FINANCIAL CONDUCT AUTHORITY

Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation

Consultation Paper
CP18/28***

October 2018

How to respond

We are asking for comments on this Consultation Paper (CP) by 7 December.

You can send them to us using the form on our website at: https://www.fca.org.uk/cp18-28-response-form

Or in writing to:
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How to navigate this document onscreen

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takes you to helpful abbreviations

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1 Summary

1.1 On 29 March 2019, the UK will leave the EU. In March 2018, the UK and the EU agreed the terms of an implementation period, which will start on 29 March 2019 and last until 31 December 2020. During this period, common rules will continue to apply and access to each other's markets will continue on current terms[1].

1.2 However, the implementation period is part of the withdrawal agreement which is subject to further negotiations between the UK and the EU. Both sides must agree the final terms of the withdrawal agreement and, to take effect, it must be ratified by the UK and the EU. In order to be ready for all scenarios, we have worked to put the necessary arrangements in place for us to continue to meet our statutory objectives and reduce harm should the withdrawal agreement not come into effect.

1.3 As part of its Brexit preparations, Parliament has passed the European Union (Withdrawal) Act 2018 (EUWA). The EUWA will repeal the European Communities Act 1972, preserve existing UK laws which implement EU obligations and convert existing directly applicable EU law at the point of exit into UK law[2]. It gives ministers powers to make secondary legislation amending this body of law to ensure it functions effectively when the UK leaves the EU. Our Handbook also needs to be amended so that it is consistent with wider UK legislation and the UK's new position outside of the EU.

1.4 HM Treasury (The Treasury) has laid a Statutory Instrument (SI) under the EUWA giving us, the Prudential Regulation Authority (PRA), the Bank of England and the Payment Systems Regulator (PSR) responsibility for amending and maintaining 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[3]. BTS are EU legislation but they do not set overall policy direction. They sit underneath Level 1 EU legislation and give technical detail on the overall legislative requirements. The regulators' powers are subject to the constraints in the EUWA – they are limited to addressing deficiencies and dealing with any failure of UK law to operate effectively after exit, and the power is time-limited.

1.5 This is the first Consultation Paper (CP) setting out proposed changes to the Handbook and to BTS as a result of Brexit. This CP principally addresses amendments to the Handbook and BTS which relate to those SIs made under the EUWA which have been published by the Government. A list of those SIs can be found in Annex 2 to this paper. The CP also explains our proposed approach to European non-legislative material, which we have set out in draft non-Handbook guidance. Our proposals aim solely to correct 'deficiencies' arising from Brexit and do not revisit policy decisions, in accordance with the powers in the EUWA.

1.6 We intend to publish a second CP later in the Autumn covering the BTS and parts of the Handbook affected by SIs which are due to be published later. We may also need to

1 For more detail on the implementation period please refer to the *Treasury's approach to financial services legislation under the European Union Withdrawal Act* (27 June) 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

2 The EUWA incorporates into UK law direct EU legislation 'so far as operative immediately before exit day'. In particular, direct EU legislation which is in force before exit day, but stated to apply after exit day, is not treated as being operative immediately before exit day

3 The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 http://www.legislation.gov.uk/ukdsi/2018/9780111171394/contents

revisit material consulted on in this CP as a result of further changes being made to the Handbook (for example, as a result of the Senior Managers and Certification Regime or the implementation of the Insurance Distribution Directive) or as a result of further published SIs.

1.7 As set out in our statement of 27 June 2018[4], and following the announcement on 8 October[5], the Treasury has communicated that it will bring forward measures that will give the regulators some flexibility to phase in changes to firms' regulatory requirements under the EUWA. We are willing to use these powers to waive or modify some requirements to allow for a smooth transition to the post-exit regulatory regime. This means we do not expect firms, regulated entities providing services within the UK's regulatory remit and other stakeholders to prepare now to implement the changes from exit day. At the same time, we would be interested in views from stakeholders regarding any aspects of the proposed changes to firms' regulatory requirements which might cause implementation challenges if the changes were to come into effect on exit day. We address this in Chapter 2.

1.8 If the UK and the EU agree on the terms of the withdrawal agreement, and there is an implementation period, the amendments consulted on in this CP will not come into effect on 29 March 2019. The changes we make to the Handbook and to BTS after the implementation period will depend on the outcome of the negotiations on the future relationship between the UK and EU.

What we cover in this CP

1.9 In April 2018, the Treasury began publishing its draft SIs to make the changes needed to the UK's legal and regulatory framework as part of preparations for Brexit. The SIs are designed to accommodate a scenario where there is no withdrawal agreement and no implementation period in place once the UK leaves the EU and where the UK would treat the EEA as a third country.

1.10 As noted above, this CP covers proposed changes to the Handbook and BTS and sets out our approach to EU non-legislative material. These proposals make sure that the regulatory framework still functions and remains in line with the EUWA and the published draft SIs from the Treasury and other ministries.

1.11 We have structured this CP as follows:

- Chapter 2 sets out **our approach to reviewing our Handbook and BTS**. In it, we explain the legal basis for making the proposed amendments and our approach to the proposed changes. We also ask for feedback on the implementation challenges the industry may face from the changes.

- Chapter 3 discusses a range of **cross-cutting issues** that we have identified which span the Handbook and BTS. The chapter sets out our proposed approach to each of these.

4 https://www.fca.org.uk/news/statements/fca-role-preparing-for-brexit

5 Proposal for a temporary transitional power to be exercised by UK regulators https://www.gov.uk/government/publications/proposal-for-a-temporary-transitional-power-to-be-exercised-by-uk-regulators/proposal-for-a-temporary-transitional-power-to-be-exercised-by-uk-regulators

- Chapter 4 explains the **Handbook** proposals covered in this CP and the type of changes we propose to make by sector. The sections of this chapter include an explanation of the more significant changes we propose:
  - Section 4.1 includes a **table of amendments** with an overview of which sourcebooks and chapters are covered in this CP and which stakeholders we think will be most interested in these proposals.
  - Section 4.2 covers our proposals to amend the **Prudential Standards** sourcebooks. These include changes to prudential rules for solo-regulated firms prudentially regulated by us and to conduct rules with prudential aspects for insurers and friendly societies.
  - Section 4.3 covers our proposals to amend parts of the **Conduct of Business sourcebook**. These proposals include changes to conduct rules that apply to insurers and friendly societies and the territorial application of the sourcebook.
  - Section 4.4 covers changes affecting the **fund management** sector, principally, amendments to both the **Investment Funds sourcebook** and the **Collective Investment Schemes sourcebook**.
  - Section 4.5 covers a brief overview of **MiFID-related Handbook changes**.
- Chapter 5 outlines the changes we propose to make to **BTS**. This includes an explanation of our approach to BTS and where we propose to make amendments.
- Chapter 6 explains how we intend to treat **EU non-legislative material**, such as Guidelines and 'Questions & Answers' documents issued by the European Supervisory Authorities (ESAs) or their predecessor bodies (Level 3). Within this chapter, we cover specific changes we propose making to chapters 19A and 19D of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC), as it refers to European Banking Authority (EBA) Guidelines on remuneration.

Why we are consulting

1.12 Our Handbook implements and refers to EU legislation and to UK law which relates to or refers to the EU. It also refers to EU institutions and concepts and to the European Economic Area (EEA). Leaving the EU, and the amendments to legislation made under the EUWA, requires us to update our Handbook to reflect the UK's new legal and regulatory framework after exit day so that it remains functional.

1.13 Amendments are also needed to BTS so that they function effectively on exit day including ensuring that they are consistent with the changes the Government is making to Level 1 EU legislation using its powers under the EUWA. More detail on our proposals to amend BTS can be found in Chapter 5.

Who this applies to

1.14 Given the breadth of changes we propose in this CP, we expect this consultation to affect all our stakeholders. To help readers navigate this CP, we set out in Chapter 4 a list of interested stakeholders by Handbook sourcebook covered in this CP.

1.15 In addition, we expect our proposed changes to BTS to be particularly relevant to:

- Credit rating agencies
- Trade repositories
- All firms which trade derivatives (whether they are financial or non-financial firms)
- Financial market infrastructure firms
- Trading venues
- Central counterparties
- Stakeholders involved in the fund management sector
- All persons within MiFID scope and MiFID optional exemption firms
- Consumers
- Trade associations

The outcome we are seeking

1.16 We seek to ensure that our Handbook and BTS continue to work effectively as we leave the EU. This is to ensure the UK has a clear and coherent legal and regulatory framework.

1.17 Most of the proposed changes are consequential in nature and follow the amendments the Government is proposing to make under the EUWA. Our approach has not been to revisit previous policy decisions or use this as an opportunity to refine our Handbook provisions or amend BTS for purposes unconnected to Brexit. We have only made changes to our Handbook to address deficiencies arising from Brexit, in line with the approach the Treasury has adopted within the various SIs. We set out the approach we have taken in more detail in Chapter 2.

1.18 We also seek to ensure through this CP that a clear approach to the treatment after Brexit of Level 3 material is established.

How it links to our objectives

1.19 Our Business Plan 2018/19 highlights Brexit preparations as one of the priorities for the coming year given its impact both on those we regulate and our broader stakeholders.

1.20 As part of our strategic objective of ensuring that the relevant markets function well, we have been working to put in place contingencies for the UK leaving the EU without a withdrawal agreement. The proposals in this CP are part of the work we have been undertaking to ensure that there is a functioning regulatory framework in place in the event the UK leaves the EU without an agreed implementation period after March 2019.

1.21 The proposals in this CP are intended to advance our operational objectives of: consumer protection, market integrity and promoting competition in the interests of consumers. We have also had due regard to our Mission and used our discretion to ensure harm or potential for harm is reduced.

Measuring success

1.22 We will consider our changes successful if the Handbook and BTS function effectively on exit day and if firms, consumers and our broader stakeholders are clear about what the proposed changes to the Handbook, BTS and the new guidance about EU Level 3 materials mean for them.

Next steps

1.23 We want to know what you think of our proposals. Please send us your comments by 7 December. Use the online response form https://www.fca.org.uk/cp18-28-response-form on our website or write to us at the address on page 2.

1.24 The consultation period for this CP is eight weeks. This is to ensure we have sufficient time to incorporate comments from stakeholders ahead of 29 March 2019. We intend to give feedback on this CP in early 2019 and publish final versions of these materials shortly before exit day. We may also publish further amendments to material consulted on in this CP in our later CP.

2 How we have reviewed the Handbook and BTS

2.1 As explained in our Business Plan 2018/19 and our statement of 27 June 2018[6], a major part of our Brexit work so far has been to ensure there is a functioning legal and regulatory framework in place when the UK leaves the EU.

2.2 We have undertaken this work collaboratively with relevant Government departments, particularly the Treasury. This is because many of the amendments needed to our Handbook and to BTS flow from the provisions of the EUWA or the changes the Government is proposing to make to UK law in SIs. These SIs are being made under the EUWA and amend:

- existing UK law, where it implements or relates to EU legislation or otherwise relates to the EU/EEA
- EU law that is incorporated into UK law under the EUWA

2.3 The process of incorporating EU law into UK law and amending it so it functions when the UK is no longer a member of the EU is referred to by the Treasury, and in this CP, as 'onshoring'. Amendments are being made via a series of SIs under the EUWA. The SIs are subject to parliamentary processes.

2.4 The proposals in this CP should be read alongside the EUWA, the SIs[7] and the Treasury's accompanying policy statements so that stakeholders can understand how the overall regulatory framework will change because of Brexit.

2.5 The proposals may reflect the content of SIs which have not been made at the time of publication and are therefore only available in draft form. More detail on how this impacts on our proposed Handbook amendments is available in paragraph 2.21. Our proposed changes to BTS in Chapter 5 have also been written to reflect the changes set out in the draft SIs.

Legal basis for the proposed amendments

2.6 On 16 July 2018, the Treasury laid in Parliament its SI on Financial Regulators' Powers[8]. This SI, if approved by Parliament, will delegate to regulators, including the FCA, powers to correct deficiencies arising from Brexit in the Handbook and in BTS.

2.7 The FCA will be subject to a number of constraints in using this power. For example, a 'deficiency'[9] is explicitly defined in the EUWA, which limits the nature of the

6 *The FCA's role in preparing for Brexit* https://www.fca.org.uk/news/statements/fca-role-preparing-for-brexit
7 The list of SIs giving rise to the amendments proposed in this CP can be found in Annex 2
8 The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 SI http://www.legislation.gov.uk/ukdsi/2018/9780111171394
9 A definition of deficiency can be found on section 8 of the *Explanatory Notes on the European Union Withdrawal Act (EUWA)* https://www.legislation.gov.uk/ukpga/2018/16/pdfs/ukpgaen_20180016_en.pdf

amendments that can be made. All amendments under the power must also be approved by the Treasury before the FCA can make them. The Treasury may only grant approval if they consider the amendments to be within the scope of the power in the SI.

2.8 Using the powers conferred by the SI means that FSMA obligations to publicly consult and conduct Cost Benefit Analysis (CBA) do not apply. However, we have chosen to consult stakeholders, and will continue to do so as far as possible, to help inform the amendments to our Handbook and to BTS.

2.9 Most of the changes in our instruments are consequential upon the provisions of the EUWA or amendments the Government is proposing to make to legislation under the EUWA. In some instances, though, several options were viably open to us for how to fix deficiencies arising from Brexit. Where this was the case, we have explained the rationale for our proposal against other potential solutions. However, we have not included CBA for any of the proposals set out in this CP.

2.10 In amending our Handbook and issuing non-Handbook guidance, we are using our general power in section 139A FSMA (power of the FCA to give guidance).

Underlying assumptions

2.11 In reviewing our Handbook and BTS we have applied the test set out in the Financial Regulators' Powers SI. Hence, we only propose changes to the Handbook and BTS which will deal with deficiencies arising from the UK leaving the EU. We have not sought to introduce broader policy changes unrelated to Brexit.

2.12 The Treasury has made clear[10] that in amending legislation under the EUWA 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). This is consistent with the fact that, in the absence of agreeing a new arrangement, the UK would be outside of the EU framework for financial services and would be a third country to the EU and its member states.

2.13 However, the Treasury has 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.

2.14 Departures from this 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

10 These can be found in *HM Treasury's approach to financial services legislation under the European Union Withdrawal Act* (27 June) under the Treasury's approach to fixing deficiencies 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

2.15 Where we propose to depart from the baseline third-country approach, we have set out our reasons. We also ask for feedback on whether there are cases where we should consider departing from the baseline approach, either on the basis set out above, or for other reasons.

Our approach to the proposed changes

2.16 As set out above, the majority of individual changes we are proposing in this CP are consequential upon the provisions of the EUWA or the changes the Treasury is proposing to make to legislation under the EUWA. These amendments do not involve a choice on our part, but reflect important effects the EUWA and proposed legislative changes will have – for example if they relate to the ability to conduct business on a cross-border basis.

2.17 For these changes, our focus has been on ensuring they are correctly expressed in the Handbook and BTS and we are seeking views from stakeholders on whether we have done that successfully. The changes are set out in draft instruments in Appendices 1 and 2, but we have generally not provided further detail on these changes in this CP.

2.18 Many of the consequential changes we have identified through our review of the Handbook affect several chapters or sourcebooks. We term them 'cross-cutting'. We outline cross-cutting changes in Chapter 3.

2.19 In addition, in this CP we provide more detail on changes to the Handbook and BTS where:

- there are different potential approaches to correcting a deficiency, which covers a small number of the changes in the CP. For these changes, we have explained the policy decisions underlying the amendments.
- we consider that an explanation is appropriate to make clear the rationale for following, or departing from, the baseline approach explained in paragraphs 2.11 to 2.15.

2.20 For all these amendments, we have sought to maintain the existing policy intent behind the provisions.

The relevant version of the Handbook, and future consultations

2.21 This CP is based on the version of the Handbook in effect on 1 July 2018[11]. This is to ensure that the proposals in this CP relate to a stable set of Handbook provisions. We may need to consult further on the chapters and sourcebooks covered in this CP. This may be because:

- The proposals in this CP reflect the content of SIs which have been published in draft but have not yet passed through Parliament. The final SIs may differ from the draft versions. In addition, further SIs may be published that affect our proposals

11 The 1 July version of the Handbook can be found here: https://www.handbook.fca.org.uk/handbook?date=01-07-2018&timeline=True

or provisions in material covered by this CP[12]. We cannot prejudge the outcome of Parliament scrutinising the draft SIs but we will address as soon as we can any modifications needed to the proposals in this CP.

- Interdependencies with chapters and sourcebooks addressed in later CPs may affect chapters and sourcebooks included in this CP[13]. As our work progresses, we may identify the need for changes in one part of the Handbook that have knock-on implications for the chapters and sourcebook on which we consult here.

- Our proposals may be affected by cross-cutting issues other than those addressed in Chapter 3 of this CP, which will be discussed in our subsequent CP. We set out in Chapter 3 the cross-cutting issues on which we are still conducting analysis.

- Between 1 July 2018 and 29 March 2019 developments unrelated to our Brexit work may affect these proposals. The publication of final Handbook provisions regarding our Senior Managers and Certification Regime is an example of an initiative that may give rise to additional amendments to parts of the Handbook covered in this CP.

2.22 Stakeholders should further note that we are consulting in this CP on changes to the Handbook glossary. Changes to glossary terms may affect the scope, application or meaning of Handbook chapters or sourcebooks covered by this CP. Stakeholders should have regard to these proposed changes when reviewing the amendments we propose. Further changes may be made to glossary terms included in this CP resulting from further analysis of the Handbook or the publication of later SIs. Our next CP will also include further proposals for glossary changes that may be of relevance to Handbook chapters and sourcebooks covered in this CP.

2.23 We are not consulting in this CP on forms that are related to these chapters or sourcebooks. We will set out in due course our intentions on making changes to forms to ensure that they are fit for purpose after Brexit.

Implementation challenges

2.24 In the event that the UK and the EU are unable to agree on the terms of the withdrawal agreement and the UK leaves the EU without an implementation period, firms and other regulated persons will have a limited amount of time to act on changes to requirements before exit day.

2.25 The Treasury announced on 27 June and confirmed on 8 October[14] that it will bring forward legislation to allow regulators to phase in changes to firms' regulatory requirements. The Treasury has said that these powers will be available to phase in changes to requirements which the regulators supervise and which have been amended under the EUWA. The powers will cover changes to requirements in

12 For example, material covered in this CP refers to incoming ECA providers and regulatory information services. As the relevant SI which relates to these provisions has not yet been published, we will cover any changes required to these provisions in a later CP.

13 For example, while MAR chapters are consulted on in this CP, provisions in GEN 2 which are referred to in these chapters are not covered in this CP. Should any amendments be made to those GEN 2 provisions in a subsequent CP, we will consider whether any further changes are required to the relevant MAR provisions.

14 Proposal for a temporary transitional power to be exercised by UK regulators https://www.gov.uk/government/publications/proposal-for-a-temporary-transitional-power-to-be-exercised-by-uk-regulators/proposal-for-a-temporary-transitional-power-to-be-exercised-by-uk-regulators

FCA rules, as well as to changes in requirements in retained EU regulations and UK domestic legislation made by the Treasury through SIs. The powers will not be available where specific transitional measures are already contained in an SI.

2.26 We expect to use these powers in a proportionate manner, bearing in mind our statutory objectives and the implementation challenges faced by firms.

2.27 Firms will not be expected to make individual applications to benefit from the transitional powers that the Treasury is giving the regulators. We are keen to get feedback in this CP on whether compliance with changes to regulatory requirements by exit day would be a particular challenge for firms. We are interested in stakeholders' views on the challenges associated with implementing changes that have been proposed in this CP, as well as changes set out in relevant SIs that have been laid or published in draft by the Treasury[15].

2.28 We welcome feedback on:

- Any situations in which compliance with new requirements may prove challenging and, in particular where compliance with pre-exit requirements would no longer be possible post-exit.
- Any systems that may need to be developed or amended, including the expected time needed to build these changes.
- Any external dependencies that may affect firms' ability to comply with new requirements in time for exit day.

2.29 We expect feedback on compliance challenges to provide evidence of reasons why full compliance would be at risk, including relevant data where possible. This will allow us to understand any challenges and consider proportionate adjustments to allow for transition where necessary. In addition to providing feedback through this CP, firms should discuss specific concerns that they may have with their usual supervisory contact.

Q1: **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.**

15 You can find the SIs that have been published by the Government https://www.gov.uk/government/collections/financial-services-legislation-under-the-eu-withdrawal-act#published-draft-statutory-instruments

3 How we will resolve cross-cutting issues

Introduction

3.1 In this chapter we explain how a no-deal Brexit would give rise to a range of issues, each of which would affect multiple parts of our Handbook and BTS. We term these 'cross-cutting issues'. We explain what impact they have and how they arise.

3.2 We have adopted a consistent approach across the Handbook and BTS to resolving cross-cutting issues, unless there are specific reasons not to. We outline below our proposed approach to each cross-cutting issue, and the Handbook sourcebooks and BTS affected. However, stakeholders should also note that these issues appear in glossary terms.

3.3 We set out later in this CP where we propose to deviate from the general approaches proposed below. This might be for a reason specific to a given Handbook sourcebook or BTS.

3.4 In our next CP, we will aim to consult on further cross-cutting issues as we finalise our proposals to address them. These will include (but may not be limited to):

- further amendments to our Handbook that are consequential to changes the PRA makes to its Rulebook
- how the EUWA will affect our ability to exercise our existing waiver and modification powers in relation to rules which transpose EU directive requirements

3.5 These issues may be relevant to material we consult on in this CP. However, as noted in Chapter 2, we will aim to consult on any further changes to the sourcebooks and BTS addressed by this CP if they are impacted by our approach to these additional cross-cutting issues.

3.6 Importantly, the changes we propose in this CP do not relate to any transitional provisions or long-term relationship that may be agreed between the UK and the EU. As noted in paragraph 1.8, we will consider in due course whether our proposed Handbook and BTS changes need to be re-considered to accommodate the outcome of negotiations.

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

Affected Handbook sourcebooks
BIPRU, COBS, COLL, CONRED, FINMAR, FUND, GEN, GENPRU, IFPRU, IPRU(FSOC), IPRU(INV), MAR, MIPRU, M2G, PRIN, RCB, SYSC, SUP

3.7 EU law has supremacy over domestic law among member states of the EU. EU law that takes the form of directives needs transposition into domestic law of EU member states. In the UK, EU Directives have been incorporated into the Handbook or UK legislation.

3.8 By contrast, EU Regulations are directly applicable. This means they do not need to be transposed into the Handbook or UK legislation.

3.9 When the UK leaves the EU, directly-applicable EU Regulations will (in the absence of a transitional arrangement) no longer apply, leaving a legislative gap. To compensate for that, the EUWA incorporates EU Regulations into UK law. They will be amended to make them work effectively by a series of SIs. Similarly, the Government is proposing in a series of SIs equivalent amendments to UK laws that:

- relate to previously transposed directives
- reflect the UK's current membership of the EU or, where applicable, the EEA
- otherwise refer to the EU or EEA concepts

3.10 Where appropriate, we will amend the Handbook to reflect these changes. This includes proposing amendments so that:

- the Handbook (including glossary terms) refers to the new or revised UK legislation (or specific provisions of that legislation), rather than the EU equivalents
- passages of EU law, or UK law now being amended, that have been replicated in the Handbook are updated to reflect the new provisions
- where relevant, references are kept to EU law to explain how the Handbook or BTS implemented EU law in the past (rather than 'implements' them)

3.11 These changes affect many sourcebooks in the Handbook reflecting the significance of EU law in the financial services sector. A further amendment related to EU law concerns references to the Treaty on the Functioning of the European Union (the Treaty). The Treaty sets out the organisational and functional arrangements of the EU and, along with the Treaty on European Union, establishes the basis of EU law.

3.12 As the UK will no longer be a member of the EU, references to the Treaty in our Handbook will no longer be appropriate. This includes where such a reference is part of a specific term – for example 'Treaty firm' to refer to a firm exercising passporting rights under the Treaty. We propose to remove these references, including relevant glossary terms such as appropriate UK regulator or authorised person (please refer to the Glossary Instrument in Appendix 1).

3.13 There are some exceptions to this approach, where we have found good reasons to retain a reference to EU legislation. Where so, we will keep the existing wording[16].

16 For example, in COLL we are retaining references to EU Capital Requirements Regulation ('CRR') in addition to UK CRR and there is a new glossary definition for EU CRR

The loss of passporting rights

Affected Handbook sourcebooks

BIPRU, COBS, COLL, CONRED, FUND, INSPRU, IFPRU, IPRU(INS), MAR, WDPG, PRIN, RCB, SYSC, SUP

3.14 Under section 31 of FSMA, the definition of an authorised person includes firms which exercise their rights to offer cross-border services into the UK or to set up a branch (to passport).

3.15 In this way, FSMA gives effect to the provisions of EU law for cross-border financial services and activities to be carried on (to be passported).

3.16 As we leave the EU's single market, passporting rights 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.

3.17 This means they will not have an automatic right to carry on regulated activities in the UK. The Government also intends to remove provisions related to passporting from relevant legislation.

3.18 Reflecting these changes in the Handbook mainly involves removing the provisions related to passporting. This includes deleting references to the roles and responsibilities of 'home' and 'host' regulators that relate to passported activities. It also means amending or deleting some glossary terms such as consent notice, passported activity or passport right (please refer to the Glossary Instrument in Appendix 1).

3.19 These changes are distinct from the proposals in our consultation about temporary permissions for incoming EEA firms, Treaty firms and UCITS/AIFM qualifiers[17].

3.20 We also plan to address in our next CP the implications of Brexit for Handbook provisions which relate to the E-Commerce Directive and the Distance Marketing Directive.

References to EU institutions

Affected Handbook sourcebooks and Binding Technical Standards

COBS, FINMAR, SYSC, MIFID BTS 2017/589, 2016/2020, 2017/658, 2017/585, 6016/2022, 2017/575, CRAR BTS 447/2012, 449/2012, 2015/1, 2015/2, SSR BTS 827/2012; EMIR BTS 150/2013[18]

3.21 As the UK will no longer be a member of the EU, European institutions such as ESMA and the European Commission will not have powers or obligations under UK law.

17 The terms *UCITS qualifier* and *AIFM qualifier* refer to UCITS management companies and AIFMs respectively that are exercising their marketing passport rights in relation to a UCITS or an AIF, without also exercising their management or services passport rights.

18 You can find the list of covered BTS in Annex 3

In most instances, the Government will replace a named EU institution with a UK equivalent.

3.22 We propose to remove or replace references in our Handbook and BTS to the European institutions to ensure it is aligned with UK law, unless there is a specific reason not to do so.

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

Affected Handbook sourcebooks and Binding Technical Standards
BIPRU, COBS, IFPRU, GENPRU, MAR, SYSC, MIFID BTS 2017/1945, 2017/584, 2017/565, 6016/2022, CRAR BTS 449/2012, 2015/2; SSR BTS 826/2012, 827/2012, EMIR BTS 150/2013

3.23 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', 'another member/EEA state' or variants thereof. When the UK leaves the EU, it will no longer be appropriate for our Handbook and BTS to refer to EU or EEA member states as if the UK were still one. 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. We propose equivalent amendments for references to 'other competent authorities' or 'another competent authority' (or variants) where currently these refer to EU or EEA authorities.

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

Affected Handbook sourcebooks and Binding Technical Standards
FINMAR, MAR, MIFID BTS 2017/1943, 2016/824, SSR BTS 826/2012, 827/2012

3.24 Within the European regulatory framework, we are obliged to share information or data with the 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 and therefore propose to remove the references to compulsory sharing of information with the ESAs.

Q2: **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?**

4 Changes to the Handbook

Section 4.1 Introduction

4.1 This chapter provides an overview of the Handbook sourcebooks and chapters that are within the scope of this CP. It summarises the changes that we are proposing to make to ensure our Handbook remains fit for purpose after Brexit.

4.2 Some sections of the Handbook chapters mentioned below are *not* within the scope of this CP. In some instances, relevant SIs that will affect them have not yet been published. In other cases, some rules within a chapter are unaffected by EU withdrawal. Annex 2 provides a list of the SIs published that are relevant to the material covered in this CP.

4.3 Appendix 1 contains the draft instruments setting out detailed proposed amendments to various sourcebooks, chapters and the glossary. Stakeholders should read this appendix to gain a full understanding of all the changes proposed.

4.4 The table below gives an overview of the sourcebooks and chapters we have reviewed for this CP and potential interested stakeholders by sourcebook. We expect all stakeholders to have an interest in our proposed changes to the glossary.

Sourcebook	Specific Chapters	Interested stakeholders
Senior Management Arrangements, Systems and Controls (SYSC)	1, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 18, 19, 20, 21, TP2, TP3, Schedule 2	All authorised persons, employees, consumers
Financial Stability and Market Confidence (FINMAR)	All	Stakeholders involved in the buying, selling and trading of financial instruments, market makers and authorised primary dealers
General Provisions (GEN)	2, 6 and TP1	Firms, Lloyds, managing agents, members agents
General Prudential sourcebook (GENPRU)	1, 2, Schedules	Investment firms (and groups containing such entities)
Prudential Sourcebook for Banks, Building Societies and Investment firms (BIPRU)	All	Investment firms (and groups containing such entities)
Prudential Sourcebook for Investment firms (IFPRU)	All (except 11)	Investment firms (and groups containing such entities)
Prudential Sourcebook for Insurers (INSPRU)	All	Insurers and friendly societies (and groups containing such entities)
Prudential Sourcebook for Mortgage and Home Finance firms, and Insurance Intermediaries (MIPRU)	4	Mortgage and home finance firms, insurance intermediaries (and groups containing such entities)
Interim Prudential Sourcebook for Friendly Societies (IFPRU-FSOC)	All	Friendly societies

Sourcebook	Specific Chapters	Interested stakeholders
Interim Prudential Sourcebook for Insurers (IPRU-INS)	All	Insurers (and groups containing such entities)
Prudential Sourcebook for Investment Business (IPRU INV)	All (except 14)	Investment firms, service companies, operators of an electronic system in relation to lending (and groups containing such entities)
Conduct of Business Sourcebook (COBS)	1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 15, 16, 18, 19, 20, 21, 22, TP1, TP2, Schedules	Investment firms and other firms undertaking designated investment business and long-term insurance business in relation to life policies, consumers
Market Conduct Sourcebook (MAR)	5, 5A, 6, 7A, 9, 10, TP and Schedules	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
Supervision (SUP)	3, 4, 5, 6, 8A, and App2, 21	All authorised persons
Consumer Redress Schemes Sourcebook (CONRED)	All	Consumers, firms
Collective Investment Schemes Sourcebook (COLL)	All	Managers and depositaries of UK-authorised collective investment schemes and/or EEA UCITS schemes
Investment Funds Sourcebook (FUND)	All	Managers and depositaries of alternative investment funds
Regulated Covered Bonds (RCB)	All	Covered bonds issuers and owners
Wind-down Planning Guide (WDPG)	All	FCA authorised solo-regulated firms
The Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD)	All	Regulated firms involved in the supply of products or services to retail customers, consumers
MiFID 2 Guide (M2G)	All	All persons within MiFID scope, MiFID optional exemption firms

4.5 Most changes we are proposing are cross-cutting in nature and consequential upon the Treasury's approach to drafting its SIs. An overview of these types of change can be found in Chapter 3, and the detailed amendments are in the draft instruments.

4.6 We include dedicated sections below with explanations of proposals where there are different approaches we could have adopted to correcting a deficiency. Specifically, we have done this where we deviate from the baseline approach explained in paragraphs 2.11 to 2.15 or we consider that an explanation is helpful to make clear the rationale for following the baseline approach.

4.7 We have also reviewed the following Handbook Guides for the purposes of this CP:

- the Energy Market Participants Guide (EMPS)
- the Oil Markets Participants Guide (OMPS)
- the Service Companies Guide (SERV)

4.8 The respective market participants will be interested in our proposed approach to each of these guides. We are not proposing any changes to the text of SERV, but service companies will be interested in the changes we are proposing to the glossary. As noted in paragraph 2.22, changes to glossary terms may affect the scope, application or meaning of Handbook provisions covered by this CP, including those sourcebooks where we have proposed no textual amendments. Stakeholders should have regard to these proposed changes set out in the glossary instrument in Appendix 1 when reviewing the amendments we propose.

Q3: **Are there any proposed changes reflected in the instruments in Appendix 1 that are not cross-cutting in nature (see Chapter 3) or discussed in this chapter where you think we should re-consider our approach? If so, why?**

Q4: **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?**

Section 4.2 Changes to Prudential Standards

Prudential requirements for solo-regulated firms

Prudential treatment of EU 27 exposures

4.9 BIPRU sets out preferential capital treatment for certain types of exposures originating from EU member states, reflecting the approach in the Capital Requirements Regulation (CRR). Our baseline approach of treating EU member states as third countries means that the UK version of the CRR[19] will remove this preferential treatment. We propose to amend BIPRU to reflect the fact that the preferential capital treatment for certain types of exposures originating from EU member states would cease to apply after exit day. We are considering temporary transitional arrangements in this area.

Conduct rules with prudential aspects for insurers and friendly societies

4.10 In addition to the cross-cutting changes to INSPRU, IPRU-INS and IPRU-FSOC[20], we have identified two changes where we have considered different approaches to correcting the deficiencies identified. These involve the treatment of:

- non-UK regulated markets
- stock-lending transactions where the counterparty is authorised in an EEA state

Non-UK regulated markets

4.11 The term 'regulated market' in INSPRU means a market that is outside the EEA (and, therefore, outside of MiFID scope) and:

- that meets comparable requirements to those for MiFID regulated markets
- whose financial instruments dealt in are of comparable quality to those in a regulated market in the UK

19 For more information on Treasury's proposed changes please refer to the Draft Capital Requirements (Amendment) (EU Exit) Regulations 2018 https://www.gov.uk/government/publications/draft-capital-requirements-amendment-eu-exit-regulations-2018

20 For more information on proposals to COBS 21, which also contains rules applying to insurers that have a prudential aspect, please refer to the COBS chapter.

4.12 INSPRU uses the term regulated market in two places[21]:

- in placing restrictions on investments in derivatives or quasi-derivatives
- in placing restrictions on assets held by pure reinsurers

4.13 We propose to amend the definition as it relates to INSPRU, to refer to markets 'outside the UK' (rather than the current 'outside the EEA') and require the market to have comparable requirements to the UK market (rather than the current reference to MiFID). This would mean that UK insurers could continue to hold their assets traded on EEA regulated markets in the same way as they do now where those markets meet the tests of being comparable to UK markets and trading instruments of comparable quality to those on UK markets.

4.14 We consider this is unlikely to cause any market disruption in the immediate term as EEA markets will meet the tests of comparability and quality. This is because they are subject to the same EU-derived requirements that currently apply in the UK.

Q5: Do you agree with our proposal to amend the term 'regulated market' as it applies in INSPRU?

Stock-lending transactions where the counterparty is authorised in an EEA state – INSPRU 3

4.15 INSPRU 3.2.36R, INSPRU 3.2.36A R and INSPRU 3.2.37G set conditions under which stock-lending transactions are approved (including in relation to permitted links). The rules limit stock-lending to transactions where the counterparty is either authorised in the UK or another EEA state, or is a person authorised by certain authorities in the USA.

4.16 The rules also exempt firms that make transactions through Euroclear Bank SA/NV's Securities Lending and Borrowing Programme from having to obtain collateral from the counterparty.

4.17 We considered options to:

- amend the rules to prevent exposure to stock-lending transactions where the counterparty is authorised in an EEA state
- continue the current position and allow exposure to stock-lending transactions where the counterparty is authorised in an EEA state

4.18 The baseline approach of treating EEA states as third countries would result in limiting stock-lending transactions to those with UK or certain USA-authorised counterparties. We consider that this approach could cause significant market disruption. This could lead to firms having to redesign their investment strategies, potentially unwinding existing transactions. This would potentially result in worse outcomes for customers.

4.19 We therefore propose to continue to permit exposure to stock-lending transactions with EEA-authorised counterparties on the same basis as the current rules.

21 This term is used more widely in our Handbook. Outside of INSPRU, it applies to all uses of the term regulated market within the Handbook, and is derived from the Markets in Financial Instruments Directive (MiFID II).

Q6: **Do you agree we should continue to permit exposure to stock-lending transactions with EEA-authorised counterparties on the same basis as under the current rules in INSPRU 3.2?**

Section 4.3 Changes to the Conduct of Business Sourcebook

Exposure of insurance policy returns to stock-lending transactions – COBS 21

4.20 The rules in COBS 21.3.11R and COBS 21.3.12R set out the conditions under which long-term insurance policy returns can be linked to stock-lending transactions. As with INSPRU 3, the rules:

- limit stock-lending to transactions where the counterparty is either authorised in the UK or another EEA state, or is a person authorised in the USA.
- exempt firms that make transactions made through Euroclear Bank SA/NV's Securities Lending and Borrowing Programme from having to obtain collateral from the counterparty.

4.21 As with INSPRU 3, we are proposing to continue to allow exposure to stock-lending transactions with EEA-authorised counterparties on the same basis as the current rules to avoid the risk of significant market upheaval. It is also in line with the approach we propose to adopt for UCITS (see paragraphs 4.46-4.48), where we propose to allow ongoing investment in EEA assets.

4.22 The rules allow exposure to loans or deposits made with an approved financial institution. The definition of this term refers to a list of approved institutions, such as central banks including the European Central Bank and the central banks of EEA states. For the same reasons set out above, we recommend continuing to allow such exposures. The proposal does not lead to a change for firms.

Q7: **Do you agree we should continue to allow exposure to stock-lending transactions with EEA-authorised counterparties on the same basis as under the current rules in COBS 21.3?**

Q8: **Do you agree we should continue to allow exposure to loans or deposits made with an approved financial institution on the same basis as under the current rules in COBS 21.3?**

Territorial application and other changes to COBS

4.23 This section addresses amendments to a broad range of chapters in COBS: 1, 2, 3, 6, 9, 10, and 22.

4.24 In our proposals to amend these chapters, we considered maintaining preferential treatment for the EEA (e.g. in terms of protections provided to EEA consumers). However, given our baseline approach of treating EEA member states the same as any other third country (and the expectation EEA member states will do the same with respect to the UK), we propose to amend the provisions in COBS accordingly. We consider this to be consistent with the Treasury's approach to corresponding

legislation and that it would ensure that appropriate levels of protection continued to be provided to UK consumers (as explained further in relation to COBS 6, 9 and 22 below).

4.25 In line with this approach, we propose to amend COBS 1, which sets out the territorial application of COBS. At present, UK conduct rules will generally only apply to an EEA firm when it carries on business from an establishment (branch) in the UK. Incoming EEA firms providing services on a cross-border passported basis are generally subject to Home State conduct rules. After exit, if an EEA firm were to obtain authorisation from us or the PRA, then COBS would apply to it in the same way as any other UK-authorised third-country firm.

Agent as client and reliance on others – COBS 2

4.26 COBS 2.4 contains rules and guidance relating to when a firm can treat an agent as its client and when a firm is entitled to rely on information from another investment firm. COBS 2.4.4R sets out that such reliance can be placed when the latter is, among other things, an investment firm authorised in an EEA state. As the guidance in COBS 4.5G explains, this means that a firm can rely on a suitability or appropriateness assessment performed by another investment firm if that firm is subject to 'equivalent requirements in another EEA State.'

4.27 Proceeding on the basis that passporting rights will come to an end, we propose to restrict the application of COBS 2.4.4R so that, in the context of MiFID or equivalent third-country business, reliance can be placed only on UK authorised investment firms subject to MiFID or equivalent requirements.

4.28 In parallel, we propose that the references in COBS 2.4.5G to equivalent requirements in other EEA States be deleted. This change would have the effect of limiting this guidance to scenarios involving reliance being placed on suitability and appropriateness assessments undertaken by firms in compliance with the requirements in COBS 9A and COBS 10A.2 respectively.

Client categorisation – COBS 3

4.29 COBS 3.5.3BR through to COBS 3.5.3ER set out the circumstances in which a firm may categorise a local public authority or municipality as an elective professional client, rather than a retail client. A firm must make an assessment, both qualitative and quantitative, of the client before re-categorising it.

4.30 With respect to MiFID business, MIFID II allows member states to set additional or alternative quantitative criteria for firms to use to assess whether a local public authority or municipality can be re-categorised. COBS 3.5.3ER states the relevant quantitative test that we have chosen to adopt for firms categorising non-UK clients of this type. The test makes a distinction between EEA and non-EEA local public authorities and we propose to remove this distinction. This means EEA local public authorities or municipalities will be treated under COBS 3 in the same way as local authority clients based in third countries. When re-categorising EEA local public authorities, therefore, firms will need to follow the same quantitative test that is applied in relation to MiFID or equivalent third-country business generally under COBS 3.5.3R (2).

Appropriateness – COBS 10

4.31 COBS 10 specifies when a firm that is carrying on non-MiFID business must determine whether a particular type of non-advised transaction is appropriate for a client.

4.32 COBS 10.4.1R sets out that a firm need not carry out an appropriateness assessment where the firm is providing an execution-only service relating to particular types of financial instrument specified in COBS 10.4.1R (2) or other 'non-complex financial instruments.' The criteria for determining whether a financial instrument is non-complex includes a reference to the financial instrument being capable of being realised at market prices or prices made available, or validated, by valuation systems 'independent of the issuer'.

4.33 In COBS 10.5.5G we give guidance that sets out our views on when a valuation system will be regarded as being 'independent of the issuer'. The guidance provision currently provides that '...valuation systems will be independent of the issuer...where they are overseen by a depositary that is regulated as a provider of depositary services in a EEA state.'

4.34 To ensure that the guidance continues to apply as intended we propose to replace references to a depositary in 'another EEA State' to in 'the UK'. As such, a valuation system which is overseen by a depositary that is regulated within the EEA will fall outside the scope of this guidance provision in the future.

4.35 The COBS instrument in Appendix 1 also addresses changes to the appropriateness rules in COBS 10A, which relate to non-advised services in respect of MiFID and insurance-based investment products. The instrument does not include changes with regard to circumstances when a firm is not required to ask its client to provide information or assess appropriateness (COBS 10A.4.1R). We will propose amendments to this rule in a subsequent consultation.

Disclosure of charges, remuneration and commission – COBS 6, Suitability and basic advice (non-MiFID provisions) – COBS 9, Restriction on the distribution of certain regulatory capital instruments – COBS 22

4.36 COBS 6.4 sets out the disclosure requirements that apply to a firm selling or arranging the sale of a packaged product to a retail client, where the selling or arranging does not relate to giving a personal recommendation. It requires a firm to disclose any commission unless the retail client '...is not present in the EEA at the time of the transaction...'.

4.37 COBS 9.4 specifies that a suitability report does not need to be provided '...if the client is habitually resident outside the EEA and is not present in the United Kingdom at the time of acknowledging consent to the proposal form, to which the personal recommendation relates.'

4.38 COBS 22.2 sets out 'Restrictions on the retail distribution of mutual society shares' and COBS 22.3 sets out 'Restrictions on the retail distribution of contingent convertible instruments and CoCo funds'. In both chapters, the restrictions currently apply to firms dealing with retail clients in the EEA.

4.39 We propose to amend the scope of these provisions so that they refer only to clients in the UK. In the case of application provisions (COBS 22), this will mean that relevant protections will no longer apply when firms deal with clients in the EEA. The scope of exemptions (COBS 6.4 and 9.4) will be expanded as they will dis-apply requirements for firms when dealing with clients in the EEA.

4.40 The UK-only approach maintains the current investor protections for UK retail clients, but removes the existing protection for retail clients in the EEA provided by our rules.

As passporting rights will fall away, UK firms conducting business in the EEA may be subject to the EEA member states' own local laws instead.

Q9: Do you agree with our proposed changes to COBS 2, 3, 6, 9, 10 and 22?

Section 4.4 Changes to fund management rules

4.41 In this section, we summarise the key changes we propose to the legal and regulatory framework for fund management. This does not cover COLLG – the Collective Investment Scheme Information Guide. We have decided not to review COLLG as it needs a broader set of updates, beyond those related to Brexit. We will review it in due course and therefore stakeholders should refer to the amendments to the Investment Funds (FUND) and Collective Investment Schemes (COLL) sourcebooks for the relevant regulatory framework post-Brexit.

Investment Funds sourcebook (FUND)

4.42 The Alternative Investment Fund Managers Directive (AIFMD) sets out a harmonised regulatory framework for AIFMs. The AIFMD rules are largely set out in FUND. The changes we propose relate to the loss of single market passporting rights given by the Directive and reflect changes proposed by the Treasury[22]. They cover:

- the creation of an equivalent UK AIFM regime for existing alternative investment funds (AIFs) managed by UK AIFMs and for AIFMs who may wish to launch new funds.
- continued cross-border management by AIFMs, whereby EEA AIFMs managing unauthorised UK AIFs without carrying on a regulated activity in the UK will be subject to the same rules as third-country AIFMs (it will no longer be possible for an EEA AIFM to manage an authorised UK AIF if that AIFM is outside of the Temporary Permissions Regime (TPR)).
- the continued cross-border marketing of EEA AIFs whereby, in order to access the UK market, EEA AIFs will be subject to the National Private Placement Regime (NPPR) unless they have already notified the FCA to begin marketing before exit day and have applied to enter the TPR.

Collective Investment Schemes sourcebook (COLL)

4.43 The UCITS Directive sets out a framework for authorising and supervising EEA collective investment schemes (funds) that can be marketed to retail investors. Management companies of UCITS funds are also authorised and regulated under the Directive.

4.44 The rules for how UCITS funds should be managed are largely set out in the Collective Investment Schemes sourcebook (COLL). The changes we propose to make to COLL

22 The Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018: explanatory information https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746539/AIFM_Amendment_Regulations_8-10-18__for_publication_.pdf

reflect the loss of single market authorisation and passporting rights[23] and mostly relate to:

- the creation of an equivalent UK retail fund regime for the existing UK UCITS schemes, and for UK management companies who may wish to launch new funds of this kind in the UK (outside of the TPR EEA management companies will no longer be able to manage UK UCITS).

- continued cross-border marketing of UCITS, whereby EEA UCITS wishing to continue to market in the UK will be treated as third-country funds and will need to apply for individual recognition by the FCA under s.272 FSMA (although passporting funds already recognised under s.264 FSMA before exit day will be able to apply to enter the TPR).

- cross-border mergers involving a UK UCITS scheme and a scheme based in the EEA, which will no longer be possible using the procedure in the Directive.

- provisions for master-feeder arrangements, which will still apply to a UK feeder UCITS when it invests in units of an EEA master UCITS. We do not expect that EEA UCITS feeder funds will be allowed to invest in a UK UCITS master fund after exit day.

4.45 We are not consulting on changes to section 5.9 of COLL, concerning money market funds, because that section was removed by the Money Market Funds Regulation Instrument 2018 (FCA 2018/37) on 20 July 2018.

UCITS investment powers

4.46 The UCITS rules describe the classes of eligible assets in which funds may invest and the borrowing and leverage arrangements they may enter into. In some cases, the UCITS regime makes a distinction between investments in EEA assets and investments in the rest of the world. Treating EEA states as third countries could cause significant disruption for some funds, resulting in them breaching risk-spreading rules and having to sell their current holdings. For existing investors who chose a fund expecting it to invest in EEA-based assets, this approach could interrupt their investment plans and it could limit the availability of alternative options for both existing and new investors. We therefore propose to allow UK UCITS schemes to retain the same freedom to invest in EEA assets as they do now.

4.47 Accordingly, we propose that references in COLL 5.2 to 'EEA' be amended to 'EEA and UK' as needed to ensure that the current investment powers are kept.

4.48 We considered widening the range of eligible investments to treat assets from the rest of the world the same as EEA-based assets. However, we consider this would potentially change the risk profile of funds by allowing greater investment in less well-regulated markets or less liquid assets. As a result, we do not judge this to be the right change to make to our Handbook.

Q10: Do you agree that UK UCITS schemes should have the same freedom to invest in EEA (non-UK) assets as they do now?

23 The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2018: draft statutory instrument https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746543/2018.10.04_CIS__Amendment_etc.___EU_Exit__SI_Draft_40__watermarked___002_.pdf

Depositaries of UK authorised funds (relevant for AIFs and UCITS)

4.49 UK funds must have a depositary that is 'established' in the UK, which can include the UK branch of an incoming EEA firm if that branch has a 'top-up' Part 4A permission to act as a depositary. After Brexit, the concept of being established in the UK will, for UK authorised funds, be limited to an entity incorporated in the UK. Depositaries of authorised funds that currently use the UK branch model will have a transitional period in which to restructure their operations. It will still be possible for branches of EEA firms to hold a Part 4A permission to act as depositary for unauthorised AIFs.

4.50 We propose to amend FUND and COLL to remove references to a depositary of an authorised fund that is a UK branch of an EEA firm.

Q11: Do you agree with our proposal to amend FUND and COLL to remove references to a depositary of an authorised fund that is a UK branch of an EEA firm?

Section 4.5 An overview of MiFID-related changes

4.51 MiFID II is being incorporated into UK law through a mixture of legislative provisions, Handbook changes and conversion of Binding Technical Standards into UK legal instruments. The draft Treasury legislation amends the legislative provisions it used to transpose MiFID II plus other relevant legislative provisions, and amends the UK versions of MiFIR and the Commission delegated acts. In this CP we are consulting on the Handbook changes and the Binding Technical Standards. For more information on MiFID BTS changes please refer to Chapter 5.

4.52 In the changes we made to give effect to MiFID II, we included in certain parts of the Handbook (most notably in SYSC and COBS) text copied out from Commission delegated regulations, principally what we referred to as the MiFID Org regulation, which is being incorporated into UK law by the Treasury. We are retaining the copied out text of the Commission delegated regulations in the Handbook and have only proposed amendments to reflect the changes the Treasury has made in that process.

4.53 MiFID II includes a category of firms, so-called 'Article 3' firms, which are not required to be authorised as investment firms under the Directive but are subject to some of the same obligations as MiFID investment firms. Article 3 firms are restricted in the activities they can carry out and include some financial advisors, corporate finance boutique firms and venture capital firms. Within the EU, unlike MiFID investment firms, Article 3 firms are not allowed to passport their investment services. Brexit means that for UK firms the MiFID II passport will no longer be available. However, we are not proposing for this reason to do away with the distinction between Article 3 firms and MiFID investment firms as we do not think this constitutes a deficiency to be dealt with under the EUWA.

4.54 In terms of deficiencies to be corrected in the incorporation of MiFID 2 into UK law, the most significant relate to the transparency regime, transaction reporting and the ancillary activities exemption for commercial firms trading commodities derivatives. These are dealt with essentially through the Treasury's draft legislation and the UK versions of BTS. Onshoring the MiFID II provisions in the Handbook mainly involves consequential changes to references to legislation, definitions or EU institutions. In

this CP we consult on changes to the MiFID 2 Guide. Some of the remaining changes to our Handbook arising from the onshoring of MiFID will be consulted upon in a later CP.

4.55 As for proposed amendments to GEN in the case of applying onshored EU regulations to UK branches of third-country investment firms (now expanded to include EEA firms), these should be read in conjunction with the amendments to the same module relating to incoming EEA firms with temporary permissions (please refer to Chapter 4 of the TPR CP)[24].

24 The Temporary Permissions Regime Consultation Paper
https://www.fca.org.uk/publications/consultation-papers/cp18-29-temporary-permissions-regime-inbound-firms-and-funds

5 Binding Technical Standards

Our approach to Binding Technical Standards (BTS)

5.1 This consultation sets out our proposals to correct provisions in BTS[25] that would no longer operate effectively once the UK has left the EU. These changes will ensure that there is a functioning legal framework for UK financial regulation on the day that the UK leaves the EU.

5.2 This consultation does not cover all of the BTS. A further consultation will follow later in the Autumn, alongside our consultation on other parts of the Handbook. In this paper, we are consulting on changes to BTS in respect of:

- Credit Rating Agencies
- Fund Management
- EMIR (only BTS related to registration and application of Trade Repositories)
- MIFID/MIFIR
- Short Selling
- Capital Requirements

5.3 As set out earlier in the paper, the Government has signalled its intention to delegate powers to the Bank of England, PRA, FCA and PSR to correct deficiencies within BTS. On 16 July 2018[26], the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 was laid before Parliament. It is under these powers that we are proposing to make changes to the Binding Technical Standards. All changes made under the delegated power will be subject to approval by the Treasury before the relevant instruments are made.

5.4 Some BTS within CRD, CRR, and MIFID are relevant to firms and persons supervised by us, the Bank of England and the PRA. The draft SI giving us the power to correct BTS designates a regulator for each BTS and in some cases this is shared between two of the regulators. The approach we, the Bank and the PRA are taking, in preparation for exit day, is that one authority will take the lead in making corrections, based on which authority's remit and objectives are most relevant. Where this is the case, we have collaborated with the other designated regulator, and we will be sharing consultation responses with one another.

5.5 On exit day, we and the PRA will be able to make our own changes to the BTS in line with our respective statutory objectives and in respect of the entities we regulate. Any

25 Please see full list of BTS covered in this CP in Annex 3

26 The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 http://www.legislation.gov.uk/ukdsi/2018/9780111171394/contents

future changes to the BTS, by either regulator, would be undertaken in consultation with each other.

5.6 The Schedule of the Financial Regulators' Powers SI includes the list of EU Regulations for which we are the appropriate regulator. It also includes this for EU Regulations we share with the PRA and the Bank.

5.7 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 changes are not described in detail in this consultation but all draft instruments showing the changes can be found in Appendix 2.

5.8 We give more detail and reasoning where our proposals depart from the general approach taken by Government or where we consider a different approach to correcting the relevant deficiency is appropriate.

5.9 All changes to BTS should also 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.

Sectoral changes

5.10 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 consultation. We have specified below where changes are specific to certain BTS.

The Credit Rating Agencies Regulation associated BTS

5.11 Credit rating agencies (CRAs) in the EU are regulated under the Credit Rating Agencies Regulation (CRAR) and supervised by ESMA. The CRAR will be incorporated into UK law under the EUWA. This legislation will make us the supervisor responsible for CRAs. CRAs should have regard to HMT proposals relating to registration regimes and the standards that will apply to firms seeking to provide business in the UK.

5.12 The CRAR has several BTS associated with it. We will make appropriate amendments to some of these and others will cease to be applicable. We propose to make amendments to the following BTS:

- Commission Delegated Regulation (EU) No 447/2012 regarding the assessment of compliance of credit rating methodologies
- Commission Delegated Regulation (EU) No 449/2012 regarding the information for registration and certification of credit rating agencies
- Commission Delegated Regulation (EU) No 2015/1 regarding the periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by the European Securities and Markets Authority
- Commission Delegated Regulation (EU) No 2015/2 regarding the presentation of the information that credit rating agencies make available to the European Securities and Markets Authority

5.13 Most of the changes are cross-cutting and as such, explanation for such approach can be found in the cross-cutting chapter of this CP (Chapter 3). But some changes are consequential to the approach communicated in the Treasury's Policy note on the Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2018[27]. These changes include, for example, replacing references to the European Rating Platform, in Commission Delegated Regulation (EU) No 2015/2, with references to a public rating database.

5.14 We have also had to consider more substantial changes. Commission Delegated Regulation (EU) No 2015/2 required CRAs to give information to ESMA on all ratings issued and not withdrawn when it came into force. Firms were required to submit this information within 6 months from the Delegated Regulation entering into force.

5.15 We propose that CRAs that are currently registered with ESMA and that wish to register with us will need to send us this information by exit day. We will work closely with CRAs to test our systems in preparation to receive the information they will need to report to us. We expect CRAs to be familiar with the reporting requirements as they are consistent with those in place under CRAR.

5.16 We are also working closely with stakeholders so that we can receive data in a similar way to ESMA.

5.17 Finally, we will remove Commission Delegated Regulation (EU) 2015/3. This BTS sets out disclosure requirements for structured finance instruments under Article 8b of CRAR. Article 8b will be removed by Article 40 of the Securitisation Regulation (2017/2402) which will come into force on 1 January 2019.

Fund Management associated BTS

5.18 This section covers changes associated with AIFMD and the UCITS Directive. It does not cover changes to BTS associated with the Regulations for Money Market Funds, European Social Entrepreneurship Funds (EuSEF), European Venture Capital Funds (EuVECA) or European Long-term Investment Funds (ELTIF) but we anticipate being able to consult on those BTS later this year.

5.19 The BTS associated with AIFMD, Commission Delegated Regulation (EU) No 2014/694, defines when AIFs should be considered open-ended or closed-ended. We have not identified any deficiencies with this BTS, except a cross-reference to an article of AIFMD in Article 5 that needs to be replaced by its implementing measure in the UK, and will not make any further changes to it.

5.20 Finally, we will remove the following Commission Delegated Regulation which will not be applicable under the onshored legislation proposed by the Treasury as it relates to reporting requirements which will cease as we exit the EU:

- UCITS: Commission Implementing Regulation (EU) No 2016/1212 prescribes the process for reporting sanctions to ESMA under article 99e.

27 Draft Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2018: explanatory information https://www.gov.uk/government/publications/draft-credit-rating-agencies-amendments-etc-eu-exit-regulations-2018/draft-credit-rating-agencies-amendments-etc-eu-exit-regulations-2018-explanatory-information

The European Markets and Infrastructure Regulation (EMIR)– only BTS related to registration and application of Trade Repositories

5.21 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).

5.22 In this CP we are consulting on proposed changes to the two BTS associated with registration and application of Trade Repositories (TRs) for which we are the lead authority. The changes are all consequential and derive from the SI on Trade Repositories[28]. They are:

- Commission Implementing Regulation (EU) No 1248/2012, regarding the format of applications for registration of trade repositories
- Commission Delegated Regulation (EU) No 150/2013 regarding the details of the application for registration as a trade repository

5.23 We intend to consult on RTS 151/2013 on data to be published and made available by trade repositories when the Treasury publishes relevant material relating to the treatment of EMIR.

The Markets in Financial Instruments associated BTS

5.24 The Markets in Financial Instruments Directive and the accompanying Markets in Financial Instruments Regulation (collectively 'MiFID II') offer a framework for regulating the buying, selling and trading of financial instruments (including shares, bonds, units in collective investment schemes and derivatives) in the EU.

5.25 There are 44 BTS associated with MIFID II. This consultation paper does not cover, to use the original numbering of the European Securities and Markets Authority, RTS 1 and 2, 3 and 11 dealing with pre-and post-trade transparency. We will communicate on the approach to these BTS in due course.

5.26 In some cases, responsibility for the BTS associated with MIFID II is shared between the FCA and the Bank or the PRA as set out earlier in this Chapter.

5.27 In order to make the MiFID/MIFIR BTS more 'user friendly' we have included a specific provision within each technical standard to define its scope and application – based on the scope provisions in the Level 1 of MiFID II together with a discrete provision setting out definitions used in the BTS.

5.28 Our review of the MIFID II/MIFIR BTS did not find any significant deficiencies, beyond those identified in the associated Level 1 text such as the scope of definitions, except for minor amendments. Most of them are non-material in nature and included within the cross-cutting chapter (Chapter 3). The list of BTS that only included cross-cutting or minor amendments can be found in the table below.

28 Draft Trade Repositories (Amendment and Transitional Provision) (EU exit) Regulations 2018 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746257/Trade_Repositories__Amendmentand_Transitional_Provisions___EU_Exit__Regulations18.pdf

BTS 2017/571, BTS 2017/581, BTS 2017/568, BTS 2017/592, BTS 2017/590, BTS 2017/591, BTS 2017/580, BTS 2017/574, BTS 2017/582, BTS 2017/575, BTS 2017/576, BTS 2017/2154, BTS 2017/ 1945, BTS 2017/1093, BTS 2017/1943, BTS 2016/2022, BTS 2017/1005, BTS 2017/1110, BTS 2017/1946, BTS 2017/579, BTS 2016/2020, BTS 2017/589, BTS 2017/584, BTS 2017/578, BTS 2017/573, BTS 2016/824, BTS 2017/566, BTS 2017/569, BTS 2017/572

5.29 However, in RTS 23 Commission Delegated Regulation (EU) No 2017/585, we are not proposing to follow the general onshoring approach of replacing references to Central European Time (CET) with references to Greenwich Mean Time (GMT) and British Summer Time (BST). Firms must still report reference data based on CET because we recognise changing this deadline would otherwise effectively reduce the time we have for processing the data and may have cost and system implications for firms. We are however proposing to keep the data time format for data to be reported to Universal Time Coordinated (UTC) to ensure consistency across order data, instrument reference data and transaction reporting.

5.30 More generally, in the case of transaction reporting, RTS 22 maintains the application of reporting requirements to the same categories of UK firms. Whilst the amendments to RTS 22 and 23 are technical in nature, UK firms should note that these changes have the following effects:

- UK trading venues will have to report transactions on their venue by EEA firms as they will become third-country firms and will not have an obligation to report to the FCA. They should not, however, report for UK branches of EEA firms as after exit day these should be reporting to the FCA. Trading venues will therefore need to distinguish trading by the UK branch from elsewhere where the branch is not executing

- A UK firm will no longer be able to meet the conditions for transmission if they transmit orders to an EEA firm. They will therefore have to either report transactions themselves or ensure their transmission arrangements are with firms that have obligations to report to the FCA

- The FCA will publish consolidated data on instruments traded on UK trading venues and systematic internalisers and may publish other reference data

5.31 These changes tie in with the scope of the onshored transaction reporting regime in MiFIR. For EEA firms, see commentary in Chapter 4 of this CP (an overview of MiFID-related changes) relating to the application of GEN 2.2.22AR and the TPR CP on requirements applying to temporary permission firms; if an EEA firm executes transactions in financial instruments from a UK branch, it will need to report these to the FCA's Market Data Processor (MDP) from exit day, either itself or using an approved reporting mechanism, and have made the necessary arrangements to do so before then.

5.32 To inform our operational onshoring programme, we seek feedback on the following areas, in addition to the general questions set out in Chapter 2:

Q12: Do you foresee any specific challenges in implementing the changes described above?

Q13: **How long do you anticipate it will take to implement the changes? Please describe which changes you are referring to.**

Q14: **Are there any other impacts that you have identified?**

5.33 Finally, we will remove these MiFID II/MIFIR BTS as they will not be applicable under the onshored legislation as they relate to obligations which will cease as we exit the EU:

- RTS 3A Delegated Regulation (EU) No 2017/1018 specifying information to be Notified by investment firms, market operators and credit institutions
- ITS 1 Implementing Regulation (EU) No 2017/988 on standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State
- ITS 4A Implementing Regulation on standard forms, templates and procedures for the transmission of information under the freedom to provide services, or the freedom of establishment
- ITS 6 Implementing Regulation (EU) No 2017/980 on standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities
- ITS 7 Implementing Regulation (EU) No 2017/981 on standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation
- ITS 8 Implementing Regulation (EU) No 2017/1111 on procedures and forms for submitting information on sanctions and measures
- Commission Implementing Regulation (EU) No 2017/2382 regarding standard forms, templates and procedures for the transmission of information
- Commission Delegated Regulation (EU) No 2017/586 regarding the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations
- Commission Implementing Regulation (EU) No 2017/1944 regarding standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm

5.34 As discussed above these BTS, covering transparency requirements and tick sizes, are still subject to ongoing discussions. We will consult on these in due course.

- RTS 1 Commission Delegated Regulation (EU) No 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 2 Commission Delegated Regulation (EU) No 2017/583, regarding transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives. Commission Delegated Regulation (EU) No 2017/2194 is an amendment to RTS 2 and will therefore also be consolidated with RTS 2 in due course

- RTS 3 Commission Delegated Regulation (EU) No 2017/577, regarding the volume cap mechanism and the provision of information for the purposes of transparency and other calculations

- RTS 11 Commission Delegated Regulation (EU) No 2017/588 regarding the tick size regime for shares, depositary receipts and exchange traded funds

The Short Selling Regulation associated BTS

5.35 We propose to make changes to the 3 BTS associated with the Short Selling Regulation, namely:

- Commission Delegated Regulation (EU) No 826/2012 – this BTS relates to notification and disclosure requirements regarding net short positions as well as the details of the information to be provided to ESMA in relation to net short positions, and the method for calculating turnover to determine exempted shares

- Commission Implementing Regulation (EU) No 827/2012 – this BTS relates to the means for public disclosure of net position in shares, the format of the information to be provided to ESMA in relation to the 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

- Commission Delegated Regulation (EU) No 919/2012 – this BTS relates to the method of calculation of the fall in value for liquid shares and other financial instruments

5.36 Most of the changes are cross-cutting, and as such, can be found in the chapter on cross-cutting issues. But some changes to these BTS are consequential to the approach adopted in the Statutory Instrument by the Treasury.

5.37 These changes are relatively minor, and by way of example, include:

- References to ESMA's publishing obligation in the Commission Delegated Regulation (EU) 827/2012, where ESMA is required to publish a list of shares which are traded on EU venues but which are exempt from the EU Short Selling Regulation as they are principally traded on venues outside of the Union, will be transferred to us. We will publish a list of shares principally traded outside of the UK.

- References in the Commission Delegated Regulation (EU) No 919/2012 to financial instruments in Section C of Annex 1 to Directive 2004/39/EC (MIFID) will be updated to refer to the category of derivatives listed in the Regulated Activities Order, in line with the Treasury's changes.

Capital Requirements associated BTS

5.38 With reference to the BTS adopted under CRD IV and CRR, we share responsibilities with the PRA for a proportion of these BTS, as set out in the Financial Regulators' Powers SI (see para 5.6). For this dossier, we have agreed with the PRA to split each onshored BTS at exit day using the power under Regulation 4 of the Financial Regulators' Powers (Technical Standards) (EU Exit) Regulations 2018. We intend to make the same onshoring changes as the PRA at exit and the outcome would be to have separate but identical onshored BTS applying to PRA-authorised and FCA-authorised firms.

5.39 While we are conducting our own consultation through this paper on the onshoring amendments to our portion of each split BTS, FCA-authorised firms should have regard to the PRA consultation that will be published shortly to view the detail of the proposed amendments. Any responses to our consultation should be provided either directly to us or to the PRA, but we encourage firms to respond to the PRA where possible.

5.40 Certain CRR BTS contain reporting and disclosure templates used by both PRA-authorised and FCA-authorised firms. The PRA and we are proposing not to make line by line changes to these templates or instructions at exit. This is due to the volume of reporting and disclosure templates and instructions, the costs to firms of changing reporting templates, and seeking to minimise/reduce the frequency of changes to reporting requirements. We both plan to issue interpretative guidance on the approach we expect firms to take after EU withdrawal in cases where reporting and disclosure fields or definitions are based on concepts related to the EU.

5.41 In relation to all the changes we have discussed in this chapter:

Q15: **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 3? Are there any proposed changes in the instruments in Appendix 2 or discussed in Chapter 5 where you think we should re-consider our approach?**

6 European Level 3 materials

Our proposed general approach to Level 3

6.1 Under the EUWA, the broad range of non-legislative material produced by the European Supervisory Authorities (ESAs) or their predecessor bodies (for example, CESR) will not be incorporated into UK law.

6.2 This non-legislative material includes Guidelines and Recommendations on the application of EU law, and Opinions, and is known collectively as Level 3 material. We have also included 'Questions and Answers' under this umbrella.

6.3 The ESAs currently have powers under the ESA Regulations to issue Guidelines and Recommendations which are subject to a 'comply or explain' requirement. Under the provisions of the EUWA, the ESA Regulations will become part of UK law. However, the Government has proposed revoking the ESA Regulations, which will mean the comply and explain requirement no longer applies.

6.4 Because of these changes, we propose to issue FCA non-Handbook guidance on our approach after exit day to existing Level 3 material. The proposed non-Handbook guidance can be found at Appendix 3 to this CP. In summary, it sets out that:

- we recognise the value of existing Level 3 material within the current regulatory structure and consider that this material will continue to be relevant after exit day to us, financial institutions and other market participants
- we expect financial institutions and other market participants to continue to apply ESA Guidelines and recommendations as they did before exit day
- we consider that references to other pre-exit EU non-legislative material (such as Commission Q&A's and ESA Opinions) may continue to be relevant and that we will continue to have regard to these as appropriate
- we expect to continue to apply pre-exit ESA Guidelines and recommendations which relate to our functions, to the extent we currently comply with them

6.5 We will not carry out a detailed, line-by-line review of all existing Level 3 materials to identify and resolve provisions which no longer have their intended effect (for example, references to legislation that may have been amended as part of the withdrawal process and may therefore no longer be correct). Instead, we expect financial institutions and other market participants to interpret all EU Level 3 material sensibly and purposively, taking into account the UK's withdrawal from the EU, the provisions of the EUWA and amendments made to relevant legislation in the withdrawal process.

Q16: **Do you have any comments on the proposed guidance on our approach to EU Level 3 materials set out at Appendix 3 to this CP?**

Q17: **Have you identified any specific provision in EU non-legislative material 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.**

Remuneration requirements in SYSC 19

6.6 There is one area where we propose to change how we refer to EBA Guidelines. Our IFPRU Remuneration Code and dual-regulated firms Remuneration Code allows firms to apply a notional discount rate to the total variable remuneration awarded to material risk takers (MRTs) to calculate the bonus cap. This lets firms account for the time value of awards, considering factors such as inflation, interest rates and deferral periods while continuing to meet the requirement to award variable remuneration only up to a maximum of 100% or 200% of the value of their fixed remuneration.

6.7 The Handbook requires firms wishing to apply the discount rate to apply the methodology set out in the EBA Guidelines on Applicable Notional Discount Rate for variable remuneration, as published on 27 March 2014[29].

6.8 An issue arises in this case because compliance with these Guidelines is mandatory, and the formula for calculation relies on inflation and interest rates produced by Eurostat. These figures may not continue to be produced for the UK following exit day.

6.9 To deal with this, we propose to remove from our rule the requirement to discount variable remuneration in the way specified in the Guidelines and replace this with a Handbook note reference.

6.10 By pointing firms to the relevant Guidelines and to our approach that firms should make every effort to comply, we would ensure they apply the same consistent method across Europe should Eurostat figures continue to be produced (as our UK equivalent statistics may differ from those of Eurostat). Should Eurostat figures not be available post-exit, firms would be expected to demonstrate that this data is not available in their efforts to comply and explain the rationale for the use of appropriate alternative figures which can then be verified by us.

Other non-Handbook guidance

6.11 There are various pieces of guidance that the FCA has published which sit outside of our Handbook. This guidance may refer to FCA Handbook provisions which we propose to change as a result of Brexit, EU legislation or otherwise refer to the EU/EU concepts. As such, this guidance may be impacted by Brexit.

6.12 We intend to publish our proposed approach to such guidance in our next consultation paper.

29 These provisions are set out in SYSC 19A.3.44ER and SYSC 19D.3.53R.

Annex 1
Questions in this paper

Q1: 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 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?

Q3: Are there any proposed changes reflected in the instruments in Appendix 1 that are not cross-cutting in nature (see Chapter 3) or discussed in this chapter where you think we should re-consider our approach? If so, why?

Q4: 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?

Q5: Do you agree with our proposal to amend the term 'regulated market' as it applies in INSPRU?

Q6: Do you agree we should continue to permit exposure to stock-lending transactions with EEA-authorised counterparties on the same basis as under the current rules in INSPRU 3.2?

Q7: Do you agree we should continue to allow exposure to stock-lending transactions with EEA-authorised counterparties on the same basis as under the current rules in COBS 21.3?

Q8: Do you agree we should continue to allow exposure to loans or deposits made with an approved financial institution on the same basis as under the current rules in COBS 21.3?

Q9: Do you agree with our proposed changes to COBS 2, 3, 6, 9, 10 and 22?

Q10: Do you agree that UK UCITS schemes should have the same freedom to invest in EEA (non-UK) assets as they do now?

Q11: **Do you agree with our proposal to amend FUND and COLL to remove references to a depositary of an authorised fund that is a UK branch of an EEA firm?**

Q12: **Do you foresee any specific challenges in implementing the changes described above?**

Q13: **How long do you anticipate it will take to implement the changes? Please describe which changes you are referring to.**

Q14: **Are there any other impacts that you have identified?**

Q15: **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 3? Are there any proposed changes in the instruments in Appendix 2 or discussed in Chapter 5 where you think we should re-consider our approach?**

Q16: **Do you have any comments on the proposed guidance on our approach to EU Level 3 materials set out at Appendix 3 to this CP?**

Q17: **Have you identified any specific provision in EU non-legislative material 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
List of relevant Statutory Instruments

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

Short Selling (Amendment) (EU Exit) Regulations 2018

Consumer Credit (Amendment) (EU Exit) Regulations 2018

Building Societies (Amendment) (EU Exit) Regulations 2018

Friendly Societies (Amendment) (EU Exit) Regulations 2018

EEA Passport Rights (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

Collective Investment Schemes (Amendment) (EU Exit) Regulations 2018

Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018

The Deposit Guarantee Scheme and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018

Capital Requirements (Amendment) (EU Exit) Regulations 2018

Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018

Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

Solvency 2 and Insurance (Amendment) (EU Exit) Regulations 2018

Payments and electronic money (Amendment) (EU Exit) Regulations 2018: draft statutory instrument

The Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018: draft statutory instrument

Annex 3
List of relevant Binding Technical Standards

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

AIFMD

- Commission Delegated Regulation (EU) 694/2014 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers.

Credit Rating Agencies Regulation

- Commission Delegated Regulation (EU) 2015/1 of 30 September 2014 supplementing Regulation (EC) 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by the European Securities and Markets Authority.

- Commission Delegated Regulation (EU) 2015/2 of 30 September 2014 supplementing Regulation (EC) 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies make available to the European Securities and Markets Authority.

- Commission Delegated Regulation (EU) 2015/3 of 30 September 2014 supplementing Regulation (EC) 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments.

- Commission Delegated Regulation (EU) 447/2012 of 21 March 2012 supplementing Regulation (EC) 1060/2009 of the European Parliament and of the Council on credit rating agencies by laying down regulatory technical standards for the assessment of compliance of credit rating methodologies.

- Commission Delegated Regulation (EU) 449/2012 of 21 March 2012 supplementing Regulation (EC) 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on information for registration and certification of credit rating agencies.

EMIR (Trade Repositaries)

- Commission Delegated Regulation (EU) 150/2013 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 details of the application for registration as a trade repository.

- Commission Implementing Regulation (EU) 1248/2012 of 19 December 2012 laying down implementing technical standards with regard to the format of applications

for registration of trade repositories according to Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.

MiFID

- Commission Delegated Regulation (EU) 2017/1018 of 29 June 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 specifying information to be notified by investment firms, market operators and credit institutions.

- Commission Delegated Regulation (EU) 2017/1943 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms.

- 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.

- Commission Delegated Regulation (EU) 2017/568 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets.

- Commission Delegated Regulation (EU) 2017/569 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the suspension and removal of financial instruments from trading.

- Commission Delegated Regulation (EU) 2017/570 of 26 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 determination of a material market in terms of liquidity in relation to notifications of a temporary halt in trading.

- Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers.

- Commission Delegated Regulation (EU) 2017/573 of 6 June 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 on requirements to ensure fair and Non-discriminatory co-location services and fee structures.

- Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks.

- Commission Delegated Regulation (EU) 2017/575 of 8 June 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 concerning the data to be published by execution venues on the quality of execution of transactions.

- Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council 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.

- Commission Delegated Regulation (EU) 2017/578 of 13 June 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 specifying the requirements on market making agreements and schemes.

- Commission Delegated Regulation (EU) 2017/584 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying organisational requirements of trading venues.

- Commission Delegated Regulation (EU) 2017/586 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations.

- 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) 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives.

- Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business.

- Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

- Commission Implementing Regulation (EU) 2017/1005 of 15 June 2017 laying down implementing technical standards with regard to the format and timing of the communications and the publication of the suspension and removal of financial instruments pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

- Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators.

- Commission Implementing Regulation (EU) 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 and related notifications pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

- Commission Implementing Regulation (EU) 2017/1111 of 22 June 2017 laying down implementing technical standards with regard to procedures and forms for submitting information on sanctions and measures in accordance with Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

- Commission Implementing Regulation (EU) 2017/1944 of 13 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council.

- Commission Implementing Regulation (EU) 2017/2382 of 14 December 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with Directive 2014/65/EU of the EU Parliament and of the Council.

- Commission Implementing Regulation (EU) 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 pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

- Commission Implementing Regulation (EU) 2017/980 of 7 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities in accordance with Directive 2014/65/EU of the European Parliament and of the Council.

- Commission Implementing Regulation (EU) 2017/981 of 7 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation in accordance with Directive 2014/65/EU of the European Parliament and of the Council.

- Commission Implementing Regulation (EU) 2017/988 of 6 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State.

MiFIR

- Commission Delegated Regulation (EU) 2016/2020 of 26 May 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation.

- Commission Delegated Regulation (EU) 2016/2022 of 14 July 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards concerning the information for registration of third-country firms and the format of information to be provided to the clients.

- Commission Delegated Regulation (EU) 2017/2194 of 14 August 2017 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to package orders.

- Commission Delegated Regulation (EU) 2017/572 of 2 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of the offering of pre-and post-trade data and the level of disaggregation of data.

- Commission Delegated Regulation (EU) 2017/577 of 13 June 2016 supplementing Regulation (EU) 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.

- Commission Delegated Regulation (EU) 2017/579 of 13 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the direct, substantial and foreseeable effect of derivative contracts within the Union and the prevention of the evasion of rules and obligations.

- Commission Delegated Regulation (EU) 2017/580 of 24 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments.

- Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) 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.

- Commission Delegated Regulation (EU) 2017/585 of 14 July 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council 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.

- Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) 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 internalise.

- Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities.

Short Selling Regulation

- Commission Delegated Regulation (EU) 826/2012 of 29 June 2012 supplementing Regulation (EU) 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.

- Commission Delegated Regulation (EU) 919/2012 of 5 July 2012 supplementing Regulation (EU) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments.

- Commission Implementing Regulation (EU) 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) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps.

UCITS Directive

- Commission Delegated Regulation (EU) 2017/2417 of 17 November 2017 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivative.

- Commission Implementing Regulation (EU) 2016/1212 of 25 July 2016 laying down implementing technical standards with regard to standard procedures and forms for submitting information in accordance with Directive 2009/65/EC of the European Parliament and of the Council.

- Commission Implementing Regulation (EU) 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities.

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

MiFID

FCA Lead, shared with the PRA

- Commission Delegated Regulation (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm.

- Commission Delegated Regulation (EU) 2017/589 of 19 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading.

- Commission Implementing Regulation (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council.

MiFIR

FCA Lead, shared with the Bank of England

- 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.

- Commission Delegated Regulation (EU) 2017/581 of 24 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties.

- Commission Delegated Regulation (EU) 2017/582 of 29 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing.

Annex 4
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

The FCA considers that all 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 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.

Equality and diversity

We are required under the Equality Act 2010 (the Act) in exercising our functions to '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 paragraph 2.16 the cross-cutting and sector-specific technical changes proposed in chapter 3 have not involved a choice being made on our part.

By contrast, some of the changes proposed do involve a choice being made. We have therefore focused on these changes in assessing the risk of people with protected characteristics being adversely impacted.

Overall, we do not consider it likely that the proposed discretionary changes would adversely impact people with protected characteristics. This is because the majority of changes in question impact directly on financial institutions rather than on individual products, which is where they would be more likely to affect individuals. Where individual products are directly affected (e.g. amending the territorial scope of COBS 22), we do not expect these changes to have a material impact on people with protected characteristics. We would, however, welcome stakeholders' input on this assessment.

Legislative and Regulatory Reform Act

We are required under the LRRA to have regard to the principles in the LRRA 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 LRRA 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 and to explain the approach to EU level 3 materials after 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

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.

Annex 5
Abbreviations in this document

AIFM	Alternative Investment Fund Managers
AIFMD	Alternative Investment Fund Managers Directive
AIFs	Alternative Investment Funds
BIPRU	Prudential Sourcebook for Banks, Building Societies and Investment Firms
BST	British Summer Time
BTS	Binding Technical Standards
CBA	Cost Benefit Analysis
CCPs	Central Counterparties
CESR	Committee of European Securities Regulators
CET	Central European Time
COBS	Conduct of Business Sourcebook
COLL	Collective Investment Schemes Sourcebook
CONRED	Consumer Redress Schemes Sourcebook
CP	Consultation Paper
CRAs	Credit Rating Agencies
CRAR	Credit Rating Agencies Regulation
CRD	Capital Requirements Directive
CRR	Capital Requirements Regulation
EBA	European Banking Authority
ECA	Electronic Commerce Activity
EEA	European Economic Area

ELTIF	European Long-Term Investment Fund
EMIR	European Markets and Infrastructure Regulation
EMPS	Energy Market Participants Guide
ESAs	European Supervisory Authorities
ESMA	European Securities and Markets Authority
EU	European Union
EuSEF	European Social Entrepreneurship Fund
EuVECA	European Venture Capital Fund
EUWA	European Union Withdrawal Act
FCA	Financial Conduct Authority
FICOD	Financial Conglomerates Directive
FINMAR	Financial Stability and Market Confidence
FSMA	Financial Services and Markets Act 2000
FUND	Investment Funds Sourcebook
GEN	General Provisions
GENPRU	General Prudential sourcebook
GMT	Greenwich Meridian Time
IDD	Insurance Distribution Directive
IFPRU	Prudential Sourcebook for Investment Firms
INSPRU	Prudential Sourcebook for Insurers
IPRU(FSOC)	Interim Prudential sourcebook for friendly societies
IPRU(INS)	Interim Prudential Sourcebook for Insurers
IPRU(INV)	Prudential Sourcebook for Investment Business
M2G	MiFID 2 Guide
MAR	Market Conduct Sourcebook

MDP	Market Data Processor
MiFID	Markets in Financial Instruments Directive
MIFIR	Markets in Financial Instruments Regulation
MIPRU	Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries
MRTs	Material Risk Takers
MTFs	Multilateral Trading Facility
NCAs	National Competent Authorities
NPPR	National Private Placement Regime
NURS	Non-UCITS Retail Schemes
OMPS	Oil Markets Participants Guide
OTC	Over-the-counter Derivatives
OTFs	Organised Trading Facility
PRA	Prudential Regulation Authority
PSR	Payment Systems Regulator
RCB	Regulated Covered Bonds
RPPD	Responsibilities of Providers and Distributors for the Fair Treatment of Customers
RTS	Regulatory Technical Standards
SERV	Service Companies Guide
SIs	Statutory Instruments
SSR	Short Selling Regulation
SUP	Supervision
SYSC	Systems and Controls Sourcebook
TP	Transitional Provisions
TR	Trade Repositories
UCITS	Undertakings for Collective Investment in Transferable Securities

UK	United Kingdom
USA	United States of America
WDPG	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.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN

Appendix 1
Draft Handbook text

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) (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 FCA 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)
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex A
Financial Stability and Market Confidence sourcebook (FINMAR)	Annex B
General Provisions (GEN)	Annex C

Citation

D. 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 set out in Annex 2 of the accompanying 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 2 of the consultation paper.

(3) The amendments in this instrument are based on the text of the Handbook in force on 1 July 2018. If amendments are made to the relevant text between 1 July 2018 and 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, rather than the text of the Handbook in force on 1 July 2018.

(4) The consultation is based on the assumption that the Financial Conduct Authority will have the power under the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 to make the proposed rule changes.

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.

1 Application and purpose

1.1A Application

…

1.1A.2 G The provisions in *SYSC* should be read in conjunction with *GEN* 2.2.23R to *GEN* 2.2.25G. In particular:

(1) [deleted]

(2) Provisions made by the *FCA*, and by the *PRA* in the *PRA* Rulebook, may be applied by both regulators to *PRA-authorised persons*. Such provisions are applied by each regulator to the extent of its powers and regulatory responsibilities.

(3) For *Solvency II firms*, the *FCA* considers that the requirements and guidance in Chapters 2, 3, 12 to 18, 21 and 22 of *SYSC* are not inconsistent with:

(a) the parts of the *PRA* Rulebook ~~implementing~~ which implemented the governance provisions in the *Solvency II Directive* (articles 40 to 49);

(b) the *Solvency II Regulation* ~~(EU) 2015/35 of 10 October 2014 (articles 258 to 275)~~, or

(c) *EIOPA* guidelines on systems of governance dated 28 January 2015 (EIOPA-BoS-14/253 EN).

In most cases, there is no direct overlap with those provisions because the *SYSC* requirements are directed at *FCA* conduct requirements not expressly covered by or under provisions which implemented or supplemented the *Solvency II Directive*. Where there is a direct overlap with *SYSC rules* and guidance, the *FCA* will take requirements and guidelines which implemented or supplemented the *Solvency II Directive* ~~derived requirements and guidelines~~ into account ~~and will interpret the *SYSC rules* and guidance in a way that avoids inconsistency~~. The definition of *Solvency II firm* includes (for *SYSC*) *large non-directive insurers* because the *PRA* have applied certain Solvency II derived requirements to those *firms*. Where *SYSC* refers to the *PRA* Rulebook applicable to *Solvency II firms*, *large non-directive*

insurers should read those references as if they were references to the corresponding part of the *PRA* Rulebook applicable to *large non-directive insurers*.

…

1 Annex 1 Detailed application of SYSC 1

Part 1 Application of SYSC 2 and SYSC 3 to an insurer, a UK ISPV, a managing agent and the Society

Who?

1.1	R	*SYSC* 2 and *SYSC* 3 only apply to an *insurer*, a *UK ISPV*, a *managing agent* and the *Society* except that:		
		(1)	~~for an *incoming EEA firm* or an *incoming Treaty firm*:~~	
			~~(a)~~	~~*SYSC* 2.1.1R and *SYSC* 2.1.2G do not apply;~~
			~~(b)~~	~~*SYSC* 2.1.3R to *SYSC* 2.2.3G apply, but only in relation to allocation of the function in *SYSC* 2.1.3R(2) and 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*; and~~
			~~(c)~~	~~*SYSC* 3 applies, but 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*;~~ [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*, *SYSC* 2 and *SYSC* 3 do not apply;~~ [deleted]	
		(3)	~~for an *incoming Treaty firm* which has *permission* only for *cross border services* and which does not carry on *regulated activities* in the *United Kingdom*, *SYSC* 3.2.6AR to *SYSC* 3.2.6JG do not apply;~~ [deleted]	
		(4)	…	
		(5)	~~*SYSC* 2 and *SYSC* 3 do not apply to an *incoming ECA provider* acting as such.~~ [deleted]	
		…	…	
…				
1.2	G	~~(1)~~	~~Question 12 in *SYSC* 2.1.6G contains guidance on *SYSC* 1 Annex 1.1.1R(1)(b) and *SYSC* 1 Annex 1.1.1R(1)(c).~~	

		~~(2)~~	~~*SYSC* 1 Annex 1.1.8R further restricts the territorial application of *SYSC* 2 and *SYSC* 3 for an *incoming EEA firm* or an *incoming Treaty firm*.~~	
		~~(3)~~	~~*SYSC* 1 Annex 1.1.1R(3) puts an *incoming EEA firm* on an equal footing with unauthorised *overseas persons* who utilise the *overseas persons* exclusions in article 72 of the *Regulated Activities Order*.~~	
		~~(4)~~	~~Further *guidance* on which matters are reserved to a *firm's Home State regulator* can be found at *SUP* 13A Annex 2.~~ [deleted]	
	What?			
…				
1.4	R	*SYSC* 3.2.6AR to *SYSC* 3.2.6JG do not apply:		
		(1)	…	
		(2)	in relation to the following *regulated activities*:	
			…	
			(c)	*long-term insurance business* which is outside the scope of the *Solvency II Directive* (unless it is otherwise one of the *regulated activities* specified in this *rule*);
…				
1.10	R	(1)	*SYSC* 3, except *SYSC* 3.2.6AR to *SYSC* 3.2.6JG, also applies in a *prudential context* to an *overseas firm* ~~(other than an *incoming EEA firm* or an *incoming Treaty firm*)~~ with respect to activities wherever they are carried on.	
…				

…

Part 2	**Application of the common platform requirements**		
	Who?		
…			
2.2	R	~~For an *incoming EEA firm* or an *incoming Treaty firm*:~~	
		~~(1)~~	~~the *rule* on responsibility of senior personnel (SYSC 4.3) does not apply;~~

		~~(2)~~	~~the *common platform requirements* 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*;~~
		~~(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 *common platform requirements* do not apply;~~
		~~(4)~~	~~for an *incoming Treaty firm* which has *permission* only for *cross-border services* and which does not carry on *regulated activities* in the *United Kingdom*, the *common platform requirements on financial crime* do not apply.~~ [deleted]
…			
2.6A	R	The *common platform requirements* do not apply to a *firm* ~~(including an *incoming EEA firm*)~~ in relation to its carrying on of *auction regulation bidding*, except for:	
		(1)	*SYSC* 6.1.1R which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the *firm* (including its managers, employees and *appointed representatives*) might be used to further *financial crime*; and
		(2)	*SYSC* 6.3 (Financial crime).
…			
2.6F	R	~~The *common platform requirements* do not apply to an *incoming EEA AIFM branch* in respect of its management of a *UK AIF*, except for:~~	
		~~(1)~~	~~those *common platform requirements* which are *AIFMD host state requirements*;~~
		~~(2)~~	~~*SYSC* 6.1.1R which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the *firm* (including its managers and *employees*) might be used to further *financial crime*; and~~
		~~(3)~~	~~*SYSC* 6.3.~~ [deleted]
…			
2.7	G	~~*EEA MiFID investment firms* are reminded in particular that they must comply with the *common platform record-keeping requirements* in relation to a *branch* in the *United Kingdom*.~~ [deleted]	

2.7A	G	~~*EEA UCITS management companies* are also reminded that they must comply with:~~		
		~~(1)~~	~~the *common platform requirements* indicated in Column A+ (Application to a management company) in Table A in Part 3 of this Annex;~~	
		~~(2)~~	~~the *common platform record-keeping requirements*; and~~	
		~~(3)~~	~~the *common platform requirements on financial crime*;~~	
		~~in relation to activities carried on from a *branch* in the *United Kingdom*. Where the *common platform requirement* addresses matters within the scope of article 12 of the *UCITS Directive*, an *EEA UCITS management company* should note that those matters may also be subject to the rules of its *Home State regulator*.~~ [deleted]		
		~~[**Note:** articles 12(1)(b), 14(1)(c),14(1)(d), 17(4), 18(3) and 19(1) of the *UCITS Directive* and articles 4(1)(e), 10(1), 10(2) and 10(3) of the *UCITS implementing Directive*]~~		
	What?			
…				
2.8A	R	(1)	Subject to (2) and (3), articles 1(2), 21 to 25, 30 to 32 and 72 of the *MiFID Org Regulation* (including any relevant definitions in ~~*MiFID*~~ the *Glossary*, *MiFIR* and the *MiFID Org Regulation*) apply as if they were *rules* or *guidance* in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm) to a *firm's* carrying on of the business set out in *SYSC* 1 Annex 1 2.8R which is not *MiFID business* or a *structured deposits regulated activity*.	
		(1A)	Subject to (2) and (3), articles 33 to 35 of the *MiFID Org Regulation* ~~of the *MiFID Org Regulation*~~ (including any relevant definitions in ~~*MiFID*~~ the *Glossary*, *MiFIR* and the *MiFID Org Regulation*) apply as if they were *rules* or *guidance* in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm) to a *firm's* carrying on of the business set out in *SYSC* 10.1.1R which is not *MiFID business* or a *structured deposits regulated activity.*	
		(2)	References in Column (1) to a word or phrase used in the *MiFID Org Regulation* for the purpose of (1) have the meaning indicated in Column (2) of the table below:	
			(1)	(2)

			“ancillary services”	*ancillary services* or *ancillary activities* associated with the *firm’s regulated activities*
			“client” and “potential client”	*client*
			“competent authority”	*FCA*
			“investment firm” and “firm”	*firm*
			“investment service” and “investment services and activities”	*designated investment business*
			“portfolio management” and “portfolio management service”	*managing investments*
			~~“Directive 2014/65/EU”; “Regulation (EU) No 600/2014”; “Directive 2014/57/EU” and “Regulation (EU) No 596/2014” and their implementing measures~~	~~*regulatory system*, except where the reference is to a specific provision of a Directive or Regulation in Column (1) in which case the reference must be read as referring to such specific provision~~
			“shall”	must
		(3)	~~Any references within the *MiFID Org Regulation* for the purpose of (1) to other provisions of *EU* law must be interpreted in light of this *rule*.~~ [deleted]	
		(4)	This *rule* does not apply to a *collective portfolio management investment firm* in relation to the *firm’s* business other than its *MiFID business*.	
		~~[**Note:** The *MiFID Org Regulation* can be found at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0565&from=EN.]~~		
…				
2.16	R	~~The *common platform requirements*, except the *common platform requirements on financial crime* and the *common platform record-keeping requirements*, apply to a *firm* that is not a *UK UCITS management*~~		

		~~*company* in relation to *passported activities* carried on by it from a *branch* in another *EEA State*.~~ [deleted]	
2.16A	R	~~(1)~~	~~The *common platform requirements* referred to in Column A+ in Table A of Part 3 (below) apply to a *UK UCITS management company* in relation to *passported activities* carried on by it from a *branch* in another *EEA State*.~~
		~~(2)~~	~~Any other *common platform requirement* applies to a *UK UCITS management company* in relation to *passported activities* carried on by it from a *branch* in another *EEA State* to the extent that the requirement addresses matters within the scope of article 12 of the *UCITS Directive*.~~ [deleted]
2.16B	G	~~The matters referred to in paragraph 2.16AR of this Annex may also be subject to the rules of the *UK UCITS management company's Host State regulator*.~~ [deleted]	
…			
2.16D	R	~~The *common platform requirements*, except those which are *AIFMD host state requirements*, apply to a *full-scope UK AIFM* in respect of its management of an *EEA AIF* from a *branch* in another *EEA State*.~~ [deleted]	
…			
2.16F	R	~~The *common platform requirements*, except the *common platform requirements on financial crime* and the *common platform record-keeping requirements*, apply to an *AIFM investment firm* in respect of its *MiFID business* where carried on from a *branch* in another *EEA State*.~~ [deleted]	
…			
2.18	R	The *common platform organisational requirements*, except the *common platform requirements on financial crime*, also apply in a *prudential context* to a *UK domestic firm* and to an *overseas firm* ~~(other than an *incoming EEA firm* or an *Incoming Treaty firm*)~~ with respect to activities wherever they are carried on. However, *SYSC* 4.5 (Management responsibilities maps for UK relevant authorised persons), *SYSC* 4.6 (Management responsibilities maps for non-UK relevant authorised persons), *SYSC* 4.8 (Senior management responsibilities for third country relevant authorised persons: allocation of responsibilities), *SYSC* 4.7 (Senior management responsibilities for UK relevant authorised persons: allocation of responsibilities), *SYSC* 4.9 (Handover procedures and material) and *SYSC* 5.2 (Certification regime) apply in accordance with the *rules* in those sections.	
…			

…

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

Provision SYSC 4	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 4.3.1R	Not applicable	Rule	Not applicable	Rule ~~(but not applicable to *incoming EEA firms*, *incoming Treaty firms* or *UCITS qualifiers*)~~
SYSC 4.3.2R	Not applicable	Rule	Not applicable	Guidance ~~(but not applicable to *incoming EEA firms*, *incoming Treaty firms* or *UCITS qualifiers*)~~
SYSC 4.3.2AG	Not applicable	Not applicable	Not applicable	Guidance ~~(but not applicable to *incoming EEA firms*, *incoming Treaty firms* or *UCITS qualifiers*)~~

SYSC 4.3.3G	Guidance	Guidance	Not applicable	Guidance ~~(but not applicable to *incoming EEA firms*, *incoming Treaty firms* or *UCITS qualifiers*)~~
…				
SYSC 4.4.1AR	Not applicable	Not applicable	Not applicable	Rule applies this section only to: … (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*; and (3) ~~an *incoming Treaty firm*, an *incoming EEA firm* and a *UCITS qualifier*, (but only *SYSC* 4.4.5R(2) applies for these firms); and~~ [deleted] …
…				

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 5	Application to a common platform firm other than to a	Application to a UCITS	Application to a full-scope UK AIFM of	Application to all other firms apart from insurers, UK ISPVs, managing

	UCITS investment firm	management company	an authorised AIF	agents the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
…				
SYSC 5.1.5AAR	Rule	Not applicable save in relation to a *UCITS investment firm* and its *MiFID business*	Not applicable	~~Rule applicable to the *branch* of an *incoming EEA firm* in relation to its *MiFID business*~~ ~~Other *firms*:~~ Not applicable
SYSC 5.1.5ABR	Rule	Not applicable save in relation to a *UCITS investment firm* and its *MiFID business*	Not applicable	~~Rule applicable to the *branch* of an *incoming EEA firm* in relation to its *MiFID business*~~ ~~Other *firms*:~~ Not applicable
SYSC 5.1.5ACG	Guidance	Not applicable save in relation to a *UCITS investment firm* and its *MiFID business*	Not applicable	~~Guidance applicable to the *branch* of an *incoming EEA firm* in relation to its *MiFID business*~~ ~~Other *firms*:~~ Not applicable
SYSC 5.1.5ADG	~~Guidance~~	~~Not applicable save in relation to a~~	~~Not applicable~~	~~Guidance applicable to the *branch* of an *incoming EEA*~~

		~~*UCITS investment firm* and its *MiFID business*~~		~~*firm* in relation to its *MiFID business*~~ ~~Other *firms:*~~ ~~Not applicable~~ [deleted]
SYSC 5.1.5AEG	~~Guidance~~	~~Not applicable save in relation to a *UCITS investment firm* and its *MiFID business*~~	~~Not applicable~~	~~Guidance applicable to the *branch* of an *incoming EEA firm* in relation to its *MiFID business*~~ ~~Other firms:~~ ~~Not applicable~~ [deleted]
…				

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 9	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	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 9.2 G	Not applicable	Not applicable	Not applicable	Applicable to *credit institutions* only~~, not including *incoming EEA firms* which have *permission* for *cross border*~~

				~~*services* only and which do not carry on *regulated activities* in the *United Kingdom*.~~

Table C:

Part 1: Application of the requirements in articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation to MiFID optional exemption firms and third country firms

Provision MiFID Org Regulation		**~~Text of the MiFID Org Regulation as of:~~**	**MiFID optional exemption firm**	**Third country firm**
Article 1 – Subject-matter and scope	(2)	~~31/3/2017~~	Not applicable	Not applicable
Article 21 – General organisational requirements	(1)	~~31/3/2017~~	Rule	(a), (b) and (g): Guidance; (c), (d), (e), (f) and final paragraph: Rule
	(2)		Rule	Rule
	(3)		Rule	Guidance
	(4)		Rule	Guidance
	(5)		Rule	Guidance
Article 22 – Compliance	(1)	~~31/3/2017~~	Guidance	Guidance
	(2)		Guidance	Guidance
	(3)		Guidance	(a), (c), (d) and (e): Guidance; (b): Rule
	(4)		Guidance	Guidance
Article 23 – Risk management		~~31/3/2017~~	Guidance	Guidance
Article 24 – Internal audit		~~31/3/2017~~	Guidance	Guidance

Article 25 – Responsibility of senior management	~~31/3/2017~~	Guidance	(1): Rule; (2), (3) and (4): Guidance
Article 30 – Scope of critical and important operational functions	~~31/3/2017~~	Guidance	Guidance
Article 31 – Outsourcing critical or important operational functions	~~31/3/2017~~	(1): Rule; (2), (3), (4) and (5): Guidance	(1): Rule; (2), (3), (4) and (5): Guidance
Article 32(1) and (2) – Service providers located in third countries	~~31/3/2017~~	Rule	Guidance
Article 72 – Retention of records	~~31/3/2017~~	Rule	Guidance

Part 2: Articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation

~~EU~~ UK	**Article 1 - Subject-matter and scope**		
	2	References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements (so far as relevant) in Chapters II to IV of this Regulation. ~~referred to in Article 1(3) and 1(4) of Directive 2014/65/EU and their implementing provisions as set out under this Regulation.~~	
~~EU~~ UK	**Article 21 - General organisational requirements**		
	1	Investment firms shall comply with the following organisational requirements:	
		(a)	establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities;
		(b)	ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;

		(c)	establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the investment firm;
		(d)	employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;
		(e)	establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the investment firm;
		(f)	maintain adequate and orderly records of their business and internal organisation;
		(g)	ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally.
		When complying with the requirements set out in the this paragraph, investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.	
	2	Investment firms shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.	
	3	Investment firms shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their investment services and activities.	
	4	Investment firms shall establish, implement and maintain accounting policies and procedures that enable them, at the request of the competent authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.	
	5	Investment firms shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and	

		arrangements established in accordance with paragraphs 1 to 4, and take appropriate measures to address any deficiencies.	
~~EU~~ UK	**Article 22 - Compliance**		
	1	Investment firms shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under ~~Directive 2014/65/EU~~ UK law on markets in financial instruments ("UK obligations"), as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under ~~that Directive~~ UK law on markets in financial instruments. Investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.	
	2	Investment firms shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:	
		(a)	to monitor on a permanent basis and to assess, on a regular basis, the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with the first subparagraph of paragraph 1, and the actions taken to address any deficiencies in the firm's compliance with its obligations;
		(b)	to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the firm's ~~obligations under Directive 2014/65/EU~~ UK obligations;
		(c)	to report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken;
		(d)	to monitor the operations of the complaints-handling process and consider complaints as a source of relevant information in the context of its general monitoring responsibilities.
		In order to comply with points (a) and (b) of this paragraph, the compliance function shall conduct an assessment on the basis of which it shall establish a risk-based monitoring programme that takes into consideration all areas of the investment firm's investment services, activities and any relevant ancillary	

		services, including relevant information gathered in relation to the monitoring of complaints handling. The monitoring programme shall establish priorities determined by the compliance risk assessment ensuring that compliance risk is comprehensively monitored.	
	3	In order to enable the compliance function referred to in paragraph 2 to discharge its responsibilities properly and independently, investment firms shall ensure that the following conditions are satisfied:	
		(a)	the compliance function has the necessary authority, resources, expertise and access to all relevant information;
		(b)	a compliance officer is appointed and replaced by the management body and is responsible for the compliance function and for any reporting as to compliance required ~~by Directive 2014/65/EU~~ in relation to its UK obligations and by Article 25(2) of this Regulation;
		(c)	the compliance function reports on an ad-hoc basis directly to the management body where it detects a significant risk of failure by the firm to comply with its ~~obligations under Directive 2014/65/EU~~ UK obligations;
		(d)	the relevant persons involved in the compliance function are not involved in the performance of services or activities they monitor;
		(e)	the method of determining the remuneration of the relevant persons involved in the compliance function does not compromise their objectivity and is not likely to do so.
	4	An investment firm shall not be required to comply with point (d) or point (e) of paragraph 3 where it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of investment services and activities, the requirements under point (d) or (e) are not proportionate and that its compliance function continues to be effective. In that case, the investment firm shall assess whether the effectiveness of the compliance function is compromised. The assessment shall be reviewed on a regular basis.	
~~EU~~ UK	**Article 23 - Risk management**		
	1	Investment firms shall take the following actions relating to risk management:	
		(a)	establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the firm's activities,

			processes and systems, and where appropriate, set the level of risk tolerated by the firm;	
		(b)	adopt effective arrangements, processes and mechanisms to manage the risks relating to the firm's activities, processes and systems, in light of that level of risk tolerance;	
		(c)	monitor the following:	
			(i)	the adequacy and effectiveness of the investment firm's risk management policies and procedures;
			(ii)	the level of compliance by the investment firm and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b);
			(iii)	the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons to comply with such arrangements, processes and mechanisms or follow such policies and procedures.
	2	Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of the investment services and activities undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:		
		(a)	implementation of the policy and procedures referred to in paragraph 1;	
		(b)	provision of reports and advice to senior management in accordance with Article 25(2).	
		Where an investment firm does not establish and maintain a risk management function under the first sub-paragraph, it shall be able to demonstrate upon request that the policies and procedures which it is has adopted in accordance with paragraph 1 satisfy the requirements therein.		
~~EU~~ UK	**Article 24 - Internal audit**			
	Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and			

	maintain an internal audit function which is separate and independent from the other functions and activities of the investment firm and which has the following responsibilities:		
		(a)	establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the investment firm's systems, internal control mechanisms and arrangements;
		(b)	issue recommendations based on the result of work carried out in accordance with point (a) and verify compliance with those recommendations;
		(c)	report in relation to internal audit matters in accordance with Article 25(2).
~~EU~~ UK	**Article 25 - Responsibility of senior management**		
	1	Investment firms shall, when allocating functions internally, ensure that senior management, and, where applicable, the supervisory function, are responsible for ensuring that the firm complies with its obligations under ~~Directive 2014/65/EU~~ UK law on markets in financial instruments ("UK obligations"). In particular, senior management and, where applicable, the supervisory function shall be required to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the ~~obligations under Directive 2014/65/EU~~ UK obligations and to take appropriate measures to address any deficiencies. The allocation of significant functions among senior managers shall clearly establish who is responsible for overseeing and maintaining the firm's organisational requirements. Records of the allocation of significant functions shall be kept up-to-date.	
	2	Investment firms shall ensure that their senior management receive on a frequent basis, and at least annually, written reports on the matters covered by Articles 22, 23 and 24 indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.	
	3	Investment firms shall ensure that where there is a supervisory function, it receives written reports on the matters covered by Articles 22, 23 and 24 on a regular basis.	
	4	For the purposes of this Article, the supervisory function shall be the function within an investment firm responsible for the supervision of its senior management.	

~~EU~~ UK	**Article 30 - Scope of critical and important operational functions**			
	1	For the purposes of ~~the first subparagraph of Article 16(5) of Directive 2014/65/EU~~ [*SYSC* 8.1.1R] and rule 2.1 of the Outsourcing Part of the PRA Rulebook, an operational function shall be regarded as critical or important where a defect or failure in its performance would materially impair the continuing compliance of an investment firm with the conditions and obligations of its authorisation or its other obligations under ~~Directive 2014/65/EU~~ UK law on markets in financial instruments, or its financial performance, or the soundness or the continuity of its investment services and activities.		
	2	Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of paragraph 1:		
			(a)	the provision to the firm of advisory services, and other services which do not form part of the investment business of the firm, including the provision of legal advice to the firm, the training of personnel of the firm, billing services and the security of the firm's premises and personnel;
			(b)	the purchase of standardised services, including market information services and the provision of price feeds.
~~EU~~ UK	**Article 31 - Outsourcing critical or important operational functions**			
	1	Investment firms outsourcing critical or important operational functions shall remain fully responsible for discharging all of their obligations under ~~Directive 2014/65/EU~~ UK law on markets in financial instruments and shall comply with the following conditions:		
			(a)	the outsourcing does not result in the delegation by senior management of its responsibility;
			(b)	the relationship and obligations of the investment firm towards its clients under the terms of ~~Directive 2014/65/EU~~ UK law on markets in financial instruments is not altered;
			(c)	the conditions with which the investment firm must comply in order to ~~be authorised in accordance with Article 5 of Directive 2014/65/EU~~ have permission under Part 4A of FSMA to carry on a regulated activity which is any of the investment services and activities (within

			the meaning of regulation 2(1) of the Markets in Financial Instruments Regulations 2017), and to remain so, are not undermined;
		(d)	none of the other conditions subject to which the firm's authorisation was granted is removed or modified.
	2	Investment firms shall exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions and shall take the necessary steps to ensure that the following conditions are satisfied:	
		(a)	the service provider has the ability, capacity, sufficient resources, appropriate organisational structure supporting the performance of the outsourced functions, and any authorisation required by law to perform the outsourced functions, reliably and professionally;
		(b)	the service provider carries out the outsourced services effectively and in compliance with applicable law and regulatory requirements, and to this end the firm has established methods and procedures for assessing the standard of performance of the service provider and for reviewing on an ongoing basis the services provided by the service provider;
		(c)	the service provider properly supervises the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;
		(d)	appropriate action is taken where it appears that the service provider may not be carrying out the functions effectively or in compliance with applicable laws and regulatory requirements;
		(e)	the investment firm effectively supervises the outsourced functions or services and manage the risks associated with the outsourcing and to this end the firm retains the necessary expertise and resources to supervise the outsourced functions effectively and manage those risks;
		(f)	the service provider has disclosed to the investment firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;
		(g)	the investment firm is able to terminate the arrangement for outsourcing where necessary, with immediate effect when this is in the interests of its clients, without detriment to the continuity and quality of its provision of services to clients;

		(h)	the service provider cooperates with the competent authorities of the investment firm in connection with the outsourced functions;
		(i)	the investment firm, its auditors and the relevant competent authorities have effective access to data related to the outsourced functions, as well as to the relevant business premises of the service provider, where necessary for the purpose of effective oversight in accordance with this article, and the competent authorities are able to exercise those rights of access;
		(j)	the service provider protects any confidential information relating to the investment firm and its clients;
		(k)	the investment firm and the service provider have established, implemented and maintained a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced;
		(l)	the investment firm has ensured that the continuity and quality of the outsourced functions or services are maintained also in the event of termination of the outsourcing either by transferring the outsourced functions or services to another third party or by performing them itself.
	3	The respective rights and obligations of the investment firms and of the service provider shall be clearly allocated and set out in a written agreement. In particular, the investment firm shall keep its instruction and termination rights, its rights of information, and its right to inspections and access to books and premises. The agreement shall ensure that outsourcing by the service provider only takes place with the consent, in writing, of the investment firm.	
	4	Where the investment firm and the service provider are members of the same group, the investment firm may, for the purposes of complying with this Article and Article 32, take into account the extent to which the firm controls the service provider or has the ability to influence its actions.	
	5	Investment firms shall make available on request to the competent authority all information necessary to enable the authority to supervise the compliance of the performance of the outsourced functions with the requirements of ~~Directive 2014/65/EU and its implementing measures~~ UK law on markets in financial instruments.	

~~EU~~ UK	**Article 32 - Service providers located in third countries**		
	1	In addition to the requirements set out in Article 31, where an investment firm outsources functions related to the investment service of portfolio management provided to clients to a service provider located in a third country, that investment firm ensures that the following conditions are satisfied:	
		(a)	the service provider is authorised or registered in its home country to provide that service and is effectively supervised by a competent authority in that third country;
		(b)	there is an appropriate cooperation agreement between the competent authority of the investment firm and the supervisory authority of the service provider.
	2	The cooperation agreement referred to in point (b) of paragraph 1 shall ensure that the competent authorities of the investment firm are able, at least, to:	
		(a)	obtain on request the information necessary to carry out their supervisory tasks pursuant to ~~Directive 2014/65/EU~~ UK law on markets in financial instruments and Regulation (EU) No 600/2014;
		(b)	obtain access to the documents relevant for the performance of their supervisory duties maintained in the third country;
		(c)	receive information from the supervisory authority in the third country as soon as possible for the purpose of investigating apparent breaches of the requirements of ~~Directive 2014/65/EU and its implementing measures~~ UK law on markets in financial instruments and Regulation (EU) No 600/2014;
		(d)	cooperate with regard to enforcement, in accordance with the national and international law applicable to the supervisory authority of the third country and the competent authorities in the ~~Union~~ United Kingdom in cases of breach of the requirements of ~~Directive 2014/65/EU and its implementing measures and relevant national law~~ UK law on markets in financial instruments.
	3	~~Competent authorities shall publish on their~~ The FCA must publish on its website a list of the supervisory authorities in third countries with which they have a cooperation agreement referred to in point (b) of paragraph 1.	

		~~Competent authorities shall update cooperation agreements concluded before the date of entry into application of this Regulation within six months from that date.~~	
~~EU~~ UK	**Article 72 - Retention of records**		
	1	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, and in such a form and manner that the following conditions are met:	
		(a)	the competent authority is able to access them readily and to reconstitute each key stage of the processing of each transaction;
		(b)	it is possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;
		(c)	it is not possible for the records otherwise to be manipulated or altered;
		(d)	it allows IT or any other efficient exploitation when the analysis of the data cannot be easily carried out due to the volume and the nature of the data; and
		(e)	the firm's arrangements comply with the record keeping requirements irrespective of the technology used.
	2	Investment firms shall keep at least the records identified in Annex I to this Regulation depending upon the nature of their activities. The list of records identified in Annex I to this Regulation is without prejudice to any other record-keeping obligations arising from other legislation.	
	3	Investment firms shall also keep records of any policies and procedures they are required to maintain pursuant to ~~Directive 2014/65/EU, Regulation (EU) No 600/2014, Directive 2014/57/EU and Regulation (EU) No 596/2014 and their respective implementing measures~~ Regulation (EU) No 600/2014, Regulation (EU) No 596/2014 and their implementing measures (as amended under the European Union (Withdrawal) Act 2018) and the law of the United Kingdom or any part of the United Kingdom which was relied on immediately before exit day to implement Directive 2014/65/EU, Directive 2014/57/EU and their implementing measures in writing.	

		Competent authorities may require investment firms to keep additional records to the list identified in Annex I to this Regulation.

3 Systems and Controls

…

3.2 Areas covered by systems and controls

…

3.2.18 G It is possible that *firms'* remuneration policies will from time to time lead to tensions between the ability of the *firm* to meet the requirements and standards under the *regulatory system* and the personal advantage of those who act for it. Where tensions exist, these should be appropriately managed. See also *Solvency II Regulation* ~~(EU) 2015/35 of 10 October 2014~~ (Article 275) and *EIOPA* Guidelines on system of governance dated 28 January 2015 (EIOPA-BoS-14/253 EN) (Guidelines 9 and 10).

…

4 General organisational requirements

4.1 General requirements

…

4.1.1D	R	A *UK UCITS management company* must comply with the *UCITS Remuneration Code* if it~~:~~	
		~~(1)~~	manages a *UCITS scheme*~~.; or~~
		~~(2)~~	~~manages an *EEA UCITS scheme*.~~

[**Note:** article 14a(1) of the *UCITS Directive*]

4.1.1E	R	A *UK UCITS management company* must have appropriate procedures for its employees to report potential or actual breaches of ~~national provisions transposing~~ *UK* provisions which implemented the *UCITS Directive* internally through a specific, independent and autonomous channel.

[**Note:** article 99d(5) of the *UCITS Directive*]

…

4.1.2B	R	For a *management company* or a *full-scope UK AIFM*, the arrangements, processes and mechanisms referred to in *SYSC* 4.1.1R and *SYSC* 4.1.1AR must also take account of the *UCITS schemes* ~~and *EEA UCITS schemes*~~ managed by the *management company* or the *AIFs* managed by the *full-scope UK AIFM*.

[**Note:** article 12(1) second paragraph of the *UCITS Directive* and article 18(1) second paragraph of *AIFMD*]

Resources for management companies and AIFMs

4.1.2C	R	A *management company*~~,~~ and a *full-scope UK AIFM* ~~and an *incoming EEA AIFM branch* ~~must have, and employ effectively, the resources and procedures that are necessary for the proper performance of its business activities.

[**Note:** articles 12(1)(a) and 14(1)(c) of the *UCITS Directive* and article 12(1)(c) of *AIFMD*]

…

Subordinate measures relating to provisions implementing article 12(1) of AIFMD

4.1.2E	G	Articles 16 to 29 of the *AIFMD level 2 regulation* provide detailed rules supplementing the ~~provisions of~~ *UK* provisions which implemented article 12(1) of *AIFMD*, and articles 57 to 66 of the *AIFMD level 2 regulation* provide detailed rules supplementing the *UK* provisions which implemented articles 12 and 18 of *AIFMD*.

…

4.2 Persons who effectively direct the business

General requirement

4.2.1	R	The *senior personnel* of a *common platform firm*, a *management company*, *a full-scope UK AIFM*, or of the *UK* branch of a ~~*non-EEA*~~ *non-UK bank* must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the *firm*.

[**Note:** article 9(1)(4) of *MiFID*, article 7(1)(b) of the *UCITS Directive*, article 8(1)(c) of *AIFMD* and article 91(1) of *CRD*]

…

Composition of management

4.2.2	R	A *common platform firm*, a *management company*, a *full-scope UK AIFM* and the *UK* branch of a ~~*non-EEA bank*~~ *non-UK bank* must ensure that its management is undertaken by at least two persons meeting the requirements laid down in *SYSC* 4.2.1R and:	
		(a)	for a *full-scope UK AIFM*, *SYSC* 4.2.7R; or
		(b)	for a *common platform firm*, *SYSC* 4.3A.3R.

[**Note:** article 9(6) first paragraph of *MiFID*, article 7(1)(b) of the *UCITS Directive*, article 8(1)(c) of *AIFMD* and article 13(1) of *CRD*]

…

4.3A Management body and nomination committee

…					
4.3A.7	R	For the purposes of *SYSC* 4.3A.5R and *SYSC* 4.3A.6R:			
		…			
		(2)	the following shall count as a single directorship:		
			…		
			(b)	executive or non-executive directorships held within:	
				(i)	~~*firms* that are members of the same institutional protection scheme provided that the conditions set out in article 113(7) of the *EU CRR* are fulfilled; or~~ [deleted]
				(ii)	*undertakings* (including non-financial entities) in which the *firm* holds a *qualifying holding*.
		[**Note:** article 91(4) and (5) of *CRD* and article 9(1) of *MiFID*]			

…

5 Employees, agents and other relevant persons

5.1 Skills, knowledge and expertise

…			
5.1.5AD	G	~~*ESMA* has issued guidelines specifying~~ The *ESMA* "Guidelines for the assessment of knowledge and competence", 3 January 2017 (ESMA71-1154262120-153), specify the criteria for the assessment of knowledge and competence for the purposes of *SYSC* 5.1.5ABR. ~~The *ESMA* guidelines can be found at https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence.~~	
…			

6 Compliance, internal audit and financial crime

6.1 Compliance

…

Adequate policy and procedures

6.1.1	R	A *firm* must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* including its managers, employees and *appointed representatives* (or where applicable, *tied agents*) with its obligations under the *regulatory system* and for countering the risk that the *firm* might be used to further *financial crime*.

[**Note:** article 16(2) of *MiFID* and article 12(1)(a) of the *UCITS Directive*]

…

6.1.2	R	A *management company* must, taking into account the nature, scale and complexity of its business, and the nature and range of financial services and activities undertaken in the course of that business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the *firm* to comply with its obligations under the *regulatory system*, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the *FCA* to exercise its powers effectively under the *regulatory system* ~~and to enable any other *competent authority* to exercise its powers effectively under the *UCITS Directive*~~.

[**Note:**16 article 10(1) of the *UCITS implementing Directive*]

…

6.1.7	R	~~(1)~~	~~This *rule* applies to a *common platform firm* conducting *investment services and activities* from a *branch* in another *EEA State*.~~
		~~(2)~~	~~References to the *regulatory system* in *SYSC* 6.1.1R, *SYSC* 6.1.2R and *SYSC* 6.1.3R apply in respect of a *firm's branch* as if *regulatory system* includes a *Host State*;s requirements under *MiFID* and the *MiFID Org Regulation* which are applicable to the *investment services and activities* conducted from the *firm's branch*.~~ [deleted]

~~[**Note:** article 16 of *MiFID*]~~

…

7 Risk control

7.1 Risk control

…

7.1.2B	G	A *management company* should be aware that *COLL* 6.11 contains requirements ~~implementing article 12 of the *UCITS implementing Directive*~~ in relation to risk control and internal reporting that will apply to it.

…

8 Outsourcing

8.1 General outsourcing requirements

…

8.1.11	R	A *firm* (other than a *common platform firm*) must make available on request to the *FCA* ~~and any other relevant *competent authority*~~ all information necessary to enable the *FCA* ~~and any other relevant *competent authority*~~ to supervise the compliance of the performance of the *outsourced* activities with the requirements of the *regulatory system*.
…		

9 Record-keeping

9.1 General rules on record-keeping

General requirements

9.1.1	R	A *firm* (other than a *common platform firm*) must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the *FCA* ~~or any other relevant *competent authority* under the *UCITS Directive*~~ to monitor the *firm's* compliance with the requirements under the *regulatory system*, and in particular to ascertain that the *firm* has complied with all obligations with respect to *clients*.

[**Note:** article 12(1)(a) of the *UCITS Directive* and article 4(1)(e) of the *UCITS implementing Directive*]

…

9.2 Credit institutions providing account information services or payment initiation services

9.2.1 R A *credit institution* must keep records of any *account information services* and *payment initiation services* it provides <u>in the *UK*</u>.

9.2.2 R ~~A *UK firm* must keep the records required by *SYSC* 9.2.1R in respect of *account information services* and *payment initiation services* provided anywhere in the *EEA*. The records must make clear in which *EEA State* those services were provided.~~ <u>[deleted]</u>

9.2.3 R ~~An *EEA firm* must keep the records required by *SYSC* 9.2.1R in respect of *account information services* and *payment initiation services* provided in the *UK*.~~ <u>[deleted]</u>

…

10 Conflicts of interest

10.1 Application

…

General application

10.1.1 R …

(2) This section also applies to a ~~*management company*~~ *UK UCITS management company*.

…

10.1.1A R This section also applies to:

(1) a *full-scope UK AIFM* of:

(a) a *UK AIF*; and

(b) ~~an *EEA AIF* managed or *marketed* from an establishment in the *UK*; and~~ [deleted]

(c) a ~~*non-EEA AIF*~~ *non-UK AIF*; and

(2) ~~an *incoming EEA AIFM branch* which manages or *markets* a *UK AIF*.~~ [deleted]

…

Additional requirements for a management company

10.1.17 R A ~~*management company*~~ *UK UCITS management company*, when identifying the types of conflict of interests for the purposes of *SYSC* 10.1.4R, must take into account:

(1) the interests of the *firm*, including those deriving from its belonging to a *group* or from the performance of services and activities, the interests of the *clients* and the duty of the *firm* towards the *UCITS scheme* ~~or *EEA UCITS scheme*~~ it manages; and

(2) where it manages two or more *UCITS schemes* ~~or *EEA UCITS schemes*~~, the interests of all of them.

…

10.1.18 G For a ~~*management company*~~ *UK UCITS management company*, references to client in *SYSC* 10.1.4R and in the other *rules* in this section should be construed as referring to any *UCITS scheme* ~~or *EEA UCITS scheme*~~

managed by that *firm* or which it intends to manage, and with or for the benefit of which the relevant activity is to be carried on.

Structure and organisation of a management company

10.1.19 R A ~~*management company*~~ *UK UCITS management company* must be structured and organised in such a way as to minimise the risk of a *UCITS scheme's*~~, *EEA UCITS scheme's*~~ or *client's* interests being prejudiced by conflicts of interest between the ~~*management company*~~ *UK UCITS management company* and its *clients*, between two of its *clients*, between one of its *clients* and a *UCITS scheme* ~~or an *EEA UCITS scheme*~~, or between two such *schemes*.

…

Avoidance of conflicts of interest for a management company

10.1.20 R A ~~*management company*~~ *UK UCITS management company* must try to avoid conflicts of interest and, when they cannot be avoided, ensure that the *UCITS schemes* ~~and *EEA UCITS schemes*~~ it manages are fairly treated.

…

Disclosure of conflicts of interest for a management company

10.1.21 R (1) Where the organisational or administrative arrangements made by a ~~*management company*~~ *UK UCITS management company* for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *UCITS scheme* ~~or *EEA UCITS scheme*~~ it manages or of its *Unitholders* will be prevented, the *senior personnel* or other competent internal body of the *firm* must be promptly informed in order for them to take any necessary decision to ensure that in all cases the *firm* acts in the best interests of the *scheme* and of its *Unitholders*.

(2) A ~~*management company*~~ *UK UCITS management company* must report situations referred to in (1) to the *Unitholders* of the *UCITS scheme* ~~or *EEA UCITS scheme*~~ it manages by any appropriate *durable medium* and give reasons for its decision.

…

…

13 Operational risk: systems and controls for insurers

13.1 Application

13.1.1 G *SYSC* 13 applies to an *insurer* unless it is~~:~~

~~(1)~~ a *non-directive friendly society*~~; or~~

~~(2) an *incoming EEA firm*; or~~

~~(3) an *incoming Treaty firm*.~~

13.1.2 G *SYSC* 13 applies to~~:~~

~~(1) an *EEA deposit insurer*; and~~

~~(2)~~ a *Swiss general insurer*~~;~~

only in respect of the activities of the *firm* carried on from a *branch* in the *United Kingdom*.

…

13.9 Outsourcing

…

13.9.9 G …

(4) *EIOPA* guidelines on system of governance dated 28 January 2015 (EIOPA-BoS-14/253 EN) include guidelines on, or relating to, outsourcing.

…

…

14 Risk management and associated systems and controls for insurers

14.1 Application

14.1.1 R This section applies to an insurer unless it is~~:~~

~~(1)~~ a *non-directive friendly society*~~; or~~

~~(2) an *incoming EEA firm*; or~~

~~(3) an *incoming Treaty firm*.~~

14.1.2 G This section applies to~~:~~

~~(1) an *EEA deposit insurer*; and~~

~~(2)~~ a *Swiss general insurer*~~;~~

only in respect of the activities of the *firm* carried on from a *branch* in the *United Kingdom*.

…

18 Whistleblowing

18.1 Application and purpose

…

Purpose

18.1.2 G (1) The purposes of this chapter are to:

…

(ca) set out the requirements which ~~implement~~ implemented the whistleblowing obligation under article 73(2) of *MiFID*, which require *MiFID investment firms* (except *collective portfolio management firms*) to have in place appropriate procedures for their employees to report potential or actual infringements of the *MiFID* ~~and *MiFIR*~~ regime (*SYSC* 18.6);

…

18.3 Internal arrangements

…

Reporting of concerns by employees to regulators

…

18.3.6A G ~~For the purposes of *SYSC* 18.3.6R(1) the possibility for P's *employees* to disclose *reportable concerns* to the *PRA* or to the *FCA* does not override any obligation of P or its *employees* to report breaches to P's *Home State regulator* of matters reserved by an *EU* instrument to that regulator.~~ [deleted]

…

…

18.6 Whistleblowing obligations under the MiFID regime and other ~~EU~~ sectoral legislation

Whistleblowing obligations under the MiFID regime

18.6.1 R (1) A ~~*UK*~~ *MiFID investment firm* (except a *collective portfolio management investment firm*) must have appropriate procedures in place for its employees to report a potential or actual breach of:

(a) any rule ~~implementing~~ which implemented *MiFID*; or

(b) a requirement imposed by *MiFIR* or any *onshored regulation* which was previously an *EU regulation* adopted under *MiFID* or *MiFIR*.

18.6.2 R *SYSC* 18.6.1R applies to a *third country investment firm* as if it were a ~~*UK MiFID investment firm*~~ (unless it is a *collective portfolio management investment firm*) when the following conditions are met:

…

18.6.3 G When considering what procedures may be appropriate for the purposes of *SYSC* 18.6.1R(1), a *MIFID investment firm* or a *third country investment firm* may wish to consider the arrangements in *SYSC* 18.3.1R(2).

Whistleblowing obligations under other sectoral legislation

18.6.4 G In addition to obligations under the *MiFID* regime, similar whistleblowing obligations apply to miscellaneous *persons* subject to regulation by the *FCA* under the following non-exhaustive list of ~~*EU*~~ legislation:

(1) article 32(3) of the *Market Abuse Regulation*, as implemented in section 131AA of the *Act*;

(2) the *UK* provisions which implemented article 71(3) of the *CRD* (see *IFPRU* 2.4.1R in respect of *IFPRU investment firms*);

(3) the *UK* provisions which implemented article 99d(5) of the *UCITS Directive* (see *SYSC* 4.1.1ER in respect of *UK UCITS management companies*, and *COLL* 6.6B.30R in respect of *depositaries*); and

(4) article 24(3) of the *securities financing transactions regulation*.

…

19A IFPRU Remuneration Code

19A.1 General application and purpose

Who? What? Where?

19A.1.1 R (1) The *Remuneration Code* applies to:

…

(d) an *overseas firm* that~~:~~

~~(i) is not an *EEA firm*;~~

~~(ii) has its head office outside the *EEA*; and~~

~~(iii)~~ …

…

19A.1.2 G Part 2 of *SYSC* 1 Annex 1 provides for the application of *SYSC* 4.1.1R (General Requirements). In particular, and subject to the provisions on group risk systems and controls requirements in *SYSC* 12, this means that:

…

(2) in relation to where the *Remuneration Code* applies, it applies in relation to:

(a) a *firm's UK* activities; and

(b) ~~a *firm's passported activities* carried on from a *branch* in another *EEA State*; and~~ [deleted]

…

…

Purpose

19A.1.6 G …

(2) The *Remuneration Code* implements the main provisions of the *CRD* which relate to *remuneration*. In applying the *Remuneration Code*, *firms* should comply with the *EBA* "Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013", 21 December 2015 (EBA/GL/2015/22). ~~Guidelines published by the *EBA* on 21 December 2015 on sound remuneration policies under articles 74(3) and 75(2) of the *CRD* and on disclosures under article 450 of the *EU CRR*. The Guidelines can be found at:~~
~~*http://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22+Guidelines+on+Sound+Remuneration+Policies.pdf/1b0f3f99-f913-461a-b3e9-fa0064b1946b.*~~

(3) [deleted]

…

19A.3 Remuneration principles for IFPRU investment firms

Application: groups

19A.3.1 R (1) A *firm* must apply the requirements of this section at *group*, *parent undertaking* and *subsidiary undertaking* levels, including those *subsidiaries* established in a country or territory which is ~~not an *EEA State*~~ outside the *UK*.

(2) Paragraph (1) does not limit *SYSC* 12.1.13R(2)(dA) (which relates to the application of the *Remuneration Code* within *UK consolidation groups* and ~~*non-EEA*~~ *non-UK sub-groups*).

[**Note:** article 92(1) of *CRD*]

19A.3.2 G *SYSC* 12.1.13R(2)(dA) requires the *firm* to ensure that the risk management processes and internal control mechanisms at the level of any *UK consolidation group* or ~~*non-EEA*~~ *non-UK sub-group* of which a *firm* is a member comply with the obligations set out in this section on a consolidated (or sub-consolidated) basis. In the *FCA's* view, the application of this section at *group*, *parent undertaking* and *subsidiary undertaking* levels in *SYSC* 19A.3.1R(1*)* is in line with ~~article 109(2) of *CRD* on~~ the application of systems and controls requirements to *groups* (as in *SYSC* 12.1.13R).

…

19A.3.4 R (1) *Remuneration Code staff* comprises:

(a) an *employee* of an *IFPRU investment firm* 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*; or

(b) subject to (2) and (3), an *employee* of an *overseas firm* in *SYSC* 19A1.1.1R(1)(d) (i.e., an *overseas firm* that would have been an *IFPRU investment firm* if it had been a *UK domestic firm*) whose professional activities have a material impact on the *firm's* risk profile, including any *employee* who would meet any of the criteria set out in articles 3 or 4(1) of ~~Regulation (EU) 604/2014 of 4 March 2014 (Regulatory technical standards to identify staff who are material risk takers)~~ the *Material Risk Takers Regulation* if it had applied to him.

(2) An *overseas firm* in *SYSC* 19A1.1.1R(1)(d) (i.e., an *overseas firm* that would have been an *IFPRU investment firm* if it had been a *UK domestic firm*) may deem an *employee* not to be *Remuneration Code staff* where:

(a) the *employee*:

(i) would meet the criteria in article 4(1) of ~~Regulation (EU) No 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*;

(ii) would not meet any of the criteria in article 3 of ~~Regulation (EU) No 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*; and

(iii) was awarded total remuneration of less than ~~€~~750,000 in the previous year; and

(b) the *overseas firm* determines that the professional activities of the *employee* do not have a material impact on its risk profile on the grounds described in article 4(2) of ~~Regulation (EU) No 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*.

(3) Where the *overseas firm* deems an *employee* not to be *Remuneration Code staff* as set out in (2), it must notify the *FCA*, applying the approach described in article 4(4) of ~~Regulation (EU) No 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*.

[**Note:** article 92(2) of *CRD* and articles 3 and 4 of ~~Regulation (EU) No 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*.]

…

Remuneration Principle 11: Non-compliance with the Remuneration Code

19A.3.32 R A *firm* must ensure that variable *remuneration* is not paid through vehicles or methods that facilitate non-compliance with the *Remuneration Code*, the ~~*EU CRR*~~ *UK CRR* or the *UK* legislation that implemented the *CRD*.

[**Note:** article 94(1)(q) of *CRD*]

…

19A.3.44 B R A *firm* must ensure that any approval by the its shareholders or owners or members for the purposes of *SYSC* 19A.3.44AR is carried out in accordance with the following procedure:

…

(3) the *firm* must:

…

(b) demonstrate to the *FCA* that the proposed higher ratio does not conflict with its obligations under the *UK* legislation that implemented the *CRD* and the ~~*EU CRR*~~ *UK CRR*, having particular regard to the *firm's own funds* obligations;

…

…

19A.3.44D R A *firm* may apply a discount rate to a maximum of 25% of an *employee's* total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years.

[**Note:** article 94(1)(g)(iii) of *CRD*]

[**Note:** on 27 March 2014, the *EBA* published "Guidelines on the applicable notional discount rate for variable remuneration", 27 March 2014 (EBA/GL/2014/01).]

19A.3.44E R ~~In applying the discount rate in *SYSC* 19A.3.44DR, a *firm* must apply the *EBA* Guidelines on the applicable notional discount rate for variable remuneration published on 27 March 2014.~~ [deleted]

~~[**Note:** the *EBA* Guidelines on the applicable notional discount rate for variable remuneration can be found at: *http://www.eba.europa.eu/documents/10180/643987/EBA-GL-2014-01+%28Final+Guidelines+on+the+discount+rate+for+remuneration%29.pdf/e8b3b3f6-6258-439d-a2d9-633e6e5de5e9*]~~

…

19B AIFM REMUNERATION CODE

19B.1 Application

19B.1.1 R The *AIFM Remuneration Code* applies to a *full-scope UK AIFM* of:

(1) a *UK AIF*; and

(2) ~~an *EEA AIF*~~ a non-*UK AIF*.~~; and~~

(3) ~~a *non-EEA AIF*.~~ [deleted]

19B.1.1A G (1) *Full-scope UK AIFMs* are advised that *ESMA* published Guidelines on sound remuneration policies under the *AIFMD* on 3 July 2013 (Guidelines on sound remuneration policies under the AIFMD, 03.07.2013|ESMA/2013/232), which *full-scope UK AIFMs* should comply with in applying the *rules* in this section. ~~The Guidelines can be found at: http://www.esma.europa.eu/system/files/2013-232_aifmd_guidelines_on_remuneration_-_en.pdf~~

(2) …

…

19C BIPRU Remuneration Code

19C.1 General application and purpose

…

19C.1.2 G Part 2 of *SYSC* 1 Annex 1 provides for the application of *SYSC* 4.1.1R and *SYSC* 4.1.1CR (General Requirements). In particular, and subject to the provisions on group risk systems and controls requirements in *SYSC* 12, this means that:

…

(2) where the *BIPRU Remuneration Code* applies, it applies to:

(a) a *firm's UK* activities; and

(b) ~~a *firm's passported activities* carried on from a *branch* in another *EEA State*; and~~ [deleted]

…

…

19C.3 Remuneration principles

Application: groups

19C.3.1 R (1) A *firm* must apply the requirements of this section at *group*, *parent undertaking* and *subsidiary undertaking* levels, including those *subsidiaries* established in a country or territory which is ~~not an *EEA State*~~ outside the *UK*.

(2) Paragraph (1) does not limit *SYSC* 12.1.13R and *SYSC* 12.1.15R (which relate to the application of the *BIPRU Remuneration Code* within *UK consolidation groups* and ~~non-*EEA*~~ *non-UK sub-groups*).

19C.3.2 G The effect of *SYSC* 12.1.13R (2)(dA) and *SYSC* 12.1.15R is that the *firm* is required to ensure that the risk management processes and internal control mechanisms at the level of any *consolidation group* or ~~non-*EEA*~~ *non-UK sub-group* of which a *firm* is a member comply with the obligations set out in this section on a consolidated (or sub-consolidated) basis.

…

19D Dual-regulated firms Remuneration Code

19D.1 Application and purpose

Who? What? Where?

19D.1.1 R (1) The *dual-regulated firms Remuneration Code* applies to:

…

(d) an *overseas firm* that~~;~~

~~(i) is not an *EEA firm*;~~

~~(ii)~~ ~~has its head office outside the *EEA*; and~~

~~(iii)~~ would be a *firm* in (a), (b) or (c) 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*.

(2) For a *firm* which falls under (1)(a), (1)(b) or (1)(c), the *dual-regulated firms Remuneration Code* applies in relation to:

(a) its *UK activities*; and

(b) ~~its *passported activities* carried on from a *branch* in another *EEA State*; and~~ [deleted]

…

…

…

Purpose

19D.1.6 G …

(2) The *dual-regulated firms Remuneration Code* implements the main provisions of the *CRD* which relate to *remuneration*. In applying the *rules* in the *dual-regulated firms Remuneration Code*, *firms* should comply with the *EBA* "Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013", 21 December 2015 (EBA/GL/2015/22). ~~Guidelines published by the *EBA* on 21 December 2015 on sound remuneration policies under articles 74(3) and 75(2) of the *CRD* and on disclosures under article 450 of the *EU CRR*. The Guidelines can be found at: *http://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22+Guidelines+on+Sound+Remuneration+Policies.pdf/1b0f3f99-f913-461a-b3e9-fa0064b1946b*~~

…

19D.3 Remuneration principles

Application: groups

19D.3.1 R (1) A *firm* must apply the requirements of this section at *group*, *parent undertaking* and *subsidiary undertaking* levels, including those *subsidiaries* established in a country or territory which is ~~not an *EEA State*~~ outside the *UK*.

(2) Paragraph (1) does not limit *SYSC* 12.1.13R(2)(dA) (which relates to the application of the *dual-regulated firms Remuneration Code* within *UK consolidation groups* and ~~*non-EEA*~~ *non-UK sub-groups*).

[**Note:** article 92(1) of *CRD*]

19D.3.2 G *SYSC* 12.1.13R(2)(dA) requires the *firm* to ensure that the risk management processes and internal control mechanisms at the level of any *UK consolidation group* or ~~*non-EEA*~~ *non-UK sub-group* of which a *firm* is a member, comply with the obligations in this section on a consolidated basis (or sub-consolidated basis). In the *FCA's* view, the application of this section at *group*, *parent undertaking* and *subsidiary undertaking* levels in *SYSC* 19D.3.1R(1) is in line with ~~article 109(2) of the *CRD* on~~ the application of systems and controls requirements to *groups* (as in *SYSC* 12.1.13R).

…

19D.3.4 R (1) *Dual-regulated firms Remuneration Code staff* comprises:

(a) an *employee* of a *dual-regulated firm* 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*; or

(b) subject to (2) and (3), an *employee* of an *overseas firm* in *SYSC* 19D.1.1R(1)(d) (i.e., an *overseas firm* that would have been a *UK bank*, *building society* or *UK designated investment firm* if it had been a *UK domestic firm*) whose professional activities have a material impact on the *firm's* risk profile, including any *employee* who would meet any of the criteria set out in articles 3 or 4(1) of ~~Regulation (EU) 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation* if it had applied to him.

(2) An *overseas firm* in *SYSC* 19D1.1.R(1)(d) (i.e., an *overseas firm* that would have been a *dual-regulated firm* if it had been a *UK domestic firm*) may deem an *employee* not to be a *dual-regulated firm Remuneration Code staff* where:

(a) the *employee*:

(i) would meet the criteria in article 4(1) of ~~Regulation (EU) No 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*;

(ii) would not meet any of the criteria in article 3 of ~~Regulation (EU) No 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*; and

(iii) was awarded total remuneration of less than €750,000 in the previous year; and

(b) the *overseas firm* determines that the professional activities of the *employee* do not have a material impact on its risk profile on the grounds described in article 4(2) of ~~Regulation (EU) 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*.

(3) Where the *overseas firm* deems an *employee* not to be *dual-regulated firms Remuneration Code staff* as set out in (2), it must notify the *FCA*, applying the approach described in article 4(4) of ~~Regulation (EU) 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*.

[**Note:** article 92(2) of *CRD* and articles 3 and 4 of Regulation (EU) No 604/2014 of 4 March 2014.]

19D.3.5 G Where an *overseas firm* in *SYSC* 19D1.1R(1)(d) (i.e., an *overseas firm* that would have been a *dual-regulated firm* if it had been a *UK domestic firm*) wishes to deem an *employee* who earns more than €750,000 not to be *dual-regulated firms Remuneration Code staff*, the *overseas firm* may apply for a *waiver* of the requirement in *SYSC* 19D.3.4R in respect of that *employee*.

…

Remuneration Principle 11: Non-compliance with the Remuneration Code

19D.3.34 R A *firm* must ensure that variable *remuneration* is not paid through vehicles or methods that facilitate non-compliance with the *Remuneration Code*, the ~~*EU CRR*~~ *UK CRR* or the *UK* legislation that implemented the *CRD*.

[**Note:** article 94(1)(q) of *CRD*]

…

19D.3.50 R A *firm* must ensure that any approval by the its shareholders or owners or members, for the purposes of *SYSC* 19D.3.49R, is carried out in accordance with the following procedure:

…

(3) the *firm* must:

…

(b) demonstrate to the *FCA* that the proposed higher ratio does not conflict with its obligations under the *UK* legislation that implemented the *CRD* and the ~~*EU CRR*~~ *UK CRR*, having particular regard to the *firm's own funds* obligations;

…

19D.3.52 R A *firm* may apply a discount rate to a maximum of 25% of an *employee's* total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years.

[**Note:** article 94(1)(g)(iii) of *CRD*]

[**Note:** on 27 March 2014, the *EBA* published "Guidelines on the applicable notional discount rate for variable remuneration", 27 March 2014 (EBA/GL/2014/01).]

19D.3.53 R ~~In applying the discount rate in *SYSC* 19D.3.52R, a *firm* must apply the *EBA* Guidelines on the applicable notional discount rate for variable remuneration published on 27 March 2014.~~ [deleted]

~~[**Note:** the *EBA* Guidelines on the applicable notional discount rate for variable remuneration can be found at: *http://www.eba.europa.eu/documents/10180/643987/EBA-GL-2014-01+%28Final+Guidelines+on+the+discount+rate+for+remuneration%29.pdf/e8b3b3f6-6258-439d-a2d9-633e6e5de5e9*]~~

…

19E UCITS Remuneration Code

19E.1 Application

19E.1.1 R (1) The *UCITS Remuneration Code* applies to a *UK UCITS management company* that~~:~~

~~(a)~~ manages a *UCITS scheme*~~; or~~

~~(b)~~ ~~manages an *EEA UCITS scheme*~~.

(2) ~~This section does not apply to an *EEA UCITS management company* that manages a *UCITS scheme*.~~ [deleted]

(3) In this section~~,~~ a *firm* under (1)~~(a) or (1)(b)~~ above~~,~~ is referred to as a *management company*.

…

19F Remuneration and performance management of sales staff

19F.1 MiFID remuneration incentives

Application

19F.1.1 R (1) *SYSC* 19F.1 applies to:

…

(b) … ; and

(c) … . ~~; and~~

(d) ~~a *UK branch* of an *EEA MiFID investment firm*, unless it is a *UCITS investment firm* or an *AIFM investment firm*.~~ [deleted]

…

…

20 Reverse stress testing

20.1 Application and purpose

Application

20.1.1A R …

(3) Subject to (4), where all of the *BIPRU firms* within the same *UK consolidation group* or the ~~*non-EEA sub-group*~~ *non-UK sub-group*, taken together, as if they were one *firm*, meet any of the criteria in (2), *SYSC* 20 applies to each of those *BIPRU firms* as if it individually met the criteria in (2).

…

…

20.2 Reverse stress testing requirements

…

20.2.2 R Where the *firm* is a member of:

…

(2) a *UK consolidation group*; ~~or~~

(3) a ~~*non-EEA sub-group*~~ *non-UK sub-group*;

it must conduct the reverse stress test on a solo basis as well as on a consolidated basis in relation to the *UK consolidation group* or the ~~*non-EEA sub-group*~~ *non-UK sub-group*, as the case may be.

Annex B

Amendments to the Financial Stability and Market Confidence sourcebook (FINMAR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Short selling

…

2.5 Measures to prohibit, restrict or limit transactions in short selling

…

2.5.5 G Where the *FCA* imposes measures under article 23 of the *short selling regulation* it will normally specify that the measures will not apply to natural or legal persons who have satisfied the criteria to use the *market maker exemption* or the *authorised primary dealer exemption* and who are included on the list maintained and published by ~~*ESMA*~~ the *FCA* pursuant to article 17(13) of the *short selling regulation*.

Exchange rate calculations

2.5.6 G (1) For the purposes of article 23(1)(b) of ~~Commission Delegated Regulation (EU) No 918/2012~~ the *SSR Delegated Regulation 2* the *FCA* will convert the figure of EUR 0.50 into pounds sterling using the daily spot foreign exchange rate of Sterling to Euro of the Bank of England applicable at the end of the first *business day* of October 2012 rounded up to the nearest £0.01. The *FCA* will state this figure (the 'sterling figure') on its public website.

…

2.5.7 G The *FCA* will treat the FTSE 100 index as the main national equity index of the ~~Member State~~ *United Kingdom* for the purposes of article 6(4) of ~~Commission Implementing Regulation (EU) No 827/2012~~ the *SSR Implementing Regulation* ~~and article 4 of Commission Delegated Regulation (EU) No 826/2012~~and article 23(1) of ~~Commission Delegated Regulation (EU) No 918/2012,~~ the *SSR Delegated Regulation 2* ~~all subject to approval by European Parliament and Council~~.

…

[*Editor's note*: the text in this Annex takes account of the proposed definition 'TP firm' suggested by CP18/29 'Temporary permissions regime for inbound firms and funds' (October 2018) as if it was made.]

Annex C

Amendments to the General Provisions (GEN)

In in this Annex underlining indicates new text and striking through indicates deleted text.

2.2 Interpreting the Handbook

…

~~EU~~ Onshored Regulations and third country firms

2.2.22A R (1) Unless exempted in (2) and subject to (3), *MiFIR*, and any ~~*EU regulation*~~ *onshored regulations* ~~adopted as at 3 January 2018 under~~ previously deriving from *MiFIR* or *MiFID*, apply to a *third country investment firm* as if it were a *UK MiFID investment firm* when the following conditions are met:

…

(2) Paragraph (1) does not apply:

(a) to the extent *MiFIR* or an ~~*EU regulation*~~ *onshored regulation* ~~adopted under~~ previously deriving from *MiFIR* or *MiFID* imposes a specific requirement in relation to a *third country investment firm*; and

(b) to ~~*EU regulations*~~ *onshored regulations* which were previously *EU regulations* adopted under ~~articles~~ article 7~~, 34 and 35~~ of *MiFID*.

…

(4) *GEN* 2.2.22AR(1) is subject to articles 2A to 2E of *MiFIR* and article 1(3) to (5) of the *MiFID Org Regulation*.

(5) In relation to *TP firms GEN* 2.2.22AR(1) does not apply requirements imposed by and under *MiFIR* or by the *MiFID Org Regulation* in addition to those referred to in articles 2A to 2E *MiFIR* and article 1(3) to (5) of the *MiFID Org Regulation*.

2.2.22B G (1) The purpose of *GEN* 2.2.22AR is to ensure ~~consistency with the principle referred to in recital 109 to *MiFID*~~ that a *third country investment firm* should not be treated in a more favourable way than ~~an *EEA firm*~~ *a UK firm*. ~~A *third country investment firm* does not, however, benefit from passporting rights in the manner envisaged for *EEA firms* and its *authorisation* requires consideration of other issues,~~

~~including the nature and extent of regulation provided by its *Home State regulator*.~~

(2) …

…

EXITING THE EUROPEAN UNION: PRUDENTIAL 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 FCA 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 Banks, Building Societies and Investment Firms (BIPRU)	Annex B
Prudential sourcebook for Investment Firms (IFPRU)	Annex C
Prudential sourcebook for insurers (INSPRU)	Annex D
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex E
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex F
Interim Prudential sourcebook for Insurers (IPRU(INS))	Annex G
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex H

Citation

D. This instrument may be cited as the Exiting the European Union: Prudential 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 set out in Annex 2 of the accompanying 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 2 of the consultation paper.

(3) The amendments in this instrument are based on the text of the Handbook in force on 1 July 2018. If amendments are made to the relevant text between 1 July 2018 and 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, rather than the text of the Handbook in force on 1 July 2018.

(4) The consultation is based on the assumption that the Financial Conduct Authority will have the power under the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 to make the proposed rule changes.

Annex A

Amendments to the General Prudential sourcebook (GENPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Application

…

1.2 Adequacy of financial resources

…

Purpose

…

1.2.14 G In the case of a *BIPRU firm* this section implements the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR* applying requirements that correspond to Article 34 of the *Capital Adequacy Directive* so far as that Article applies Article 123 of the *Banking Consolidation Directive*.

…

Application of this section on a solo and consolidated basis: Processes and tests

1.2.46 R …

(2) apply on a sub-consolidated basis under *BIPRU* 8.3.1R (Basic consolidation *rule* for a ~~*non-EEA sub-group*~~ *non-UK sub-group*).

…

1.2.48 R …

(3) (if *BIPRU* 8.3.1R (Basic consolidation *rule* for a ~~*non-EEA sub-group*~~ *non-UK sub-group*) applies) the ~~*non-EEA sub-group*~~ *non-UK sub-group* of which the *firm* is a member.

1.2.49 R …

(2) For the purpose of this *rule* the relevant group is the group referred to in *GENPRU* 1.2.48R and the members of that group are those *undertakings* that are included in the scope of consolidation with respect to the *UK consolidation group* or, as the case may be, ~~*non-EEA sub-group*~~ *non-UK sub-group* in question.

…

Group risk (BIPRU firm only)

…

1.2.88 R A *firm* should include in the written record referred to in *GENPRU* 1.2.60R a description of the broad business strategy of the *UK consolidation group* or the ~~non-*EEA sub-group*~~ *non-UK sub-group* of which it is a member, the group's view of its principal risks and its approach to measuring, managing and controlling the risks. This description should include the role of stress testing, scenario analysis and contingency planning in managing risk at the solo and consolidated level.

1.2.89 R A *firm* should satisfy itself that the systems (including IT) of *the UK consolidation group* or the ~~non-*EEA sub-group*~~ *non-UK sub-group* of which it is a member are sufficiently sound to support the effective management and, where applicable, the quantification of the risks that could affect the *UK consolidation group* or the ~~non-*EEA sub-group*~~ *non-UK sub-group*, as the case may be.

…

1.3 Valuation

…

1.3.3 G (1) ~~In the case of a *BIPRU firm*, this~~ This section corresponds to ~~implements~~ Articles 64(4) and 64(5) of the *Banking Consolidation Directive* (Own funds) and Article 33 and Part B of Annex VII of the *Capital Adequacy Directive*.

…

2 Capital

2.1 Calculation of capital resources requirements

Application

…

2.1.2 G ~~The scope of application of this section is not restricted to *firms* that are subject to the relevant *EU* Directives.~~ [deleted]

…

Purpose

…

2.1.8 G (2) This section also implements the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR* applying requirements that correspond to the provisions of the *Capital Adequacy Directive* and *Banking*

Consolidation Directive concerning the level of *capital resources* which a *BIPRU firm* is required to hold. In particular it ~~implements~~ corresponds (in part) to article 75 of the *Banking Consolidation Directive* and Articles 5, 9, 10 and 18 of the *Capital Adequacy Directive*.

…

Definition of BIPRU firm

2.1.49 G ~~The *Capital Adequacy Directive* sets out various categories of *investment firms* subject to differing levels of initial capital. For the purpose of the third paragraph of article 95(2) of the *EU CRR*, a *BIPRU firm* falls into the category in article 5(3) of the *Capital Adequacy Directive*.~~ In summary, a *BIPRU firm*:

…

…

2.2 Capital resources

…

Purpose

…

2.2.4 G This section also implements minimum ~~EC~~ standards for the composition of *capital resources* required to be held by a *BIPRU firm*. In particular ~~it implements~~ pursuant to the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR*, ~~applying~~ it applies requirements that correspond to Articles 56 – 61, Articles 63 – 64, Article 66 and Articles 120 – 122 of the *Banking Consolidation Directive* ~~(2006/48/EC)~~ and Articles 12 – 16, Article 17 (in part), Article 22(1)(c) (in part) and paragraphs 13 - 15 of Part B of Annex VII of the *Capital Adequacy Directive* ~~(2006/49/EC)~~.

…

Notification of issuance of capital instruments

…

2.2.61H G Details of the notification to be provided by a *BIPRU firm* in relation to capital instruments issued by another *undertaking* in its *group* for inclusion in its *capital resources* or the *consolidated capital resources* of its *UK consolidation group* or ~~non-*EEA sub-group*~~ *non-UK sub-group* are set out in *BIPRU* 8.6.1AR to *BIPRU* 8.6.1FR.

…

2 Annex 6 Capital resources table for a BIPRU firm with a waiver from consolidated supervision

…

Part 2 of the capital resources calculation for an investment firm with a waiver from consolidated supervision		
…		
Note (4): The *material holdings* that must be deducted at part 2 of stage E are *material holdings* issued by *undertakings* which would have been members of the *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* if the *firm* did not have an *investment firm consolidation waiver* if:		
(1)	in relation to a *BIPRU firm*, the holding forms part of the *undertaking's tier one capital resources*; or	
(2)	(subject to (3)) in relation to any other *undertaking*, the holding would form part of the *undertaking's tier one capital resources* if:	
	(a)	that *undertaking* were a *BIPRU firm* with a *Part 4A permission*; and
	(b)	it had carried on all its business in the *United Kingdom* and had obtained whatever *permissions* for doing so are required under the *Act*; or
(3)	in relation to any *undertaking* not falling within (1) and for which the methodology in (2) does not give an answer, the holding would form part of its *tier one capital resources* if the *undertaking* were a *BIPRU firm* of the same category as the *firm* carrying out the calculation under this Annex.	
Note (5): The *material holdings* that must be deducted by a *firm* at part 3 of stage E and at stage J or at Part 1 of stage M are *material holdings* issued by *undertakings* which would have been members of that *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* if the *firm* did not have an *investment firm consolidation waiver* and which do not fall into Note (4).		
Note (6): The contingent liabilities that must be deducted by a *firm* at Part 1 of stage M are any contingent liabilities which the *firm* has in favour of *BIPRU firms*, *financial institutions*, *asset management companies* and *ancillary services undertakings* which would have been members of the *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* if the *firm* did not have an *investment firm consolidation waiver*.		

Annex B

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Application

1.1 Application

…

Purpose

1.1.4 G *BIPRU* 1.1 implements in part the third paragraph of article 95(2) of *the ~~EU~~ UK CRR* that permits the *FCA* to apply certain requirements that correspond to the *Banking Consolidation Directive* and the *Capital Adequacy Directive*.

The definition of a BIPRU firm

1.1.7 R None of the following is a *BIPRU firm:*

(1) ~~an *incoming EEA firm*;~~ [deleted]

(2) ~~an *incoming Treaty firm*;~~ [deleted]

(3) ~~any other~~ an *overseas firm*;

(4) ~~an *ELMI*;~~ [deleted]

(5) an *insurer*; and

(6) an *ICVC.*

…

1.1.10 G …

(2) Except in exceptional circumstances, it is the *appropriate regulator's* policy that it will not give an overseas applicant a *Part 4A permission* unless the *appropriate regulator* is satisfied that the applicant will be subject to prudential regulation by its home state *regulatory body* that is broadly equivalent to that provided for in the *Handbook* and the applicable ~~*EEA*~~ *UK prudential sectoral legislation*. The *appropriate regulator* will take into account not only the requirements to which the *firm* is subject but how they are enforced. The *appropriate regulator* will also take into account the laws, regulations and administrative provisions to which it is subject in its home state. The reasons for that policy include:

…

…

…

Meaning of dealing on own account

1.1.23 R (1) *Dealing on own account* means (for the purpose of *GENPRU* and *BIPRU*) the service of dealing in any *financial instruments* for own account as referred to in ~~point 3 of Section A of Annex I to *MiFID*~~ paragraphs 3 of Part 3 of Schedule 2 to the *Regulated Activities Order*, subject to (2) and (3).

(2) ~~In accordance with article 5(2) of the *Capital Adequacy Directive* (Definition of dealing on own account), a~~ A *CAD investment firm* that executes investors' orders for *financial instruments* and holds such *financial instruments* for its own account does not for that reason *deal on own account* if all of the following conditions are met:

…

(d) ~~(in the case of a *CAD investment firm* that is an *EEA firm*) it complies with the *CRD implementation measures* of its *Home State* for Articles 18 and 20 (Minimum capital requirements) of the *Capital Adequacy Directive*;~~ [deleted]

(e) (in the case of ~~any other~~ a *CAD investment firm*) it would comply with the *rules* in (2)(c) if it had been a *BIPRU firm* on the basis of the following assumptions:

(i) its head office had been in ~~an *EEA State*~~ the *UK*; and

(ii) it had carried on all its business in the ~~*EEA*~~ *UK* and had obtained whatever ~~authorisations~~ *Part 4A permission* required for doing so ~~as are required under *MiFID*~~; and

…

(3) ~~In accordance with in article 5(2) of the *Capital Adequacy Directive*, the holding~~ Holding of *non-trading book positions* in *financial instruments* in order to invest *capital resources* is not *dealing on own account* for the purposes referred to in article 4(1)(2)(c) of the ~~*EU*~~ *UK CRR* (see *BIPRU* 1.1.7AG).

[**Note:** Article 5(2) of the *Capital Adequacy Directive* (Definition of dealing on own account)]

…

1.2 Definition of the trading book

…

Purpose

1.2.2 G Pursuant to the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR*, ~~the~~ this section ~~implements~~ applies certain provisions ~~of~~ that correspond to the *Capital Adequacy Directive* and the *Banking Consolidation Directive* relating to the *trading book*. The precise provisions ~~being implemented~~ are listed as a note after each *rule*.

…

1.2.8 R *CRD financial instrument*s include both primary *CRD financial instrument* or cash instruments, and derivative *CRD financial instrument*s the value of which is derived from the price of an underlying *CRD financial instrument*, a rate, an index or the price of another underlying item and include as a minimum the instruments specified in ~~Section C of Annex I to the *MIFID*~~ Part 1 of Schedule 2 to the *Regulated Activities Order*.

[**Note:** *CAD* Article 3(1) last paragraph]

…

1.3 Applications for advanced approaches and waivers

…

Purpose

1.3.2 G (1) A *firm* may apply for ~~an *Article 129 permission* or~~ a *waiver* in respect of:

…

(2) A *firm* should apply for a *waiver* if it wants to:

…

(c) disapply consolidated supervision under *BIPRU* 8 for its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*; or

…

Article 129

1.3.3 G ~~An *EEA parent institution* and its *subsidiary undertakings* or the *subsidiary undertakings* of its *EEA parent financial holding company* or the *subsidiary undertakings* of its *EEA parent mixed financial holding company* that wish to use any of the approaches listed in *BIPRU* 1.3.2G(1) in respect of its~~

~~group, including members of its group that are *BIPRU firms*, may apply for an *Article 129 permission*.~~ [deleted]

1.3.4 G ~~The *Article 129 procedure* allows an *EEA parent institution* and its *subsidiary undertakings* or the *subsidiary undertakings* of its *EEA parent financial holding company* or the *subsidiary undertakings* of its *EEA parent mixed financial holding company* to apply for permission to use the approaches in *BIPRU* 1.3.2G(1) without making separate applications to the *competent authority* of each *EEA State* where members of a *firm's* group are authorised.~~ [deleted]

1.3.5 G ~~The *Capital Requirements Regulations 2006* set out the *Article 129 procedure*.~~ [deleted]

1.3.6 G ~~Where a *firm* or its group has been granted an *Article 129 permission*, each *competent authority*, including the lead *competent authority*, will need to take action to apply that *Article 129 permission* to the *institutions* that they authorise. Part 3 of the *Capital Requirements Regulations 2006* governs how the *appropriate regulator* will take that action, whether or not the *appropriate regulator* is the lead *competent authority*.~~ [deleted]

…

Forms and method of application

…

1.3.15 D If a *firm* wishes to apply for a *waiver* ~~or an *Article 129 permission*~~ to use the *IRB approach*, it must complete and submit the form in *BIPRU* 1 Annex *2 D D*.

1.3.16 D If a *firm* wishes to apply for a *waiver* ~~or an *Article 129 permission*~~ to use the *CCR internal model method*, it must complete and submit the form in *BIPRU* 1 Annex 3DD.

1.3.17 D ~~Where a *firm* makes an application in accordance with *BIPRU* 1.3.14D, *BIPRU* 1.3.15D or *BIPRU* 1.3.16D, the *firm* must state on the application whether it is making an application for a *waiver* or *an Article 129 permission*.~~ [deleted]

1.3.18 D ~~Where a *firm* applies for a *VaR model permission*, the *firm* must state whether it is making an application for a *waiver* or an *Article 129 permission*.~~ [deleted]

1.3.19 G In respect of the application for *waivers* to apply the approaches set out in *BIPRU* 1.3.2G(1), the *appropriate regulator* will aim to give decisions on applications as soon as practicable. However, the *appropriate regulator* expects that it will take a significant period to determine and give a decision due to the complexity of the issues raised by the applications. Details of timelines for applications for waivers to use advanced approaches ~~and under the *Article 129 procedure*~~ are set out on the *appropriate regulator* website.

…

1.3.21 G Before sending in an application for a *waiver* ~~or *Article 129 permission*~~, a *firm* may find it helpful to discuss the application with its usual supervisory contact at the *appropriate regulator*. However, the *firm* should still ensure that all relevant information is included in the application.

…

2 Capital

2.1 Solo consolidation

…

Purpose

2.1.2 G Pursuant to the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR*, ~~the purpose of this section is to implement~~ this section applies requirements that correspond to Articles 70 and 118 of the *Banking Consolidation Directive* so far as they apply under Articles 2 and 28 of the *Capital Adequacy Directive* to *CAD investment firms* that are subject to the requirements imposed by the *UK* legislation that implemented *MiFID* (or which would have been subject to ~~that Directive~~ those requirements if its head office were in ~~an *EEA State*~~ the *UK*), but excluding a *bank*, *building society*, a *credit institution*, a *local* and an *exempt CAD firm*.

…

The basic rules for solo consolidation

…

2.1.8 R …

(2) If (1) applies, *SYSC* 12.1.13R applies to the group made up of the *firm* and its *subsidiary undertakings* referred to in (1) in the same way as it applies to a *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.

…

Solo consolidation and capital and concentration risk requirements

…

2.1.10 R A *firm* must treat itself and each *subsidiary undertaking* referred to in *BIPRU* 2.1.7R as a single *undertaking* and must apply, on that basis, *BIPRU* 8 (Group risk - consolidation) to the group made up of the *firm* and such *subsidiary undertakings* in the same way as *BIPRU* 8 applies to a *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.

…

Minimum standards

…

2.1.23 R Where the *firm* is a *parent institution in ~~a Member State~~* the *UK*, it must have measures in place that ensure the satisfactory allocation of risks within the group consisting of the *firm* and each *subsidiary undertaking* to which *BIPRU* 2.1 is applied.

…

2.2 Internal capital adequacy standards

…

The drafting of individual capital guidance and capital planning buffer

…

2.2.19 G (1) …

(2) If *BIPRU* 8.2.1R (General consolidation *rule* for a *UK consolidation group*) applies to the *firm* the *guidance* relates to its *UK consolidation group*. If *BIPRU* 8.3.1R (General consolidation *rule* for a ~~*non-EEA sub-group*~~ *non-UK sub-group*) applies to the *firm* the *guidance* relates to its ~~*non-EEA sub-group*~~ *non-UK sub-group*. If both apply to the *firm* the *guidance* relates to its *UK consolidation group* and to its ~~*non-EEA sub-group*~~ *non-UK sub-group*.

…

…

Business risk: Stress tests for firms using the IRB approach

…

2.2.43 R …

(1) references *to capital resources* are to the *consolidated capital resources* of the *firm's UK consolidation group* or, as the case may be, its ~~*non-EEA sub-group*~~ *non-UK sub-group*; and

(2) references to the capital requirements in *GENPRU* 2.1 (Calculation of capital resources requirements) are to the consolidated capital requirements with respect to the *firm's UK consolidation group* or, as the case may be, its ~~*non-EEA sub-group*~~ *non-UK sub-group* under *BIPRU* 8 (Group risk - consolidation).

…

2.3 Interest rate risk in the non-trading book

…

Purpose

…

2.3.5 G *BIPRU* 2.3 ~~implements~~ applies requirements that correspond to Article 124(5) of the *Banking Consolidation Directive.*

…

3 Standardised credit risk

3.1 Application and purpose

…

Purpose

3.1.2 G Pursuant to the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR*, *BIPRU* 3 ~~implements~~ applies requirements that correspond to:

(1) Articles 78 to 80, paragraph (1) of Article 81, Article 83, Annex II and Parts 1 and 3 of Annex VI of the *Banking Consolidation Directive*;

(2) Article 18 of the *Capital Adequacy Directive* so far as it applies Articles 78 to 80, paragraph (1) of Article 81, Article 83 and Parts 1 and 3 of Annex VI of the *Banking Consolidation Directive* to *investment firms*; and

(3) Article 40 of the *Capital Adequacy Directive* for the purposes of the calculation of credit risk under the *Banking Consolidation Directive*.

…

3.2 The central principles of the standardised approach to credit risk

…

Zero risk-weighting for intra-group exposures: core UK group

…

3.3.29A G (1) …

(2) For the purpose of *BIPRU* 3.2.25R(1)(d) (Incorporation in the UK), if a counterparty is of a type that falls within the scope of the ~~Council Regulation of 29 May 2000 on insolvency proceedings (Regulation 1346/2000/EC)~~ *Insolvency Proceedings Regulation* and it is

established in the *United Kingdom* other than by incorporation, a *firm* wishing to include that counterparty in its *core UK group* may apply to the *appropriate regulator* for a *waiver* of this condition if it can demonstrate fully to the *appropriate regulator* that the counterparty's centre of main interests is situated in the *United Kingdom* within the meaning of that Regulation.

…

3.3 The use of the credit assessments of ratings agencies

…

Recognition of ratings agencies

…

3.3.3 G Regulation 22 of the *Capital Requirements Regulations 2006* deals with recognition by the *appropriate regulator* of *eligible ECAIs* for *exposure risk weight* purposes. Regulation 25 deals with revoking recognition.

…

3.3.6 G ~~The list of *eligible ECAIs* includes those who have been recognised as eligible for *exposure risk weighting* purposes by a *competent authority* of another *EEA State* and are subsequently recognised as *eligible ECAIs* by the *appropriate regulator* without carrying out its own evaluation process under Regulation 22(2) of the *Capital Requirements Regulations 2006*.~~ [deleted]

Mapping of credit assessments

…

3.3.9 G The table mapping the credit assessments of eligible ECAIs to *credit quality steps* is published on the *appropriate regulator's* website and amended from time to time in line with additions to and deletions from the list of *eligible ECAIs*. ~~The table includes mappings made by a *competent authority* of another *EEA State* which are subsequently recognised by the *appropriate regulator* without carrying out its own determination process under Regulation 22(5) of the *Capital Requirements Regulations 2006*.~~

[**Note:** For the most recent version of the table, refer to: http://www.fca.org.uk/your-fca/documents/fsa-ecais-standardised for the *FCA* and http://www.bankofengland.co.uk/publications/Documents/other/pra/policy/2013/ecaisstandardised.pdf for the *PRA*]

3.4 Risk weights under the standardised approach to credit risk

…

Exposures in the national currency of the borrower

3.4.5 R *Exposures* to ~~*EEA States'* central governments~~ the central government of the *UK* and ~~*central banks*~~ the Bank of England denominated and funded in £ sterling must be assigned a *risk weight* of 0%.

[**Note:** *BCD* Annex VI Part 1 point 4]

3.4.6 R When the *competent authorities* of a third country which apply supervisory and regulatory arrangements at least equivalent to those applied in the ~~*EEA*~~ *UK* assign a *risk weight* which is lower than that indicated in *BIPRU* 3.4.1R to *BIPRU* 3.4.3R to *exposures* to their central government and *central bank* denominated and funded in the domestic currency, a *firm* may *risk weight* such *exposures* in the same manner.

[**Note:** *BCD* Annex VI Part 1 point 5]

…

Exposures to regional governments or local authorities: General

3.4.10 R Without prejudice to *BIPRU* 3.4.1R to *BIPRU* 3.4.19R:

(1) a *firm* must *risk weight exposures* to regional governments and local authorities in accordance with *BIPRU* 3.4.11R to *BIPRU* 3.4.14R ~~and *BIPRU* 3.4.19AR~~; and

…

…

Table: Central government risk weight based method

…

3.4.17 R ~~A *firm* must treat an *exposure* to a regional government or local authority of an *EEA State* other than the *United Kingdom* as an *exposure* to the central government in whose jurisdiction that regional government or local authority is established if that regional government or local authority is included on the list of regional governments and local authorities drawn up by the *competent authority* in that *EEA State* under a *CRD implementation measure* with respect to point 9 of Part 1 of Annex VI of the *Banking Consolidation Directive*.~~ [deleted]

~~[**Note:** *BCD* Annex VI Part 1 point 9]~~

3.4.18 R *Exposures* to churches or religious communities constituted in the form of a legal *person* under public law must, in so far as they raise taxes in accordance with legislation conferring on them the right to do so, be treated as *exposures* to regional governments and local authorities, except that *BIPRU* 3.4.15R ~~and *BIPRU* 3.4.17R do~~ does not apply.

[**Note:** *BCD* Annex VI Part 1 point 10]

…

3.4.19 R When competent authorities of a third country jurisdiction which apply supervisory and regulatory arrangements at least equivalent to those applied in the ~~*EEA*~~ *UK* treat *exposures* to regional governments and local authorities as exposures to their central government, a *firm* may *risk weight exposures* to such regional governments and local authorities in the same manner.

[**Note:** *BCD* Annex VI Part 1 point 11]

3.4.19A R ~~Without prejudice to *BIPRU* 3.4.17R to *BIPRU* 3.4.19R, an *exposure* to a regional government or local authority of an *EEA State* denominated and funded in the domestic currency of that regional government or local authority must be assigned a risk weight of 20%.~~ [deleted]

~~[**Note:** *BCD* Annex VI Part 2(b)]~~

…

Public sector entities

…

3.4.25 R ~~Where a *competent authority* of another *EEA State* implements points 14 or 15 of Part 1 of Annex VI of the *Banking Consolidation Directive* by exercising the discretion to treat *exposures* to *public sector entities* as *exposures* to *institutions* or as *exposures* to the central government of the *EEA State* concerned, a *firm* may *risk weight exposures* to the relevant *public sector entities* in the same manner.~~ [deleted]

~~[**Note:** *BCD* Annex VI Part 1 point 16]~~

3.4.26 R When *competent authorities* of a third country jurisdiction, which apply supervisory and regulatory arrangements at least equivalent to those applied in the ~~*EEA*~~ *UK*, treat *exposures* to *public sector entities* as exposures to *institutions*, a *firm* may *risk weight exposures* to the relevant *public sector entities* in the same manner.

[**Note:** *BCD* Annex VI Part 1 point 17]

Exposures to multilateral development banks: Treatment

…

3.4.29 R ~~A *risk weight* of 20% must be assigned to the portion of unpaid capital subscribed to the European Investment Fund.~~ [deleted]

~~[**Note:** *BCD* Annex VI Part 1 point 21]~~

Exposures to international organisations

…

3.4.31 R *BIPRU* 3.4.32R to *BIPRU* ~~3.4.48R~~ 3.4.47R set out the treatment to be accorded to *exposures* to *institutions*.

Exposures to institutions: Treatment

3.4.32 R Without prejudice to *BIPRU* 3.4.33R to *BIPRU* 3.4.47R, *exposures* to *financial institutions* authorised and supervised by the ~~*competent authorities* responsible for the authorisation and supervision of *credit institutions*~~ *PRA* and *FCA* and subject to prudential requirements equivalent to those applied to *credit institutions* must be *risk weighted* as *exposures* to *institutions*.

[**Note**: *BCD* Annex VI Part 1 point 24]

…

Exposures to institutions: Short-term exposures in the national currency of the borrower

…

3.4.45 R (1) ~~Where a *competent authority* of another *EEA State* implements point 37 of Part 1 of Annex VI of the *Banking Consolidation Directive* by exercising the discretion to allow the treatment in that point, a *firm* may assign to the relevant national currency *exposures* the *risk weight* permitted by that *CRD implementation measure*.~~ [deleted]

(2) When the *competent authority* of a third country which applies supervisory and regulatory arrangements at least equivalent to those applied in the ~~*EEA*~~ *UK* assigns to an *exposure* to an *institution* formed under the law of that third country of a residual maturity of 3 months or less denominated and funded in the national currency a *risk weight* that is one category less favourable than the preferential *risk weight*, as described in *BIPRU* 3.4.6R (Exposures in the national currency of the borrower), assigned to *exposures* to the central government of that third country, a *firm* may *risk weight* such *exposures* in the same manner.

[**Note:** *BCD* Annex VI Part 1 point 37]

…

~~Exposures to institutions: Minimum reserves required by the ECB~~

3.4.48 R ~~Where an *exposure* to an *institution* is in the form of minimum reserves required by the European Central Bank or by the *central bank* of an *EEA State* to be held by the *firm*, a *firm* may assign the *risk weight* that would be assigned to *exposures* to the *central bank* of the *EEA State* in question provided:~~

~~(1)~~ ~~the reserves are held in accordance with Regulation (EC) No. 1745/2003 of the European Central Bank of 12 September 2003 or a subsequent replacement regulation or in accordance with national requirements in all material respects equivalent to that Regulation; and~~

~~(2)~~ ~~in the event of the bankruptcy or insolvency of the *institution* where the reserves are held, the reserves will be fully repaid to the *firm* in a timely manner and will not be available to meet other liabilities of the *institution*.~~ [deleted]

~~[**Note:** *BCD* Annex VI Part 1 point 40]~~

…

Exposures secured by real estate property

3.4.54 R *BIPRU* 3.4.55R to ~~*BIPRU* 3.4.94R~~ *BIPRU* 3.4.89R set out the treatment to be accorded to *exposures* secured by real estate property.

…

Exposures secured by mortgages on residential property

…

3.4.57 R ~~*Exposures* fully and completely secured, to the satisfaction of the *firm*, by shares in Finnish residential housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, in respect of residential property which is or shall be occupied or let by the owner must be assigned a *risk weight* of 35%.~~ [deleted]

~~[**Note:** *BCD* Annex VI Part 1 point 46]~~

…

3.4.60 R …

(6) The value of the property exceeds the *exposures* by a substantial margin as set out in *BIPRU* 3.4.81R~~, *BIPRU* 3.4.83R~~, *BIPRU* 3.4.84R or *BIPRU* 3.4.85R (as applicable).

[**Note:** *BCD* Annex VI Part 1 point 48]

…

3.4.62 G The ~~*Banking Consolidation Directive* permits a *competent authority* to disapply~~ *FCA* may disapply the condition in *BIPRU* 3.4.60R(3), if it has evidence that a well-developed and long-established residential real estate market is present in ~~its territory~~ the *UK* with loss rates which are sufficiently low to justify ~~such treatment~~ disapplying the condition in *BIPRU* 3.4.60R(3). *BIPRU* 3.4.61R implements that option. However, if the

evidence changes so that these conditions are no longer satisfied, the *appropriate regulator* may ~~be obliged to~~ revoke *BIPRU* 3.4.61R.

3.4.63 R ~~If a *CRD implementation measure* of another *EEA State* exercises the discretion in point 49 of Part 1 of Annex VI of the *Banking Consolidation Directive* to dispense with the condition corresponding to *BIPRU* 3.4.60R(3) (The risk of the borrower should not materially depend upon the performance of the underlying property or project), a *firm* may apply a *risk weight* of 35% to such *exposures* fully and completely secured by mortgages on residential property situated in that *EEA State*.~~ [deleted]

~~[**Note:** *BCD* Annex VI Part 1 point 50]~~

…

3.4.77 R The property must be valued by an independent valuer at or less than the market value. ~~In those *EEA States* that have laid down~~ In the *UK* where rigorous criteria for the assessment of the mortgage lending value exist in statutory or regulatory provisions ~~the~~ property may instead be valued by an independent valuer at or less than the mortgage lending value.

[**Note:** *BCD* Annex VIII Part 3 point 62]

…

3.4.83 R ~~A *firm* may only treat an *exposure* as fully and completely secured by residential property situated in another *EEA State* for the purposes of *BIPRU* 3.4.56R or *BIPRU* 3.4.58R if it would be treated as fully and completely secured by the relevant *CRD implementation measures* in that *EEA State* implementing points 45 and 47 of Part 1 of Annex VI of the *Banking Consolidation Directive*.~~ [deleted]

…

3.4.87 G If a *firm* has more than one *exposure* secured on the same property they should be aggregated and treated as if they were a single *exposure* secured on the property for the purposes of *BIPRU* 3.4.56R and *BIPRU* 3.4.58R and *BIPRU* 3.4.81R~~, *BIPRU* 3.4.83R~~ and *BIPRU* 3.4.84R.

…

Exposures secured by mortgages on commercial real estate

…

3.4.90 R ~~*Exposures* fully and completely secured by shares in Finnish housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, in respect of offices or other commercial premises may be assigned a *risk weight* of 50%.~~ [deleted]

~~[**Note:** *BCD* Annex VI Part 1 point 52]~~

3.4.91 R ~~If a *CRD implementation measure* in another *EEA State* implements the discretion in point 51 of Part 1 of Annex VI of the *Banking Consolidation Directive*, a *firm* may apply the same treatment as that *CRD implementation measure* to *exposures* falling within the scope of that *CRD implementation measure* which are fully and completely secured by mortgages on offices or other commercial premises situated in that *EEA State*.~~ [deleted]

~~[**Note:** *BCD* Annex VI Part 1 points 51 and 57]~~

3.4.92 R ~~If a *CRD implementation measure* in another *EEA State* implements the discretion in point 53 of Part 1 of Annex VI of the *Banking Consolidation Directive*, a *firm* may apply the same treatment as that *CRD implementation measure* to exposures related to property leasing transactions concerning offices or other commercial premises situated in that *EEA State* and governed by statutory provisions whereby the lessor retains full ownership of the rented assets until the tenant exercises his option to purchase, as long as that *exposure* falls within the scope of that *CRD implementation measure*.~~ [deleted]

~~[**Note:** *BCD* Annex VI Part 1 points 53 and 57]~~

3.4.93 R ~~In particular, if a *firm* applies *BIPRU* 3.4.91R or *BIPRU* 3.4.92R, it must comply with the corresponding *CRD implementation measures* in relation to points 54-56 of Part 1 of Annex VI of the *Banking Consolidation Directive*.~~ [deleted]

~~[**Note**: *BCD* Annex VI Part 1 points 54 to 56]~~

3.4.94 R ~~(1) If a *CRD implementation measure* in another *EEA State* implements the discretion in point 58 of Part 1 of Annex VI of the *Banking Consolidation Directive* to dispense with the condition in point 54(b) for *exposures* fully and completely secured by mortgages on commercial property situated in that *EEA State*, a *firm* may apply the same treatment as that *CRD implementation measure* to *exposures* fully and completely secured by mortgages on commercial property situated in that *EEA State* falling within the scope of that *CRD implementation measure*.~~

~~(2) However a *firm* may not apply the treatment in (1) if the eligibility to use that treatment under the *CRD implementation measure* referred to in (1) ceases as contemplated under point 59 of Annex VI of the *Banking Consolidation Directive* (condition in point 54(b) must apply where conditions in point 58 are not satisfied).~~ [deleted]

~~[**Note:** *BCD* Annex VI Part 1 points 58, 59 and 60]~~

Past due items

…

3.4.99 R *Exposures* indicated in *BIPRU* 3.4.56R to ~~*BIPRU* 3.4.63R~~ *BIPRU* 3.4.61R (Exposures secured by mortgages on residential property) must be assigned a *risk weight* of 100% net of value adjustments if they are past due for more than 90 days. If value adjustments are no less than 20% of the *exposure* gross of value adjustments, the *risk weight* to be assigned to the remainder of the *exposure* is 50%.

[**Note:** *BCD* Annex VI Part 1 point 64]

…

3.4.101 R *Exposures* indicated in *BIPRU* 3.4.89R ~~to *BIPRU* 3.4.94R~~ (Exposures secured by mortgages on commercial real estate) must be assigned *a risk weight* of 100% if they are past due for more than 90 days.

[**Note**: *BCD* Annex VI Part 1 point 65]

…

Items belonging to regulatory high-risk categories

…

3.4.105 G ~~For the purposes of point 66 of Part 1 of Annex VI of the *Banking Consolidation Directive*, the~~ The exposures listed in *BIPRU* 3 Annex 3R are in the view of the *appropriate regulator* associated with particularly high risk.

[**Note:** BCD Annex VI Part 1 point 66]

Exposures in the form of covered bonds

…

3.4.107 R (1) *Covered bonds* means covered bonds as defined in ~~paragraph (1) of~~ the definition in the *glossary* ~~(Definition based on Article 22(4) of the *UCITS Directive*)~~ and collateralised by any of the following eligible assets:

(a) *exposures* to or guaranteed by the ~~central governments, *central bank*,~~ *UK* central government, the Bank of England, *public sector entities*, regional governments and local authorities in the ~~*EEA*~~ *UK*;

(b) (i) *exposures* to or guaranteed by non-~~*EEA*~~ *UK* central governments, non-~~*EEA*~~ *UK central banks, multilateral development banks, international organisations* that qualify for the *credit quality step* 1;

(ii) *exposures* to or guaranteed by non-~~*EEA*~~ *UK public sector entities*, non-~~*EEA*~~ *UK* regional governments and non-~~*EEA*~~ *UK* local authorities that are *risk*

weighted as *exposures* to *institutions* or central governments and *central banks* according to *BIPRU* 3.4.23R, *BIPRU* 3.4.24R, *BIPRU* 3.4.10R or *BIPRU* 3.4.16G ~~to *BIPRU* 3.4.17R~~ respectively and that qualify for the *credit quality step* 1; and

…

…

(d) ~~loans secured:~~

~~(i) by residential real estate or shares in Finnish residential housing companies as referred to in *BIPRU* 3.4.57R up to the lesser of the principal amount of the liens that are combined with any prior liens and 80% of the value of the pledged properties; or~~

~~(ii) by senior units issued by French Fonds Communs de Créances or by equivalent *securitisation* entities governed by the laws of an *EEA State securitising* residential real estate *exposures* provided that the special public supervision to protect bond holders as provided for in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council ensures that the assets underlying such units must, at any time while they are included in the cover pool, be at least 90% composed of residential mortgages that are combined with any prior liens up to the lesser of the principal amounts due under the units, the principal amounts of the liens, and 80% of the value of the pledged properties, that the units qualify for *credit quality step 1* and that such units do not exceed 10% of the nominal amount of the outstanding issue; or~~ [deleted]

(e) (i) ~~loans secured by commercial real estate or shares in Finnish housing companies as referred to in *BIPRU* 3.4.57R up to the lesser of the principal amount of the liens that are combined with any prior liens and 60% of the value of the pledged properties; or~~ [deleted]

(ii) ~~loans secured by senior units issued by French Fonds Communs de Créances or by equivalent *securitisation* entities governed by the laws of an *EEA State securitising* commercial real estate *exposures* provided that the special public supervision to protect bond holders as provided for in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council ensures that the assets underlying such units must, at any time while they are included in the~~

~~cover pool, be at least 90% composed of commercial mortgages that are combined with any prior liens up to the lesser of the principal amounts due under the units, the principal amounts of the liens, and 60% of the value of the pledged properties, that the units qualify for *credit quality step 1* and that such units do not exceed 10% of the nominal amount of the outstanding issue; or~~ [deleted]

(iii) a *firm* may recognise loans secured by commercial real estate as eligible where the loan to value ratio of 60% is exceeded up to a maximum level of 70% if the value of the total assets pledged as collateral for the *covered bonds* exceed the nominal amount outstanding on the covered bond by at least 10%, and the bondholders' claim meets the legal certainty requirements set out in *BIPRU* 3 and *BIPRU* 5; the bondholders' claim must take priority over all other claims on the collateral; ~~or~~

(f) loans secured by ships where only liens that are combined with any prior liens within 60% of the value of the pledged ship.

(2) ~~For the purposes of *BIPRU* 3.4.107R(1)(d)(ii) and *BIPRU* 3.4.107 R(1)(e)(ii) *exposures* caused by transmission and management of payments of the obligors of, or liquidation proceeds in respect of, loans secured by pledged properties of the senior units or debt *securities* must not be comprised in calculating the 90% limit.~~ [deleted]

…

(4A) ~~Until 31 December 2013, the 10% limit for senior units issued by French Fonds Communs de Créances or by equivalent *securitisation* entities as specified in (1)(d)(ii) and (1)(e)(ii) does not apply, provided that:~~

~~(a) the *securitised* residential or commercial real estate *exposures* were originated by a member of the same consolidated group of which the *issuer* of the *covered bonds* is also a member or by an entity affiliated to the same central body to which the *issuer* of the *covered bonds* is also affiliated (that common group membership or affiliation to be determined at the time the senior units are made collateral for *covered bonds*); and~~

~~(b) a member of the same consolidated group of which the *issuer* of the *covered bonds* is also a member or an entity affiliated to the same central body to which the *issuer* of the *covered*~~

~~*bonds* is also affiliated retains the whole first loss tranche supporting those senior units.~~ [deleted]

(5) ~~Until 31 December 2010 the figure of 60% in (1)(f) can be replaced with a figure of 70%.~~ [deleted]

[**Note:** *BCD* Annex VI Part 1 point 68]

…

3.4.109 R Notwithstanding *BIPRU* 3.4.107R to *BIPRU* 3.4.108R, *covered bonds* meeting ~~the definition of Article 22(4) of the *UCITS Directive* paragraph (1) of~~ the definition in the *glossary* and issued before 31 December 2007 are also eligible for the preferential treatment until their maturity.

[**Note:** *BCD* Annex VI Part 1 point 69]

…

Exposures in the form of collective investment undertakings (CIUs)

….

3.4.121 R Where *BIPRU* 3.4.116R does not apply, a *firm* may determine the *risk weight* for a *CIU* as set out in *BIPRU* 3.4.123R to *BIPRU* 3.4.125R, if the following eligibility criteria are met:

(1) one of the following conditions is satisfied:

(a) the *CIU* is managed by a company which is subject to supervision in ~~an *EEA State*~~ the *UK*; or

(b) the following conditions are satisfied:

(i) the *CIU* is managed by a company which is subject to supervision that is equivalent to that laid down in ~~*EU*~~ *UK* law; and

(ii) cooperation between *competent authorities* and *third country competent authorities* is sufficiently ensured; and

…

3.4.122 R ~~If another *EEA competent authority* approves a third country *CIU* as eligible under a *CRD implementation measure* with respect to point 77(a) of Part 1 of Annex VI of the *Banking Consolidation Directive* then a *firm* may make use of this recognition.~~ [deleted]

~~[**Note:** *BCD* Annex VI Part 1 point 78]~~

…

3.5 Simplified method of calculating risk weights

…

3.5.5 G Table: Simplified method of calculating risk weights

This table belongs to *BIPRU* 3.5.4G.

Exposure class	Exposure sub-class	Risk weights	Comments
Central government	*Exposures* to *United Kingdom* government or Bank of England in sterling	0%	
	~~*Exposures* to *United Kingdom* government or Bank of England in the currency of another *EEA State*~~	~~0%~~	~~See Note 2.~~
	~~*Exposures* to *EEA State's* central government or *central bank* in currency of that state~~	~~0%~~	
	~~*Exposures* to *EEA State's* central government or *central bank* in the currency of another *EEA State*~~	~~0%~~	~~See Notes 2 and 3.~~
	Exposures to central governments or *central banks* of certain countries outside the ~~*EEA*~~ *UK* in currency of that country	See next column	The *risk weight* is whatever it is under local law. See *BIPRU* 3.4.6R for precise details.

	~~*Exposures* to European Central Bank~~	~~0%~~	
	Other *exposures*	100%	
Regional/local governments	*Exposures* to the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly in sterling	0%	
	~~*Exposures* to the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly in the currency of another *EEA State*~~	~~0%~~	~~See Note 2.~~
	~~*Exposures* to *EEA States'* equivalent regional/local governments in currency of that state~~	~~0%~~	~~See *BIPRU* 3.4.17R for details of type of local/regional government covered.~~
	~~*Exposures* to *EEA States'* equivalent regional/local governments in the currency of another *EEA State*~~	~~0%~~	~~See *BIPRU* 3.4.17R for details of type of local/regional government covered.~~ ~~See Notes 2 and 3.~~
	Exposures to local or regional governments of certain countries	0%	See *BIPRU* 3.4.19R for details of type of

	outside the ~~*EEA*~~ *UK* in currency of that country		local/regional government covered. See Note ~~1~~.
	Exposures to *United Kingdom* ~~or *EEA States'*~~ local/regional government in ~~currency of that state~~ sterling if the *exposure* has original effective maturity of 3 months or less	20%	
	~~*Exposures* to *United Kingdom* or *EEA States'* local/regional government in the currency of another *EEA State* if the *exposure* has original effective maturity of 3 months or less~~	~~20%~~	~~See Note 2. See Note 3 for local/regional government of an *EEA State* other than the *United Kingdom*~~
	Exposures to local or regional governments of countries outside the ~~*EEA*~~ *UK* in currency of that country if the *exposure* has original effective maturity of 3 months or less	20%	See Note ~~1~~.
	Other *exposures*	100%	
PSE	*Exposures* to a *PSE* of the *United Kingdom*	0%	*BIPRU* 3.4.24R describes the

	~~or of an *EEA State*~~ if that *PSE* is guaranteed by ~~its~~ central government and if the *exposure* is ~~be in currency of that *PSE's* state~~ in sterling.		*United Kingdom PSEs* covered ~~and *BIPRU* 3.4.25R describes the *EEA PSEs* covered.~~
	Exposures to *PSE* of a country outside the ~~*EEA*~~ *UK* if that *PSE* is guaranteed by the country's central government and if the *exposure* is in currency of that country.	0%	See *BIPRU* 3.4.26R and Note ~~1~~.
	Exposures to a *PSE* of the *United Kingdom* ~~or of an *EEA State*~~ in ~~currency of that state~~ sterling if the *exposure* has original effective maturity of 3 months or less	20%	
	~~*Exposures* to a *PSE* of the *United Kingdom* or of an *EEA State* in the currency of another *EEA State* if the *exposure* has original effective maturity of 3 months or less~~	~~20%~~	~~See Notes 2 and 3.~~

	Exposures to *PSE* of a country outside the ~~*EEA*~~ *UK* in currency of that country if the *exposure* has original effective maturity of 3 months or less	20%	See Note ~~1~~.
	Other *exposures*	100%	
Multilateral development banks	*Exposures* to *multilateral development banks* listed in paragraph (1) of the *Glossary* definition	0%	Simplified approach does not apply. Normal *rules* apply.
	Other *exposures*	Various	Treated as an *institution*
EU, ~~the~~ The International Monetary Fund and the Bank for International Settlements		0%	Simplified approach does not apply. Normal *rules* apply.
Institutions	*Exposures* to *United Kingdom institution* in sterling with original effective maturity of three months or less	20%	
	~~*Exposures* to *United Kingdom institution* in the currency of another *EEA State* with original effective~~	~~20%~~	~~See Note 2.~~

	~~maturity of three months or less~~		
	~~*Exposures* to *institution* whose head office is in another *EEA State* in the currency of that state with original effective maturity of three months or less~~	~~20%~~	
	~~*Exposures* to *institution* whose head office is in another *EEA State* in the currency of another *EEA State* with original effective maturity of three months or less~~	~~20%~~	~~See Notes 2 and 3.~~
	Exposures to *institution* with a head office in a country outside the ~~*EEA*~~ *UK* in the currency of that country with original effective maturity of three months or less	20%	See Note ~~1~~.
	Exposures to *United Kingdom institution* in sterling with original effective maturity of over three months	50%	

	~~*Exposures* to *United Kingdom institution* in the currency of another *EEA State* with original effective maturity of over three months~~	~~50%~~	~~See Note 2.~~
	~~*Exposures* to an *EEA institution* with a head office in another *EEA State* in the currency of that state with original effective maturity of over three months~~	~~50%~~	
	~~*Exposures* to an *EEA institution* with a head office in another *EEA State* in the currency of another *EEA State* with original effective maturity of over three months~~	~~50%~~	~~See Notes 2 and 3.~~
	Exposures to *institution* with a head office in a country outside the ~~*EEA*~~ *UK* in the currency of that country with original effective maturity of over three months	50%	See Note ~~1~~.
	Other *exposures*	100%	

…			
Note ~~1~~: The *risk weight* should not be lower than the *risk weight* that applies for national currency *exposures* of the central government of the third country in question under *BIPRU* 3.5. That means that this *risk weight* only applies if the third country is one of those to which *BIPRU* 3.4.6R (Preferential *risk weight* for *exposures* of the central government of countries outside the ~~*EEA*~~ *UK* that apply equivalent prudential standards) applies.			
~~Note 2: This is a transitional measure. It lasts until 31 December 2012.~~			
~~Note 3: The *risk weight* should not be lower than the *risk weight* that applies for *exposures* of the central government of the *EEA State* in question in the currency of another *EEA State* under *BIPRU* 3.5.~~			

4 The IRB approach

4.1 The IRB approach: Application, purpose and overview

…

Purpose

4.1.2 G Pursuant to the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR*, *BIPRU* 4 ~~implements~~ applies requirements that correspond to the following provisions of the *Banking Consolidation Directive*:

(1) Articles 84 - 89; and

(2) Annex VII.

4.1.3 G Pursuant to the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR*, *BIPRU* 4 also ~~implements~~ applies requirements that correspond to Annex VIII of the *Banking Consolidation Directive* so far as it applies to the *IRB approach*. In particular, it ~~implements~~ applies requirements corresponding to (in part):

(1) from Part 1 of that Annex, points 12-16, 19-22, 26(g)(ii) and 27;

(2) from Part 2 of that Annex, points 8-11; and

(3) from Part 3 of that Annex, points 1, 11, 20, 23-24, 58(h), 61, 64-79 and 90-93.

4.1.4 G Similarly, *BIPRU* 4 also ~~implements~~ applies requirements that correspond to article 40 of the *Capital Adequacy Directive* as it applies to the *IRB approach*.

…

Overview

4.1.6 G The *IRB approach* is an alternative to the *standardised approach* for calculating a *firm's* credit risk capital requirements. It may be applied to all a *firm's exposures* or to some of them, subject to various limitations on partial use as set out in *BIPRU* 4.2. Under the *IRB approach* capital requirements are based on a *firm's* own estimates of certain parameters together with other parameters as set out in ~~the *Banking Consolidation Directive*~~ *BIPRU* 4.

…

IRB permissions: general

…

4.1.13 G The *appropriate regulator* recognises that the nature of *IRB approaches* will vary between *firms*. The scope of and the requirements and conditions set out in an *IRB permission* may therefore differ in substance or detail from *BIPRU* 4 in order to address individual circumstances adequately. ~~However any differences will only be allowed if they are compliant with the Banking Consolidation Directive~~ The *FCA* will consider any differences by having regard to the *Banking Consolidation Directive*. An *IRB permission* will implement any such variation by modifying the relevant provisions of *GENPRU* and *BIPRU*. An *IRB permission* may also include additional conditions to meet the particular circumstances of the *firm*.

…

Link to standard rules: Incorporation of the IRB output into the capital calculation

…

4.1.23 R If a provision of the *Handbook* relating to the *IRB approach* says that a *firm* may do something if its *IRB permission* allows it, a *firm* may do that thing unless its *IRB permission* expressly says that it may not do so except that:

…

(6) ~~(in the case of *collateral* that is only eligible for recognition under paragraph 21 of Part 1 of Annex VIII of the *Banking Consolidation Directive* (Other physical collateral))~~ a *firm* may not recognise as eligible collateral an item of a type referred to in *BIPRU* 4.10.16R (Other physical collateral) unless that item is of a type specified as permitted in its *IRB permission*.

[**Note:** *BCD* Annex VIII Part 1 point 21]

…

4.2 The IRB approach: High level material

…

General approach to granting an IRB permission

…

4.2.3 R Where ~~an *EEA parent institution*~~ a *parent institution in the UK* and its *subsidiary undertakings* or ~~an *EEA parent financial holding company*~~ a *parent financial holding company in the UK* and its *subsidiary undertakings* or ~~an *EEA parent mixed financial holding company*~~ a *parent mixed financial holding company in the UK* and its *subsidiary undertakings* use the *IRB approach* on a unified basis, the question whether the *minimum IRB standards* are met is answered by considering the *parent undertaking* and its *subsidiary undertakings* together, unless the *firm's IRB permission* specifies otherwise.

[**Note:** *BCD* Article 84(2) (part)]

Outsourcing

4.2.4 G (1) This *guidance* sets out the basis on which a *firm* may rely upon a *rating system* or data provided by another member of its *group*.

(2) A *firm* may rely upon a *rating system* or data provided by another member of its *group* if the following conditions are satisfied:

(a) the *firm* only does so to the extent that it is appropriate, given the nature and scale of the *firm's* business and portfolios and the *firm's* position within the *group*;

(b) the *group* is an ~~*EEA*~~ *banking and investment group*;

…

(e) (if the provision of the *rating system* or data is not carried out in the *United Kingdom* ~~or in the jurisdiction of the *competent authority* that is the lead regulator of the *group*~~) the *firm* can demonstrate to the *appropriate regulator* that the ability of the *appropriate regulator* ~~and that lead regulator~~ to carry out their responsibilities under the *Handbook*~~, the *Banking Consolidation Directive* and the *Capital Adequacy Directive* are~~ is not adversely affected.

…

…

Combined use of methodologies: Basic provisions

4.2.26 R (1) …

(2) A *firm* may apply the *standardised approach* to the *IRB exposure class* referred to in *BIPRU* 4.3.2R(1) (Sovereigns) where the number of material counterparties is limited and it would be unduly burdensome for the *firm* to implement a *rating system* for these counterparties. A firm may include in this treatment an *exposure* of the type described in *BIPRU* 3.4.18R (Exposures to churches or religious communities) that would fall within *BIPRU* 3.4.15R ~~or *BIPRU* 3.4.17R~~ (Exposure to a regional government or local authority) if ~~those provisions~~ that provision had not been excluded by *BIPRU* 3.4.18R.

…

(5) A *firm* may apply the *standardised approach* to *exposures* to the *UK's* central ~~governments of *EEA States*~~ and ~~their~~ regional governments, local authorities and administrative bodies, provided that:

…

…

(9) ~~A *firm* may apply the *standardised approach* to the *exposures* identified in *BIPRU* 3.4.48R (Exposures in the form of minimum reserves required by the European Central Bank or by the central bank of an *EEA State*) meeting the conditions specified therein.~~ [deleted]

…

…

4.3 The IRB approach: Provisions common to different exposure classes

…

Corporate governance

…

4.3.12 G Where the *firm's rating systems* are used on a unified basis for the *parent undertaking* and its *subsidiary undertakings* under *BIPRU* 4.2.3R, and approval and reporting of the *ratings systems* are carried out at the group level, the governance requirements in *BIPRU* 4.3.9R and *BIPRU* 4.3.11R may be met if:

(1) the *subsidiary undertakings* have delegated to the *governing body* or *designated committee* of the ~~*EEA parent institution*~~ *parent institution in the UK* or ~~*EEA parent financial holding company*~~ *parent financial*

holding company in the UK responsibility for approval of the *firm's rating systems*;

(2) the *governing body* or *designated committee* of the ~~*EEA parent institution*~~ *parent institution in the UK* or ~~*EEA parent financial holding company*~~ *parent financial holding company in the UK* approves either:

(a) all aspects of the *firm's rating systems*, and material changes; or

(b) all aspects of the *firm's rating systems* that are material in the context of the group, and material changes to those, and a policy statement defining the overall approach to material aspects of rating and estimation processes for all *rating systems*, including non-material *rating systems*.

…

4.4 The IRB approach: Exposures to corporates, institutions and sovereigns

…

Risk quantification: Definition of default

4.4.22 R …

(3) ~~For counterparts that are *PSEs* situated in another *EEA State* the number of days past due is the lower of:~~

~~(a) 180; and~~

~~(b) the number of days past due fixed under the *CRD implementation measure* with respect to point 48 of Part 4 of Annex VII of the *Banking Consolidation Directive* for that *EEA State* for such *exposures*.~~ [deleted]

(4) For counterparts that are *PSEs* in a state ~~outside the *EEA*~~ other than the *UK* the number of days past due is the lower of:

(a) 180; and

(b) (if a number of days past due for such *exposures* has been fixed under any law of that state applicable to *undertakings* in the *banking sector* or the *investment services sector* that implements the *IRB approach*) that number.

[**Note:** *BCD* Annex VII Part 4 point 44 (part) and point 48 (part)]

…

Double default

…

4.4.83 R An *institution*, an *insurance undertaking* (including an *insurance undertaking* that carries out *reinsurance*) or an export credit agency which fulfils the following conditions may be recognised as an eligible provider of *unfunded credit protection* which qualifies for the treatment set out in *BIPRU* 4.4.79R:

(1) the protection provider has sufficient expertise in providing *unfunded credit protection*;

(2) the protection provider is regulated in a manner equivalent to the rules laid down in ~~the *Banking Consolidation Directive*~~ *GENPRU* and *BIPRU* or had, at the time the credit protection was provided, a credit assessment by an *eligible ECAI* which is associated with *credit quality step 3* or above under the *rules* for the *risk weighting* of *exposures* to *corporates* under the *standardised approach*;

…

…

4.6 The IRB approach: Retail exposures

…

Risk quantification: Definition of default

…

4.6.20 R (1) This *rule*, in accordance with *BIPRU* 4.3.57R(4) (Definition of default), sets the exact number of days past due that a *firm* must abide by in the case of *retail exposures*.

(2) For *retail exposures* to counterparts situated within the *United Kingdom* the number of days past due is 180 days with the exception of *retail SME exposures*. For these *exposures* the number is 90 days.

(3) ~~For *retail exposures* to counterparts situated in another *EEA State* the number of days past due is the lower of:~~

(a) ~~180; and~~

(b) ~~the number of days past due fixed under the *CRD implementation measure* in that *EEA State* with respect to paragraph 48 of Part 4 of Annex VII of the *Banking Consolidation Directive* for such *exposures*.~~ [deleted]

(4) For *retail exposures* to counterparts in a state outside the ~~*EEA*~~ *United Kingdom* the number of days past due is the lower of:

…

…

4.9 The IRB approach: Securitisation, non-credit obligations assets and CIUs

…

Collective investment undertakings

4.9.11 R (1) Where *exposures* in the form of a *CIU* meet the criteria set out in *BIPRU* 3.4.121R ~~to *BIPRU* 3.4.122R~~ (Conditions for look through treatment under the standardised approach) and the *firm* is aware of all of the underlying *exposures* of the *CIU*, the *firm* must look through to those underlying *exposures* in order to calculate *risk weighted exposure amounts* and *expected loss* amounts in accordance with the methods set out in *BIPRU* 4. *BIPRU* 4.9.12R applies to the part of the underlying *exposures* of the *CIU* of which the *firm* is not aware or could not reasonably be aware. In particular, *BIPRU* 4.9.12R must apply where it would be unduly burdensome for the *firm* to look through the underlying *exposures* in order to calculate *risk weighted exposure amounts* and *expected loss* amounts in accordance with methods set out in this *rule*.

…

4.9.12 R (1) Where *exposures* in the form of a *CIU* do not meet the criteria set out in *BIPRU* 3.4.121R ~~to *BIPRU* 3.4.122R~~ (Conditions for look through treatment under the standardised approach) or the *firm* is not aware of all of the underlying *exposures* of the *CIU*, a *firm* must look through to the underlying *exposures* and calculate *risk weighted exposure amounts* and *expected loss* amounts in accordance with the approach set out in *BIPRU* 4.7.9R - *BIPRU* 4.7.12R (Simple risk weights). If, for those purposes, the *firm* is unable to differentiate between private equity, exchange-traded and other *equity exposures*, it must treat the *exposures* concerned as other *equity exposures*. For these purposes, non-equity *exposures* must be assigned to one of the classes (private equity, exchange traded equity or other equity) set out in *BIPRU* 4.7.9R (Simple risk weight approach) and unknown *exposures* must be assigned to the other equity class.

…

…

4.10 The IRB approach: Credit risk mitigation

…

Eligibility of funded credit protection: General

4.10.5 R In addition to the collateral set out in *BIPRU* 5.3.1R to *BIPRU* 5.3.2R, *BIPRU* 5.4.1R to *BIPRU* 5.4.8R and *BIPRU* 5.6.1R (Eligibility of funded credit protection) the provisions of *BIPRU* 4.10.6R - *BIPRU* 4.10.11R ~~*BIPRU* 4.10.12R~~ (Eligibility of real estate collateral), *BIPRU* 4.10.14R (Eligibility: receivables), *BIPRU* 4.10.16R (Eligibility: other physical collateral), and *BIPRU* 4.10.19R (Eligibility: leasing), apply where a *firm* calculates *risk weighted exposure amounts* and *expected loss* amounts under the *IRB approach*.

[**Note:** *BCD* Annex VIII Part 1 point 12]

…

Real estate collateral: Types of eligible collateral: General

…

4.10.8 G (1) ~~Under paragraph 16 of Part 1 of Annex VIII of the Banking Consolidation Directive, a *competent authority*~~ The *FCA* may only disapply the condition in *BIPRU* 4.10.6R(3) if ~~the *competent authority*~~ it has evidence that the ~~relevant~~ *UK* market is well-developed and long-established with loss-rates which are sufficiently low to justify such action.

(2) If the evidence were to change so that the action was no longer justified the *appropriate regulator* would expect to revoke *BIPRU* 4.10.7R.

[**Note:** *BCD* Annex VIII Part 1 point 16]

4.10.9 R (1) The condition in *BIPRU* 4.10.6R(3) does not apply for *exposures* secured by residential real estate property situated ~~within the territory of another *EEA State*~~ outside the *UK*.

(2) ~~However (1) only applies if and to the extent that *the CRD implementation measures* for that *EEA State* in relation to the *IRB approach* implement the option set out in paragraph 16 of Part 1 of Annex VIII of the *Banking Consolidation Directive* (waiver for residential real estate property) with respect to residential real estate property situated within that *EEA State*. Therefore (1) does not apply if the eligibility to use this treatment under those measures ceases as contemplated under paragraph 18 of Part 1 of Annex VIII of the *Banking Consolidation Directive* (suspension of alternative treatment).~~ [deleted]

~~[**Note:** *BCD* Annex VIII Part 1 point 16 (part)]~~

4.10.10 R (1) The condition in *BIPRU* 4.10.6R(3) does not apply for commercial real estate property situated ~~within the territory of another *EEA State*~~ outside the *UK*.

(2) ~~However (1) only applies if and to the extent that the *CRD implementation measures* for that *EEA State* in relation to the *IRB approach* implement the option set out in paragraph 17 of Part 1 of Annex VIII of the *Banking Consolidation Directive* (waiver for commercial real estate property) with respect to commercial real estate property situated within that *EEA State*. Therefore (1) does not apply if the eligibility to use this treatment under those measures ceases as contemplated under paragraph 18 of Part 1 of Annex VIII of the *Banking Consolidation Directive* (suspension of alternative treatment).~~ [deleted]

~~[**Note:** *BCD* Annex VIII Part 1 point 19]~~

Real estate collateral: Types of eligible collateral: Finnish housing legislation

4.10.11 R ~~A *firm* may also recognise as eligible collateral shares in Finnish residential housing companies operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation in respect of residential property which is or will be occupied or let by the owner, as residential real estate collateral, provided that the conditions in *BIPRU* 4.10.6R are met.~~ [deleted]

~~[**Note:** *BCD* Annex VIII Part 1 point 14]~~

4.10.12 R ~~A *firm* may also recognise as eligible collateral shares in Finnish housing companies operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation as commercial real estate collateral, provided that the conditions in *BIPRU* 4.10.6R are met.~~ [deleted]

~~[**Note:** *BCD* Annex VIII Part 1 point 15]~~

….

Other physical collateral: Types of eligible collateral

4.10.16 R A *firm* may recognise as eligible collateral a physical item of a type other than those types indicated in *BIPRU* 4.10.6R - *BIPRU* 4.10.8R ~~*BIPRU* 4.10.12R~~ (Eligibility of real estate collateral) if its *IRB permission* provides that the *firm* may treat collateral of that type as eligible and if the *firm* is able to demonstrate the following:

…

….

Calculating risk weighted exposure amounts and expected loss amounts: General treatment

4.10.23 R *BIPRU* 4.10.24 R - *BIPRU* 4.10.28R ~~*BIPRU* 4.10.29R~~ apply to collateral in the form of real estate collateral, receivables, other physical collateral and leasing permitted by *BIPRU* 4.10 and *exposures* secured by such collateral.

…

Calculating risk weighted exposure amounts and expected loss amounts for funded credit risk mitigation: Alternative treatment for real estate collateral

4.10.29 R ~~(1)~~ ~~A *firm* may apply the treatment in paragraph 74 of Part 3 of Annex VIII of the *Banking Consolidation Directive* (50% risk weight for exposures secured by real estate) in respect of *exposures* collateralised by:~~

~~(a) residential real estate property; or~~

~~(b) commercial real estate property;~~

~~located in the territory of another *EEA State*.~~

~~(2)~~ ~~However (1)(a) or (1)(b) only applies if the *CRD implementing measures* for that *EEA State* with respect to the *IRB approach* have implemented the option set out in the provision of the *Banking Consolidation Directive* referred to in (1) with respect to the relevant category of real estate property situated within that *EEA State*.~~

~~(3)~~ ~~The use of the treatment in (1) with respect to property in another *EEA State* must be subject to the same conditions as apply under the relevant *CRD implementation measures* for that *EEA State*.~~ [deleted]

~~[**Note:** *BCD* Annex VIII Part 3 point 75]~~

…

5 Credit risk mitigation

5.1 Application and purpose

…

Purpose

5.1.2 G Pursuant to the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR*, *BIPRU* 5 ~~implements~~ applies requirements that correspond, in part, to Articles 78(1) and 91 to 93 and Annex VIII of the *Banking Consolidation Directive*.

…

5.1.4 G *BIPRU* 4.10 ~~implements~~ applies requirements that correspond to those parts of Articles 91 to 93 and Annex VIII of the *Banking Consolidation Directive* which are specific to the recognition of *credit risk mitigation* by *firms* using the *IRB approach*, and modifies the application of the provisions in *BIPRU* 5 to those *firms*.

…

5.4 Financial collateral

…

The financial collateral simple method: Repurchase transactions and securities lending or borrowing transactions

5.4.19 R A *risk weight* of 0% must be assigned to the collateralised portion of the *exposure* arising from transactions which fulfil the criteria enumerated in *BIPRU* 5.4.62R ~~or *BIPRU* 5.4.65R~~. If the counterparty to the transaction is not a *core market participant* a *risk weight* of 10% must be assigned.

[**Note:** *BCD* Annex VIII Part 3 point 27]

…

The financial collateral comprehensive method: General

…

5.4.24 R In valuing financial collateral for the purposes of the *financial collateral comprehensive method*, volatility adjustments must be applied to the market value of collateral, as set out in *BIPRU* 5.4.30R to *BIPRU* 5.4.64R ~~*BIPRU* 5.4.65R~~, in order to take account of price volatility.

[**Note:** *BCD* Annex VIII Part 3 point 30

5.4.25 R Subject to the treatment for currency mismatches in the case of *financial derivative instrument* set out in *BIPRU* 5.4.26R, where collateral is denominated in a currency that differs from that in which the underlying *exposure* is denominated, an adjustment reflecting currency volatility must be added to the volatility adjustment appropriate to the collateral as set out in *BIPRU* 5.4.30R to *BIPRU* 5.4.64R ~~*BIPRU* 5.4.65R~~.

[**Note:** *BCD* Annex VIII Part 3 point 31]

…

5.4.27 R In the case of a *firm* using the *financial collateral comprehensive method*, where an *exposure* takes the form of securities or *commodities* sold, posted or lent under a *repurchase transaction* or under a *securities or commodities lending or borrowing transaction*, and *margin lending transactions* the *exposure* value must be increased by the volatility adjustment appropriate to such securities or *commodities* as prescribed in *BIPRU* 5.4.30R to *BIPRU* 5.4.64R ~~*BIPRU* 5.4.65R~~.

[**Note:** *BCD* Article 78(1), third sentence]

The financial collateral comprehensive method: Calculating adjusted values

5.4.28 R …

(3) The fully adjusted value of the *exposure*, taking into account both volatility and the risk-mitigating effects of collateral is calculated as follows:

$E^* = \max \{0, [E_{VA} - C_{VAM}]\}$

Where:

…

(e) H_E is the volatility adjustment appropriate to the *exposure* (E), as calculated under *BIPRU* 5.4.30R to *BIPRU* 5.4.64R ~~*BIPRU* 5.4.65R~~.

(f) H_C is the volatility adjustment appropriate for the collateral, as calculated under *BIPRU* 5.4.30R to *BIPRU* 5.4.64R ~~*BIPRU* 5.4.65R~~.

(g) H_{FX} is the volatility adjustment appropriate for currency mismatch, as calculated under *BIPRU* 5.4.30R to *BIPRU* 5.4.64R ~~*BIPRU* 5.4.65R~~.

…

…

The financial collateral comprehensive method: Calculation of volatility adjustments to be applied: General

5.4.29 R *BIPRU* 5.4.30R - *BIPRU* 5.4.64R ~~*BIPRU* 5.4.65R~~ set out the calculation of volatility adjustments under the *financial collateral comprehensive method*.

…

The financial collateral comprehensive method: Conditions for applying a 0% volatility adjustment

….

5.4.65 R ~~If under the *CRD implementation measure* for a particular *EEA State* with respect to point 58 of Part 3 of Annex VIII of the *Banking Consolidation Directive* (Conditions for applying the 0% volatility adjustment) the treatment set out in that point is permitted to be applied in the case of *repurchase transactions* or *securities lending or borrowing transactions* in *securities* issued by the domestic government of that *EEA State*, then a *firm* may adopt the same approach to the same transactions.~~ [deleted]

~~[**Note:** *BCD* Annex VIII Part 3 point 59]~~

…

5.5 Other funded credit risk mitigation

…

Life insurance policies: Minimum requirements

5.5.5 R For life insurance policies pledged to a *lending firm* to be recognised the following conditions must be met:

(1) the party providing the life insurance must be ~~subject to the *Solvency II Directive*~~ a *Solvency II firm* listed in paragraphs (a), (d) or (e) of the definition in the *Glossary*, or is subject to supervision by a competent authority of a third country which applies supervisory and regulatory arrangements at least equivalent to those applied in the ~~Community~~ *UK*;

…

5.6 Master netting arrangements

…

Calculation of the fully adjusted exposure value: the supervisory volatility adjustments approach and the own estimates of volatility adjustments approach

…

5.6.5 R In calculating the 'fully adjusted *exposure* value'' (E*) for the *exposures* subject to an eligible master netting agreement *covering repurchase transactions* and/or *securities or commodities lending or borrowing transactions* and/or other *capital market-driven transactions*, a *firm* must calculate the volatility adjustments to be applied in the manner set out in *BIPRU* 5.6.6R to *BIPRU* 5.6.11R either using the *supervisory volatility adjustments approach* or the *own estimates of volatility adjustments approach* as set out in *BIPRU* 5.4.30R to *BIPRU* 5.4.64R ~~*BIPRU* 5.4.65R~~ for the *financial collateral comprehensive method*. For the use of the *own estimates of volatility adjustments approach* the same conditions and requirements apply as under the *financial collateral comprehensive method*.

[**Note:** *BCD* Annex VIII Part 3 point 5]

…

5.6.7 R For the purposes of *BIPRU* 5.6.6R, type of *security* means *securities* which are issued by the same entity, have the same issue date, the same maturity and are subject to the same terms and conditions and are subject to the same liquidation periods as indicated in *BIPRU* 5.4.30R to *BIPRU* 5.4.64R ~~*BIPRU* 5.4.65R~~.

[**Note:** *BCD* Annex VIII Part 3 point 7]

…

Calculation of the fully adjusted exposure value: the master netting agreement internal models approach

…

5.6.18 R A *firm* may use the *master netting agreement internal models approach* independently of the choice it has made between the *standardised approach* and the *IRB approach* for the calculation of *risk weighted exposure amounts*. However, if a *firm* uses the *master netting agreement internal models approach*, it must do so for all counterparties and *securities*, excluding immaterial portfolios where it may use the *supervisory volatility adjustments approach* or the *own estimates of volatility adjustments approach* as set out in *BIPRU* 5.4.30R to *BIPRU* 5.4.64R ~~*BIPRU* 5.4.65R~~.

[**Note:** *BCD* Annex VIII Part 3 point 13]

…

5.7 Unfunded credit protection

…

Additional requirements for guarantees

…

5.7.12 R In the case of guarantees ~~provided in the context of mutual guarantee schemes recognised for these purposes by another EEA *competent authority* under a *CRD implementation measure* with respect to point 19 of Part 2 of Annex VIII of the *Banking Consolidation Directive* or~~ provided by or counter-guaranteed by entities referred to in *BIPRU* 5.7.9R, the requirements in *BIPRU* 5.7.1R(1) - (3) will be satisfied where either of the following conditions are met:

(1) the *lending firm* has the right to obtain in a timely manner a provisional payment by the guarantor calculated to represent a robust estimate of the amount of the economic *loss*, including losses resulting from the non-payment of interest and other types of payment which the borrower is obliged to make, likely to be incurred by the *lending firm* proportional to the coverage of the guarantee; or

(2) the *lending firm* is able to demonstrate to the *appropriate regulator* that the loss-protecting effects of the guarantee, including losses resulting from the non-payment of interest and other types of payments which the borrower is obliged to make, justify such treatment.

[**Note:** *BCD* Annex VIII Part 2 point 19]

…

7 Market risk

7.1 Application, purpose, general provisions and non-standard transactions

…

Purpose

7.1.2 G Pursuant to the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR*, the purpose of this chapter is to ~~implement~~ apply requirements that correspond to Annexes I, III, IV and V of the *Capital Adequacy Directive*.

…

7.2 Interest rate PRR

…

Derivation of notional positions: Futures, forwards or synthetic futures on a basket or index of debt securities

…

7.2.15 G Under *BIPRU* 7.2.14R(2)(b), a *forward* on basket of three Euro denominated debt *securities* and two Dollar denominated debt *securities* would be treated as a *forward* on a single notional Euro denominated debt *security* and a *forward* on a single notional Dollar denominated debt *security*.

…

Specific risk calculation

…

7.2.44 R Table: specific risk position risk adjustments

This table belongs to *BIPRU* 7.2.43R.

Issuer	Residual maturity	*Position risk adjustment*
Debt *securities* issued or guaranteed by central governments, issued by *central banks*, *international organisations*, *multilateral development banks* or ~~*EEA States'*~~ *United Kingdom* regional governments or local authorities which would qualify for *credit quality step* 1 or which would receive a 0% *risk weight* under the *standardised approach* to credit risk.	Any	0%

(A) Debt *securities* issued or guaranteed by central governments, issued by *central banks*, *international organisations*, *multilateral development banks* or ~~*EEA States'*~~ *United Kingdom* regional governments or local authorities which would qualify for *credit quality step* 2 or 3 under the *standardised approach* to credit risk. …	Zero to six months …	0.25% …
(A) Debt *securities* issued or guaranteed by central governments, issued by *central banks*, *international organisations*, *multilateral development banks* or ~~*EEA States'*~~ *United Kingdom* regional governments or local authorities or *institutions* which would qualify for *credit quality step* 4 or 5 under the *standardised approach* to credit risk. (B) Debt *securities* issued or guaranteed by *corporates* which would qualify for *credit quality step* 4 under the *standardised approach* to credit risk.	Any	8%

(C) Exposures for which a credit assessment by a *nominated ECAI* is not available.		
(A) Debt *securities* issued or guaranteed by central governments, issued by *central banks*, *international organisations*, *multilateral development banks* or ~~*EEA States'*~~ *United Kingdom* regional governments or local authorities or *institutions* which would qualify for *credit quality step* 6 under the *standardised approach* to credit risk. (B) Debt *securities* issued or guaranteed by *corporates* which would qualify for *credit quality step* 5 or 6 under the *standardised approach* to credit risk. (C) An instrument that shows a particular risk because of the insufficient solvency of the issuer of liquidity. This paragraph applies even if the instrument would otherwise qualify for a lower *position risk adjustment* under this table.	Any	12%
Note: The question of what a *corporate* is and of what category a debt *security* falls into must be decided under the *rules* relating to the *standardised approach* to credit risk.		

[**Note**: *CAD* Annex I point 14 Table 1]

…

Definition of a qualifying debt security

7.2.49 R A debt *security* is a *qualifying debt security* if:

…

(4) it is a debt *security* issued by an *institution* subject to the capital adequacy requirements set out in the ~~*EU*~~ *UK CRR* or, as may be applicable, ~~the *Banking Consolidation Directive*~~ *GENPRU* and *BIPRU,* that satisfies the following conditions:

(a) it is considered by the *firm* to be sufficiently liquid;

(b) its investment quality is, according to the *firm's* own discretion, at least equivalent to that of the assets referred to under (1) above; or

(5) it is a debt *security* issued by an *institution* that is deemed to be of equivalent or higher credit quality than that associated with *credit*

quality step 2 under the *standardised approach* to credit risk and that is subject to supervision and regulatory arrangements comparable to those under ~~the *Capital Adequacy Directive*~~ *GENPRU* and *BIPRU*.

…

7.7 Position risk requirements for collective investment undertakings

…

Look through methods: General criteria

…

7.7.7 R The general eligibility criteria for using the methods in *BIPRU* 7.7.4R and *BIPRU* 7.7.9R - *BIPRU* 7.7.11R, for *CIUs* issued by *companies* supervised or incorporated within the ~~*EEA*~~ *UK* are that:

…

…

7.9 Use of a CAD 1 model

Introduction

…

7.9.5 G *Waivers* permitting the use of models in the calculation of *PRR* will not be granted if that would be contrary to ~~the *CAD*~~ *BIPRU*. ~~Any *waiver* which is granted will only be granted on terms that are compatible with the *CAD*.~~ When granting any waiver the *FCA* will have regard to the *CAD*. Accordingly, the only *waivers* permitting the use of models in calculating *PRR* that the *appropriate regulator* is likely to grant are CAD 1 model waivers and VaR model permissions.

…

7.10 Use of a Value at Risk Model

…

Introduction and purpose

…

7.10.3 G The models described in *BIPRU* 7.10 are described as VaR models in order to distinguish them from *CAD 1 models*, which are dealt with in *BIPRU* 7.9 (Use of a CAD 1 model). A *VaR model* is a risk management model which uses a statistical measure to predict profit and loss movement ranges with a confidence interval. From these results *PRR*

charges can be calculated. The standards described in *BIPRU* 7.10, and which will be applied by the *appropriate regulator*, are based on ~~and implement~~ Annex V of the *Capital Adequacy Directive*.

…

Conditions for granting a VaR model permission

7.10.7 G A *waiver* or other permission allowing the use of models in the calculation of *PRR* will ~~not be granted if that would be contrary to the *Capital Adequacy Directive*~~ be considered with regards to *CAD* and any *VaR model permission* which is granted will ~~only be granted on terms that are compatible with the *Capital Adequacy Directive*~~ be considered with regards to *CAD*. Accordingly, the *appropriate regulator* is likely only to grant a *waiver* or other permission allowing the use of models in the calculation of *PRR* if it is a *VaR model permission* or a *CAD 1 model waiver*.

…

7.10.9 G The *appropriate regulator* recognises that the nature of *VaR models* will vary between *firms*. The scope of and the requirements and conditions set out in a *VaR model permission* may therefore differ in substance or detail from *BIPRU* 7.10 in order to address individual circumstances adequately. ~~However any differences will only be allowed if they are compliant with the *Capital Adequacy Directive*.~~ The *FCA* will consider any differences by having regard to the *CAD*. A *VaR model permission* will implement any such variation by modifying *BIPRU* 7.10. A *VaR model permission* may also include additional conditions to meet the particular circumstances of the *firm* or the model.

…

8 Group risk consolidation

8.1 Application

8.1.1 R This chapter applies to:

(1) a *BIPRU firm* that is a member of *UK consolidation group*;

(2) a *BIPRU firm* that is a member of a ~~*non-EEA sub-group*~~ *non-UK sub-group*; and

(3) [deleted]

(4) a *firm* that is not a *BIPRU firm* and is a *parent financial holding company in ~~a Member State~~ the UK* in a *UK consolidation group*.

8.1.2 R This chapter does not apply to a *firm* in *BIPRU* 8.1.1R(1) to *BIPRU* 8.1.1R(3) which is a member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* if the interest of the relevant *UK*

consolidation group or ~~*non-EEA sub-group*~~ *non-UK sub-group* in that *firm* is no more than a *participation*.

8.1.2A R A *firm* is not subject to consolidated supervision under *BIPRU* 8 where any of the following conditions are fulfilled:

(1) the *firm* is included in the supervision on a *consolidated basis* of the *group* of which it is a member by the *FCA* or *PRA* under the ~~*EU*~~ *UK CRR*; ~~or~~

(2) ~~the *firm* is included in the supervision on a *consolidated basis* of the *group* of which it is a member by a *competent authority* other than the *FCA* under the *EU CRR* as implemented by that *competent authority*.~~ [deleted]

8.1.2B R Where a *group* includes one or more *BIPRU firms* and one or more *IFPRU investment firms* which has permission under article 19 of the ~~*EU*~~ *UK CRR* (Exclusion from the scope of prudential consolidation) from the *FCA* not to be included in the supervision on a *consolidated basis* of the *group* of which it is a member, consolidated supervision under *BIPRU* 8 applies to those *IFPRU investment firms* and the *BIPRU firms*.

Purpose

8.1.3 G Pursuant to the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR*, this chapter ~~implements~~ applies provisions corresponding to articles 71, 73(1) and (2), 125, ~~126,~~ 127(1), 133 and 134 of the *Banking Consolidation Directive* and articles 2 (in part), 22-27 and 37(1) (in part) of the *Capital Adequacy Directive*.

How this chapter is organised

…

8.1.5 G *BIPRU* 8.3 sets out the definition of a ~~*non-EEA sub-group*~~ *non-UK sub-group* and the basic requirement to apply financial resources and concentration risk requirements to that group on a consolidated basis.

…

Consolidation requirements for BIPRU firms elsewhere in the Handbook

…

8.1.16 G *GENPRU* 3.2 (Prudential rules for third country groups) deals, amongst other things, with banking and investment services groups headed by a *parent undertaking* outside the ~~*EEA*~~ *UK*.

8.2 Scope and basic consolidation requirements for UK consolidation groups

Main consolidation rule for UK consolidation groups

8.2.1 R A *firm* that is a member of a *UK consolidation group* must comply, to the extent and in the manner prescribed in *BIPRU* 8.5, with the obligations laid down in *GENPRU* 1.2 (Adequacy of financial resources) and the *main BIPRU firm Pillar 1 rules* (but not the *base capital resources requirement*) on the basis of the consolidated financial position of:

(1) where either Test 1A or Test 1B in *BIPRU* 8 Annex 1 (Decision tree identifying a UK consolidation group) apply, the *parent institution in ~~a Member State~~ the UK* in the *UK consolidation group*; or

(2) where either Test 1C or Test 1D in *BIPRU* 8 Annex 1 apply, the *parent financial holding company in ~~a Member State~~ the UK* or the *parent mixed financial holding company in ~~a Member State~~ the UK*.

…

Definition of UK consolidation group

8.2.4 R A *firm's UK consolidation group* means a 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); the members of that group are:

(1) where either Test 1A or Test 1B in *BIPRU* 8 Annex 1R apply, the members of the *consolidation group* made up of the *sub-group* of the *parent institution in ~~a Member State~~ the UK* identified in *BIPRU* 8 Annex 1R together with any other *person* who is a member of that *consolidation group* because of a *consolidation Article 12(1) relationship* or an *Article 134 relationship*; or

(2) where either Test 1C or Test 1D in *BIPRU* 8 Annex 1R apply, the members of the *consolidation group* made up of the *sub-group* of the *parent financial holding company in ~~a Member State~~ the UK* or the *parent mixed financial holding company in ~~a Member State~~ the UK* identified in *BIPRU* 8 Annex 1R together with any other *person* who is a member of that *consolidation group* because of a *consolidation Article 12(1)* relationship or an *Article 134 relationship*;

in each case only *persons* included under *BIPRU* 8.5 (Basis of consolidation) are included in the *UK consolidation group*.

…

8.2.7 G ~~*BIPRU* 8 Annex 1 (Decision tree identifying a UK consolidation group) shows that Articles 125 and 126 of the *Banking Consolidation Directive* are important in deciding whether the *appropriate regulator* is obliged to~~

~~supervise a group or part of a group and hence whether that group or part of a group is a *UK consolidation group*. *BIPRU* 8 Annex 4 (Text of Articles 125 and 126 of the *Banking Consolidation Directive*) sets out these articles together with an explanation of how those articles should be read in the case of a group which also contains *CAD investment firms*.~~ [deleted]

8.3 Scope and basic consolidation requirements for ~~non-EEA sub-groups~~ non-UK sub-groups

Main consolidation rule for ~~non-EEA sub-group~~ non-UK sub-groups

8.3.1 (1) A *BIPRU firm* that is a *subsidiary undertaking* of a *BIPRU firm* or of a *financial holding company* or of a *mixed financial holding company* must apply the requirements laid down in *GENPRU* 1.2 (Adequacy of financial resources) and the *main BIPRU firm Pillar 1 rules* (but not the *base capital resources requirement*) on a sub-consolidated basis if the *BIPRU firm*, or the *parent undertaking* where it is a *financial holding company* or a *mixed financial holding company*, have a ~~third country investment services undertaking~~ *third country investment services undertaking* as a *subsidiary undertaking* or hold a *participation* in such an *undertaking*.

(2) ~~(1) only applies if the *appropriate regulator* is required by the *Banking Consolidation Directive* or the *Capital Adequacy Directive* to supervise the group established under (1) under Article 73(2) of the *Banking Consolidation Directive* (Non-EEA sub-groups).~~ [deleted]

8.3.2 R Further to *BIPRU* 8.3.1R, a *firm* that is a member of a ~~*non-EEA sub-group*~~ *non-UK sub-group* must at all times ensure that the *consolidated capital resources* of that ~~*non-EEA sub-group*~~ *non-UK sub-group* are equal to or exceed its c*onsolidated capital resources requirement*.

…

8.3.4 G The *sub-group* identified in *BIPRU* 8.3.1R is called a ~~*non-EEA sub-group*~~ *non-UK sub-group*.

How to identify a ~~non-EEA sub-group~~ non-UK sub-group

8.3.6 G The remainder of this section sets out a process for identifying a ~~*non-EEA sub-group*~~ *non-UK sub-group* in straightforward cases.

8.3.7 G A *firm* will not be a member of a ~~*non-EEA sub-group*~~ *non-UK sub-group* unless it is also a member of a *UK consolidation group*. So the first step is to identify each *undertaking* in the *firm's UK consolidation group* that satisfies the following conditions:

(1) it is a *CAD investment firm*, *financial institution* or *asset management company* whose head office is outside the ~~*EEA*~~ *UK* (a *third country investment services undertaking*);

(2) one of the following applies:

(a) it is a *subsidiary undertaking* of a *BIPRU firm* in that *UK consolidation group*; or

(b) a *BIPRU firm* in that *UK consolidation group* holds a *participation* in it; and

(3) that *BIPRU firm* is not a *parent institution in* ~~*a Member State*~~ *the UK*.

8.3.8 G The *sub-group* of the *BIPRU firm* identified in *BIPRU* 8.3.7G(2)(a) or *BIPRU* 8.3.7G(2)(b) is a potential ~~*non-EEA sub-group*~~ *non-UK sub-group*.

8.3.9 G If more than one *BIPRU firm* is a direct or indirect *parent undertaking* in accordance with *BIPRU* 8.3.7G(2)(a) then the *sub-groups* of each of them are all ~~*non-EEA sub-group*~~ *non-UK sub-groups*.

8.3.10 G Similarly if there is more than one *BIPRU firm* that holds a *participation* in the *third country investment services undertaking* in accordance with *BIPRU* 8.3.7G(2)(b) then the *sub-group* of each such *BIPRU firm* is a potential ~~*non-EEA sub-group*~~ *non-UK sub-group*.

8.3.11 G The effect of *BIPRU* 8.3.7G(3) is that a ~~*non-EEA sub-group*~~ *non-UK sub-group* cannot be headed by a *parent institution in* ~~*a Member State*~~ *the UK*.

8.3.12 G The *firm* should then identify each *undertaking* in the *firm's UK consolidation group* that satisfies the following conditions:

(1) it is a *CAD investment firm*, *financial institution* or *asset management company* whose head office is outside the ~~*EEA*~~ *UK* (*a third country investment services undertaking*);

…

8.3.13 G The *sub-group* of the *financial holding company* identified in *BIPRU* 8.3.12G(2)(a) or *BIPRU* 8.3.12G(2)(b) is a potential ~~*non-EEA sub-group*~~ *non-UK sub-group*.

8.3.14 G The *financial holding company* identified in *BIPRU* 8.3.12G may be a *parent financial holding company in* ~~*a Member State*~~ *the UK*.

8.3.15 G If more than one *financial holding company* is a direct or indirect *parent undertaking* in accordance with *BIPRU* 8.3.12G(2)(a) then the *sub-groups* of each of them are all potential ~~*non-EEA sub-groups*~~ *non-UK sub-groups*.

8.3.16 G Similarly if there is more than one *financial holding company* that holds a *participation* in the *third country investment services undertaking* in

accordance with *BIPRU* 8.3.12G(2)(b) then the *sub-group* of each such *financial holding company* is a potential ~~*non-EEA sub-group*~~ *non-UK sub-group*.

8.3.17 G The *firm* should apply the process in *BIPRU* 8.3.12G to a *third country investment services undertaking* even though it may be also be part of a potential ~~*non-EEA sub-group*~~ *non-UK sub-group* under *BIPRU* 8.3.7G.

8.3.18 G Having identified potential ~~*non-EEA sub-groups*~~ *non-UK sub-groups* for each *third country investment services undertaking* in its *UK consolidation group* the *firm* should then eliminate overlapping potential ~~*non-EEA sub-groups*~~ *non-UK sub-groups* in the following way. If:

(1) one potential ~~*non-EEA sub-group*~~ *non-UK sub-group* is contained within a wider potential ~~*non-EEA sub-group*~~ *non-UK sub-group*; and

(2) the *third country investment services undertakings* in the two potential ~~*non-EEA sub-groups*~~ *non-UK sub-groups* are the same;

then the smaller potential ~~*non-EEA sub-group*~~ *non-UK sub-group* is eliminated.

8.3.19 G If there is a chain of three or more ~~*non-EEA sub-group*~~ *non-UK sub-groups*, each with the same *third country investment services undertakings*, the elimination process may remove all but the highest.

8.3.20 G Each remaining potential ~~*non-EEA sub-group*~~ *non-UK sub-group* is a ~~*non-EEA sub-group*~~ *non-UK sub-group*, even though it may be part of a wider ~~*non-EEA sub-group*~~ *non-UK sub-group*.

8.3.22 G If a *UK consolidation group* is headed by a *parent financial holding company in* ~~*a Member State*~~ *the UK* the result of the elimination process may be that a *firm's UK consolidation group* contains only one ~~*non-EEA sub-group*~~ *non-UK sub-group* and that the ~~*non-EEA sub-group*~~ *non-UK sub-group* is the same as the *UK consolidation group*. In theory that means that there are two sets of consolidation requirements, one in relation to the *UK consolidation group* and one in relation to the ~~*non-EEA sub-group*~~ *non-UK sub-group*. However as the *UK consolidation group* and the ~~*non-EEA sub-group*~~ *non-UK sub-group* are the same, in practice this means that the additional ~~*non-EEA sub-group*~~ *non-UK sub-group* consolidation disappears.

8.3.23 G Even where the requirements for a ~~*non-EEA sub-group*~~ *non-UK sub-group* are absorbed into those for the *UK consolidation group* a *firm* should still make clear in its regulatory reporting that the consolidation figures relate to a *UK consolidation group* and a ~~*non-EEA sub-group*~~ *non-UK sub-group* and that they both contain the same members.

8.3.24 G ~~The examples in this section have so far assumed that the only *EEA State* involved is the *United Kingdom*. If a potential *non-EEA sub-group* that~~

~~would otherwise be regulated by the *appropriate regulator* contains a potential *non-EEA sub-group* in another *EEA State* then the *United Kingdom* one is eliminated if the *third country investment services undertaking* in the *UK* potential *non-EEA sub-group* and the potential *non-EEA sub-group* in the other *EEA State* are the same. The intention here is that the *EEA competent authority* closest to the *third country investment services undertaking* should be responsible for the *non-EEA sub-group* subconsolidation. Example 6 in *BIPRU* 8 Annex 3 (Examples of how to identify a non-EEA sub-group) illustrates this situation.~~ [deleted]

8.4 CAD Article 22 groups and investment firm consolidation waiver

…

The effect of an investment firm consolidation waiver and the conditions for getting one

…

8.4.3 G An *investment firm consolidation waiver* will waive the application of *BIPRU* 8.2.1R and *BIPRU* 8.2.2R (if it applies with respect to a *UK consolidation group*) or *BIPRU* 8.3.1R and *BIPRU* 8.3.2R (if it applies with respect to a ~~*non-EEA sub-group*~~ *non-UK sub-group*). The effect will be to switch off this chapter with respect to the group in question apart from this section.

8.4.4 G The *FCA* will not grant an *investment firm consolidation* waiver unless:

(1) the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* meets the conditions for being a *CAD Article 22 group*;

(2) the *FCA* is satisfied that each *BIPRU firm* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* will be able to meet its capital requirements using the calculation of *capital resources* in *GENPRU* 2 Annex 6R (Capital resources table for a BIPRU firm with a waiver from consolidated supervision); and

(3) the *firm* demonstrates that the requirements in *BIPRU* 8.4.11R to *BIPRU* 8.4.18R will be met.

…

Meeting the terms of an investment firm consolidation waiver

8.4.7 R If a *firm* has an *investment firm consolidation waiver* with respect to its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* but that *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* ceases to meet the definition of a *CAD Article 22 group* the *firm* must

comply with the rest of this chapter rather than this section notwithstanding the *investment firm consolidation waiver*.

8.4.8 G Compliance with the capital requirements set out in *BIPRU* 8.4.11R is a condition under the *Capital Adequacy Directive* for the exemption from capital requirements as it applies in accordance with article 95(2) of the *UK CRR*. Thus if they are breached the *FCA* is likely to revoke the *investment firm consolidation waiver*.

Definition of a CAD Article 22 group

8.4.9 R (1) A *CAD Article 22 group* means a *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* that meets the conditions in this *rule*.

(2) There must be no *bank*, *building society* or *credit institution* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* and any *investment firm* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* must not be subject to consolidated supervision under the ~~*EU*~~ *UK CRR*.

(3) Each *CAD investment firm* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *UK sub-group* ~~which is an *EEA firm*~~ must use the definition of own funds ~~given in the *CRD implementation measure* of its *EEA State* for Article 16 of the *Capital Adequacy Directive*~~ that would be at least equivalent to that which would apply under *GENPRU* and *BIPRU*.

(4) Each *CAD investment firm* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* must be a:

(a) *limited activity firm*; or

(b) *limited licence firm*.

(5) Each *CAD investment firm* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *UK sub-group* ~~which is an *EEA firm*~~ must:

(a) meet the requirements ~~imposed by the *CRD implementation measures* of its *EEA State* for Articles 18 and Article 20 of the *Capital Adequacy Directive*~~ that would be at least equivalent to those that would apply under *GENPRU* and *BIPRU* on an individual basis; and

(b) deduct from its own funds any contingent liability in favour of other members of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *UK sub-group*.

(6) Each *BIPRU firm* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* must comply with the *main BIPRU firm Pillar 1 rules* on an individual basis.

8.4.10 G ~~*GENPRU* 2.2 (Capital resources) says that a *BIPRU firm* with an *investment firm consolidation waiver* should calculate its *capital resources* on a solo basis using *GENPRU* 2 Annex 6 (Capital resources table for a BIPRU firm with a waiver from consolidated supervision). *GENPRU* 2 Annex 6 requires a *BIPRU firm* to deduct contingent liabilities in favour of other members of the *UK consolidation group* or *non-EEA sub-group*. Therefore *BIPRU* 8.4.9R(5)(b) only imposes the requirement to deduct them on *EEA firms*.~~ [deleted]

Capital adequacy obligations relating to a CAD Article 22 group: General rule

8.4.11 R If a *firm* has an *investment firm consolidation waiver*, it must ensure that any *financial holding company* in the *UK consolidation group* or the ~~*non-EEA sub-group*~~ *non-UK sub-group* that is the ~~*UK*~~ *parent financial holding company in in ~~a Member State~~ the UK* of a *CAD investment firm* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* has capital resources, calculated under *BIPRU* 8.4.12R, in excess of the sum of the following (or any higher amount specified in the *investment firm consolidation waiver*):

(1) the sum of the solo notional capital resources requirements for each *CAD investment firm*, *financial institution*, *asset management company* and *ancillary services undertaking* in the *UK consolidation group* or the ~~*non-EEA sub-group*~~ *non-UK sub-group*, as calculated in accordance with *BIPRU* 8.4.13R; and

(2) the total amount of any contingent liability in favour of *CAD investment firms*, *financial institutions*, *asset management companies* and *ancillary services undertakings* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.

Capital adequacy obligations relating to a CAD Article 22 group: Capital resources

8.4.12 R A *firm* must calculate the capital resources of the *parent financial holding company in ~~a Member State~~ the UK* for the purpose of *BIPRU* 8.4.11R as follows:

…

…

Additional rules that apply to a firm with an investment firm consolidation waiver

8.4.18 R If a *firm* has an *investment firm consolidation waiver*, it must:

(1) ensure that each *CAD investment firm* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* which is a *firm* ~~or an *EEA firm*~~ has in place systems to monitor and control the sources of capital and funding of all the members in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*;

(2) notify the *FCA* of any serious risk that could undermine the financial stability of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*, as soon as the *firm* becomes aware of that risk, including those associated with the composition and sources of the capital and funding of members of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*;

(3) report the amount of the *consolidated capital resources* and *consolidated capital resources requirement* of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* on a periodic basis as set out in the *investment firm consolidation waiver*;

(4) report any *large exposures* risks of members of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* including any undertakings not located in ~~an *EEA State*~~ the *UK* on a periodic basis set out in the *investment firm consolidation waiver*;

(5) notify the *FCA* immediately it becomes aware that the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* has ceased to meet the conditions for being a *CAD Article 22 group*; and

(6) notify the *FCA* immediately it becomes aware of any breach of *BIPRU* 8.4.11R.

8.4.19 G Although an *investment firm consolidation waiver* switches off most of this chapter, a *firm* should still carry out the capital adequacy calculations in *BIPRU* 8.3 to *BIPRU* 8.8 as if those parts of this chapter still applied to the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* and report these to the *FCA*. It should also still monitor *large exposure* risk on a consolidated basis.

8.5 Basis of consolidation

Undertakings to be included in consolidation

8.5.1 R A *firm* must include only the following types of *undertaking* in a *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* for the purposes of this chapter:

…

8.5.2 G Although an *undertaking* falling outside *BIPRU* 8.5.1R will not be included in a *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* it may be relevant in deciding whether one *undertaking* in the *banking sector* or the *investment services sector* is a *subsidiary*

undertaking of another with the result that they should be included in the same *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.

8.5.3 G An example of *BIPRU* 8.5.2G is as follows. Say that the *undertaking* at the head of a *BIPRU firm's UK group* is a *parent financial holding company in* ~~*a Member State*~~ *the UK*. One of its *subsidiary undertakings* is the *firm*. The parent financial holding company *in* ~~*a Member State*~~ *the UK* also has an *insurer* as a *subsidiary undertaking*. That *insurer* has several *BIPRU firms* as *subsidiary undertakings*. Say that the *UK group* is not a *financial conglomerate*. The *UK consolidation group* will include the *parent financial holding company in* ~~*a Member State*~~ *the UK* and the *firm*. It will also include the *BIPRU firms* that are *subsidiary undertakings* of the *insurer*. This is because the *BIPRU firms* are *subsidiary undertakings* of the *parent financial holding company in* ~~*a Member State*~~ *the UK* through the *parent financial holding company in* ~~*a Member State's*~~ *the UK's* holding in the *insurer*. However it will not include the *insurer* itself.

Basis of inclusion of undertakings in consolidation

8.5.4 R A *firm* must include any *subsidiary undertaking* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* in full in the calculations in this chapter.

8.5.5 R In carrying out the calculations for the purposes of this chapter a *firm* must only include the relevant proportion of an *undertaking* that is a member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*:

…

8.5.6 R In *BIPRU* 8.5.5R, the relevant proportion is either:

(1) (in the case of a *participation*) the proportion of *shares* issued by the *undertaking* held by the *UK consolidation group* or the ~~*non-EEA sub-group*~~ *non-UK sub-group*; or

…

…

Exclusion of undertakings from consolidation: Other reasons

8.5.11 R ~~Article 73(1) of the *Banking Consolidation Directive* allows~~ Article 95(2) preserves the discretion for the *appropriate regulator* to decide to exclude a *BIPRU firm*, *financial institution*, *asset management company* or *ancillary services undertaking* that is a *subsidiary undertaking* in, or an *undertaking* in which a *participation* is held by, the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* for the purposes of this chapter in the following circumstances:

(1) where the head office of the *undertaking* concerned is situated in a country outside the ~~*EEA*~~ *UK* where there are legal impediments to the transfer of the necessary information; or

…

…

Information about excluded undertakings

8.5.14 G The *appropriate regulator* may require a *firm* to provide information about the *undertakings* excluded from consolidation of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* pursuant to this section.

8.6 Consolidated capital resources

General

8.6.1 R A *firm* must calculate the *consolidated capital resources* of its *UK consolidation group* or its ~~*non-EEA sub-group*~~ *non-UK sub-group* by applying *GENPRU* 2.2 (Capital resources) to its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* on an accounting consolidation basis, treating the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as a single *undertaking*. The *firm* must adjust *GENPRU* 2.2 in accordance with this section for this purpose.

Notification of issuance of capital instruments

8.6.1A R This section applies to a *firm* if another member of its *group* intends to issue a *capital instrument* on or after 1 March 2012 for inclusion in the *firm's capital resources* or *consolidated capital resources* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.

8.6.1B R A *firm* must notify the *appropriate regulator* in writing of the intention of another member of its *group* which is not a *firm* to issue a *capital instrument* which the *firm* intends to include within its *capital resources* or the *consolidated capital resources* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as soon as it becomes aware of the intention of the *group undertaking* to issue the *capital instrument*. When giving notice, a *firm* must:

…

…

8.6.1D R If a *group undertaking* proposes to establish a debt securities program for the issue of *capital instruments* which the *firm* intends to include within

its *capital resources* or the *consolidated capital resources* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*, it must:

…

8.6.1E R The *capital instruments* to which *BIPRU* 8.6.1BR does not apply are:

…

(3) *capital instruments* which are not materially different in terms of their characteristics and eligibility for inclusion in a particular tier of capital to *capital instruments* previously issued by a *group undertaking* for inclusion in the *firm's capital resources* or *consolidated capital resources* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.

8.6.1F R A *firm* must notify the *appropriate regulator* in writing, no later than the date of issue, of the intention of a *group undertaking* to issue a *capital instrument* listed in *BIPRU* 8.6.1ER which the *firm* intends to include within its *capital resources* or the *consolidated capital resources* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*. When giving notice a *firm* must:

…

Limits on the use of different forms of capital

8.6.2 R The *capital resources gearing rules* apply for the purposes of calculating *consolidated capital resources*. They apply to the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* on an accounting consolidation basis, treating the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as a single undertaking.

8.6.3 R As the various components of capital differ in the degree of protection that they offer, the *capital resources gearing rules* as applied on a consolidated basis place restrictions on the extent to which certain types of capital are eligible for inclusion in a *UK consolidation group* or ~~*non-EEA sub-group's*~~ *non-UK sub-group's consolidated capital resources*. *GENPRU* 2.2.25R (Limits on the use of different forms of capital: Use of higher tier capital in lower tiers) also applies.

…

Calculation of consolidated capital resources for a BIPRU firm group

8.6.8 R A *firm* must calculate *the consolidated capital resources* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* using the calculation of capital resources in *GENPRU* 2 Annex 4 (Capital resources table for a BIPRU firm deducting material holdings) or *GENPRU* 2 Annex 5 (Capital resources table for a BIPRU firm deducting illiquid assets).

…

Treatment of minority interests

8.6.10 R (1) This *rule* sets out how to determine whether minority interests in an *undertaking* in a *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* may be included in *tier one capital*, *tier two capital* or *tier three capital* for the purpose of calculating *consolidated capital resources* (each referred to as a "tier" of capital in this rule).

…

Indirectly issued capital and group capital resources

…

8.6.12 R *Consolidated indirectly issued capital* means any *capital instrument* issued by a member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* where:

(1) …

(2) any of the *SPVs* referred to in (1) is a member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* or a *subsidiary undertaking* of any member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.

8.6.13 R A *firm* may only include *consolidated indirectly issued capital* in the *consolidated capital resources* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* if:

(1) it is issued by an *SPV* that is a member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* to *persons* who are not members of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*; and

…

8.6.14 R *Consolidated indirectly issued capital* that is eligible for inclusion in the *consolidated capital resources* of a *UK consolidation group* ~~*non-EEA sub-group*~~ *non-UK sub-group* may only be included as a minority interest created by the *capital instrument* issued by the *SPV* referred to in *BIPRU* 8.6.13R. If it is eligible, it is *innovative tier one capital*.

8.6.15 R For the purposes of this section, an *undertaking* is an *SPV* if the main activity of the *SPV* is to raise funds for *undertakings* in:

(1) (in the case of a *UK consolidation group*) that *UK consolidation group*; or

(2) (in the case of a ~~*non-EEA sub-group*~~ *non-UK sub-group*) that ~~*non-EEA sub-group*~~ *non-UK sub-group* or any *UK consolidation group* of which it forms part.

8.6.16 R The *SPV* referred to in *BIPRU* 8.6.13R must satisfy the conditions in *GENPRU* 2.2.127R (Conditions that an *SPV* has to satisfy if indirectly issued capital is to be included in *capital resources* on a solo basis) as modified by the following:

(1) references in *GENPRU* 2.2.127R(1) to being controlled by the *firm* are to being controlled by a member of the *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as the case may be; and

(2) references to the *firm's group* are to the *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as the case may be.

8.6.17 R The capital issued by the *SPV* referred to in *BIPRU* 8.6.13R must satisfy the conditions in *GENPRU* 2.2.129R (Conditions that capital issued by an SPV has to satisfy if indirectly issued capital is to be included in capital resources on a solo basis) as modified by the following:

(1) references to the *firm's group* are to the *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as the case may be;

(2) the substitution obligation in *GENPRU* 2.2.129R(2) need not be the *firm's* but may apply to any member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as the case may be; and

(3) that substitution obligation applies if the *consolidated capital resources* of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*, as the case may be, fall, or are likely to fall, below its *consolidated capital resources requirement*.

8.6.18 R The *SPV* referred to in *BIPRU* 8.6.13R must invest the funds raised from the issue of capital by the *SPV* by subscribing for capital resources issued by an *undertaking* that is a member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*. Those capital resources must satisfy the following conditions:

…

…

8.7 Consolidated capital resources requirements

General approach

8.7.1 G The calculation of the *consolidated capital resources requirement* of a *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* involves taking the individual components that make up the *capital resources requirement* on a solo basis and applying them on a consolidated basis. Those components are the capital charge for credit risk (the *credit risk capital requirement*), the capital charge for *market risk* (the *market risk capital requirement*) and the *fixed overheads requirement*.

…

Method of calculation to be used

8.7.10 R A *firm* must calculate the *consolidated capital resources requirement* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as the higher of the following *consolidated requirements components*:

…

Calculation of the consolidated requirement components

8.7.11 R A *firm* must calculate a *consolidated requirement component* by applying the *risk capital requirement* applicable to that *consolidated requirement component* to the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* in accordance with *BIPRU* 8.7.13R. ~~Except where *BIPRU* 8.7.34R to *BIPRU* 8.7.38R allow the requirements of another regulator to be used, the~~ The *risk capital requirement* must be calculated in accordance with the *appropriate regulator's rules*. The *risk capital requirement* applicable to a *consolidated requirement component* is the one specified in the second column of the table in *BIPRU* 8.7.12R.

…

Choice of consolidation method

8.7.13 R (1) A *firm* must calculate a *consolidated requirement component* by using one of the methods in this *rule*.

(2) Under the first method a *firm* must:

(a) apply the *risk capital requirement* set out in *BIPRU* 8.7.12R to each *undertaking* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*; and

(b) add the *risk capital requirements* together.

(3) Under the second method a *firm* must:

(a) treat the whole *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as a single *undertaking*; and

(b) apply the *risk capital requirement* set out in *BIPRU* 8.7.12R to the group on an accounting consolidation basis.

(4) The third method is a mixture of methods one and two. Under the third method a *firm* must:

(a) treat one or more parts of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as separate single *undertakings*;

(b) apply the *risk capital requirement* set out in *BIPRU* 8.7.12R to each such part of the group on an accounting consolidation basis;

(c) apply the *risk capital requirement* set out in *BIPRU* 8.7.12R to each of the remaining *undertakings* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* (if any); and

(d) add the *risk capital requirements* together.

(5) A *firm* may use different methods for different *consolidated requirement components*.

…

Notifying the appropriate regulator of the choice of consolidation technique

8.7.16 R A *firm* must notify the *appropriate regulator* which method under *BIPRU* 8.7.13R it applies for which *consolidated requirement component* and to which parts of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* it is applying an aggregation approach and to which parts it is applying an accounting consolidation approach.

Special rules for the consolidated credit risk requirement

…

8.7.20 R A *firm* may use a combination of the *CCR standardised method*, the *CCR mark to market method* and the *CCR internal model method* on a permanent basis with respect to the *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* for the purposes of calculating the *consolidated credit risk requirement*. In particular, where the *firm* is permitted to apply the *CCR internal model method* on a consolidated basis with respect to its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*, it may combine the use of *CCR standardised method* and *CCR mark to market method* on a permanent basis for *financial derivative instruments* and *long settlement transaction* not covered by its *CCR internal model method permission*.

8.7.21 R *BIPRU* 9.4.1R (Minimum requirements for recognition of significant credit risk transfer) as applied on a consolidated basis requires the transfer to be to a *person* outside the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.

8.7.22 R A *firm* must not use both the *financial collateral simple method* and the *financial collateral comprehensive method* with respect to its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.

8.7.23 R (1) A *firm* may only treat an *exposure* as exempt under *BIPRU* 3.2.25R (Zero risk-weighting for intra-group exposures) as applied on a consolidated basis if the member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* that has the *exposure*:

…

…

Special rules for the consolidated market risk requirement

8.7.24 R For the purposes of calculating the *consolidated market risk requirement* of a *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*, a *firm* must apply *BIPRU* 1.2.3R (Definition of the trading book) and *BIPRU* 1.2.17R (Size thresholds for the purposes of the definition of the trading book) to the whole *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as if the group were a single *undertaking*.

8.7.25 R A *firm* may not apply the second method in *BIPRU* 8.7.13R(3)(accounting consolidation for the whole group) or apply accounting consolidation to parts of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* under method three as described in *BIPRU* 8.7.13R(4)(a) for the purposes of the calculation of the *consolidated market risk requirement* unless the group or sub-group and the *undertakings* in that group or sub-group satisfy the conditions in this *rule*. Instead the *firm* must use the aggregation approach described in *BIPRU* 8.7.13R(2) (method one) or *BIPRU* 8.7.13R(4)(c). Those conditions are as follows:

(1) each of the *undertakings* in that group or sub-group is an *institution* that is:

(a) a *BIPRU firm*; or

(b) ~~an *EEA firm* that is a *CAD investment firm*; or~~ [deleted]

(c) a *recognised third country investment firm*;

(2) each of the *undertakings* referred to in (1) that is a *BIPRU firm* has *capital resources* that are equal to or in excess of its *capital resources requirement*;

(3) ~~each of the *undertakings* referred to in (1) that is an *EEA firm* complies with the *CRD implementation measures* in its *EEA State* that correspond to the requirements in (2);~~ [deleted]

(4) each of the *undertakings* referred to in (1) that is a *recognised third country investment firm* complies with laws in the state or territory in which it has its head office that are equivalent to the requirements of ~~the *Banking Consolidation Directive* or *Capital Adequacy Directive*~~ *GENPRU* and *BIPRU* relating to capital adequacy;

…

Special rules for calculating specific consolidated requirement components

8.7.28 G *BIPRU* 8.7.21R to *BIPRU* 8.7.26R are generally examples of the application of the general principles in *BIPRU* 8.2.1R (Main consolidation *rule* for *UK consolidation groups*) and *BIPRU* 8.3.1R (Main consolidation *rule* for ~~*non-EEA sub-groups*~~ non-UK sub-groups). *BIPRU* 8.7.20R and *BIPRU* 8.7.25R are exceptions to those principles.

Elimination of intra-group transactions

8.7.29 R In accordance with *BIPRU* 8.2.1R and *BIPRU* 8.3.1R (The basic consolidation *rules* for a *UK consolidation group* or ~~*non-EEA sub-groups*~~ non-UK sub-groups), a *firm* may exclude that part of the *risk capital requirement* that arises as a result of:

(1) (in respect of the *consolidated credit risk requirement*) intra-group balances; or

(2) (in respect of the *consolidated fixed overheads requirement*) intra-group transactions;

with other *undertakings* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.

…

~~Use of the solo requirements of another EEA competent authority~~

8.7.34 R ~~A *firm* may calculate the *risk capital requirement* for an *institution* in the *firm's UK consolidation group* or *non-EEA sub-group* that is an *EEA firm* in accordance with the *CRD implementation measures* in the *EEA firm's EEA State* that correspond to the *appropriate regulator's rules* that would otherwise apply under this section if the *institution* is subject to those *CRD implementation measures*.~~ [deleted]

~~Use of the consolidated requirements of another EEA competent authority~~

8.7.37 R ~~(1) This *rule* applies if:~~

~~(a)~~ ~~a *firm* is applying an accounting consolidation approach to part of its *UK consolidation group* or *non-EEA sub-group* under method three as described in *BIPRU* 8.7.13R(4)(a); and~~

~~(b)~~ ~~the part of the group in (a) constitutes the whole of a group subject to the consolidated capital requirements of a *competent authority* under the *CRD implementation measures* relating to consolidation under the *Banking Consolidation Directive* or the *Capital Adequacy Directive*.~~

~~(2)~~ ~~If the conditions in this *rule* are satisfied, a *firm* may apply the consolidated capital requirement in (1)(b) as the *risk capital requirement* for the group identified in (1)(a) so far as that consolidated capital requirement corresponds to the *appropriate regulator's rules* that would otherwise apply under this section.~~ [deleted]

Prohibition on using the standardised rules of a regulator outside the ~~EEA~~ UK

8.7.38A R (1) This *rule* applies to a *firm* if:

(a) an *institution* in its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* is subject to any of the rules or requirements of, or administered by, a *third-country competent authority* applicable to its *financial sector* that correspond to the *sectoral rules* applicable to that *financial sector* ("corresponding sectoral rules"); or

(b) a part of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* constitutes the whole of a group subject to the consolidated capital requirements of a *third-country competent authority* under the corresponding sectoral rules applicable to the *banking sector* or the *investment services sector* for a state or territory outside the ~~*EEA*~~ *UK*.

(2) A *firm* may not use the requirements under any of the corresponding sectoral rules of a state or territory outside the ~~*EEA*~~ *UK* in order to calculate the *consolidated capital resources requirement* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* for the purpose of this chapter.

…

8.8 Advanced prudential calculation approaches

…

Prohibition on using the rules of an overseas regulator

8.8.3 R Even if a *firm* has an *advanced prudential calculation approach permission* that allows it to use an *advanced prudential calculation approach* for the purposes of this chapter, the *firm* may not use the requirements of another state or territory to the extent they provide for that *advanced prudential calculation approach*. ~~Therefore a *firm* may not use *BIPRU* 8.7.34R and *BIPRU* 8.7.37R (Use of the capital requirements of another EEA competent authority) if that would involve using an *advanced prudential calculation approach*.~~

Special provisions relating to the internal ratings based approach

8.8.4 R The conditions in *BIPRU* 4.2.26R (Combined use of methodologies under the IRB approach) apply to a *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as if that group were a single *undertaking*.

…

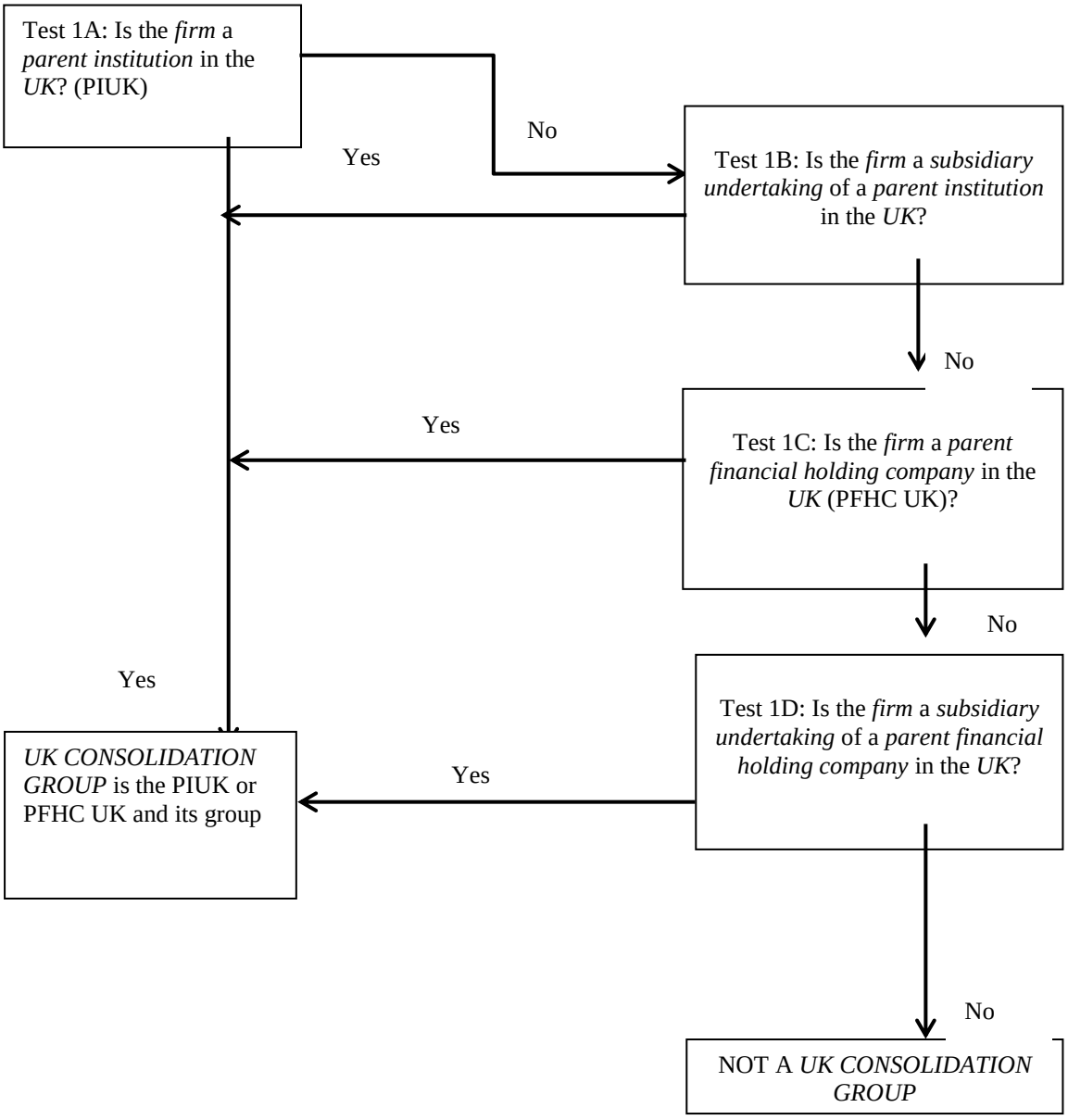
Corporate governance arrangement for the IRB approach and the AMA

8.8.9 G The governance arrangements that apply to the *governing body*, the senior management and any *designated committee* of a *firm* in relation to the *IRB approach* also apply to the body or *persons* with equivalent powers with respect to the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*. Where the *parent undertaking* and its *subsidiary undertakings* use rating systems on a unified basis, the approval and reporting process described in *BIPRU* 4.3.12G (Approval and reporting arrangements for the *IRB approach* where rating systems are used on a unified group basis) apply for the purpose of this paragraph too.

…

The current decision tree (diagram) in BIPRU 8 Annex 1 is deleted and is replaced by the one below. The new decision tree (diagram) below is not underlined.

8 Annex 1R Decision tree identifying a *UK consolidation group*



BIPRU 8 Annex 4 is deleted in its entirety. The deleted text of the Annex is not shown but it is marked as [deleted] as shown below.

8 Annex 4G **Text of Articles 125 and 126 of the Banking Consolidation Directive**
[deleted]

Amend the following as shown.

8 Annex 6R **~~Non-EEA~~ Non-UK regulators' requirements deemed ~~CRD~~ equivalent for individual risks**

Regime regulators	Market risk	Credit risk	Operational risk
Part 1 (~~Non-EEA~~ Non-UK banking regulators' requirements deemed ~~CRD~~ equivalent for individual risks)			
…			
Regime regulators	Market risk	Credit risk	Operational risk
Part 2 (~~Non-EEA~~ Non-UK investment firm regulators' requirements deemed ~~CRD~~ equivalent for individual risks)			

…			

9 Securitisation

9.1 Application and purpose

…

Purpose

9.1.2 G Pursuant to the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR*, the purpose of *BIPRU* 9 is to ~~implement~~ apply requirements that correspond to:

…

…

11 Disclosure (Pillar 3)

11.1 Application and purpose

…

Purpose

11.1.2 G Pursuant to the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR*, the purpose of *BIPRU* 11 is to ~~implement~~ apply requirements that correspond to:

…

11.2 Basis of disclosures

Disclosure on an individual basis

11.2.1 R The following must comply with the obligations laid down in *BIPRU* 11.3 on an individual basis:

(1) a *firm* which is neither a *parent undertaking* nor a *subsidiary undertaking*;

(2) a *firm* which is excluded from a *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* pursuant to *BIPRU* 8.5; and

[**Note:** *BCD* Article 68(3)]

(3) a *firm* which is part of a *group* which has been granted an *investment firm consolidation waiver* under *BIPRU* 8.4;

[**Note**: *CAD* Article 23]

~~EEA parent~~ Parent institutions in the UK

11.2.2 R A *firm* which is ~~an *EEA* parent institution~~ a *parent institution in the UK* must comply with the obligations laid down in *BIPRU* 11.3 on the basis of its consolidated financial situation.

[**Note:** *BCD* Article 72(1)]

11.2.3 R A *firm* which is a significant subsidiary of ~~an EEA parent institution~~ a *parent institution in the UK* must disclose the information specified in *BIPRU* 11.4.5R on an individual or sub-consolidated basis.

Firms controlled by ~~an EEA~~ a parent financial holding company in the UK

11.2.4 R A *firm controlled* by ~~an *EEA parent financial holding company*~~ a *parent financial holding company in the UK* or ~~an *EEA parent mixed financial holding company*~~ a *parent mixed financial holding company in the UK* must comply with the obligations laid down in *BIPRU* 11.3 on the basis of the consolidated financial situation of that ~~*EEA parent financial holding company*~~ *parent financial holding company in the UK* or ~~*EEA parent mixed financial holding company*~~ *parent financial holding company in the UK*.

[**Note:** *BCD* Article 72(2)]

11.2.5 R A *firm* which is a significant subsidiary of ~~an *EEA parent financial holding company*~~ a *parent financial holding company in the UK* or ~~an *EEA parent mixed financial holding company*~~ a *parent financial holding company in the UK* must disclose the information specified in *BIPRU* 11.4.5R on an individual or sub-consolidated basis.

Waiver: Comparable disclosures provided on a consolidated basis by a parent undertaking established in a third country

11.2.6 G A *firm* which is included within comparable disclosures provided on a consolidated basis by a *parent undertaking* whose head office is not in ~~an *EEA State*~~ the *UK* may apply for a waiver from the relevant disclosure requirements in *BIPRU* 11.2.2R - *BIPRU* 11.2.5R. The *appropriate regulator's* approach to granting *waivers* is set out in the Supervision manual (see *SUP* 8).

[**Note:** *BCD* Article 72(3)]

11.2.7 G A *firm* applying for a *waiver* from one or more of the disclosure requirements in *BIPRU* 11.2.2R - *BIPRU* 11.2.5R will need to:

(1) satisfy the *appropriate regulator* that it is included within comparable disclosures provided on a consolidated basis by a *parent undertaking* whose head office is not in ~~an *EEA State*~~ the *UK*; and

(2) notify the *appropriate regulator* of the location where the comparable disclosures are provided.

…

11.4 Technical criteria on disclosure: General

…

Disclosures: Significant subsidiaries

11.4.5 R A *firm* which is a significant subsidiary of:

(1) ~~an *EEA parent institution*~~ a *parent institution in the UK*; or

(2) ~~an *EEA parent financial holding company*~~ a *parent financial holding company in the UK*; or

(3) ~~an *EEA parent mixed financial holding company*~~ a *parent mixed financial holding company in the UK*;

must disclose the information specified in *BIPRU* 11.5.3R to *BIPRU* 11.5.4R on an individual or sub-consolidated basis.

[**Note:** *BCD* Annex XII Part 1 point 5]

11.5 Technical criteria on disclosure: General requirements

…

Disclosure: Scope of application of directive requirements

11.5.2 R A *firm* must disclose the following information regarding the scope of application of the requirements of ~~the *Banking Consolidation Directive*~~ *GENPRU* and *BIPRU*:

…

…

Disclosures: remuneration

…

11.5.19 G The *appropriate regulator* would normally consider the requirements to publish disclosures in accordance with *BIPRU* 11.3.8R and 11.3.9R in respect of *BIPRU* 11.5 as a whole to meet the requirement ~~in paragraph 15 of Annex XII to the Banking Consolidation Directive~~ to publish "regular, at least annual, updates" ~~(as implemented~~ in *BIPRU* 11.5.18R~~)~~.

11.5.20 R (1) A *firm* that is significant in terms of its size, internal organisation and the nature, scope and the complexity of its activities must also disclose the quantitative information referred to in *BIPRU* 11.5.18R at the level of *senior personnel*.

(2) *Firms* must comply with the requirements set out in *BIPRU* 11.5.18R in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities and without prejudice to the *General Data Protection Regulation*. ~~UK or other national transposition of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.~~

[**Note:** Paragraph 15 of Annex XII to the *Banking Consolidation Directive*.]

[**Note:** The *appropriate regulator* has given *guidance* for the purpose of providing a framework for complying with the disclosure requirements of *BIPRU* 11.5.18R in accordance with the proportionality test set out in *BIPRU* 11.5.20R(2).]

…

12 Liquidity standards

12.1 Application

…

12.1.7 R ~~In relation to an *incoming EEA firm* or a *third country BIPRU firm*, this chapter applies only with respect to the activities of the *firm's UK branch*.~~ [deleted]

12.2 Adequacy of liquidity resources

The overall liquidity adequacy rule

12.2.1 R …

(2) For the purpose of (1):

…

(b) ~~an *incoming EEA firm* or a *third country BIPRU firm* may not, in relation to its *UK branch*, include liquidity resources other than those which satisfy the conditions in *BIPRU* 12.2.3R;~~ [deleted]

…

…

Branch liquidity resources

12.2.3 R ~~The conditions to which *BIPRU* 12.2.1R(2)(b) refers are that the *firm's* liquidity resources are:~~

~~(1) under the day-to-day control of the *UK branch's* senior management;~~

~~(2) held in an account with one or more *custodians* in the sole name of the *UK branch*;~~

~~(3) unencumbered; and~~

~~(4) for the purpose of the *overall liquidity adequacy rule* only, attributed to the balance sheet of the *UK branch*.~~ [deleted]

12.2.4 G ~~The effect of *BIPRU* 12.2.1R(2)(b) and *BIPRU* 12.2.3R is to require an *incoming EEA firm* or a *third country BIPRU firm* to maintain a local operational liquidity reserve in relation to the activities of its *UK branch*. *BIPRU* 12.9 contains further *guidance* on this point.~~ [deleted]

Liquidity resources: general

…

12.2.6 G The *overall liquidity adequacy rule* is expressed to apply to each *firm* on a solo basis. Each *firm* must be able to satisfy that *rule* relying solely on its own liquidity resources. ~~Where the *firm* is an *incoming EEA firm* or a *third country BIPRU firm*, compliance with the *overall liquidity adequacy rule* with respect to the *UK branch* must be achieved relying solely on liquidity resources that satisfy the conditions in *BIPRU* 12.2.3R.~~

12.2.7 G The starting point, therefore, is that each *firm*~~, or where relevant its *UK branch*,~~ must be self-sufficient in terms of its own liquidity adequacy. The *appropriate regulator* does, however, recognise that there are circumstances in which it may be appropriate for a *firm* ~~or *branch*~~ to rely on liquidity support provided by other entities in its *group* or from elsewhere within the *firm*. A *firm* wishing to rely on support of this kind~~, whether for itself or for its *UK branch*,~~ may only do so with the consent of the *appropriate regulator*, given by way of a *waiver* under section 138A (Modification or waiver of rules) of the *Act* to the *overall liquidity adequacy rule*.

…

12.3 Liquidity risk management

…

Overarching liquidity systems and controls requirements

…

12.3.5 R The strategies, policies, processes and systems referred to in *BIPRU* 12.3.4R must be proportionate to the complexity, risk profile and scope of operation of the *firm*, and the liquidity risk tolerance set by the *firm's governing body* in accordance with *BIPRU* 12.3.8R~~, and must reflect the *firm's* importance in each *EEA State*, in which it carries on business~~.

[**Note:** article 86(2) (part) of the *CRD*]

…

Management of collateral

…

12.3.22B R A *firm* must also have regard to existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, both within and outside the ~~*EEA*~~ *UK*.

[**Note:** article 86(6) of the *CRD*]

…

12.4 Stress testing and contingency funding

…

Contingency funding plans

…

12.4.11 R A *firm* must have in place liquidity recovery plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls~~, including in relation to *branches* established in another *EEA State*~~. Those plans must be tested at least annually, updated on the basis of the outcome of the alternative scenarios set out in *BIPRU* 12.4.-1R, and be reported to and approved by the *firm's governing body*, so that internal policies and processes can be adjusted accordingly. A *firm* must take the necessary operational steps in advance to ensure that liquidity recovery plans can be implemented immediately.

[**Note:** article 86(11) (part) of the *CRD*]

…

12.5 Individual Liquidity Adequacy Standards

…

Wholesale secured and unsecured funding risk

…

12.5.18 G In the *appropriate regulator's* view, Type A wholesale funding is likely to include at least funding which:

…

(5) is accepted from overseas counterparties (other than those in the country or territory of incorporation of a *firm's parent undertaking* ~~or, in the case of a *UK branch*, of the *firm* of which it forms part~~); or

…

…

Intra-group liquidity risk

…

12.5.38 R ~~In relation to an *incoming EEA firm* or *third country BIPRU firm* which does not have a *whole firm liquidity modification*, that *firm* must assess the risk that its *UK branch* may be exposed to calls on liquidity under its control from its head office:~~

~~(1) in normal financial conditions; and~~

~~(2) under the liquidity stresses required by *BIPRU* 12.5.6R~~. [deleted]

12.5.39 R ~~In complying with *BIPRU* 12.5.38R a *firm* is therefore assessing its exposure to inter-office *liquidity risk*, rather than intra-*group liquidity risk.* It is the *appropriate regulator's* assessment of the *firm's* inter-office *liquidity risk* that is one of the factors that will inform the *appropriate regulator's* decision as to the appropriate size for the *firm's* local operational liquidity reserve (as described in *BIPRU* 12.2).~~ [deleted]

…

12.7 Liquid assets buffer

…

12.7.5 R Subject to *BIPRU* 12.7.6R, for the purpose of *BIPRU* 12.7.2R(3) a *firm* may include reserves in the form of sight deposits held by the *firm* with the central bank of a third country.~~:~~

~~(1) an *EEA State*; or~~

~~(2) Canada, the Commonwealth of Australia, Japan, Switzerland or the United states of America.~~

12.7.6 R For the purpose of *BIPRU* 12.7.5R, a *firm* may not include reserves held at a central bank unless:

(1) the central bank in question has been assessed by at least two *eligible ECAIs* as having a credit rating associated with credit quality step 1 in the table set out in *BIPRU* 12 Annex 1R (Mapping of credit assessments of *ECAIs* to credit quality steps); ~~and~~

(2) those reserves are denominated in the domestic currency of the central bank in question; and

(3) there are no legal or practical impediments to the *firm* using or withdrawing those reserves.

…

12.8 Cross-border and intra-group management of liquidity

12.8.1 R Every *firm* subject to *BIPRU* 12 is subject to the *overall liquidity adequacy rule*. The effect of that rule is that every *firm* is required to be self-sufficient in terms of liquidity adequacy and to be able to satisfy that rule relying on its own liquidity resources. ~~Where the *firm* is an *incoming EEA firm* or *third country BIPRU firm* compliance with the *overall liquidity adequacy rule* with respect to the *UK branch* must be achieved relying solely on liquidity resources that satisfy the conditions in *BIPRU* 12.2.3R.~~

12.8.2 G However, the *appropriate regulator* recognises that there may be circumstances in which it would be appropriate for a *firm* to rely on liquidity resources which can be made available to it by other members of its *group*~~, or for a *firm* to rely on liquidity resources elsewhere in the *firm* for the purposes of ensuring that its *UK branch* has adequate liquidity resources in respect of the activities carried on from the *branch*~~. Where the *appropriate regulator* is satisfied that the statutory tests in section 138A (Modification or waiver of rules) of the *Act* are met, the *appropriate regulator* will consider modifying the *overall liquidity adequacy rule* to permit reliance on liquidity support of this kind.

12.8.3 G *BIPRU* 12.8 provides *guidance* on ~~two types~~ a type of modification to the *overall liquidity adequacy rule* and to other *rules* in *BIPRU* 12 for which the *appropriate regulator* considers a *firm* may wish to apply, namely:

(1) an *intra-group liquidity modification*.~~; and~~

(2) ~~a *whole firm liquidity modification*.~~ [deleted]

12.8.4 G In considering whether the statutory tests in section 138A of the *Act* have been met, the *appropriate regulator* will, amongst others, have regard to the factors detailed below in relation to an *intra-group liquidity modification* (of the kind permitting the inclusion in a *firm's* liquidity resources of *parent undertaking* liquidity support) ~~and a *whole firm liquidity modification*~~. In practice it is likely that the *appropriate regulator* will view these as preconditions to the grant of an *intra-group liquidity modification* of that type ~~or a *whole firm liquidity modification*~~ and will therefore ordinarily need to be satisfied fully that each has been adequately

addressed. They include matters on which the *appropriate regulator* will need to reach agreement with ~~the *Home State regulator*, *third country competent authority*, or other~~ another relevant supervisor, and also matters which it will need to agree directly with a *firm* or the *parent undertaking* of a *firm*. It is likely that a number of these matters will be reflected as requirements or conditions in the modification.

12.8.5 G This section represents merely an indication of the matters to which the *appropriate regulator* will have regard in considering an application for ~~a *whole-firm liquidity modification* or~~ an *intra-group liquidity modification*. In considering such an application, the *appropriate regulator* will always take into account anything that it reasonably considers to be relevant for the purposes of assessing whether the statutory tests in section 138A of the *Act* are met. In doing so, it will have regard to the role and importance of a *firm* ~~or *UK branch*~~ in the *UK financial system*.

…

~~Whole-firm liquidity modification: general~~

12.8.22 G ~~In relation to an *incoming EEA firm* or *third country BIPRU firm*, the *overall liquidity adequacy rule* provides that, for the purpose of complying with that *rule*, a *firm* may not, in relation to its *UK branch*, include liquidity resources other than those which satisfy the conditions in *BIPRU* 12.2.3R. Those conditions seek to ensure that a *firm* of this kind has a reserve of liquidity for operational purposes that is under the control of, and available for use by, that *firm's UK branch*. Further *guidance* is given in *BIPRU 12.5.39G* in relation to the local operational liquidity reserve. In addition, *BIPRU* 12.9.10G explains how the *appropriate regulator* will approach the giving of *individual liquidity guidance* to an *incoming EEA firm* or *third country BIPRU firm*. The *appropriate regulator* does, however, recognise that there are circumstances in which it may be appropriate for a *UK branch* to rely on the availability of liquidity resources from elsewhere within the *firm*. A *firm* wishing to rely on support of this kind for its *UK branch* may apply for a modification to the *overall liquidity adequacy rule* where it considers that the statutory tests in section 138A of the *Act* are met.~~ [deleted]

12.8.23 G ~~Although an *incoming EEA firm* or *third country BIPRU firm* may apply to modify the *overall liquidity adequacy rule* and other *rules* in *BIPRU* 12, in relation to its *UK branch*, the *appropriate regulator* anticipates that many such *firms* will wish to apply for a modification in the form which the *appropriate regulator* defines as a *whole-firm liquidity modification*. In the *appropriate regulator's* view, a modification to the *overall liquidity adequacy rule* for a *firm* of this kind will tend to be appropriate where an applicant *firm* manages its liquidity on an integrated, whole-*firm* basis. Where that is the case, and having regard to the matters outlined in the *guidance* in this section, the *appropriate regulator* is likely to consider it more appropriate for the *UK branch* to be subject, in large part, to the same regulatory liquidity regime which applies to the rest of the *firm*. In granting a *whole-firm liquidity modification* the *appropriate regulator* therefore~~

~~recognises that in certain circumstances a *UK branch* can have adequate liquidity resources in circumstances where the liquidity resources upon which the *firm* seeks to rely do not meet the criteria set out in *BIPRU* 12.2.3R.~~ [deleted]

12.8.24 G ~~Accordingly, a *whole-firm liquidity modification* envisages:~~

~~(1) a modification to the *overall liquidity adequacy rule* so as to permit reliance by the *firm*, in relation to its *UK branch*, on liquidity resources wherever held in the *firm* for the purposes of meeting that *rule*; and~~

~~(2) a *waiver* of the remainder of the substantive *rules* in *BIPRU* 12, with the effect that the *UK branch* of the applicant *firm* becomes subject for the purpose of day-to-day liquidity supervision to the liquidity regime of the *Home State regulator* or *third country competent authority* in question.~~ [deleted]

12.8.25 R ~~The effect of a *whole-firm liquidity modification* is that the *appropriate regulator* will in its supervision of the liquidity of the *UK branch* place reliance on the liquidity regime of the *Home State regulator* or *third country competent authority* in question. The *appropriate regulator* will wish to ensure that it has adequate data at the time of consideration of the *whole-firm liquidity modification* application and, if the application is granted, on a continuing basis thereafter, about the liquidity position of the *firm* as a whole. It is therefore likely that an applicant *firm* will be asked to provide as part of its application relevant liquidity *data items* covering the liquidity position of the *firm* as a whole. It is also likely that an applicant *firm* will be asked, as part of its application, to provide an appropriately detailed account as to the activities conducted by its *UK branch* as at the date of the application. In addition, the *appropriate regulator* anticipates that an applicant *firm* will be asked to ensure as a condition of the modification, if granted, that it provides relevant *data items*, covering the whole-*firm* liquidity position, to the *appropriate regulator* on a continuing basis at a frequency to be determined as part of the *appropriate regulator's* consideration of the applicant *firm's* case but in any event likely to be reflective of the *appropriate regulator's* assessment of the *liquidity risk* profile of the *firm*.~~ [deleted]

~~Consideration of an application for a whole-firm liquidity modification~~

12.8.26 G ~~In relation to the *Home State regulator's* or *third country competent authority's* regime of liquidity regulation, the *appropriate regulator* will, before granting a *whole-firm liquidity modification*, ordinarily expect to be satisfied that:~~

~~(1) the regime in question delivers outcomes as regards the regulation of the applicant *firm's liquidity risk* that are broadly equivalent to those intended by this chapter; and~~

(2) there is clarity as to any legal constraints imposed by the *Home State regulator* or *third country competent authority* on the provision of liquidity by a *firm* to its *UK branch*, as well as the potential for such restrictions to be imposed in the future. [deleted]

12.8.27 G In relation to the applicant *firm* in question, the *appropriate regulator* will, before granting a *whole-firm liquidity modification*, ordinarily expect to have reached agreement with the *Home State regulator* or *third country competent authority* in a number of areas, including agreement that:

(1) it will notify the *appropriate regulator* promptly of any material or persistent breaches by that *firm* of its liquidity rules, or of risks that such breaches are imminent;

(2) it is satisfied with the adequacy of the arrangements in place for *firm*-wide *liquidity risk* management;

(3) it is satisfied as to the adequacy of that *firm's* liquidity resources including the size and quality of its liquid assets buffer;

(4) it does not object to any undertakings given by that *firm* in respect of its *UK branch* to ensure that the *branch* has adequate liquidity resources; and

(5) it will have due regard to the views of the *appropriate regulator* in its supervision of that *firm's* liquidity position. [deleted]

12.8.28 G In relation to the applicant *firm* in question, the *appropriate regulator* will, before granting a *whole-firm liquidity modification*, ordinarily expect to have reached agreement with that *firm* in a number of areas, including agreement that:

(1) it will make available liquidity resources at all times to its *UKbranch* if needed;

(2) it will make available to the *appropriate regulator* information in an appropriate format on *firm*-wide liquidity;

(3) it will notify the *appropriate regulator* at the same time as it notifies the *Home State regulator* or *third country competent authority* of any issues relevant to the liquidity position of its *UK branch* or compliance with the rules to which it is subject in respect of its liquidity (including with the terms of its *whole-firm liquidity modification*);

(4) its *UK branch* will continue to be fully integrated with the rest of the *firm* for *liquidity risk* management purposes;

(5) it will participate in the *appropriate regulator's* thematic supervisory work in relation to liquidity when requested to do so by the *appropriate regulator*. [deleted]

~~Ongoing requirements~~

12.8.29 G ~~The *appropriate regulator* also anticipates that a *whole-firm liquidity modification* would be made subject to a number of ongoing conditions and requirements. These are likely to include:~~

~~(1) the *appropriate regulator* receiving annual confirmation from the *Home State regulator* or *third country competent authority* that it remains satisfied with the arrangements in respect of that *firm* for liquidity supervision and their operation;~~

~~(2) an annual meeting with the *Home State regulator* or *third country competent authority* to discuss liquidity supervision of that *firm*;~~

~~(3) the *appropriate regulator* receiving annual confirmation from the *firm*, approved by its *governing body*, that it remains in full compliance with the terms of its *whole-firm liquidity modification*; and~~

~~(4) as at the first anniversary of the grant of the *whole-firm liquidity modification* and on each anniversary thereafter, the *appropriate regulator* receiving from the *firm*:~~

~~(a) an appropriate account of the activities conducted by the *UK branch* over the previous year; and~~

~~(b) a copy of the *firm's* latest business plan where this differs from that previously sent to the *appropriate regulator* after grant of its *whole-firm liquidity modification*.~~ [deleted]

12.8.30 G ~~In determining the appropriate duration of a *whole-firm liquidity modification*, the *appropriate regulator* will have regard to the role and importance of the *UK branch* in question in the *UK financial system*. In some cases, the *appropriate regulator* may take the view that a *whole-firm liquidity modification*, covering a *UK branch* whose role and importance in the *UK financial system* are significant, ought to be reviewed more regularly than one granted in respect of a less systemically significant *branch*. The *appropriate regulator* will consider this issue in determining the appropriate duration of such a modification. The *appropriate regulator* is also likely to consider it appropriate in modifications other than those of short duration to reflect in the terms of the modification representations made either in an applicant *firm's* business plan or direct to the *appropriate regulator* as part of the application process, but in either case as to the expected nature and size of the *UK branch's* activities over the course of the duration of the modification. Where requirements are included in a modification in relation to these matters, a *firm* that anticipates that it will breach those requirements will need to apply in advance of any such event for a variation to its then existing *whole-firm liquidity modification*. In considering an application to vary, the *appropriate regulator* will consider afresh whether the tests in section 138A of the *Act* continue to be met for~~

~~the grant of a *whole-firm liquidity modification* to the *firm* in question.~~ [deleted]

…

12.9 Individual liquidity guidance and regulatory intervention points

…

Additional guidance for branches

12.9.10 G ~~In relation to an *incoming EEA firm* or *third country BIPRU firm*, where the *appropriate regulator* gives that *firm individual liquidity guidance* in relation to its *UK branch*, it will have regard to the *liquidity risk* profile of the *branch*. In the absence of a *whole-firm liquidity modification*, the effect of *BIPRU* 12.2.1R(2)(b) and *BIPRU* 12.2.3R is to require the *firm* to hold a liquid assets buffer of the amount identified as appropriate in its *individual liquidity guidance* (or in the case of a *simplified ILAS BIPRU firm*, the amount of its *simplified buffer requirement* unless this has been superseded by the *appropriate regulator* issuing *individual liquidity guidance* to the *firm* in question) in the form of a local operational liquidity reserve. Further *guidance* is given in *BIPRU* 12.5.39G in relation to the local operational liquidity reserve. In determining the appropriate size of such a *firm's* liquid assets buffer the *appropriate regulator* will have regard to all relevant factors, including the extent to which the *appropriate regulator* has adequate data to enable it to assess accurately the *liquidity risk* elsewhere in the *firm* beyond its *UK branch*.~~ [deleted]

…

13 The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions

13.1 Application and Purpose

…

Purpose

13.1.4 G Pursuant to the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR*, *BIPRU* 13 ~~implements~~ applies requirements that correspond to:

…

…

13.3 Calculation of exposure values for financial derivatives and long settlement transactions: General provisions

…

Definition of financial derivative instrument

13.3.3 R Each of the following is a *financial derivative instrument*:

…

(3) a contract of a nature similar to those in 1(a) to (e) and 2(a) to (d) concerning other reference items or indices, including as a minimum all instruments specified in ~~points~~ paragraphs 4 to 7, 9 and 10 of ~~Section C of Annex I to the *MIFID*~~ Part 1 of Schedule 2 to the *Regulated Activities Order* not otherwise included in (1) or (2).

[**Note:** *BCD* Annex IV]

…

13.6 CCR internal model method

…

Use of other models

13.6.9 G ~~Point 2 of Part 6 of Annex III of the *Banking Consolidation Directive* provides that a~~ A *firm* using the *CCR internal model method* may use a type of model other than the type set out in *BIPRU* 13.6. If the *appropriate regulator* agrees to this the details of the model and the necessary calculations will be set out in the *CCR internal model method permission*, which will modify *BIPRU* 13.6 to the extent necessary. The *appropriate regulator* would not expect to agree to such a request unless the *firm* was able to satisfy the *appropriate regulator* that the method was at least as conservative as the method set out in *BIPRU* 13.6 and in particular that, for every *counterparty*, any method was more conservative than alpha multiplied by *effective EPE* calculated according to the equation in *BIPRU* 13.6.27R.

[**Note:** *BCD* Annex III Part 6 point 2 (second sentence) and point 11]

…

14 Capital requirements for settlement and counterparty risk

14.1 Application and purpose

…

Purpose

14.1.3 G Pursuant to the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR*, *BIPRU* 14 ~~implements~~ applies requirements that correspond to:

…

…

TP 2 Capital floors for a firm using the IRB approach

…

Purpose

2.3 G Pursuant to the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR*, this section in part ~~implements~~ applies requirements that correspond to Articles 152(1) - (7) of the *Banking Consolidation Directive* and Article 43 of the *Capital Adequacy Directive*.

2.4 G The purpose of this section is to limit the amount of capital reduction arising from the ~~implementation~~ application of the requirements that correspond to the *Banking Consolidation Directive* and the *Capital Adequacy Directive* compared with the requirements arising from the previous versions of those Directives. As such it is effectively a comparison of the capital resource requirements arising from *BIPRU* with those arising from the appropriate *IPRU* sourcebook that would have applied as at 31 December 2006. However the effect of changes to the market risk requirements is removed by requiring *BIPRU* 7 (Market risk) to be used for both sides of the comparison.

How to apply the capital floors

…

2.6 G ~~The Directive provisions on which this section is based are written as a floor on a *firm's* capital resources requirement.~~ This section is intended as a floor on the *firm's* capital resources. This section ~~however~~ is also written as a second capital resources requirement that sits beside the general capital resources requirements of *BIPRU* and *GENPRU*. The reason for this is that a *firm* should meet the general capital resources requirements of *BIPRU* and *GENPRU* using *capital resources* calculated under *GENPRU* 2.2 (Capital resources). On the other hand a *firm* should meet the capital resources requirements of this section (which are based on *IPRU*) using the relevant *IPRU* definition. In practice the two sets of definitions of capital resources are similar apart from the provisions about *expected loss*. Therefore as shown by the example in *BIPRU* TP 2.12G and *BIPRU* TP 2.13G, in practice a *firm* is subject to a single capital resources requirement.

…

Waiver from IPRU capital resources requirement

2.11A G ~~Article 152(5d) and (5e) of the *Banking Consolidation Directive* allows the~~ The *appropriate regulator* ~~to~~ may waive the capital floor calculation based on the *IPRU* capital resources requirement in *BIPRU* TP 2.8R(3) on a case-by-case basis only if a *firm* started to use the *IRB approach* on or after 1 January 2010. The *appropriate regulator* will consider an application for such a *waiver* in the light of the criteria in section 138A of the *Act* (Modification or waiver of rules).

[**Note:** *BCD* Annex VII part 1 point 152]

…

Capital floors: consolidation

…

2.32 R The scope of the consolidation under *BIPRU* TP 2.30R and any exemption from consolidation is determined in accordance with *BIPRU* 8 (Group risk - consolidation) rather than *IPRU*. In particular, the following adjustments apply:

(1) if a *firm* is a member of a *UK consolidation group* and applies the *IRB approach* with respect to that *UK consolidation group*, *BIPRU* TP 2.30R applies with respect to that *UK consolidation group*; and

(2) if a *firm* is a member of a ~~*non-EEA sub-group*~~ *non-UK sub-group* and applies the *IRB approach* with respect to that ~~*non-EEA sub-group*~~ *non-UK sub-group*, *BIPRU* TP 2.30R applies with respect to that ~~*non-EEA sub-group*~~ *non-UK sub-group*.

2.33 G If for example the consolidation *rules* that apply for the purposes of this section are those in chapter 14 of *IPRU(INV)* (Consolidated supervision of *investment firms*) then *IPRU(INV)* 14.1 (Application) and 14.2 (Scope of consolidation) do not apply. *BIPRU* 8.2 (Scope and basic consolidation requirements for UK consolidation groups), *BIPRU* 8.3 (Scope and basic consolidation requirements for ~~*non-EEA sub-groups*~~ *non-UK sub-groups*), *BIPRU* 8.4 (CAD Article 22 groups and investment firm consolidation waiver) and *BIPRU* 8.5 (Basis of consolidation) apply instead.

…

TP 15 Commodities firm transitionals: Exemption from capital requirements

Application

15.1 R Subject to *BIPRU* TP 15.2R, *BIPRU* TP 15 applies to a *BIPRU firm*:

(1) whose main business consists exclusively of the provision of investment services or investment activities in relation to the financial instruments set out in ~~points~~ paragraphs 5, 6, 7, 9 and 10 of ~~Section C of Annex I to the *MIFID*~~ Part 1 of Schedule 2 to the *Regulated Activities Order*; and

…

…

Purpose

15.3 G *BIPRU TP* 15 ~~implements~~ applies requirements that correspond to Article 48(1) of the *Capital Adequacy Directive* as applied pursuant to the discretion in the third paragraph of article 95(2) of the ~~*EU*~~ *UK CRR*.

…

Consolidation

15.13 R *BIPRU TP* 15 does not apply for the purposes of *BIPRU* 8 with respect to a *firm's UK consolidation group* or, as the case may be, *non-~~EEA~~ UK sub-group* unless the following conditions are satisfied:

(1) there is no *credit institution* in that group;

(2) each CAD investment firm in the group meets the conditions in *BIPRU* TP 15.1R(1); and

(3) ~~each CAD investment firm whose head office is in an *EEA State* satisfies the conditions in *BIPRU* TP 15.1R(2); and~~ [deleted]

(4) any CAD investment firm whose head office is outside the ~~*EEA*~~ *UK* would have fallen into *BIPRU* TP 15.1R(2) if:

(a) its head office had been in ~~an *EEA State*~~ the *UK*; and

(b) it had carried on all its business in the ~~*EEA*~~ *UK* and had obtained whatever authorisations for doing so were required under the *ISD* in the form that Directive was in on 31 December 2006.

…

Annex C

Amendments to the Prudential sourcebook for Investment Firms (IFPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Application

1.1 Application and Purpose

…

Exclusion of certain types of firms

1.1.5 R None of the following is an *IFPRU investment firm*:

(1) ~~an *incoming EEA firm*~~ [deleted];

(2) ~~an *incoming Treaty firm*~~ [deleted];

(3) ~~any other~~ an *overseas firm*;

…

…

Meaning of dealing on own account

1.1.12 R (1) For the purpose of *IFPRU* and the ~~*EU*~~ *UK CRR*, dealing on own account means the service of dealing in any *financial instruments* for own account as referred to in ~~point~~ paragraph 3 of ~~Section A of Annex I to *MiFID*~~ Part 3 of Schedule 2 to the *Regulated Activities Order*, subject to (2) and (3).

(2) ~~In accordance with article 29(2) of *CRD* (Definition of dealing on own account), an~~ An *investment firm* that executes investors' orders for *financial instruments* and holds such *financial instruments* for its own account does not, for that reason, deal on own account if the following conditions are met:

…

(c) (for an *investment firm* that is an *IFPRU investment firm* ~~or an *EEA firm*~~) it complies with the requirements in articles 92 to 95 (Own funds requirements for investment firms with limited authorisation to provide investment services) and Part Four (Large exposures) of the ~~*EU*~~ *UK CRR*;

…

(3) ~~In accordance with article 29(4) of *CRD*, the~~ The holding on non-trading book positions in financial instruments in order to invest in *own funds* is not dealing on own account for the purposes of *IFPRU* 1.1.9R (Types of IFPRU investment firm: IFPRU 125K firm) and *IFPRU* 1.1.10R (Types of IFPRU investment firm: IFPRU 50K firm).

[**Note:** CRD article 29(4)]

Interpretation of the definition of types of firm and undertaking

1.1.13 G A *firm* whose head office is not in ~~an *EEA State*~~ the *UK* is an *investment firm* if it would have been subject to the requirements imposed by *MiFID* (but it is not a *bank*, *building society*, *credit institution*, *local firm*, *exempt CAD firm* and *BIPRU firm*) if:

(1) its head office had been in ~~an *EEA State*~~ the *UK*; and

(2) it had carried on all its business in ~~an *EEA State*~~ the *UK* and had obtained whatever authorisations for doing so as are required under the *UK* legislation that implemented *MiFID*.

…

1.1.15 G For the purposes of the definitions in *IFPRU* and Part Three, Title I, Chapter 1, Section 2 of the ~~*EU*~~ *UK CRR* (Own funds requirements for investment firms with limited authorisation to provide investment services), a *person* does any of the activities referred to in *IFPRU* and the ~~*EU*~~ *UK CRR* if:

…

(3) ~~(for an *EEA firm*) it is authorised by its *Home State regulator* to do that activity; or~~ [deleted]

(4) (if the carrying on of that activity is prohibited in a state or territory without an authorisation in that state or territory) that *firm* has such an authorisation.

…

1.2 Significant IFPRU firm

Purpose

1.2.1 G Throughout *CRD* and the ~~*EU*~~ *UK CRR* there are various policies which have restricted application based on a *firm's* scope, nature, scale, internal organisation and complexity. These policies are provided in the *UK* legislation related to the following:

(1) article 76 of *CRD* on the establishment of an independent risk committee;

(2) article 88 of *CRD* on the establishment of an independent nominations committee;

(3) article 91 of *CRD* on the limitations on the number of directorships an individual may hold;

(4) article 95 of *CRD* on the establishment of an independent remuneration committee;

(5) article 100 of *CRD* on supervisory stress testing to facilitate the *SREP* under article 97 of *CRD*;

(6) articles 129 and 130 of *CRD* on applicability of the capital conservation buffer and the countercyclical capital buffer (provided that an exemption from the application of these articles does not threaten the stability of the financial system of the ~~*EEA State*~~ *UK*);

(7) article 6(4) of the ~~*EU*~~ *UK CRR* on the scope of liquidity reporting on an individual basis;

(8) article 11(3) of the ~~*EU*~~ *UK CRR* on the scope of liquidity reporting on a consolidated basis; and

(9) article 450 of the ~~*EU*~~ *UK CRR* on disclosure on *remuneration*.

…

1.3 Supervisory benchmarking of internal approaches for calculating own funds requirements

…

1.3.2 G A *firm* must submit the results of the calculations referred to in *IFPRU* 1.3.1R(1), in line with the template set out in the ~~Commission Regulation adopted under article 78(8) of *CRD*, to the *FCA* and to EBA~~ *CRD ITS on templates, definitions and IT-solutions*.

1.3.3 R Where the *FCA* has chosen to develop specific portfolios ~~in accordance with article 78(2) of *CRD*~~, a *firm* must report the results of the calculations separately from the results of the calculations ~~for EBA portfolios~~ referred to in *IFPRU* 1.3.1R.

[**Note:** article 78(2) of *CRD*]

…

1.5 Notification of FINREP reporting

…

1.5.2 R A *firm* must notify the *FCA* if it adjusts its *firm's accounting reference date* under the ~~Commission Regulation made under article 99 of the *EU CRR*~~ *CRR ITS on supervisory reporting*.

…

2 Supervisory processes and governance

2.1 Application and purpose

[**Note:** On 19 December 2014, the *EBA* published ~~guidelines~~ "Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP)", EBA/GL/2014/13. The *FCA* has confirmed its intention to make every effort to comply with these guidelines ~~that can be found at: http://www.eba.europa.eu/documents/10180/935249/EBA-GL-2014-13+%28Guidelines+on+SREP+methodologies+and+processes%29.pdf/~~.]

…

Level of application: ICAAP rules

…

2.2.47 R A *firm* which is a *UK parent institution* ~~*in a Member State*~~ must comply with the *ICAAP rules* on a *consolidated basis*.

[**Note:** article 108(2) of *CRD*]

2.2.48 R A *firm* controlled by a *UK parent financial holding company* ~~*in a Member State*~~ or a *UK parent mixed financial holding company* ~~*in a Member State*~~ must comply with the *ICAAP rules* on the basis of the *consolidated situation* of that holding company, if the *FCA* is responsible for supervision of the *firm* on a *consolidated basis* under ~~article 111 of *CRD*~~ regulation 20 of the *Capital Requirements Regulation 2013*.

[**Note:** article 108(3) of *CRD*]

2.2.49 R A *firm* that is a subsidiary must apply the *ICAAP rules* on a *sub-consolidated basis* if the *firm*, or the *parent undertaking* where it is a *financial holding company* or *mixed financial holding company*, have an *institution* or *financial institution* or an asset management company as a *subsidiary* in a *third country* or hold a *participation* in such an undertaking as members of a ~~*non-EEA sub-group*~~ *non-UK sub-group*.

[**Note:** article 108(4) of *CRD*]

…

Level of application: risk control rules

…

2.2.59 R Where a *firm* is a member of a *FCA consolidation group* or a ~~*non-EEA sub-group*~~ *non-UK sub-group*, the *firm* must ensure that the risk management processes and internal control mechanisms at those levels comply with the obligations set out in the *risk control rules* on a *consolidated basis* (or a *sub-consolidated basis*).

[**Note:** article 109(2) of *CRD*]

2.2.60 R Compliance with the obligations in *IFPRU* 2.2.59R must enable the *FCA consolidation group* or the ~~*non-EEA sub-group*~~ *non-UK sub-group* to have arrangements, processes and mechanisms that are consistent, well integrated and ensure that data relevant to the purpose of supervision can be produced.

[**Note:** article 109(2) of *CRD*]

…

Group risk

…

2.2.86 G A *firm* should include in the written record in *IFPRU* 2.2.43R (Documentation of risk assessments) a description of the broad business strategy of the *FCA consolidation group* or the ~~*non-EEA sub-group*~~ *non-UK sub-group* of which it is a member, the group's view of its principal risks and its approach to measuring, managing and controlling the risks. This description should include the role of stress testing, scenario analysis and contingency planning in managing risk on an individual basis and *consolidated basis*.

2.2.87 G A *firm* should satisfy itself that the systems (including IT) of the *FCA consolidation group* or the ~~*non-EEA sub-group*~~ *non-UK sub-group* of which it is a member are sufficiently sound to support the effective management and, where applicable, the quantification of the risks that could affect the *FCA consolidation group* or the ~~*non-EEA sub-group*~~ *non-UK sub-group*, as the case may be.

…

2.3 Supervisory review and evaluation process: internal capital adequacy standards

[**Note:** On 19 December 2014, the *EBA* published ~~guidelines~~ "Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP)", EBA/GL/2014/13. The *FCA* has confirmed its intention to make every effort to comply with these guidelines ~~that can be found at: http://www.eba.europa.eu/documents/10180/935249/EBA-GL-2014-13+%28Guidelines+on+SREP+methodologies+and+processes%29.pdf/~~.]

…

The ICAAP and the SREP: the SREP

…

2.3.12 G (1) …

(2) In making these assessments, the *FCA* will have regard to the nature, scale and complexity of a *firm's* business and of the major sources of risks relevant to such business as referred to in the *general stress and scenario testing rule* and *SYSC* 20 (Reverse stress testing), and the extent to which the *firm* has used any of the capital buffers that are required of it under the *UK* legislation that implemented the *CRD*, as applicable.

…

Business risk: stress tests for firms using the IRB approach

…

2.3.52 R If *IFPRU* 2.3.50R applies to a *firm* on a *consolidated basis*, the following adjustments are made to *IFPRU* 2.3.50R in accordance with the general principles of Part One, Title II, Chapter 2 of the ~~*EU*~~ *UK CRR* (Prudential consolidation):

(1) references to *own funds* are to the consolidated *own funds* of the *firm's FCA consolidation group* or, as the case may be, its ~~*non-EEA sub-group*~~ *non-UK sub-group*; and

(2) references to the capital requirements in Part Three of the ~~*EU*~~ *UK CRR* (Capital requirements) are to the consolidated capital requirements with respect to the *firm's FCA consolidation group* or, as the case may be, its ~~*non-EEA sub-group*~~ *non-UK sub-group* under Part One, Title II, Chapter 2 of the ~~*EU*~~ *UK CRR* (Prudential consolidation).

…

3 Own funds

3.1 Base own funds requirement

…

3.3 Basel 1 floor

…

Permission not to apply the Basel 1 floor

3.3.1 G ~~The *FCA* does not expect that it will waive the application of the Basel 1 floor as contemplated in article 500(2) of the *EU CRR*.~~ [deleted]

…

4 Credit risk

…

4.2 Standardised approach

…

Retail exposures

4.2.6 G Where an *exposure* is denominated in a currency other than the euro, the *FCA* expects a *firm* to use appropriate and consistent exchange rates to determine compliance with relevant thresholds in the ~~*EU*~~ *UK CRR*. Accordingly, a *firm* should calculate the euro equivalent value of the *exposure* for the purposes of establishing compliance with the aggregate monetary limit of €1 million for retail *exposures* using a set of exchange rates the *firm* considers to be appropriate. The *FCA* expects a *firm's* choice of exchange rate to have no obvious bias and to be derived on the basis of a consistent approach (see article 123(c) of the ~~*EU*~~ *UK CRR*).

…

~~Mapping of ECAIs credit assessments~~

4.2.12 G ~~Until such time as the European Commission adopts implementing technical standards drafted by the European Supervisory Authorities Joint Committee to specify for all *ECAIs* the relevant credit assessments of the *ECAI* that correspond to credit quality steps, the *FCA* expects a *firm* to continue to have regard to the table mapping the credit assessments of certain *ECAIs* to credit quality steps produced in accordance with regulation 22(3) of the Capital Requirements Regulations 2006. For mapping of the credit quality step to the credit assessments of eligible *ECAIs*, refer to: http://www.fca.org.uk.~~ [deleted]

4.3 Guidance on internal ratings based approach: high level material

…

Application of requirements to EEA groups applying the IRB approach on a unified basis

4.3.4 G Article 20(6) of the ~~*EU*~~ *UK CRR* states that, where the IRB approach is used on a unified basis by those entities which fall within the scope of article 20(6) ~~(EEA group)~~, the *FCA* is required to permit certain IRB requirements to be met on a collective basis by members of that group. In particular, the

FCA considers that, where a *firm* is reliant upon a rating system or data provided by another member of its group, it will not meet the condition that it is using the IRB approach on a unified basis unless:

(1) the *firm* only does so to the extent that it is appropriate, given the nature and scale of the *firm's* business and portfolios and the *firm's* position within the group;

(2) the integrity of the *firm's* systems and controls is not adversely affected;

(3) the outsourcing of these functions meets the requirements of *SYSC*; and

(4) the abilities of the *FCA* and the *consolidating supervisor* of the group to carry out their responsibilities under the ~~*EU*~~ *UK CRR* are not adversely affected.

…

Corporate governance

4.3.8 G (1) Where the *firm's* rating systems are used on a unified basis under article 20(6) of the ~~*EU*~~ *UK CRR*, the *FCA* considers that the governance requirements in article 189 of the ~~*EU*~~ *UK CRR* can only be met if the subsidiaries have delegated to the *governing body* or designated committee of the ~~*EEA parent institution*~~ *UK parent institution*, ~~*EEA parent financial holding company*~~ *UK parent financial holding company* or ~~*EEA parent mixed financial holding company*~~ *UK parent mixed financial holding company* responsibility for approval of the *firm's* rating systems.

(2) The *FCA* expects an appropriate individual in a *significant-influence function* role to provide to the *FCA* on an annual basis written attestation that the rating system permissions required by the ~~*EU*~~ *UK CRR* have been carried out appropriately.

[**Note:** see articles 189 and 20(6) of the ~~*EU*~~ *UK CRR* and article 3(1)(7) of *CRD*]

…

Permanent partial use: non-significant business units and immaterial exposure classes and types

…

4.3.12 G The following points set out the level at which the *FCA* expects the 15% test to be applied for a *firm* that is a member of a *group*:

(1) if a *firm* is part of a group subject to consolidated supervision in the ~~*EEA*~~ *UK* and for which the *FCA* is the *consolidating supervisor*, the calculations in (1) are carried out with respect to the wider *group*;

(2) if a *firm* is part of a group subject to consolidated supervision in the ~~*EEA*~~ *UK* and for which the *FCA* is not the *consolidating supervisor* the calculation in (1) would not apply but the requirements of the *consolidating supervisor* relating to materiality will need to be met for the wider *group*;

(3) if the *firm* is part of a sub-group subject to consolidated supervision in the ~~*EEA*~~ *UK* and part of a wider third-country group subject to equivalent supervision by a regulatory authority outside of the ~~*EEA*~~ *UK*, the calculation in (1) would not apply but the requirements of the consolidating or lead regulator relating to materiality would need to be met for both the sub-group and the wider *group*; and

(4) if the *firm* is part of a sub-group subject to consolidated supervision in the ~~*EEA*~~ *UK* and is part of a wider third-country group that is not subject to equivalent supervision by a regulatory authority outside of the ~~*EEA*~~ *UK*, then the calculation in (1) would apply for the wider *group* if supervision by analogy is applied and for the sub-group if other alternative supervisory techniques are applied.

4.3.13 G Whether a third-country group is subject to equivalent supervision, whether it is subject to supervision by analogy or whether other alternative supervisory techniques apply, is decided in accordance with ~~article 127 of *CRD* (Assessment of equivalence of third countries' consolidated supervision)~~ *GENPRU* 3.2 (Third-country groups). (See article 150(1)(c) of the ~~*EU*~~ *UK CRR*.)

…

7 Liquidity

7.1 Application

…

Application of BIPRU 12 (Liquidity standards)

7.1.3 G The *FCA's* liquidity regime and liquidity reporting in *BIPRU* 12 (Liquidity standards) and *SUP* 16 (Reporting requirements) ~~continue to apply~~ applies to an *IFPRU investment firm* ~~until the liquidity coverage requirement in article 412 of the *EU CRR* becomes applicable in 2015~~.

7.1.4 ~~Pending specification of a uniform definition under article 460 of the *EU CRR* (Liquidity) of high and extremely high liquidity and credit quality, a~~ A *firm* should be guided by *BIPRU* 12 (Liquidity standards) when complying with article 416 of the *EU CRR* (Reporting on liquid assets).

…

8 Prudential consolidation and large exposures

8.1 Prudential consolidation

Application

8.1.1 R (1) This section applies to an *IFPRU investment firm*.

(2) This section does not apply to an *exempt IFPRU commodities firm* if the conditions in (2) are met.

(3) The conditions are:

(a) article 498 of the ~~*EU*~~ *UK CRR* (Exemptions for commodities dealers) applies to it;

(b) the *exempt IFPRU commodities firm* is not a member of a *FCA* ~~consolidation group~~ *consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*;

(c) each *investment firm* in the group that the *exempt IFPRU commodities firm* belongs to meets the conditions in article 498 of the ~~*EU*~~ *UK CRR*; and

(d) any *investment firm* in the group that the *exempt IFPRU commodities firm* belongs to whose head office is outside the ~~*EEA*~~ *UK* would have been a *firm* to whom article 498 would have applied if its head office had been in ~~an *EEA State*~~ the *UK*.

…

8.2 Large exposures

…

Intra-group exposures: non-core large exposures group

…

8.2.5 G The *FCA* expects that applications for exemptions under article 400(2)(c) of the ~~*EU*~~ *UK CRR* will be for *firms* established in the *UK* where the intra-group *undertakings* to which they have *exposures* meet the criteria for the *core UK group* in article 113(6) of the ~~*EU*~~ *UK CRR*, except for article 113(6)(d) (established in the ~~same *EEA State*~~ *UK*).

8.2.6 R A *firm* with a *non-core large exposures group permission* may (in line with that permission) exempt, from the application of article 395(1) of the *EU*

CRR (Limits to large exposures), *exposures*, including *participations* or other kinds of holdings, incurred by a *firm* to:

…

in so far as those *undertakings* are covered by the supervision on a *consolidated basis* to which the *firm* itself is subject, in accordance with the *EU CRR*, ~~Directive 2002/87/EC regarding the supplementary supervision of financial entities in a *financial conglomerate*~~ the *UK* legislation that implemented the *Financial Groups Directive* or with equivalent standards in force in a *third country*; *exposures* that do not meet these criteria, whether or not exempted from article 395(1), shall be treated as *exposures* to a third party.

[**Note:** article 400(2) of the *EU CRR*]

…

Conditions for exemptions

8.2.13 R A firm may only make use of the exemptions provided in this section where the following conditions are met:

(1) the specific nature of the *exposure*, the counterparty or the relationship between the *firm* and the counterparty eliminate or reduce the risk of the *exposure*; and

(2) any remaining concentration risk can be addressed by other equally effective means, such as the arrangements, processes and mechanisms in ~~article 81 of *CRD*~~ *IFPRU* 2.2.22R (Concentration risk).

[**Note:** article 400(3) of the *EU CRR*]

…

10 Capital buffers

…

10.3 Countercyclical capital buffer

…

Calculation of countercyclical capital buffer rates

10.3.2 R (1) To calculate the weighted average in *IFPRU* 10.3.1R, a *firm* must apply to each applicable *countercyclical buffer rate* its total *own funds requirements* for credit risk, specific risk, incremental default and migration risk that relates to the *relevant credit exposures* in the jurisdiction in question, divided by its total *own funds requirements* for credit risk that relates to all of its *relevant credit exposures*.

(2) For the purposes of (1), a *firm* must calculate its total *own funds requirement* for credit risk, specific risk, incremental default and migration risk in accordance with Part Three, Titles II (Capital requirements for credit risk) and IV (Own funds requirements for market risk) of the ~~*EU*~~ *UK CRR*.

(3) The *countercyclical buffer rate* for an exposure located in the *UK* is the rate set by the *UK countercyclical buffer authority* for the *UK*.

(4) ~~The *countercyclical buffer rate* for an exposure located in an *EEA State* other than the *UK* is:~~

~~(a) the rate set by the *EEA countercyclical buffer authority* for that jurisdiction; or~~

~~(b) if that rate exceeds 2.5% of *total risk exposure amount* and has not been recognised by the *UK countercyclical buffer authority*, 2.5%~~ [deleted]

(5) The *countercyclical buffer rate* for an exposure located in a *third country* is the rate set by the *UK countercyclical buffer authority* for that jurisdiction.

(6) If the *UK countercyclical buffer authority* has not set a rate for a *third country*, the *countercyclical buffer rate* for an exposure located in that jurisdiction is:

(a) the rate set by the *third country countercyclical buffer authority* for that jurisdiction; or

(b) if that rate exceeds 2.5% and has not been recognised by the *UK countercyclical buffer authority*, 2.5%.

(7) If the *UK countercyclical buffer authority* has not set a rate for a *third country* and either there is no *third-country countercyclical buffer authority* for that country or the authority has not set a rate for that jurisdiction, the *countercyclical buffer rate* for an exposure located in that jurisdiction is zero.

(8) If the *countercyclical buffer rate* for the *UK* is increased, that increase takes effect from the date specified by the *UK countercyclical buffer authority*.

(9) ~~If the *countercyclical buffer rate* for an *EEA State* other than the *UK* is increased, subject to (4)(b), that increase takes effect from:~~

~~(a) the date specified by the *EEA countercyclical buffer authority* for that jurisdiction, if the rate applied under this chapter does not exceed 2.5%; or~~

~~(b)~~ ~~the date specified by the *UK countercyclical buffer authority* if the rate applied under this chapter exceeds 2.5%.~~ [deleted]

(10) If the *countercyclical buffer rate* for a *third country* is increased by the *UK countercyclical buffer authority*, that increase takes effect from the date specified by the *UK countercyclical buffer authority*.

(11) If the *UK countercyclical buffer authority* does not set a *countercyclical buffer rate* for a *third country* and that rate is increased by the *third-country countercyclical buffer authority* for that jurisdiction, subject to 6(b), that increase takes effect from:

(a) the date 12 months after the date on which the increase was published by the *third-country countercyclical buffer authority* in accordance with the relevant law of the *third country*, if the rate applied under this chapter does not exceed 2.5%; or

(b) the date specified by the *UK countercyclical buffer authority* if the rate applied under this chapter exceeds 2.5%.

(12) If a *countercyclical buffer rate* is reduced, that reduction takes effect immediately.

[**Note:** articles 136(4) (part), 139(2) to (5) (part) and 140(1) to (4) and (6) (part) of *CRD*]

Location of exposures

10.3.3 G A *firm* must identify the geographical location of a *relevant credit exposure* in accordance with the ~~regulatory technical standards adopted under article 140(7) of *CRD*~~ *CRD RTS on the identification of the geographical location of credit exposures for calculating institution-specific countercyclical capital buffer rates*.

…

10.6 Application on an individual and consolidated basis

…

Application on a consolidated basis

10.6.2 R A *firm* that is a *UK parent institution* ~~in *a Member State*~~ must comply with this chapter on the basis of its *consolidated situation*.

10.6.3 R A *firm* controlled by a *UK parent financial holding company* ~~*in a Member State*~~ or a *UK parent mixed financial holding company* ~~*in a Member State*~~

must comply with this chapter on the basis of the *consolidated situation* of that holding company in the *FCA consolidation group*.

…

10.7 Exemption

…

10.7.2 R (1) The condition referred to in *IFPRU* 10.7.1R is that the *firm* is a ~~small and medium-sized~~ *SME* (as defined in article 4(1)(131) of the *UK CRR*) *investment firm.*

(2) ~~For this purpose, a *firm* is categorised as small and medium-sized in accordance with the European Commission Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises.~~ [deleted]

[**Note:** articles 129(4) and 130(4) of *CRD*]

…

IFPRU TP 3 (Gains and losses) is deleted in its entirety. The deleted text of the TP is not shown but it is marked as [deleted] as shown below.

TP 3 Gains and losses [deleted]

Amend the following as shown.

TP 4 Deductions from own funds

	Application	
4.1	R	*IFPRU* TP 4 applies to an *IFPRU investment firm*, unless it is an *exempt IFPRU commodities firm*.
	Purpose	
4.2	G	*IFPRU* TP 4 contains the *rules* that exercise the discretion afforded to the *FCA* as *competent authority* under article~~s~~ 469~~, 474 and 477~~ of the ~~*EU*~~ *UK*

		CRR. The applicable percentages in *IFPRU* TP 4 apply instead of articles~~ 36(1), 56 (1)(c) and 66~~ of the ~~*EU*~~ *UK CRR* for the duration of the transitional.	
	Duration of transitional		
4.3	R	*IFPRU* TP 4 applies until 31 December 2023.	
	Deduction from common equity tier 1		
4.4	R	~~For the purposes of article 469(1)(a) of the *EU CRR*, as it applies to the items in points (b), (d), (f), (g) and (h) of article 36(1) of the *EU CRR* (Deductions from Common Equity Tier 1 items), the applicable percentages are:~~	
		~~(1)~~	~~20% during the period from 1 January 2014 to 31 December 2014;~~
		~~(2)~~	~~40% during the period from 1 January 2015 to 31 December 2015;~~
		~~(3)~~	~~60% during the period from 1 January 2016 to 31 December 2016; and~~
		~~(4)~~	~~80% for the period from 1 January 2017 to 31 December 2017.~~ [expired]
4.5	R	~~For the purposes of article 469(1)(a) of the *EU CRR* as it applies to the items in points (a), (e) and (i) of article 36(1)) of the *EU CRR* (Deductions from Common Equity Tier 1 items), the applicable percentages are:~~	
		~~(1)~~	~~100% during the period from 1 January 2014 to 31 December 2014;~~
		~~(2)~~	~~100% during the period from 1 January 2015 to 31 December 2015;~~
		~~(3)~~	~~100% during the period from 1 January 2016 to 31 December 2016; and~~
		~~(4)~~	~~100% for the period from 1 January 2017 to 31 December 2017.~~ [expired]
4.6	R	For the purposes of article 469(1)(c) of the *EU CRR*, as it applies to the items in point (c) of article 36(1)) of the ~~*EU*~~ *UK CRR* (Deductions from Common Equity Tier 1 items) that existed prior to 1 January 2014, the applicable percentages are:	
		(1)	0% for the period from 1 January 2014 to 31 December 2014;
		(2)	10% for the period from 1 January 2015 to 31 December 2015;

		(3)	20% for the period from 1 January 2016 to 31 December 2016;
		(4)	30% for the period from 1 January 2017 to 31 December 2017;
		(5)	40% for the period from 1 January 2018 to 31 December 2018;
		(6)	50% for the period from 1 January 2019 to 31 December 2019;
		(7)	60% for the period from 1 January 2020 to 31 December 2020;
		(8)	70% for the period from 1 January 2021 to 31 December 2021;
		(9)	80% for the period from 1 January 2022 to 31 December 2022; and
		(10)	90% for the period from 1 January 2023 to 31 December 2023.
4.7	R	~~For the purposes of article 469(1)(c) of the *EU CRR*, as it applies to the items in point (c) of article 36(1)) of the *EU CRR* (Deductions from Common Equity Tier 1 items) that did not exist prior to 1 January 2014, the applicable percentages are:~~	
		~~(1)~~	~~20% during the period from 1 January 2014 to 31 December 2014;~~
		~~(2)~~	~~40% during the period from 1 January 2015 to 31 December 2015;~~
		~~(3)~~	~~60% during the period from 1 January 2016 to 31 December 2016; and~~
		~~(4)~~	~~80% for the period from 1 January 2017 to 31 December 2017.~~ [expired]
	~~Deductions from additional tier 1 items~~		
4.8	R	~~For the purposes of article 474(a) of the *EU CRR*, the applicable percentages are:~~	
		~~(1)~~	~~20% during the period from 1 January 2014 to 31 December 2014;~~
		~~(2)~~	~~40% during the period from 1 January 2015 to 31 December 2015;~~
		~~(3)~~	~~60% during the period from 1 January 2016 to 31 December 2016; and~~

		~~(4)~~	~~80% for the period from 1 January 2017 to 31 December 2017.~~ [expired]
	~~Deductions from tier 2 items~~		
4.9	R	~~For the purposes of article 476(a) of the *EU CRR*, the applicable percentages are:~~	
		~~(1)~~	~~20% during the period from 1 January 2014 to 31 December 2014;~~
		~~(2)~~	~~40% during the period from 1 January 2015 to 31 December 2015;~~
		~~(3)~~	~~60% during the period from 1 January 2016 to 31 December 2016; and~~
		~~(4)~~	~~80% for the period from 1 January 2017 to 31 December 2017.~~ [expired]

TP 5 Own funds: other transitionals

	Application	
5.1	R	*IFPRU* TP 5 applies to an *IFPRU investment firm*, unless it is an *exempt IFPRU commodities firm*.
	Purpose	
5.2	G	*IFPRU* TP 5 contains the *rules* that exercise the discretion afforded to the *FCA* as *competent authority* under articles ~~479 to 480~~ 484 to 486 of the ~~*EU*~~ *UK CRR*. The applicable percentages in *IFPRU* TP 5 apply for the duration of the transitional.
	Duration of transitional	
5.3	R	*IFPRU* TP 5 applies until 31 December 2021.
	~~Recognition of instruments and items not qualifying as minority interests~~	
5.4	R	~~For the purposes of article 479(2) of the *EU CRR*, the applicable percentages are:~~

		~~(1)~~	~~0% during the period from 1 January 2014 to 31 December 2014;~~
		~~(2)~~	~~0% during the period from 1 January 2015 to 31 December 2015;~~
		~~(3)~~	~~0% during the period from 1 January 2016 to 31 December 2016; and~~
		~~(4)~~	~~0% for the period from 1 January 2017 to 31 December 2017.~~ [expired]
	~~Recognition of minority interests and qualifying additional tier 1 and tier 2 capital~~		
5.5	R	~~For the purposes of article 480(1) of the *EU CRR*, the applicable factors are:~~	
		~~(1)~~	~~0.2 during the period from 1 January 2014 to 31 December 2014;~~
		~~(2)~~	~~0.4 during the period from 1 January 2015 to 31 December 2015;~~
		~~(3)~~	~~0.6 during the period from 1 January 2016 to 31 December 2016; and~~
		~~(4)~~	~~0.8 for the period from 1 January 2017 to 31 December 2017.~~ [expired]
	~~Additional filters and deductions~~		
5.6	R	~~For the purposes of article 481(1) of the *EU CRR*, the applicable percentages are:~~	
		~~(1)~~	~~0% during the period from 1 January 2014 to 31 December 2014;~~
		~~(2)~~	~~0% during the period from 1 January 2015 to 31 December 2015;~~
		~~(3)~~	~~0% during the period from 1 January 2016 to 31 December 2016; and~~
		~~(4)~~	~~0% for the period from 1 January 2017 to 31 December 2017.~~ [expired]
	Limits on grandfathering		
5.7	R	For the purposes of article 486 of the ~~*EU*~~ *UK CRR* the applicable factors are:	
		(1)	80% during the period from 1 January 2014 to 31 December 2014;
		(2)	70% during the period from 1 January 2015 to 31 December 2015;

		(3)	60% during the period from 1 January 2016 to 31 December 2016;
		(4)	50% during the period from 1 January 2017 to 31 December 2017;
		(5)	40% during the period from 1 January 2018 to 31 December 2018;
		(6)	30% during the period from 1 January 2019 to 31 December 2019;
		(7)	20% during the period from 1 January 2020 to 31 December 2020; and
		(8)	10% during the period from 1 January 2021 to 31 December 2021.

IFPRU TP 6 (Leverage) and IFPRU TP 7 (Capital conservation buffer: transitional) are deleted in their entirety. The deleted text of the TPs is not shown but they are marked as [deleted] as shown below.

TP 6 Leverage [deleted]

TP 7 Capital conversation buffer: transitional [deleted]

Amend the following as shown.

Sch 1 Record-keeping requirements

…

(3) Table

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
…				
IFPRU 4.3.17G	Documents relating to rating systems	All documentation relating to a *firm's* rating systems (including any document referenced in *IFPRU* 4 or	Not specified	At least three years

		required by the ~~*EU*~~ *UK CRR* that relate to the IRB approach)		

Sch 2 Notification and reporting requirements

…

(3) Table

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
…				
IFPRU 3.2.17R	Intention by *firm* or member of its *group* member to reduce *own funds* or consolidated *own funds*	Actions described in article 77 of the ~~*EU*~~ *UK CRR*	Intention to carry out the actions described in article 77 of the ~~*EU*~~ *UK CRR*	As soon as intention is formed
IFPRU 4.12.1R	Reliance on deemed transfer of significant risk under articles 243(2) and 244(2) of the ~~*EU*~~ *UK CRR*, including for the purposes of article 337(5) of the ~~*EU*~~ *UK CRR*	Sufficient information to allow the *FCA* to assess whether the possible reduction in risk-weighted exposure amounts achieved by the *securitisation* is justified by a commensurate transfer of credit risk to third parties	Intention to rely on deemed transfer of significant risk	Within a reasonable period before or after a relevant transfer, not being later than one *month* after the date of transfer
…				

Annex D

Amendments to the Prudential sourcebook for Insurers (INSPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Capital resources requirements and technical provisions for insurance business

1.1 Application

1.1.1 R INSPRU 1.1 applies to an *insurer* unless it is:

(1) a *non-directive friendly society*; or

(2) ~~an *incoming EEA firm*; or~~ [deleted]

(3) ~~an *incoming Treaty firm*; or~~ [deleted]

(4) a *Solvency II firm*.

…

1.1.3 R For ~~a *non-EEA*~~ an *insurer* with a *branch* in the *United Kingdom* whose *insurance business* in the *United Kingdom* is not restricted to *reinsurance* ~~(~~other than ~~an *EEA deposit insurer*,~~ a *Swiss general insurer* ~~or a *UK deposit insurer*~~) *INSPRU* 1.1.27R applies separately in respect of its world-wide activities and its activities carried on from a *branch* in the *United Kingdom*.

1.1.4 R ~~For an *EEA deposit insurer* or a *Swiss general insurer* *INSPRU* 1.1.27R applies in respect of the activities carried on from a *branch* in the *United Kingdom*.~~ [deleted]

1.1.5 R ~~For a *UK deposit insurer* *INSPRU* 1.1.27R applies separately in respect of its world-wide activities and its activities carried on from a *branch* in the *EEA*.~~ [deleted]

1.1.6 G ~~This section may apply in cases where a *firm* has its head office in another *EEA State* but is neither an *incoming EEA firm* nor an *incoming Treaty firm*.~~ [deleted]

…

1.2 Mathematical reserves

Application

1.2.1 R *INSPRU* 1.2 applies to a *long-term insurer* unless it is:

(1) a *non-directive friendly society*; or

(2) ~~an *incoming EEA firm*; or~~ [deleted]

(3) ~~an *incoming Treaty firm*; or~~ [deleted]

(4) a *Solvency II firm*.

…

1.5 Internal-contagion risk

Application

1.5.1 R *INSPRU* 1.5 applies to an *insurer* except any *insurer* in (1) to (3):

(1) (a) *non-directive friendly societies*; or

(b) *Solvency II firms*;

(2) ~~none of the provisions, apart from *INSPRU* 1.5.33R (payment of financial penalties), apply to *firms* which qualify for authorisation under *Schedule* 4 of the *Act*;~~ [deleted]

…

…

1.5.5A R In the application of this section to ~~activities carried on by a *non-EEA insurer*~~ a *firm* with its head office outside the *United Kingdom*:

(1) …

(2) all other provisions of this section apply only in relation to~~:~~

~~(a) in the case of any *UK-deposit insurer*, activities carried on from *branches* in any *EEA State*; and~~

~~(b) in any other case,~~ activities carried on from a *branch* in the *United Kingdom*.

…

1.5.12 G Finally, the section sets out requirements to protect *policyholders* of the *United Kingdom* *branches* of ~~*non-EEA firms*~~ *firm*s with their head office outside the *United Kingdom* ~~where these are supervised by the *appropriate regulator*. These apply only to a *non-EEA firm* that has established a *branch* in the *United Kingdom*~~.

…

3 Market risk

3.1 Market risk insurance

3.1.1 R *INSPRU* 3.1 applies to an *insurer* unless it is:

(1) a *non-directive friendly society*; or

(2) ~~an *incoming EEA firm*; or~~ [deleted]

(3) ~~an *incoming Treaty firm*; or~~ [deleted]

(4) a *Solvency II firm*.

…

3.2 Derivatives in insurance

Application

3.2.1 R This section applies to an *insurer* unless it is:

(1) a *non-directive friendly society*; or

(2) ~~an *incoming EEA firm*; or~~ [deleted]

(3) ~~an *incoming Treaty firm*; or~~ [deleted]

(4) …..

…

TP Transitional Provisions

Application

1.1 R *INSPRU* TP 1 applies to an insurer unless it is:

[FCA]

[PRA]

(1) a *non-directive friendly society*; or

(2) ~~an *incoming EEA firm*; or~~ [deleted]

(3) ~~an *incoming Treaty firm*; or~~ [deleted]

(4) a *Solvency II firm*.

…

1.6 R ~~*INSPRU* TP 1.4 does not have effect if, and to the extent that, it would be inconsistent with any *EU* law obligation of the *United Kingdom*.~~ [deleted]

[FCA]

[PRA]

…

PRU waivers

Application

3.1 R *INSPRU* TP 3 applies to an *insurer* unless it is:

[FCA]

[PRA]

(1) a *non-directive friendly society*; or

(2) ~~an *incoming EEA firm*; or~~ [deleted]

(3) ~~an *incoming Treaty firm*; or~~ [deleted]

(4) a *Solvency II firm*.

…

3.6 R ~~*INSPRU* TP 3.4 does not have effect if, and to the extent that, it would be inconsistent with any *EU* law obligation of the *United Kingdom*.~~ [deleted]

[FCA]

[PRA]

Annex E

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.

4 Capital resources

4.1 Application and purpose

Application

…

4.1.2 G ~~As this chapter applies only to a *firm* with *Part 4A permission*, it does not apply to an *incoming EEA firm* (unless it has a *top-up permission*). An incoming EEA *firm* includes a *firm* which is passporting into the United Kingdom under the *Insurance Mediation Directive*.~~ [deleted]

…

4.2F Exposures and risk weights

…

Treatment of secured and unsecured portions of residential mortgages

…

4.2F.36 R *Exposures* to residential property situated in ~~an *EEA State* or~~ a *third-country* must be assigned a *risk weight* of 75% up to a limit of 100% of the value of the property.

…

4.4 Calculation of capital resources

…

Reversion providers: additional requirement for instalment reversions

4.4.10 R (1) If the *reversion provider* agrees under the terms of an *instalment reversion plan* to pay the *reversion occupier* for the *qualifying interest in land* over a period of time, then the provider must:

(a) take out and maintain adequate insurance from an *insurance undertaking* authorised in the ~~*EEA*~~ *UK* or a *person* of equivalent status in:

…

…

Annex F

Amendments to the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))

In this Annex, underlining indicates new text and striking through indicates deleted text.

GUIDANCE: THE PURPOSE OF THE PRUDENTIAL RULES FOR FRIENDLY SOCIETIES AND AN OVERALL DESCRIPTION

…

7A *Directive friendly societies* should also refer to the PRA Rulebook: Solvency II firms: Conditions Governing Business and the *Solvency II Regulation* ~~of (EU) 2015/35 of 10 October 2014~~ which contain systems and control requirements, and the *FCA* will take these into account.

…

LEGAL COMPLIANCE

2.1 A *friendly society* must take reasonable steps to ensure that:

[FCA]

[PRA]

…

(b) …

(ii) any requirement ~~(whether of the law of any part of the *United Kingdom* or of the law of another *EEA State*)~~ which ~~gives effect to the *insurance Directives*~~ implemented the *Solvency II Directive* or is otherwise applicable to the insurance activities of the *friendly society*.

…

Annex G

Amendments to the Interim Prudential sourcebook for Insurance Businesses (IPRU(INS))

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Chapter 1: Application Rule

APPLICATION

Insurers

1.1 An *insurer* must comply with *IPRU (INS)* unless it is –

[FCA]

[PRA]

…

(b) ~~an *EEA insurer* or an *EEA pure reinsurer* qualifying for authorisation under Schedules 3 or 4 to the Act; or~~ [deleted]

…

8 Chapter 8: Non-UK Insurers

…

8.3 An *insurer* which has its head office outside the United Kingdom (other than a ~~*pure reinsurer* which has a Treaty right under Schedule 4 to the *Act*, or a~~ *Swiss general insurer*) must appoint and maintain the appointment of a chief executive (who alone or jointly with one or more others, is responsible for the conduct of its business through an establishment in the United Kingdom).

[FCA]

[PRA]

Annex H

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Application and General provisions

…

1.2 Application

…

1.2.3 G For the avoidance of doubt, *IPRU-INV* does not apply to any of the following:

…

(e) ~~an *incoming EEA firm* or an *incoming Treaty firm* which does not have a *top-up permission*; or~~ [deleted]

(f) an *insurer*~~.; or~~

(g) ~~a *UCITS qualifier*.~~ [deleted]

…

2 Authorised professional firms

2.1 Application

…

2.1.7 G The activities that a *full-scope UK AIFM* and a *UCITS management company* are allowed to perform are restricted by ~~article 6 of *AIFMD* and article 6 of the *UCITS Directive* to the management of *AIFs* and/or *UCITS* and the additional investment activities permitted by article 6(4) of *AIFMD* and article 6(3) of the *UCITS Directive*~~ *COLL* 6.9.9R and *FUND* 1.4.3R (as applicable). As such, an *authorised professional firm* cannot be a *collective portfolio management firm* or a *collective portfolio management investment firm*.

…

3 Financial resources for Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms or Exempt IFPRU Commodities Firms

…

Appendix 1- Glossary terms for IPRU(INV) 3

…

approved bank — (in relation to a bank account opened by a firm) means:

…

(b) if the account is opened elsewhere:

…

(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]

…

…

…

3-182(5)R …

Consolidated Supervision

~~Under the Financial Conglomerates and Other Financial Groups Instrument 2004, the rules in Chapter 14 shall (with respect to a particular firm, group or financial conglomerate) apply from the first day of its financial year beginning in 2005 in place of rules 3-190(1) to 3-195.~~ [deleted]

…

5 Financial resources

5.1 Application

5.1.1 G (1)

(a) This chapter applies to an *investment management firm*, other than:

(i) ~~an *incoming EEA firm* unless it has a *top-up permission* for *acting as trustee or depositary of a UCITS*; or~~ [deleted]

…

…

5.1.3 R ~~An *incoming EEA firm* with a *top-up permission* for *acting as trustee or depositary of a UCITS* must comply with:~~

~~(a) *IPRU-INV* 5.2.1R;~~

~~(b) *IPRU-INV* 5.2.2R;~~

~~(c) *IPRU-INV* 5.2.3R;~~

~~(d) *IPRU-INV* 5.3.2R;~~

~~(e) *IPRU-INV* 5.4.4R; and~~

~~(f) *IPRU-INV* 5.4.8R.~~ [deleted]

…

5.2 General requirement

…

Financial resources

5.2.3 R A *firm's* **financial resources** means:

(a) its **own funds**, if the *firm* is subject to an **own funds requirement** under *IPRU-INV* 5.4.2R ~~or *IPRU-INV* 5.4.4R~~; or

(b) its **liquid capital**, if the *firm* is subject to a **liquid capital requirement** under *IPRU-INV* 5.4.1R.

…

5.4 Financial resources requirement

Determination of requirement

5.4.1 R The **financial resources requirement** for a *firm* is a **liquid capital requirement**, determined in accordance with *IPRU-INV* 5.4.10R:

(i) unless the *firm* falls within any of the exceptions in *IPRU-INV* 5.4.2R.~~; or~~

(ii) ~~the *firm* is an *incoming EEA firm* with a *top-up permission* of *acting as trustee or depositary of a UCITS*.~~ [deleted]

Exceptions from the liquid capital requirement

5.4.2 R The **financial resources requirement** is an **own funds requirement** determined in accordance with *IPRU-INV* 5.4.3R for a *firm* if its **permitted business** does not include *establishing, operating or winding up a personal pension scheme* and which:

…

(ii) is not an *exempt CAD firm* if:

…

(c) the *firm* is a *trustee* of an *authorised unit trust scheme* whose **permitted business** consists only of trustee activities and does not include any other activity constituting **specified trustee business** or the *firm* is a depositary of an *ICVC* or *ACS* or a *depositary* appointed in line with *FUND* 3.11.12R (Eligible depositaries for UK AIFs) or a UK depositary of a *non-~~EEA~~ UK AIF* whose **permitted business** consists only of depositary activities.

…

Own funds requirement

5.4.3 R The **own funds requirement** for a *firm* subject to *IPRU-INV* 5.4.2R is the higher of:

(i) £4 million for a *firm* which is a *depositary* of an *authorised fund*, if the *authorised fund* is an *AIF*;

(ia) €125,000 for a *firm* which is a *depositary* appointed in line with *FUND* 3.11.12R (Eligible depositaries for UK AIFs) or a *UK depositary* of a *non-~~EEA~~ UK AIF*;

(ib) for a *firm* which is a *depositary* of a *UCITS scheme*, the higher of:

(A) the requirement calculated depending on the selected approach in accordance with articles 315 or 317 of the *~~EU~~ UK CRR*; and

(B) £4 million; and

(ii) £5,000 for any other *firm*.

5.4.4 R ~~The **financial resources requirement** for an *incoming EEA firm* with a *top-up permission* for *acting as trustee or depositary of a UCITS* is the **own funds requirement** in *IPRU-INV* 5.4.3R(ib).~~ [deleted]

5.4.5 G In accordance with *IPRU-INV* 5.4.3R(ib)(A) ~~and *IPRU-INV* 5.4.4R~~, a *firm* which is a *depositary* of a *UCITS scheme* has a choice between:

(a) the basic indicator approach in article 315 of the *~~EU~~ UK CRR*; and

(b) the standardised approach in article 317 of the ~~*EU*~~ *UK CRR*.

…

5.4.7 G ~~The effect of *IPRU-INV* 5.4.4R is to apply the **financial resources requirement** to an *incoming EEA firm* with a *top-up permission* for *acting as trustee or depositary of a UCITS* in relation to its activity in the *UK* of *acting as trustee or depositary of a UCITS*.~~ [deleted]

…

5 App 1 Appendix 5(1): Glossary of terms for IPRU-INV 5

5 App 1.1G …

Term	Meaning
…	
qualifying capital item	means that part of a *firm's* capital which has the following characteristics:
	…
	~~Note: Verification by internal auditors will suffice until such time as EU provisions making external auditing mandatory have been implemented.~~
…	
specified trustee business	…
	2. For the purpose of this definition of "specified trustee business":
	…
	(e) government, local authority or international organisation means:
	…
	(iii) an international organisation the members of which include the United Kingdom ~~or another EEA State~~.
	…
…	

…

9 Financial resources requirements for an exempt CAD firm

…

9.2 General requirements

…

Initial capital and professional indemnity insurance requirements - exempt CAD firms that are not IMD insurance intermediaries

9.2.4 R (1) An *exempt CAD firm* which is not an *IMD insurance intermediary* must have:

…

(b) professional indemnity insurance covering the whole territory of the ~~*EEA*~~ *UK* or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 1,000,000 applying to each claim and in aggregate EUR 1,500,000 per year for all claims; or

…

…

Initial capital and professional indemnity insurance requirements – exempt CAD firms that are also IMD insurance intermediaries

…

9.2.5A G ~~Article 4(7) of the *Insurance Mediation Directive* requires the *limits of indemnity* to be reviewed every five years to take into account movements in European consumer prices. These *limits* will therefore be subject to further adjustments on the basis of index movements advised by the European Commission.~~ [deleted]

9.2.6 G A trade-off between *initial capital* and professional indemnity insurance is appropriate such that EUR 1 of *initial capital* is the equivalent of professional indemnity insurance cover of EUR 20 for a single claim against the *firm* and EUR 30 in aggregate.

…

9.4 Policy terms for professional indemnity insurance

Insurers whose professional indemnity insurance policies can be used by an exempt CAD firm

9.4.1 R An *exempt CAD firm* that has professional indemnity insurance in accordance with this chapter must take out and maintain professional indemnity insurance that is at least equal to the requirements of the rule below from:

(1) an *insurance undertaking* which is authorised to transact professional indemnity insurance in the ~~*EEA*~~ *UK*; or

…

…

11.1 INTRODUCTION

…

Purpose

11.1.4 R … ~~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) This original purpose of this chapter ~~also~~ was to ~~implement~~ implement relevant requirements of *AIFMD* and the *UCITS Directive*, which ~~includes~~ included imposing capital and professional indemnity insurance requirements on a *full-scope UK AIFM* and a *UCITS management company*. *AIFMD* and the *UCITS Directive* incorporate references to provisions of the *Banking Consolidation Directive* and the *Capital Adequacy Directive* in relation to initial capital, own funds and fixed overheads. However, in line with article 163 of the *CRD*, the *Banking Consolidation Directive* and the *Capital Adequacy Directive* ~~are~~ were repealed from 1 January 2014 and references to these directives ~~are~~ were replaced with references to the *CRD* and the *EU CRR* in line with the correlation table set out in Annex II to the *CRD* and in Annex IV to the *EU CRR*.

…

11.2 MAIN REQUIREMENTS

11.2.1 R A *firm* must:

…

(2) at all times, maintain *own funds* which equal or exceed:

(a) the higher of:

(i) the *funds under management requirement* (in line with *IPRU-INV* 11.3.2R); and

(ii) the amount specified in article 97 of the ~~EU~~ *UK CRR* (Own funds based on fixed overheads) (as replicated in *IPRU-INV* 11.3.3A~~EU~~UK)); plus

…

(3) at all times, hold liquid assets (in line with *IPRU-INV* 11.3.17R) which equal or exceed

(a) the higher of:

(i) the *funds under management requirement* (in line with *IPRU-INV* 11.3.2R) less the *base own funds requirement* (in line with *IPRU-INV* 11.3.1R); and

(ii) the amount specified in article 97 of the ~~EU~~ *UK CRR* (Own funds based on fixed overheads); plus

…

11.3 DETAIL OF MAIN REQUIREMENTS

…

Own Funds based on Fixed Overheads

11.3.3A ~~EU~~ UK (1) In accordance with Articles 95 and 96, an investment firm and firms referred to in point (2)(c) of Article 4(1) that provide the investment services and activities listed in the *UK* legislation that implemented points (2) and (4) of Section A of Annex I to Directive 2004/39/EC shall hold eligible capital of at least one quarter of the fixed overheads of the preceding year.

…

…

Professional negligence

11.3.11 G A *full-scope UK AIFM* should:

(1) cover the professional liability risks set out in article 12 of the *AIFMD level 2 regulation* (professional liability risks) (as replicated in *IPRU-INV* 11.3.12~~EU~~*UK*) by either:

(a) maintaining an amount of *own funds* in line with article 14 of the *AIFMD level 2 regulation* (additional own funds) (as replicated in *IPRU-INV* 11.3.14~~EU~~UK*)* (the *professional negligence capital requirement*); or

(b) holding professional indemnity insurance and maintaining an amount of *own funds* to meet the *PII capital requirement*

under article 15 of the *AIFMD level 2 regulation* (professional indemnity insurance) (as replicated in *IPRU-INV* 11.3.15~~EU~~UK) and *IPRU-INV* 11.3.16R; and

(2) comply with the qualitative requirements addressing professional liability risks in article 13 of the *AIFMD level 2 regulation* (qualitative requirements addressing professional liability risks) (as replicated in *IPRU-INV* 11.3.13~~EU~~UK).

Professional liability risks

11.3.12 ~~EU~~ UK (1) The professional liability risks to be covered pursuant to the *UK* legislation that implemented Article 9(7) of Directive 2011/61/EU shall be risks of loss or damage caused by a relevant person through the negligent performance of activities for which the AIFM has legal responsibility.

…

Qualitative requirements addressing professional liability risks

11.3.13 ~~EU~~ UK

Additional own funds

11.3.14 ~~EU~~ UK …

(4) The ~~competent authority of the home Member State of the AIFM~~ *FCA* may authorise the AIFM to provide additional own funds lower than the amount referred to in paragraph 2 only if it is satisfied - on the basis of the historical loss data of the AIFM as recorded over an observation period of at least three years prior to the assessment - that the AIFM provides sufficient additional own funds to appropriately cover professional liability risks. The authorised lower amount of additional own funds shall be not less than 0,008 % of the value of the portfolios of AIFs managed by the AIFM.

(5) The ~~competent authority of the home Member State of the AIFM~~ *FCA* may request the AIFM to provide additional own funds higher than the amount referred to in paragraph 2 if it is not satisfied that the AIFM has sufficient additional own funds to appropriately cover professional liability risks. The competent authority shall give reasons why it considers that the AIFM's additional own funds are insufficient.

…

Professional indemnity insurance

11.3.15 ~~EU~~ UK …

(2) An *AIFM* shall take out and maintain at all times professional indemnity insurance that:

…

Any agreed defined excess shall be fully covered by own funds which are in addition to the own funds to be provided in accordance with the *UK* legislation that implemented Article 9(1) and (3) of Directive 2011/61/EU.

…

11.6 ADDITIONAL REQUIREMENTS FOR COLLECTIVE PORTFOLIO MANAGEMENT INVESTMENT FIRMS

…

11.6.2 G …

(2) Subject to the conditions that the *firm* is not authorised to provide safekeeping and administration in relation to *shares* or *units* of collective investment undertakings and is not permitted to hold client money or client assets in relation to its *MiFID business* (and for that reason may not place itself in debt with those clients) competent authorities may allow the *firm* to stay on the capital requirements that would be binding on that firm as at 31 December 2013 under the *UK* legislation that implemented the *Banking Consolidation Directive* and the *Capital Adequacy Directive* (in line with article 95(2) of the ~~EU~~ *UK CRR*). The FCA ~~has~~ exercised this derogation and, as such, a firm meeting those conditions is a BIPRU firm. If the above conditions are not met, a *collective portfolio management investment firm* is an *IFPRU investment firm.*

…

12 Financial resources requirements for operators of electronic systems in relation to lending

…

12.2 Financial resources requirements

…

Financial resources requirement: firms carrying on other regulated activities

12.2.3 R The **financial resources requirement** for a *firm* carrying on one or more regulated activities in addition to operating an electronic system in relation to lending, is the higher of:

…

(2) the financial resources or own funds requirement which is applied by another *rule* or by directly applicable legislation of the ~~*EU*~~ *UK* to the *firm.*

…

13 Financial Resources Requirements for Personal Investment Firms

13.1 Application, general requirements and professional indemnity insurance requirements

…

Purpose

…

13.1.3 G Although financial resources and appropriate systems and controls can generally mitigate operational risk, professional indemnity insurance has a role in mitigating the risks a *firm* faces in its day-to-day operations, including those arising from not meeting the legally required standard of care when *advising on investments*. The purpose of the *rules* in this section is also to ensure that a *firm* has in place the type, and level, of professional indemnity insurance necessary to mitigate these risks. ~~This includes, in the case of a *UK firm* exercising an *EEA right*, cover for breaches of obligations imposed by or under laws, or provisions having the force of law, in each *EEA State* in which the *firm* carries on business.~~

…

Requirement to hold professional indemnity insurance

13.1.5 R A *firm* must take out and maintain at all times professional indemnity insurance that is at least equal to the requirements in this section from:

(1) an *insurance undertaking* which is authorised to transact professional indemnity insurance in the ~~*EEA*~~ *UK*; or

…

…

Limits of indemnity

…

13.1.14 G ~~Article 4(7) of the *Insurance Mediation Directive* requires the *limits of indemnity* to be reviewed every five years to take into account movements in European consumer prices. These *limits* will therefore be subject to further adjustments on the basis of index movements advised by the European Commission.~~ [deleted]

13.1.15 G If a policy is denominated in any currency other than euros, a *firm* must take reasonable steps to ensure that the *limits of indemnity* are, when the policy is effected (i.e. agreed) and at renewal, at least equivalent to those denominated in euros.

…

Annex A Limited liability partnerships: Eligible members' capital

Annex A 1 Introduction

…

Purpose

Annex A 1.4 G The purpose of this annex is to amplify *Principle* 8 (Financial resources) which requires a *firm* to maintain adequate financial resources to meet its investment business commitments and to withstand the risks to which its business is subject. This annex imposes various conditions that must be satisfied for members' capital to count as "Tier 1" or equivalent grade capital in meeting the *limited liability partnership's* financial resources requirement. These conditions are made up of conditions specific to *limited liability partnerships* ~~and general conditions based for the most part on those set out in article 57 of the *Banking Consolidation Directive*~~. This assists in the achievement of the *statutory objective* of consumer protection.

[**Note:** *BCD* Annex V Part 2 point 57]

…

TP 1 Table: Transitional provisions applying to IPRU(INV)

(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	*IPRU-INV* 9.2.5R and *IPRU-INV* 13.1.4(2)R(b)	R	~~The new limits of indemnity apply to a professional indemnity policy or a comparable guarantee commenced, renewed or extended with effect from or after 1 March 2009. Any other existing non-annual arrangements must be aligned with the new limits of indemnity before 1 March 2010~~ [expired]	~~1 March 2009 to 28 February 2010~~	~~1 March 2009~~
4	13.1.21 and 13.1.23	R	~~The requirement to hold additional capital resources where a policy excludes business or activities that have been carried out by the *firm* in the past or will be carried out by the *firm* only apply to a *professional indemnity policy* taken out, renewed or extended with effect from 31 December 2009.~~ [expired]	~~31 December 2009 to 31 December 2010~~	~~31 December 2009~~
…					
7	*IPRU-INV* 11	R	~~Where a *firm* falls within regulation 74(1) or 75(1) of the *AIFMD UK regulation* it need not include *AIFs* managed by it that~~	~~From 22 July 2013~~	~~22 July 2013~~

			~~fall within those regulations in the calculation of its *funds under management requirement*, *professional negligence capital requirement* or *PII excess capital requirement*.~~ [expired]		
…					
10	IPRU(INV) 12	R	~~IPRU(INV) 12 does not apply to a *firm* with an *interim permission*~~ [expired]	~~Indefinitely~~	~~1 April 2014~~
11	IPRU(INV) 12.2.6R(1)	R	~~The amount is replaced with £20,000~~ [expired]	~~From 1 April 2014 to 31 March 2017 From~~	~~1 April 2014~~
12	IPRU(INV) 12.3.5R	R	~~b = items 1,4 and 5 in the Table of items which must be deducted in arriving at a *firm's financial resources* (see IPRU(INV) 12.3.3R)~~ [expired]	~~1 April 2014 to 31 March 2017~~	~~1 April 2014~~
13	*IPRU-INV* 13.1A.3R(2)	R	~~A *firm* applying (b) or (c) above must have *initial capital* of at least £15,000.~~ [expired]	~~From 30 June 2016 to 29 June 2017~~	~~30 June 2016~~
14	*IPRU-INV* 13.1A.4R(2)	R	~~A *firm* applying (b) or (c) above must have *initial capital*~~	~~From 30 June 2016~~	~~30 June 2016~~

			~~of at least £15,000.~~ [expired]	~~to 29 June 2017~~	
15	*IPRU-INV* 13.13.2R(2)(a)	R	~~The *firm* must calculate its capital resources requirement as the higher of:~~ ~~(a) £15,000.~~ [expired]	~~From 30 June 2016 to 29 June 2017~~	~~30 June 2016~~
16	*IPRU-INV* 13.13.3R(2)(a)	R	~~The *firm* must calculate its capital resources requirement as the higher of:~~ ~~(a) £15,000.~~ [expired]	~~From 30 June 2016 to 29 June 2017~~	~~30 June 2016~~
17	*IPRU-INV* 13.15.9R and *IPRU-INV* 13.15.10R	R	~~These *rules* do not apply to a *category B3 firm* which is not a *network*, has fewer than 26 *financial advisers* or *representatives* and is not permitted to:~~ ~~(a) carry on discretionary portfolio management;~~ ~~(b) *establish, operate or wind up a personal pension scheme*; or~~ ~~(c) delegate the activities in (a) or (b) to an *investment firm.*~~ [expired]	~~From 30 June 2016 to 29 June 2017~~	~~30 June 2016~~

18	*IPRU(INV)* 5.4.3R(i)(ib)	R	~~A *depositary* of a *UCITS scheme* appointed before 18 March 2016 need not calculate its *own funds requirement* under articles 315 or 317 of the *EU CRR*.~~ [expired]	~~From 18 March 2016 until 18 March 2018~~	~~18 March 2016~~
19	*IPRU(INV)* 5.4.8R	R	~~A *depositary* of a *UCITS scheme* appointed before 18 March 2016 need not comply with *IPRU(INV)* 5.4.8R.~~ [expired]	~~From 18 March 2016 to 18 March 2018~~	~~18 March 2016~~

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 FCA Handbook

C. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex A to this instrument.

D. The Market Conduct sourcebook (MAR) is amended in accordance with Annex B to this instrument.

Citation

E. 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 set out in Annex 2 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 2 of the consultation paper.

(3) The amendments in this instrument are based on the text of the Handbook in force on 1 July 2018. If amendments are made to the relevant text between 1 July 2018 and 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, rather than the text of the Handbook in force on 1 July 2018.

(4) The consultation is based on the assumption that the Financial Conduct Authority will have the power under the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 to make the proposed rule changes.

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

…

Deposits (including structured deposits)

1.1.1A R This sourcebook applies to a *firm* with respect to activities carried on in relation to *deposits* from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom* only as follows:

	Section / chapter	Application in relation to deposits
(1)	*Rule*s in this sourcebook which ~~implement~~ implemented articles 24, 25, 26, 28 and 30 of *MiFID* (and related provisions of the *MiFID Delegated Directive*) (see *COBS* 1.1.1ADG).	A *MiFID investment firm*, a *third country investment firm* and a *MiFID optional exemption firm* when selling, or advising a *client* in relation to, a *structured deposit*.
…		

…

1.1.1A B ~~EU~~ UK Article 1(2) of the *MiFID Org Regulation* specifies how its provisions should be read where they apply to firms selling, or advising on, *structured deposits*.

> 1(2) References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements ~~referred to in Article 1(3) and 1(4) of Directive 2014/65/EU and their implementing provisions as set out under~~ (so far as relevant) in Chapters II to IV of this Regulation.

1.1.1A C R A *third country investment firm* and a *MiFID optional exemption firm* must also comply with the provisions of the *MiFID Org Regulation* which relate to the *rules* which implemented the articles of *MiFID* referred to in *COBS* 1.1.1AR(1), as modified by article 1(2) of the *MiFID Org Regulation*, when selling, or advising a client in relation to, a *structured deposit*.

1.1.1AD G The *rules* which implemented the provisions of *MiFID* and the *MiFID Delegated Directive* referred to in *COBS* 1.1.1AR(1) can be found in the chapters of *COBS* in the following table and are followed by a 'Note:'.

…

…

1.1.5 G *PERG* 13 contains general *guidance* on the *persons* and businesses to which the *UK* provisions which implemented *MiFID* apply.

1.1.6 G *PERG* 16 contains general *guidance* on the businesses to which the *UK* provisions which implemented *AIFMD* apply. *FUND* 1 contains *guidance* on the types of *AIFM*.

1.2 Markets in Financial Instruments Directive

References in COBS to the MiFID Org Regulation

1.2.1 G (1) This sourcebook contains a number of provisions which ~~transpose~~ transposed *MiFID*. A *rule* transposed a provision of *MiFID* if it is followed by a 'Note:' indicating the article of *MiFID* or the *MiFID Delegated Directive* which it transposed.

(2) In order to help *firms* which are subject to ~~the~~ those requirements ~~of~~ which implemented *MiFID* to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the ~~directly applicable~~ *MiFID Org Regulation*, marked with the status letters ~~"EU"~~ "UK". ~~The authentic provisions of the *MiFID Org Regulation* are directly applicable to *firms* in relation to their *MiFID business*.~~

(3) This sourcebook does not reproduce the *MiFID Org Regulation* in its entirety. A *firm* to which provisions of the *MiFID Org Regulation* applies should refer to the ~~electronic version of the Official Journal of the European Union for:~~ *MiFID Org Regulation*.

~~(a) the authentic version of the applicable articles of the *MiFID Org Regulation*; and~~

~~(b) a comprehensive statement of its obligations under the *MiFID Org Regulation*.~~

…

1.2.3 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)
…	
"derivative"	~~as defined in article 4(1)(49) of *MiFID*~~ those *financial instruments* referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the *Regulated Activities Order*
…	
"group"	as defined in ~~article 4(1)(34) of *MiFID*~~ section 421 of the *Act*
…	
"professional client covered by ~~Section 1 of Annex II to Directive 2014/65/EU~~ Part 2 of Schedule 1 to Regulation (EU) No 600/2014"	*per se professional client*
"professional client in accordance with ~~Section 2 of Annex II to Directive 2014/65/EU~~ Part 3 of Schedule 1 to Regulation (EU) No 600/2014"	*elective professional client*
…	

…

1.2.4 G *Firms* to which provisions of the *MiFID Org 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"

1.2.5 G (1) Certain of the provisions in this sourcebook which ~~implement~~ implemented *MiFID* require *firms* to provide *clients* with information "in good time".

…

ESMA Guidelines

[**Note:** *ESMA* has issued a number of guidelines under article 16(3) of the *ESMA* Regulation in relation to certain aspects of *MiFID*. These include:

guidelines on certain aspects of the *MiFID* suitability requirements which also include guidelines on conduct of business obligations, 21 August 2012/ESMA/2012/387 (EN); ~~. See [https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-387_en.pdf]~~;

guidelines on cross-selling practices, 11 July 2016/ESMA/2016/574 (EN) ~~. See [https://www.esma.europa.eu/sites/default/files/library/2016-574_en_guidelines_on_cross-selling_practices.pdf]~~; and

guidelines on complex debt instruments and *structured deposits*, 4 February 2016/ESMA/2015/1787 (EN) ~~. See [https://www.esma.europa.eu/sites/default/files/library/2015-1787_-_guidelines_on_complex_debt_instruments_and_structured_deposits.pdf]~~.

1 Annex 1 **Application (see COBS 1.1.2R)**

Part 1: What?

Modifications to the general application of COBS according to activities

1.	**Eligible counterparty business**		
1.1	R	The *COBS* provisions shown below do not apply to *eligible counterparty business*.	
		COBS provision	**Description**
		…	
		COBS 4 (other than *COBS* 4.2, *COBS* 4.4.1R, *COBS* ~~4.5A.9EU~~ 4.5A.9UK and *COBS* ~~4.7.-1AEU~~ 4.7.-1AUK)	Communicating with clients including financial promotions
		…	
		COBS 8A (other than *COBS* ~~8A.1.5EU~~ 8A.1.5UK to *COBS* 8A.1.8G)	Client agreements (MiFID provisions)
		…	
		COBS ~~12.2.18EU~~ 12.2.18UK	Labelling of non-independent research

		…	
…			
5.	**Consumer credit products**		
5.1	R	If a *firm*, in relation to its *MiFID business*, offers an *investment service* as part of a financial product that is subject to other provisions of ~~*EU*~~ *EU*-derived law related to *credit institutions* and consumer credits with respect to information requirements, that service is not subject to the rules in this sourcebook that ~~implement~~ implemented articles 24(3), (4) and (5) of *MiFID*.	
		[**Note:** article 24(6) of *MiFID*]	
…			
5A.	**Mortgages and mortgage bonds**		
5A.1	R	The *rule* in paragraph 5A.2R applies in relation to an *MCD credit agreement* with a *consumer* which is subject to the provisions concerning the creditworthiness assessment of *consumers* in Chapter 6 of the *MCD* (~~as~~ which were transposed in *MCOB* 11 and *MCOB* 11A).	
5A.2	R	If an agreement with a *consumer* within paragraph 5A.1R has as a pre-requisite the provision to that same *consumer* of an *investment service* in relation to mortgage bonds satisfying the conditions in paragraph 5A.3R in order for the loan to be payable, refinanced or redeemed, that *investment service* is not subject to the *rules* in this sourcebook which ~~implement~~ implemented article 25 of *MiFID*.	
…			

Part 2: Where?

Modifications to the general application according to location

1.	**EEA territorial scope rule: compatibility with European law**		
1.1	R	~~(1)~~	~~The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 3 for *guidance* on this).~~
		~~(2)~~	~~This *rule* overrides every other *rule* in this sourcebook.~~ [deleted]
1.2	R	…	
2.	**Business with UK clients from overseas establishments**		

…		
2.2	G	~~One of the effects of the *EEA territorial scope rule* is to override the application of this sourcebook to the overseas establishments of *EEA firms* in a number of cases, including circumstances covered by *MiFID*, the *Distance Marketing Directive* or the *Electronic Commerce Directive*. See Part 3 for *guidance* on this.~~ [deleted]

Part 3: Guidance

1.	**The main extensions, modifications and restrictions to the general application**		
…			
1.2	G	~~The provisions of the *Single Market Directives* and other directives also extensively modify the general application of this sourcebook, particularly in relation to territorial scope.~~ [deleted]	
…			
1.4	G	*COBS* 18 (Specialist regimes) contains specialist regimes which modify the application of the provisions in this sourcebook for particular types of *firm* and business. To the extent that they are in conflict, the *rules* in *COBS* 18 on the application of the provisions in this sourcebook should be understood as overriding any other provision (whether in *COBS* 1 or an individual chapter) on the application of *COBS*. ~~For the avoidance of doubt, nothing in *COBS* 18 modifies the effect of the *EEA territorial scope rule*.~~	
2.	**The Single Market Directives and other directives** [deleted]		
~~2.1~~	~~G~~	~~This *guidance* 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 *rule*, a *firm* will first need to consider whether the relevant situation involves a non-*UK* element. The *EEA territorial scope rule* 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 *United Kingdom* product. 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', the *EEA territorial scope rule* may change the general application of this sourcebook.	
2.3	G	When considering a particular situation, a *firm* should also consider whether two or more directives apply.	
3.	**MiFID: effect on territorial scope** [deleted]		
3.1	G	*PERG* 13 contains general *guidance* on the *persons* and businesses to which *MiFID* applies.	
3.2	G	This *guidance* concerns the *rules* within the scope of *MiFID* including those *rules* which are in the same subject area as the implementing *rules*. A *rule* is within the scope of *MiFID* if it is followed by a 'Note:' indicating the article of *MiFID* or the *MiFID Delegated Directive* which it implements.	
3.3	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*, but only where that business is not carried on within the territory of that State. (See articles 34(1), 35(1) and 35(8) of *MiFID*)	
3.4	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*. (See article 35(1) and 35(8) of *MiFID*)	
3.5	G	However, the *rules* on *investment research* and *non-independent research* (*COBS* 12.2, except for *COBS* 12.2.18EU) and the *rules* on *personal transactions* (*COBS* 11.7A) apply on a "home state" basis. This means that they apply to the establishments of a *UK MiFID investment firm* in the *United Kingdom* and another *EEA State* and do not apply to an *EEA MiFID investment firm*.	
3.6	G	*Firms* to which *MiFID* applies or which are subject to requirements in *MiFID* (including *MiFID optional exemption firms*) should also have regard to the *rules* and *guidance* in *COBS* 1.2.	
4.	**Insurance Mediation Directive: effect on territorial scope** [deleted]		
4.1	G	The *Insurance Mediation Directive's* scope covers most *firms* carrying on most types of *insurance mediation*. The *rules* in this sourcebook within the Directive's scope are those relating to *life policies* that require the provision of pre-contract information or	

		~~the provision of advice on the basis of a fair analysis. The *rules* implementing the minimum information and other requirements in articles 12 and 13 of the Directive are set out in *COBS* 7 (Insurance mediation) and *COBS* 9 (Suitability (including basic advice)).~~	
~~4.2~~	~~G~~	~~In the *FCA's* view, the responsibility for these minimum requirements rests with the *Home State*, but a *Host State* is entitled to impose additional requirements within the Directive's scope in the 'general good'. Accordingly, the general rules on territorial scope are modified so that:~~	
		~~(1)~~	~~for a *UK firm* providing *passported activities* through a *branch* in another *EEA State* under the Directive, the *rules* implementing the Directive's minimum requirements apply but the territorial scope of the additional *rules* within the Directive's scope is not modified;~~
		~~(2)~~	~~for an *EEA firm* providing *passported activities* under the Directive in the *United Kingdom*, the *rules* implementing the Directive's minimum requirements do not apply, but the additional *rules* within the Directive's scope have their unmodified territorial scope unless the *Home State* imposes measures of like effect. (See recital 19 and article 12(5) of the *Insurance Mediation Directive*)~~
5.	**Solvency II Directive: effect on territorial scope** [deleted]		
~~5.1~~	~~G~~	~~The *Solvency II Directive's* scope covers *long-term insurers*. The *rules* in this sourcebook within the Directive's scope are the cancellation *rules* (*COBS* 15) and those *rules* requiring the provision of pre-contract information or information during the term of the contract concerning the *insurer* or the *contract of insurance*. The Directive specifies minimum information and cancellation requirements and permits *EEA States* to adopt additional information requirements that are necessary for a proper understanding by the *policyholder* of the essential elements of the commitment.~~	
~~5.2~~	~~G~~	~~If the *State of the commitment* is an *EEA State*, the Directive provides that the applicable information rules and cancellation rules shall be laid down by that state. Accordingly, if the *State of the commitment* is the *United Kingdom*, the relevant *rules* in this sourcebook apply. Those *rules* do not apply if the *State of the commitment* is another *EEA State*. The territorial scope of other *rules*, in particular the *financial promotion rules*, is not affected since the Directive explicitly permits *EEA States* to apply rules, including advertising rules, in the 'general good'. (See articles 156, 180, 185 and 186 of the *Solvency II Directive*)~~	

6.	**Distance Marketing Directive: effect on territorial scope** [deleted]		
6.1	G	In broad terms, a *firm* is within the *Distance Marketing Directive's* scope when conducting an activity relating to a *distance contract* with a *consumer*. The *rules* in this sourcebook within the Directive's scope are those requiring the provision of pre-contract information, the cancellation rules (*COBS* 15) and the other specific *rules* implementing the Directive contained in *COBS* 5 (Distance communications).	
6.2	G	In the *FCA's* view, the Directive places responsibility for requirements within the Directive's scope on the *Home State* except in relation to business conducted through a branch, in which case the responsibility rests with the *EEA State* in which the branch is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis). (See article 16 of the *Distance Marketing Directive*)	
6.3	G	This means that relevant *rules* in this sourcebook will, in general, apply to a *firm* conducting business within the Directive's scope from an establishment in the *United Kingdom* (whether the *firm* is a national of the *UK* or of any other *EEA* or non-*EEA* state).	
6.4	G	Conversely, the territorial scope of the relevant *rules* in this sourcebook is modified as necessary so that they do not apply to a *firm* conducting business within the Directive's scope from an establishment in another *EEA state* if the *firm* is a national of the *United Kingdom* or of any other *EEA state*.	
6.5	G	In the *FCA's* view:	
		(1)	the 'country of origin' basis of the Directive is in line with that of the *Electronic Commerce Directive*; (See recital 6 of the *Distance Marketing Directive*)
		(2)	for business within the scope of both the *Distance Marketing Directive* and the *Solvency II Directive*, the territorial application of the *Distance Marketing Directive* takes precedence; in other words, the *rules* requiring pre-contract information and cancellation rules (*COBS* 15) derived from the *Solvency II Directive* apply on a 'country of origin' basis rather than being based on the *State of the commitment*; (See articles 4(1) and 16 of the *Distance Marketing Directive*)
		(3)	for business within the scope of both the *Distance Marketing Directive* and the *Insurance Mediation Directive*, the minimum information and other requirements in the *Insurance Mediation Directive* continue to be those applied by the '*Home State*', but the

			~~minimum requirements in the *Distance Marketing Directive* and any additional pre-contract information requirements are applied on a 'country of origin' basis. (The basis for this is that the *Insurance Mediation Directive* was adopted after the *Distance Marketing Directive* and is not expressed to be subject to it.)~~
7.	**Electronic Commerce Directive: effect on territorial scope** [deleted]		
~~7.1~~	~~G~~	~~The *Electronic Commerce Directive's* scope covers every *firm* carrying on an *electronic commerce activity*. Every *rule* in this sourcebook is within the Directive's scope.~~	
~~7.2~~	~~G~~	~~A key element of the Directive is the ability of a *person* from one *EEA* state to carry on an *electronic commerce activity* freely into another *EEA state*. Accordingly, the territorial application of the *rules* in this sourcebook is modified so that they apply at least 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*. Conversely, a *firm* that is a national of the *UK* or another *EEA State*, carrying on an *electronic commerce activity* from an *establishment* in another *EEA State* with or for a *person* in the *United Kingdom* need not comply with the *rules* in this sourcebook. (See article 3(1) and (2) of the *Electronic Commerce Directive*)~~	
~~7.3~~	~~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 *FCA* has adopted for this sourcebook. The derogation applies to an *insurer* that is authorised under and carrying on an *electronic commerce activity* within the scope of the *Solvency II Directive* and permits *EEA States* to continue to apply their advertising rules in the 'general good'. Where the derogation applies, the *financial promotion rules* continue to apply for incoming *electronic commerce activities* (unless the *firm's* 'country of origin' applies rules of like effect) but do not apply for outgoing *electronic commerce activities*. (See article 3(3) and Annex, fourth indent of the *Electronic Commerce Directive*; Annex to European Commission Discussion Paper MARKT/2541/03)~~	
~~7.4~~	~~G~~	~~In the *FCA's* 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 *Distance Marketing Directive*; and~~
		~~(2)~~	~~overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.~~
~~7.5~~	~~G~~	~~The 'derogations' in the Directive may enable other *EEA States* to adopt a different approach to the *United Kingdom* in certain fields.~~	

		(See recital 19 of the *Insurance Mediation Directive*, recital 6 of the *Distance Marketing Directive*, article 3 and Annex of the *Electronic Commerce Directive*)	
8.	**Investor Compensation Directive** [deleted]		
8.1	G	(1)	The *Investor Compensation Directive* generally requires *MiFID investment firms* to belong to a compensation scheme established in accordance with the Directive. The *rules* in this sourcebook that implement the Directive are those (i) requiring *MiFID investment firms*, including their branches, to make available specified information about the compensation scheme to which they belong and specifying the language in which such information must be provided (*COBS* 6.1.16 R) and (ii) restricting mention of the compensation scheme in advertising to factual references (*COBS* 4.2.5G).
		(2)	In the *FCA's* view, these matters are a *Home State* responsibility although a *Host State* may continue to apply its own rules in the 'general good'. Accordingly, these *rules* apply to the establishments of a *UK MiFID investment firm* in the *United Kingdom* and another *EEA State* but also apply in accordance with their standard territorial scope to an *EEA MiFID investment firm* providing services in the *UK* unless its *Home State* applies rules of like effect.
9.	**UCITS Directive: effect on territorial scope** [deleted]		
9.1	G	The *UCITS Directive* covers undertakings for collective investment in transferable securities (*UCITS*) meeting the requirements of the Directive, and their *management companies* and *depositaries*. The *rules* in this sourcebook within the Directive's scope (all of which will apply to a *management company*) are those in:	
		(1)	*COBS* 2.1 (Acting honestly, fairly and professionally);
		(2)	*COBS* 2.3 (Inducements);
		(3)	*COBS* 4.2.1R (The fair, clear and not misleading rule);
		(4)	*COBS* 4.3.1R (Financial promotions to be identifiable as such);
		(5)	*COBS* 4.13 (UCITS);
		(6)	*COBS* 11.2B (Best execution for UCITS management companies);

		(7)	*COBS* 11.3 (Client order handling);
		(8)	*COBS* 11.7 (Personal account dealing);
		(9)	*COBS* 14 (Providing product information to clients) relating to the provision of *key investor information* by the *management company* (in addition to applying to a *management company*, *COBS* 14.2 also applies to an *ICVC* that is a *UCITS scheme*); and
		(10)	*COBS* 16.2 (Occasional reporting).
9.1 A	G	The majority of the *COBS rules* referred to in paragraph 9.1 are rules of conduct which each *EEA State* must draw up under article 14.1 of the *UCITS Directive* which *management companies* authorised in that State must observe at all times. The exceptions are *COBS* 4 and *COBS* 14 in so far as they relate to a *UCITS scheme*, which form part of the *FCA's fund application rules* and which are the responsibility of the *UCITS Home State* (for a *UCITS scheme*, the *FCA* - see *COLL* 12.3.5R (*COLL* fund rules under the management company passport: the fund application rules) and article 19 of the *UCITS Directive*).	
9.1B	G	Where a *management company* is providing *collective portfolio management* services for a *UCITS* established in a different *EEA State*, responsibility for its compliance with the applicable rules of conduct drawn up under article 14 will generally be for the *management company's Home State*, but when a *branch* is established it will be the responsibility of the *Host Member State* (*UCITS Home State*) (see articles 17(4) and 17(5) of the *UCITS Directive*).	
9.1C	G	Under the *UCITS Directive* certain *Host State* marketing and *MiFID* specific rules might also apply to a *management company* providing *collective portfolio management* services for a *UCITS* established in a different *EEA State*. Consequently, an *EEA UCITS management company* should note that, under *COBS*, certain of the *FCA's rules* apply to it, including the *financial promotion rules*. *COBS* 4.13 (UCITS) is concerned with marketing communications for *UCITS schemes* and *EEA UCITS schemes*.	
9.1 D	G	*EEA UCITS management companies* should be aware that there is a special narrower application of *COBS* for *scheme management activity* provided for by *COBS* 18.5B (UCITS management companies).	
9.2	G	[deleted]	

~~9.3~~	~~G~~	~~The Directive does not affect the territorial scope of *rules* as they apply to an intermediary (that is not a *management company*) selling *units* of a *UCITS*.~~	
		~~[**Note:** articles 12, 14, 17, 18, 19 and 94 of the *UCITS Directive*]~~	
10.	**AIFMD: effect on territorial scope** [deleted]		
~~10.1~~	~~G~~	~~*PERG* 16 contains general *guidance* on the businesses to which *AIFMD* applies. *FUND* 1 contains *guidance* on the types of *AIFM*.~~	
~~10.2~~	~~G~~	~~The only *rule* in this sourcebook which implements *AIFMD* is *COBS* 2.1.4R, which applies to:~~	
		~~(1)~~	~~a full-scope *UK AIFM* operating from an establishment in the *UK* or a *branch* in another *EEA State*; and~~
		~~(2)~~	~~an *Incoming EEA AIFM branch*.~~
~~10.3~~	~~G~~	~~The other *rules* in *COBS* which apply to a *full-scope UK AIFM* or *incoming EEA AIFM* (including an *AIFM qualifier*) fall outside the scope of *AIFMD* and are, therefore, not affected by its territorial scope.~~	
~~10.4~~	~~G~~	~~*Incoming EEA AIFM branches* should be aware that there is a special narrower application of *COBS* for *AIFM investment management* functions provided for by *COBS* 18.5A (Full-scope UK AIFMs and incoming EEA AIFM branches).~~	

2 Conduct of business obligations

2.1 Acting honestly, fairly and professionally

The client's best interests rule

2.1.1 R …

(3) For a *management company*, this *rule* applies in relation to any *UCITS scheme* ~~or *EEA UCITS scheme*~~ the *firm* manages.

[**Note:** article 24(1) of *MiFID* and article 14(1)(a) and (b) of the *UCITS Directive*]

…

AIFMs' best interests rules

2.1.4 R A *full-scope UK AIFM* ~~and an *incoming EEA AIFM branch*~~ must, for all *AIFs* it manages:

…

[**Note:** article 12(1)(a), (b) and (f) and article 12(1) last paragraph of *AIFMD*]

…

2.3 Inducements relating to business other than MiFID, equivalent third country or optional exemption business

…

Rule on inducements

2.3.1 R A *firm* must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to *designated investment business* carried on for a *client* other than:

…

(2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a *person* acting on behalf of a third party, if:

…

(b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the *client*, in a manner that is comprehensive, accurate and understandable, before the provision of the service;

(i) this requirement only applies to business other than the carrying on by a *UK UCITS management company* ~~or *EEA UCITS management company*~~ of the *collective portfolio management* activities of investment management and administration for the relevant *scheme* if it includes:

…

(ii) where this requirement applies to business other than the carrying on by a *UK UCITS management company* ~~or *EEA UCITS management company*~~ of the *collective portfolio management* activities of investment management and administration for the relevant *scheme*, a *firm* is not required to make a disclosure to the client in relation to a non-monetary benefit permitted under (a) and which falls within the table of reasonable non-

monetary benefits in *COBS* 2.3.15G as though that table were part of this *rule* for this purpose only;

…

(c) in relation to the carrying on by a *UK UCITS management company* ~~or *EEA UCITS management company*~~ of the collective portfolio management activities of investment management and administration for the relevant *scheme* or when carrying on a *regulated activity* in relation to a *retail investment product*, or when *advising on P2P agreements*, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the *client*; or

…

[**Note:** articles 29(1) and 29(2) of the *UCITS implementing Directive*]

2.3.1A R *COBS* 2.3.1R applies to a *UK UCITS management company* ~~and *EEA UCITS management company*~~ when providing *collective portfolio management* services, as if references to a *client*, were references to any *UCITS* it manages.

[**Note:** article 29(1) of the *UCITS implementing Directive*]

…

2.3.2A R *COBS* 2.3.2R applies to a *UK UCITS management company* ~~and *EEA UCITS management company*~~ when providing *collective portfolio management* services, as if references to a *client* were references to a *Unitholder* of the *scheme*.

[**Note:** article 29(2) of the *UCITS implementing Directive*]

…

2.3A Inducements relating to MiFID, equivalent third country or optional exemption business

…

2.3A.13 R In implementing the requirements of *COBS* 2.3A.10R to *COBS* 2.3A.12R, a *fi*rm must take into account the costs and charges *rules* ~~set out~~ in ~~article 24(4)(c) of *MiFID*~~ *COBS* 6.1ZA.11R and *COBS* 6.1ZA.12R and article 50 of the *MiFID Org Regulation* (see ~~*COBS* 6.1ZA.11R to *COBS* 6.1ZA.13R and *COBS* 6.1ZA.14EU~~ 6.1ZA.14UK).

[**Note:** article 11(5) of the *MiFID Delegated Directive*]

…

Acceptable minor non-monetary benefits

2.3A.19 R An acceptable minor non-monetary benefit is one which:

(1) is clearly disclosed prior to the provision of the relevant service to the *client*, which the *firm* may describe in a generic way (where applicable, in accordance with ~~article 11(5)(a) of the *MiFID Delegated Directive* (see~~ *COBS* 2.3A.10R~~)~~);

…

…

2.3C Research and execution services

Application

2.3C.1 R This section applies to an *investment firm* providing execution services to:

…

(2) an *investment firm* authorised under the *UK* provisions which implemented *MiFID* that is not within (1); or

…

(7) ~~an *incoming EEA AIFM branch*; or~~ [deleted]

…

…

2.4 Agent as client and reliance on others

…

2.4.2 G This section is not relevant to, nor does it affect:

…

(3) any obligation imposed on a *firm* by article 26 of *MiFIR* or ~~RTS 22~~ *MiFID RTS 22*.

…

Reliance on other investment firms: MiFID and equivalent business

2.4.4 R (1) This *rule* applies if a *firm* (F1), in the course of performing *MiFID or equivalent third country business*, receives an instruction to

provide an *investment* or *ancillary service* on behalf of a *client* (C) through another *firm* (F2), if F2 is:

…

(b) an *investment firm* that is:

(i) a *firm* ~~or authorised in another *EEA State*~~; and

(ii) subject to equivalent relevant requirements.

…

2.4.5 G (1) If F1 is required to perform a suitability assessment or an appropriateness assessment under *COBS* 9A or *COBS* 10A, it may rely upon a suitability assessment performed by F2, if F2 was subject to the requirements for assessing suitability in *COBS* 9A (excluding the *basic advice rules*) ~~or equivalent requirements in another *EEA State*~~ in performing that assessment.

(2) If F1 is required to perform an appropriateness assessment under *COBS* 10A, it may rely upon an appropriateness assessment performed by F2, if F2 was subject to the requirements for assessing appropriateness in *COBS* 10A.2~~, or equivalent requirements in another *EEA State*~~ in performing that assessment.

…

3 Client categorisation

3.1 Application

…

3.1.2A R Subject to *COBS* 3.1.3R and *COBS* 3.6.4CR, in this chapter provisions marked ~~"EU"~~ "UK" apply to a *firm's* business other than *MiFID business* as if they were *rules*.

…

3.2 Clients

General definition

3.2.1 R …

(4) A client of an *appointed representative* or, if applicable, a *tied agent* is a "client" of the *firm* for whom that *appointed representative*, or *tied agent*, acts or intends to act in the course of business for which that *firm* has accepted responsibility under the *Act* ~~or *MiFID*~~ (see sections 39 and 39A of the *Act* ~~and *SUP* 12.3.5R~~).

…

…

3.3 General notifications

3.3.1A ~~EU~~ UK Articles 45(1) and (2) of the *MiFID Org Regulation* require *firms* to provide *clients* with specified information concerning *client* categorisation.

> 45(1) Investment firms shall notify new clients, and existing clients that the investment firm has newly categorised as required by ~~Directive 2014/65/EU~~ UK law on markets in financial instruments, of their categorisation as a retail client, a professional client or an eligible counterparty in accordance with that Directive.
>
> …

3.3.1B R The information referred to in article 45(2) of the *MiFID Org Regulation* (as reproduced at *COBS* ~~3.3.1AEU~~ 3.3.1AUK) must be provided to *clients* prior to any provision of services.

[**Note:** paragraph 2 of section I of annex II to *MiFID*]

…

3.5 Professional clients

…

Per se professional clients

3.5.2 R Each of the following is a *per se professional client* unless and to the extent it is an *eligible counterparty* or is given a different categorisation under this chapter:

(1) an entity required to be authorised or regulated to operate in the financial markets. The following list includes all authorised entities carrying out the characteristic activities of the entities mentioned, whether authorised ~~by an *EEA State*~~ in the *UK* or a third country ~~and whether or not authorised by reference to a directive~~:

…

…

3.5.3E R (1) A *firm* may treat a non-*UK* local public authority or municipality as an *elective professional client* if it complies with *COBS* 3.5.3R(1) and *COBS* 3.5.3R(3) and, in addition, applies the ~~relevant~~ "quantitative test" ~~under paragraph (2)~~ that is applied in relation to *MiFID or equivalent third country business* under *COBS* 3.5.3R(2).

(2) ~~The relevant "quantitative test" under this *rule* is either:~~

~~(a) where the local public authority or municipality is established in an *EEA State* and the *EEA State* has adopted alternative or additional criteria to those listed in the fifth paragraph to section II.1 of annex II to *MiFID*, those criteria as set out in the law or measures of that *EEA State*; or~~

~~(b) in any other case the same "quantitative test" that is applied in relation to *MiFID or equivalent third country business* under *COBS* 3.5.3R(2).~~ [deleted]

…

3.5.5 G The fitness test applied to managers and directors of ~~entities licensed under directives in the financial field~~ relevant *firms* is an example of the assessment of expertise and knowledge involved in the qualitative test.

[**Note:** fourth paragraph of section II.1 of annex II to *MiFID*]

…

3.6 Eligible counterparties

…

Per se eligible counterparties

3.6.2 R Each of the following is a *per se eligible counterparty* (including an entity that is not from ~~an *EEA State*~~ the *UK* that is equivalent to any of the following) unless and to the extent it is given a different categorisation under this chapter:

…

(4) a *collective investment scheme* authorised under the *UK* provisions which implemented the *UCITS Directive* or its management company;

…

(6) another financial institution authorised or regulated ~~under *EU* legislation or the national law of an *EEA State*~~ under the law of the *United Kingdom*;

…

…

Elective eligible counterparties

3.6.4 R A *firm* may treat a *client* as an *elective eligible counterparty* in relation to business other than *MiFID or equivalent third country business* if:

…

(2) the *firm* adheres to the procedure set out at *COBS* ~~3.6.4BEU~~ 3.6.4BUK.

3.6.4A R Provided that it adheres to the procedure set out at *COBS* ~~3.6.4BEU~~ 3.6.4BUK, a *firm* may treat a *client* as an *elective eligible counterparty* in relation to *MiFID or equivalent third country business* if the *client*:

…

3.6.4B ~~EU~~ UK Article 71(5) of the *MiFID Org Regulation* sets out the procedure to be followed where a *client* requests to be treated as an *eligible counterparty*.

> 71(5) Where a client requests to be treated as an eligible counterparty, in accordance with ~~Article 30(3) of Directive 2014/65/EU~~ [*COBS* 3.6.4AR], the following procedure shall be followed:
>
> …

3.6.5 G The categories of *elective eligible counterparties* include an equivalent undertaking that is not from ~~an *EEA State*~~ the *United Kingdom* provided the above conditions and requirements are satisfied.

…

Client and firm located in different jurisdictions

3.6.7 R ~~In the case of *MiFID or equivalent third country business*, in the event of a transaction where the prospective counterparties are located in different *EEA States*, the *firm* shall defer to the status of the other undertaking as determined by the law or measures of the *EEA State* in which that undertaking is established.~~ [deleted]

~~[**Note:** first paragraph of article 30(3) of *MiFID*]~~

3.7 Providing clients with a higher level of protection

…

3.7.3A ~~EU~~ UK Article 45(3) of the *MiFID Org Regulation* sets out provisions in respect of giving *clients* a higher level of protection.

> 45(3) Investment firms may, either on their own initiative or at the request of the client concerned treat a client in the following manner:

(a) as a professional or retail client where that client might otherwise be classified as an eligible counterparty pursuant to ~~Article 30(2) of Directive 2014/65/EU~~ [*COBS* 3.6.2R];

(b) a retail client where that client that is considered a professional client pursuant to ~~Section I of Annex II to Directive 2014/65/EU~~ Part 2 of Schedule 1 to Regulation (EU) No 600/2014.

3.7.3B ~~EU~~ UK Article 71(2) to (4) of the *MiFID Org Regulation* sets out provisions applying to *eligible counterparties* requesting a higher level of protection.

71(2) Where, pursuant to ~~the second subparagraph of Article 30(2) of that Directive 2014/65/EU~~ [*COBS* 3.7.1R], an eligible counterparty requests treatment as a client whose business with an investment firm is subject to ~~Articles 24, 25, 27 and 28 of that Directive~~ rules in the Conduct of Business; Market Conduct; Senior Management Arrangements, Systems and Controls and the Product Intervention and Product Governance sourcebooks which were relied on immediately before exit day to implement Articles 24, 25, 27 and 28 of Directive 2014/65/EU ("the relevant rules"), the request should be made in writing, and shall indicate whether the treatment as retail client or professional client refers to one or more investment services or transactions, or one or more types of transaction or product.

(3) Where an eligible counterparty requests treatment as a client whose business with an investment firm is subject to ~~Articles 24, 25, 27 and 28 of Directive 2014/65/EU~~ the relevant rules, but does not expressly request treatment as a retail client, the firm shall treat that eligible counterparty as a professional client.

(4) Where the eligible counterparty expressly requests treatment as a retail client, the investment firm shall treat the eligible counterparty as a retail client, applying the provisions in respect of requests of non-professional treatment specified in ~~the second, third and fourth sub-paragraphs of Section I of Annex II to Directive 2014/65/EU~~ paragraph 3(b), (c), (d) and 4 of Schedule 1 to Regulation (EU) No 600/2014.

…

4 Communicating with clients, including financial promotions

4.1 Application

…

~~Where? Modifications to comply with EU law~~

4.1.9 G ~~(1)~~ ~~The *EEA territorial scope rule* modifies the general territorial scope of the *rules* in this chapter to the extent necessary to be compatible~~

~~with European law. This means that in a number of cases, the *rules* in this chapter will apply to communications made by *UK firms* to *persons* located outside the *United Kingdom* and will not apply to communications made to persons inside the *United Kingdom* by *EEA firms*. Further *guidance* on this is located in *COBS* 1 Annex 1.~~

~~(2)~~ ~~One effect of the *EEA territorial scope rule* is that the *rules* in this chapter will not generally apply to an *EEA key investor information document* but will, for example, apply to a *firm* (including an *EEA UCITS management company*) when *marketing* in the *United Kingdom* the *units* of an *EEA UCITS scheme* that is a *recognised scheme*.~~

~~(3)~~ ~~The *financial promotion rules* do not apply to incoming communications in relation to the *MiFID business* of an *investment firm* from another *EEA State* that are, in its *home member state*, regulated under *MiFID* other than to the extent *COBS* 4.12 (Restrictions on the promotion of *non-mainstream pooled investments*) applies.~~ [deleted]

…

4.5A Communicating with clients (including past, simulated past and future performance) (MiFID provisions)

…

4.5A.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).

4.5A.2A 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*.

General requirements

4.5A.3 ~~EU~~ UK …

…

Comparative information

4.5A.7 ~~EU~~ UK …

Referring to tax

4.5A.8 ~~EU~~ UK …

Consistent financial promotions

4.5A.9	~~EU~~ UK	…

Past performance

4.5A.10	~~EU~~ UK	44(4) Where the information contains an indication of past performance of a financial instrument, a financial index or an investment service, investment firms shall ensure that the following conditions are satisfied: (a) that indication is not the most prominent feature of the communication; (b) the information must include appropriate performance information which covers the preceding 5 years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has been provided where less than five years, or such longer period as the firm may decide, and in every case that performance information is based on complete 12-month periods; (c) the reference period and the source of information is clearly stated; (d) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results; (e) where the indication relies on figures denominated in a currency other than ~~that of the Member State in which the retail client or potential retail client is resident~~ pounds sterling, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations; (f) where the indication is based on gross performance, the effect of commissions, fees or other charges are disclosed.

[**Note:** article 44(4) of the *MiFID Org Regulation*]

…

Simulated past performance

4.5A.12	~~EU~~ UK	…

4.5A.13	G	For the purposes of *COBS* ~~4.5A.12EU~~ 4.5A.12UK, the conditions referred to in article 44(5)(b) can be found reproduced in *COBS* ~~4.5A.10EU~~ 4.5A.10UK.

Future performance

4.5A.14	~~EU~~ UK	…
4.5A.15	G	A *firm* should not provide information on future performance if it is not able to obtain the objective data needed to comply with the requirements regarding information on the future performance in *COBS* ~~4.5A.14EU~~ 4.5A.14UK. For example, objective data in relation to *EIS shares* may be difficult to obtain.

Information that uses the name of any competent authority

4.5A.16	~~EU~~ UK	…

4.6 Past, simulated past and future performance (non-MiFID provisions)

…

Past performance

4.6.2	R	A *firm* must ensure that information that contains an indication of past performance of *relevant business*, a *relevant investment* or a financial index, satisfies the following conditions: … (5) if the indication relies on figures denominated in a currency other than ~~that of the *EEA State* in which the *retail client* is resident~~ pounds sterling, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations; …

…

4.7 Direct offer financial promotions

Application

4.7.-1	G	(1) *COBS* ~~4.7.-1AEU~~ 4.7.-1AUK to *COBS* 4.7.1R contain provisions on the communication of *direct offer financial promotions*. (2) In broad terms:

(a) *COBS* ~~4.7.-1AEU~~ 4.7.-1AUK is relevant to a *firm* communicating a *direct offer financial promotion* in relation to its *MiFID, equivalent third country or optional exemption business*; and

(b) …

(3) However, a *MiFID investment firm*, *third country investment firm* or *MiFID optional exemption firm* which is subject to the requirements in *COBS* ~~4.7.-1AEU~~ 4.7.-1AUK may be subject to the *rule* in *COBS* 4.7.1R to the extent that it communicates a *direct offer financial promotion*:

…

Direct offer financial promotions relating to MiFID, equivalent third country or optional exemption business

4.7.-1A	~~EU~~ UK	46(6) …

Effect of provisions marked ~~"EU"~~ UK for third country investment firms and MiFID optional exemptions firms

4.7.-1B	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).
4.7.-1C	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*.
4.7.-1D	G	For the purposes of *COBS* ~~4.7.-1AEU~~ 4.7.-1AUK, the provisions of articles 47 to 50 of the *MiFID Org Regulation* can be found reproduced in *COBS* 6.1ZA and *COBS* 14.3A.

…

4.7.5A	G	*COBS* 4.13.2R (Marketing communications relating to UCITS schemes ~~or EEA UCITS schemes~~) and *COBS* 4.13.3R (Marketing communications relating to feeder UCITS) contain additional disclosure requirements for *firms* in relation to marketing communications (other than *key investor information*) that concern particular investment strategies of a *UCITS scheme* ~~or *EEA UCITS scheme*~~.

…

4.13 UCITS

Application

4.13.1 R (1) This section applies to a *firm* in relation to a communication to a *client*, including an *excluded communication*, that is a marketing communication within the meaning of the *UCITS Directive*.

(2) This section does not apply to:

(a) *image advertising*; or

(b) the *instrument constituting the fund*, the *prospectus*, the *key investor information* or the periodic reports and accounts of ~~either~~ a *UCITS scheme* ~~or an *EEA UCITS scheme*~~.

…

Marketing communications relating to UCITS schemes ~~or EEA UCITS schemes~~

4.13.2 R (1) A *firm* must ensure that a marketing communication that comprises an invitation to purchase *units in a UCITS scheme* ~~or *EEA UCITS scheme*~~ and that contains specific information about the *scheme*:

(a) makes no statement that contradicts or diminishes the significance of the information contained in the *prospectus* and the *key investor information document* ~~or *EEA key investor information document*~~ for the scheme;

(b) indicates that a *prospectus* exists for the *scheme* and that the *key investor information document* ~~or *EEA key investor information document*~~ is available; and

(c) specifies where and in which language such information or documents may be obtained by investors or potential investors or how they may obtain access to them.

(2) Where a *UCITS scheme* ~~or an *EEA UCITS scheme*~~ may invest more than 35% of its *scheme property* in *transferable securities* and money market instruments issued or guaranteed by <u>the *United Kingdom* or</u> an *EEA State*, one or more of its local authorities, a third country or a public international body to which <u>the *United Kingdom* or</u> one or more *EEA States* belong, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to the investment policy and indicating the particular ~~*EEA States*~~ <u>countries</u> , local authorities, third countries or public international bodies in the *securities* of which the *scheme* intends to invest or has invested more than 35% of its *scheme property*.

(3) Where a *UCITS scheme* ~~or *EEA UCITS scheme*~~ invests principally in *units* in *collective investment schemes*, *deposits* or *derivatives*, or replicates a stock or debt securities index in accordance with *COLL* 5.2.31R (Schemes replicating an index) ~~or equivalent national measures implementing article 53 of the *UCITS Directive*~~, the *firm*

must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to the investment policy.

(4) Where the net asset value of a *UCITS scheme* ~~or *EEA UCITS scheme*~~ has, or is likely to have, high volatility owing to its portfolio composition or the portfolio management techniques that are or may be used, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to that characteristic.

[**Note:** articles 54(3), 70(2), 70(3) and 77 of the *UCITS Directive*]

Marketing communications relating to a feeder UCITS

4.13.3 R A *firm* must ensure that a marketing communication (other than a *key investor information document* ~~or *EEA key investor information document*~~) relating to a *feeder UCITS* contains a statement that the *feeder UCITS* permanently invests at least 85% in value of its assets in *units* of its *master UCITS*.

[**Note:** article 63(4) of the *UCITS Directive*]

…

6 Information about the firm, its services and remuneration

6.1 Information about the firm and compensation information (non-MiFID provisions)

…

Information about a firm and its services

6.1.4 R A *firm* must provide a *client* with the following general information, if relevant:

…

(4) a statement of the fact that the *firm* is authorised ~~and the name of the *competent authority* that has authorised it~~ by the *FCA* or the *PRA*, as applicable;

…

…

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:

…

(d) if applicable, that accounts that contain *designated investments* or *client money* belonging to that *client* are or will be subject to the law of a jurisdiction other than that of ~~a *EEA State*~~ the *United Kingdom*, an indication that the rights of the *client* relating to those instruments or money may differ accordingly;

(e) …

…

…

6.1ZA Information about the firm and compensation information (MiFID provisions)

…

Effect of provisions marked ~~"EU"~~ "UK" for third country investment firms and MiFID optional exemption firms

6.1ZA.3 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).

6.1ZA.4 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*.

[**Note:** ESMA has issued guidelines under article 16(3) of the ESMA Regulation on cross-selling practices, 11 July 2016/ESMA/2016/574 (EN). ~~See https://www.esma.europa.eu/sites/default/files/library/2016-574_en_guidelines_on_cross-selling_practices.pdf~~]

Information about a firm and its services

6.1ZA.5 ~~EU~~ UK 47(1) Investment firms shall provide clients or potential clients with the following general information, where relevant:

…

(e) where the investment firm is acting through a tied agent, a statement of this fact ~~specifying the Member State in which that agent is registered~~;

(f) the nature, frequency and timing of the reports on the performance of the service to be provided by the investment

firm to the client in accordance with ~~Article 25(6) of Directive 2014/65/EU~~ [*COBS* 9A.3.2R and *COBS* 16A.2.1R];

(g) where the investment firm holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the firm by virtue of its activities in ~~a Member State~~ the United Kingdom;

…

6.1ZA.6 G ~~Reference in *COBS* 6.1ZA.5EU to "Article 25(6) of Directive 2014/65/EU" is to the requirements in *COBS* 16A.2.1R.~~ [deleted]

…

Information about a firm's portfolio management service

6.1ZA.8 ~~EU~~ UK …

Information concerning safeguarding of financial instruments belonging to clients and client money

6.1ZA.9 ~~EU~~ UK …

49(5) The investment firm shall inform the client or potential client where accounts that contain financial instruments or funds belonging to that client or potential client are or will be subject to the law of a jurisdiction other than that of ~~a Member State~~ the United Kingdom and shall indicate that the rights of the client or potential client relating to those financial instruments or funds may differ accordingly.

…

…

Information about costs and associated charges

6.1ZA.14 ~~EU~~ UK 50(1) For the purposes of providing information to clients on all costs and charges pursuant to ~~Article 24(4) of Directive 2014/65/EU~~ [*COBS* 6.1ZA.11R] ("the relevant rule"), investment firms shall comply with the detailed requirements in paragraphs 2 to 10.

Without prejudice to the obligations set out in ~~Article 24(4) of Directive 2014/65/EU~~ the relevant rule, investment firms providing investment services to professional clients shall have the right to

agree to a limited application of the detailed requirements set out in this Article with these clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.

Without prejudice to the obligations set out in ~~Article 24(4) of Directive 2014/65/EU~~ the relevant rule, investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this Article, except when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients.

…

…

50(5) The obligation to provide in good time a full ex-ante disclosure of information about the aggregated costs and charges related to the financial instrument and to the investment or ancillary service provided shall apply to investment firms in the following situations:

(a) …

(b) where the investment firment providing any investment services is required to provide clients with a UCITS KIID or PRIIPs KID in relation to the relevant financial instruments~~, in accordance with relevant Union legislation~~.

50(6) Investment firms that do not recommend or market a financial instrument to the client or are not obliged to provide the client with a KID/KIID ~~in accordance with relevant Union legislation~~ shall inform their clients about all costs and charges relating to the investment and/or ancillary service provided.

…

…

Timing of disclosure

6.1ZA.17	~~EU~~ UK	…
6.1ZA.18	G	The following provisions of *COBS* reproduce the information requirements contained in Articles 47 to 50 of the *MiFID Org Regulation*: *COBS* ~~6.1ZA.5EU~~ 6.1ZA.5UK, *COBS* ~~6.1ZA.8EU~~ 6.1ZA.8UK, *COBS* ~~6.1ZA.9EU~~ 6.1ZA.9UK, *COBS* ~~6.1ZA.2.14EU~~ 6.1ZA.14UK, and *COBS* ~~14.3A.5EU~~ 14.3A.5UK.

Medium of disclosure

6.1ZA.19	~~EU~~ UK	…

Keeping the client up to date

6.1ZA.20	~~EU~~ UK	…

…

6.2B Describing advice services

…

Introduction

6.2B.5 G This section ~~transposes~~ transposed provisions in *MiFID* on describing advice services relating to *financial instruments* and *structured deposits* for all *clients* and reproduces a number of provisions of the ~~directly applicable~~ *MiFID Org Regulation* as explained in *COBS* 1.2. The requirements apply in relation to *MiFID, equivalent third country or optional exemption business*. The requirements are extended to apply to other *investment advice* and cover other *retail investment products* when the *client* is a *retail client* in the *United Kingdom*.

…

Interpretation of ~~EU~~ provisions marked "UK": MiFID business

6.2B.7 R A *firm* must treat obligations in relation to *financial instruments* as extending to other *retail investment products* when complying with the provisions in this section marked ~~"EU"~~ "UK" in the course of *MiFID business* with a *retail client* in the *United Kingdom*.

6.2B.8 G References to *financial instruments* include *structured deposits* (but not other *retail investment products*) when a *firm* is complying with the provisions in this section marked ~~"EU"~~ "UK" in the course of *MiFID business* with a *retail client* outside the *United Kingdom* or with a *professional client*.

…

Interpretation of ~~EU~~ provisions marked "UK": non-MiFID business

6.2B.9 R In relation to business that is not *MiFID business*, a *firm* must comply with provisions in this section marked ~~"EU"~~ "UK" as if they were *rules* but:

(1) …

(2) (for business that is not *equivalent business of a third country investment firm* or *MiFID optional exemption business*) the *firm* need not comply with the following provisions of the *MiFID Org Regulation*:

(a) the requirement in paragraph 2 of article 52(1) of the *MiFID Org Regulation* (reproduced in *COBS* ~~6.2B.32EU~~ 6.2B.32UK) not to give undue prominence to their *independent advice* services;

(b) the requirement in article 52(4) of the *MiFID Org Regulation* (reproduced in *COBS* ~~6.2B.36EU~~ 6.2B.36UK) to distinguish the range of *financial instruments* issued or provided by entities not being closely linked with the *firm*; and

(c) the requirement in article 53(3)(c) of the *MiFID Org Regulation* (reproduced in *COBS* ~~6.2B.29EU~~ 6.2B.29UK) that a *firm* does not allow a natural person to provide both *independent advice* and *restricted advice*.

…

6.2B.15	~~EU~~ UK	…

6.2B.16 G (1) *COBS* ~~6.2B.15EU~~ 6.2B.15UK means that a *firm* providing *independent advice* need not provide advice on all relevant products. A *firm* may market itself as, for example, an independent stockbroker that provides *independent advice* on *shares* only. A *firm* might alternatively market itself on the basis of providing *independent advice* on a particular product market such as ethical and socially responsible investments. The requirements in *COBS* ~~6.2B.15EU~~ 6.2B.15UK apply to ensure that *clients* of a *firm* that provides *independent advice* on a focused basis properly understand the nature of the advice that they will receive and that the service is appropriate.

…

Sufficient range

6.2B.17 G The extent of the assessment which a *firm* is required to undertake in order to meet the requirement to assess a sufficient range of relevant products will depend on:

(1) the nature of the *independent advice* service provided by the *firm* (general or focused) for the purposes of *COBS* ~~6.2B.15EU~~ 6.2B.15UK.

…

6.2B.18	~~EU~~ UK	53(1)	Investment firms providing investment advice on an independent basis shall define and implement a selection process to assess and compare a sufficient range of financial instruments available on the market in accordance with ~~Article 24(7)(a) of Directive 2014/65/EU~~ [*COBS* 6.2B.11R]. The selection process shall include the following elements: …
6.2B.19	G	(1)	…
		(2)	Notwithstanding (1), since the assessment conducted by the *firm* must be such as to ensure the *client's* investment objectives can be suitably met, a *firm* providing *independent advice* should be in a position to advise on all types of relevant product within the scope of the market (for the purposes of *COBS* ~~6.2B.15EU~~ 6.2B.15UK) on which it provides advice. When the *client* is a *retail client* in the *United Kingdom*, this means being in a position to advise on all types of *financial instrument*, *structured deposit* and other *retail investment products*.
		…	

…

6.2B.22	G	The fact that a *firm* is owned by, or owns, in whole or in part, the issuer or provider of relevant products does not prevent that *firm* from providing *independent advice*, provided that the *firm's* assessment of relevant products is:	
		…	
		(3)	not biased (*COBS* ~~6.2B.18EU~~ 6.2B.18UK).

…

Requirements for firms providing both independent and restricted advice

6.2B.29	~~EU~~ UK	53(3)	An investment firm offering investment advice on both an independent basis and on a non-independent basis shall comply with the following obligations:
		(a)	in good time before the provision of its services, the investment firm has informed its clients, in a durable medium, whether the advice will be independent or non-independent in accordance with ~~Article 24(4)(a) of Directive 2014/65/EU~~ [*COBS* 6.2B.33R] and the relevant implementing measures;

		…

…

6.2B.3 2	~~EU~~ UK	…
…		
6.2B.3 5	~~EU~~ UK	…
6.2B.3 6	~~EU~~ UK	…

…

6.4 Disclosure of charges, remuneration and commission

…

6.4.2 G ~~Under the territorial application *rules* in *COBS* 1, the *rules* in this section apply to:~~

~~(1)~~ ~~a *UK firm's* business carried on from an establishment in an *EEA State* other than the United Kingdom for a *retail client* in the *United Kingdom* unless, if the office from which the activity is carried on were a separate *person*, the activity:~~

~~(a)~~ ~~would fall within the overseas *persons* exclusion in article 72 of the *Regulated Activities Order*; or~~

~~(b)~~ ~~would not be regarded as carried on in the *United Kingdom*.~~

~~(2)~~ ~~a *firm's* business carried on from an establishment in the *United Kingdom* carried on for a *client* in an other *EEA State*.~~ [deleted]

Disclosure of commission (or equivalent) for packaged products

6.4.3 R …

(4) This *rule* does not apply if:

…

(b) the *retail client* is not present in the ~~*EEA*~~ *United Kingdom* at the time of the transaction; or

…

…

…

8A Client agreements (MiFID provisions)

8A.1 Client agreements (MiFID, equivalent third country or optional exemption business)

Application and purpose provisions

…

8A.1.2 R Provisions in this chapter marked ~~"EU"~~ "UK" apply to *MiFID optional exemption firms* as if they were *rules*.

…

Providing a client agreement: retail and professional clients

8A.1.4	~~EU~~ UK	58	Investment firms providing any investment service or the ancillary service referred to in ~~Section B(1) of Annex I to Directive 2014/65/EC~~ paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order to a client after the date of application of this Regulation shall enter into a written basic agreement with the client, in paper or another durable medium, with the client setting out the essential rights and obligations of the firm and the client. Investment firms providing investment advice shall comply with this obligation only where a periodic assessment of the suitability of the financial instruments or services recommended is performed. … (c) a description of the main features of any services referred to in ~~Section B(1) of Annex I to Directive 2014/65/EC~~ paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order to be provided, including where applicable the role of the firm with respect to corporate actions relating to client instruments and the terms on which securities financing transactions involving client securities will generate a return for the client.

[**Note:** article 58 of the *MiFID Org Regulation*]

General requirement for information to clients

8A.1.5	~~EU~~ UK	…
8A.1.6	~~EU~~ UK	…
8A.1.7	~~EU~~	…

	UK	

…

8A.1.10	~~EU~~ UK	…

…

9 Suitability (including basic advice) (non-MiFID provisions)

…

9.4 Suitability reports

…

9.4.3 R The obligation to provide a *suitability report* does not apply:

(1) …

(2) if the *client* is habitually resident outside the ~~*EEA*~~ *United Kingdom* and the *client* is not present in the *United Kingdom* at the time of acknowledging consent to the proposal form to which the *personal recommendation* relates;

…

…

9A Suitability (MiFID provisions)

9A.1 Application and purpose

Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation on certain aspects of the MiFID suitability requirements, 21 August 2012/ESMA/2012/387 (EN). ~~See https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-387_en.pdf.~~

…

Effect of provisions marked ~~"EU"~~ "UK" for third country investment firms and MiFID optional exemption firms

9A.1.2 R Provisions in this chapter marked ~~"EU"~~ "UK" apply in relation to *MiFID optional exemption business* as if they were *rules*.

9A.1.3 G The effect of *GEN* 2.2.22AR is that provisions in this chapter marked ~~"EU"~~ "UK" also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

9A.2 Assessing suitability: the obligations

…

Assessing the extent of the information required

9A.2.4	~~EU~~ UK	…

Professional clients

9A.2.5	~~EU~~ UK	54(3) … Where that investment service consists in the provision of investment advice to a professional client covered by ~~Section 1 of Annex II to Directive 2014/65/EU~~ Part 2 of Schedule 1 to Regulation (EU) No 600/2014), the investment firm shall be entitled to assume for the purposes of point (b) of paragraph 2 that the client is able financially to bear any related investment risks consistent with the investment objectives of that client.

[**Note:** article 54(3) of the *MiFID Org Regulation*]

Obtaining information about knowledge and experience

9A.2.6	~~EU~~ UK	…

Obtaining information about a client's financial situation

9A.2.7	~~EU~~ UK	…

Obtaining information about a client's investment objectives

9A.2.8	~~EU~~ UK	…

Reliability of information

9A.2.9	~~EU~~ UK	…

Maintaining adequate and up-to-date information

9A.2.10	~~EU~~ UK	…

Discouraging the provision of information

9A.2.11	~~EU~~ UK	55(2)	An investment firm shall not discourage a client or potential client from providing information required for the purposes of ~~Article 25(2) and (3) of Directive 2014/65/EU~~ [*COBS* 9A.2.1R and *COBS* 10A.2.1R].

Reliance on information

9A.2.12	~~EU~~ UK	…

Insufficient information

9A.2.13	~~EU~~ UK	54(8) Where, when providing the investment service of investment advice or portfolio management, an investment firm does not obtain the information required under ~~Article 25(2) of Directive 2014/65/EU~~ [*COBS* 9A.2.1R], the firm shall not recommend investment services or financial instruments to the client or potential client.

[**Note:** article 54(8) of the *MiFID Org Regulation*]

…

Identifying the subject of a suitability assessment

9A.2.15	~~EU~~ UK	54(6)	… Where a natural person is represented by another natural person or where a legal person having requested treatment as professional client in accordance with ~~Section 2 of Annex II to Directive 2014/65/EU~~ Part 3 of Schedule 1 to Regulation (EU) No 600/2014 is to be considered for the suitability assessment, the financial situation and investment objectives shall be those of the legal person or, in relation to the natural person, the underlying client rather than of the representative. The knowledge and experience shall be that of the representative of the natural person or the person authorised to carry out transactions on behalf of the underlying client.

[**Note:** article 54(6) of the *MiFID Org Regulation*]

…

Switching

9A.2.18	~~EU~~ UK	…

Adequate policies and procedures

9A.2.19	~~EU~~	…

	UK	

Unsuitability

9A.2.20	~~EU~~ UK	…

…

Automated or semi-automated systems

9A.2.23	~~EU~~ UK	…

9A.3 Information to be provided to the client

Explaining the reasons for assessing suitability

9A.3.1	~~EU~~ UK	54(1) Investment firms shall not create any ambiguity or confusion about their responsibilities in the process when assessing the suitability of investment services or financial instruments in accordance with ~~Article 25(2) of Directive 2014/65/EU~~ [*COBS* 9A.2.1R]. When undertaking the suitability assessment, the firm shall inform clients or potential clients, clearly and simply, that the reason for assessing suitability is to enable the firm to act in the client's best interest.

[**Note:** first paragraph of article 54(1) of the *MiFID Org Regulation*]

…

Providing a suitability report

9A.3.3	~~EU~~ UK	…

…

9A.3.8	~~EU~~ UK	…
9A.3.9	~~EU~~ UK	…

…

10 Appropriateness (for non-MiFID non-advised services) (non-MiFID provisions)

…

10.5 Assessing appropriateness: guidance

…

Independent valuation systems

10.5.5 G The circumstances in which valuation systems will be independent of the issuer (see *COBS* 10.4.1R(3)(b)) include where they are overseen by a depositary that is regulated as a provider of depositary services in ~~a *EEA State*~~ the *United Kingdom*.

…

10A Appropriateness (for non-advised services) (MiFID provisions)

10A.1 Application

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation on complex debt instruments and structured deposits, 4 February 2016/ESMA/2015/1787 (EN).] ~~See [https://www.esma.europa.eu/sites/default/files/library/2015-1787_-_guidelines_on_complex_debt_instruments_and_structured_deposits.pdf]~~

…

Effect of provisions marked ~~EU~~ "UK"

10A.1.3 R The effect of *GEN* 2.2.22AR is that provisions in this chapter marked ~~"EU"~~ "UK" also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

10A.2 Assessing appropriateness: the obligations

…

Assessing a client's knowledge and experience

10A.2.3 ~~EU~~ UK

56(1) Investment firms, shall determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded when assessing whether an investment service as referred to in ~~Article 25(3) of Directive 2014/65/EU~~ [*COBS* 10A.1.1R] is appropriate for a client.

…

Information regarding a client's knowledge and experience

10A.2.4 ~~EU~~ UK

…

Discouraging the provision of information

10A.2.5	~~EU~~ UK	55(2)	An investment firm shall not discourage a client or potential client from providing information required for the purposes of ~~Article 25(2) and (3) of Directive 2014/65/EU~~ [*COBS* 9A.2.1R and *COBS* 10A.2.1R].

Reliance on information

10A.2.6	~~EU~~ UK	…	

…

10A.4 Assessing appropriateness: when it need not be done

…

Non-complex financial instruments

10A.4.2	~~EU~~ UK	57	A financial instrument which is not explicitly specified in ~~Article 25(4)(a) of Directive 2014/65/EU~~ [*COBS* 10A.4.1R(2)] shall be considered as non-complex for the purposes of ~~Article 25(4)(a)(vi) of Directive 2014/65/EU~~ paragraph (2)(f) of that rule if it satisfies the following criteria: (a) ~~it does not fall within Article 4(1)(44)(c) of, or points (4) to (11) of Section C of Annex I to Directive 2014/65/EU~~ it does not fall within Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order; …

…

10A.7 Record keeping and retention periods for appropriateness records

…

10A.7.2	~~EU~~ UK	…	

…

11 Dealing and managing

11.1 Application

General application

…

11.1.2 R Save as may be provided in the relevant sections, in this chapter, provisions marked ~~"EU"~~ "UK" apply to a *firm* which is not a *MiFID investment firm* as if they were *rules*.

…

11.1.5 G ~~The *EEA territorial scope rule* modifies the default territorial scope of the section on personal account dealing (see *COBS* 11.7 and *COBS* 11.7A) to the extent necessary to be compatible with European law (see paragraph 1.1G5 of Part 3 of *COBS* 1 Annex 1). This means that the section on personal account dealing also applies to passported activities carried on by a *UK MiFID investment firm* or a *UK UCITS management company* from a *branch* in another *EEA state*, but does not apply to the *UK branch* of an *EEA MiFID investment firm* in relation to its *MiFID business* or of an *EEA UCITS management company* in relation to activities it is entitled to carry on in the *United Kingdom* under the *UCITS Directive*.~~ [deleted]

…

11.2 Best execution for AIFMs and residual CIS operators

Application

11.2-7 G This section applies to:

(1) a small authorised *UK AIFM* and a *residual CIS operator* in accordance with *COBS* 18.5.2R; and

(2) a *full-scope UK AIFM* ~~and an *incoming EEA AIFM branch*~~, in accordance with *COBS* 18.5A.3R.

…

11.2-5 G In accordance with *COBS* 18.5A.8R, only the following provisions of this section apply to a *full-scope UK AIFM* ~~and an *incoming EEA AIFM branch*~~:

…

Obligation to execute orders on terms most favourable to the client

11.2.1 R A *firm* must take all reasonable steps to obtain, when executing orders, the best possible result for its *clients* taking into account the *execution factors*.

[**Note:** The Committee of European Securities Regulators (*CESR*) has issued a Question and Answer paper on best execution under the first Markets in Financial Instruments Directive (MiFID I, 2004/39/EU). This paper also incorporates the European Commission's response to CESR's questions regarding the scope of the best execution obligations under

MiFID I. ~~The paper can be found at: *https://www.esma.europa.eu/sites/default/files/library/2015/11/07_320.pdf*~~ See 'CESR Questions & Answers: Best Execution under MiFID', May 2007, Ref: CESR/07-320]

…

11.2.23A R A *full-scope UK AIFM* ~~and an *incoming EEA AIFM branch*~~ must make available appropriate information on its execution policy required under article 27(3) of the *AIFMD level 2 regulation* (Execution of decisions to deal on behalf of the managed AIF) and on any material changes to that policy to the investors in of each *AIF* it manages.

…

11.2A Best execution – MiFID provisions

11.2A.1 R (1) Subject to (2) to (4), the following provisions apply to a *firm's* business other than *MiFID business* as if they were *rules*:

(a) provisions within this chapter marked ~~"EU"~~ "UK"; and

(b) ~~*COBS* 11 Annex 1EU~~ *COBS* 11 Annex 1UK (Regulatory Technical Standard (RTS 28)).

(2) The following provisions do not apply to *MiFID optional exemption firm's business*:

(a) the part of the first sub-paragraph of article 65(6) to the *MiFID Org Regulation* (reproduced at ~~*COBS* 11.2A.34EU~~ *COBS* 11.2A.34UK) that reads:

"In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the ~~technical standards developed under Article 27(10)(b) of Directive 2014/65/EU~~ Commission Delegated Regulation (EU) 2017/576 supplementing Directive 2014/65/EU of the European Parliament and of the Council 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, or any technical standards made by the Financial Conduct Authority under paragraph 27(b) of Schedule 1 to Regulation (EU) 2014/600."; and

(b) ~~*COBS* 11 Annex 1EU~~ *COBS* 11 Annex 1UK (Regulatory Technical Standard (RTS 28)).

(3) This chapter does not apply (but *COBS* 11.2B applies) to *UCITS management companies* when carrying on *scheme management activity*.

(4) This chapter does not apply (but *COBS* 11.2 applies) to *AIFMs* when carrying on *AIFM investment management functions* and *residual CIS operators*.

…

Best execution criteria

11.2A.8 ~~EU~~ UK

~~Article 64 of the *MiFID Org Regulation* sets out best execution criteria.~~

64 (1) When executing client orders, investment firms shall take into account the following criteria for determining the relative importance of the factors referred to in ~~Article 27(1) of Directive 2014/65/EU~~ [*COBS* 11.2A.2R]:

…

(2) An investment firm satisfies its obligation under ~~Article 27(1) of Directive 2014/65/EU~~ [*COBS* 11.2A.2R, *COBS* 11.2A.3G, *COBS* 11.2A.9R, *COBS* 11.2A.12R and *COBS* 11.2A.15R] to take all sufficient steps to obtain the best possible result for a client to the extent that it executes an order or a specific aspect of an order following specific instructions from the client relating to the order or the specific aspect of the order.

…

Execution policies

11.2A.25 ~~EU~~ UK

~~Article 66 of the *MiFID Org Regulation* sets out requirements concerning execution policies.~~

66 (1) Investment firms shall review, at least on an annual basis execution policy established pursuant to ~~Article 27(4) of Directive 2014/65/EU~~ [*COBS* 11.2A.20R], as well as their order execution arrangements.

…

(3) Investment firms shall provide clients with the following details on their execution policy in good time prior to the provision of the service:

(a) an account of the relative importance the investment firm assigns, in accordance with the criteria specified in Article 59(1), to the factors referred to in ~~Article 27(1) of Directive 2014/65/EU~~ [*COBS* 11.2A.2R], or the process by which the firm determines the relative importance of those factors.

…

(6) Investment firms shall only receive third-party payments that comply with ~~Article 24(9) of Directive 2014/65/EU~~ [*COBS* 2.3A.5R, *COBS* 2.3A.6R and *COBS* 2.3A.7E] and shall inform clients about the inducements that the firm may receive from the execution venues. The information shall specify the fees charged by the investment firm to all counterparties involved in the transaction, and where the fees vary depending on the client, the information shall indicate the maximum fees or range of the fees that may be payable.

(7) Where an investment firm charges more than one participant in a transaction, in compliance with ~~Article 24(9) of Directive 2014/65/EU and its implementing measures~~ [*COBS* 2.3A.5R, *COBS* 2.3A.6R and *COBS* 2.3A.7E], the firm shall inform its client of the value of any monetary or non-monetary benefits received by the firm.

…

(9) Where an investment firm executes orders for retail clients, it shall provide those clients with a summary of the relevant policy, focused on the total cost they incur. The summary shall also provide a link to the most recent execution quality data published in accordance with ~~Article 27(3) of Directive 2014/65/EU~~ [*COBS* 11.2C.1R, *MAR* 5.3.1AR(5), *MAR* 5A.4.2R(3) and *MAR* 6.3A.1R] and paragraph 4C of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 for each execution venue listed by the investment firm in its execution policy.

…

11.2A.33 G In order to obtain the best execution for a client, a *firm* should compare and analyse relevant data, including that made public in accordance with *COBS* 11.2A.38G, *COBS* 11.2C and article 27(3) of *MiFID* and respective implementing measures.

…

Duty of portfolio managers, receivers and transmitters to act in client's best interest

11.2A.34 ~~EU~~ UK ~~Article 65 of the *MiFID Org Regulation* sets out the duty of *firms* carrying out certain activities to act in the best interests of the *client*.~~

65 (1) Investment firms, when providing portfolio management, shall comply with the obligation under ~~Article 24(1) of Directive 2014/65/EU~~ [*COBS* 2.1.1R] to act in accordance with the best interests of their clients when placing orders with other entities for execution that result from decisions by the investment firm to deal in financial instruments on behalf of its client.

(2) Investment firms, when providing the service of reception and transmission of orders, shall comply with the obligation under ~~Article 24(1) of Directive 2014/65/EU~~ [*COBS* 2.1.1R] to act in accordance with

the best interests of their clients when transmitting client orders to other entities for execution.

…

(6) Investment firms shall provide information to their clients on the policy established in accordance with paragraph 5 and paragraphs 2 to 9 of Article 66. Investment firms shall provide clients with appropriate information about the firm and its services and the entities chosen for execution. In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the ~~technical standards developed under Article 27(10)(b) of Directive 2014/65/EU~~ Commission Delegated Regulation (EU) 2017/576 supplementing Directive 2014/65/EU of the European Parliament and of the Council 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, or any technical standards made by the Financial Conduct Authority under paragraph 20(b) of Schedule 3 to Regulation (EU) 600/2014.

…

(8) This Article shall not apply where the investment firm that provides the service of portfolio management or reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases, ~~Article 27 of Directive 2014/65/EU~~ Articles 64 and 66 of this Regulation, technical standards made under Article 27(10) of Directive 2014/65/EC and rules in [*COBS*] which were relied on immediately before exit to implement Article 27 of Directive 2014/65/EU shall apply.

…

11.2B Best execution for UCITS management companies

…

11.2B.3 G References in this chapter to a *scheme* are to a *UCITS scheme* ~~or an *EEA UCITS scheme*~~.

…

11.2B.26 R (1) A *management company* of an *ICVC* that is a *UCITS scheme*~~, or an *EEA UCITS scheme*~~ that is structured as an investment company, must obtain the prior consent of the *ICVC* or investment company to the execution policy.

…

…

11.2B.36 R …

(2) The information must be consistent with the information published in accordance with ~~*COBS* 11 Annex 1EU~~ *COBS* 11 Annex 1UK (Regulatory technical standard 28) (which applies as *rules* in accordance with *COBS* 18.5B.2R).

…

11.2C Quality of execution

…

11.2C.2 R …

[**Note:** article 27(3) of *MiFID* and *MiFID RTS 27*]

…

11.3 Client order handling

General principles

11.3.1 R …

(3) A *UCITS management company* providing *collective portfolio management* services, must establish and implement procedures and arrangements in respect of all *client* orders it carries out which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the *UCITS scheme* ~~or *EEA UCITS scheme*~~ it manages.

…

11.3.1A R (1) Subject to (2) and (3) in this chapter provisions marked ~~"EU"~~ "UK" apply to a *firm's* business other than *MiFID business* as if they were *rules*.

(2) Provisions ~~marked "EU"~~ which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to all *firms* as guidance.

(3) ~~*COBS* 11.3.4AEU~~ *COBS* 11.3.4AUK, which reproduces article 67(2) of the *MiFID Org Regulation*, does not apply to a *UCITS management company*.

…

Carrying out client orders

11.3.2A	~~EU~~ UK	~~Article 67(1) of the *MiFID Org Regulation* requires *firms* to satisfy conditions when carrying out *client* orders.~~ …

…

Settlement of executed orders

11.3.4A	~~EU~~ UK	~~Article 67(2) of the *MiFID Org Regulation* places requirements on *firms* which are responsible for overseeing and arranging the settlement of an executed order.~~ …

…

Use of information relating to pending client orders

11.3.5A	~~EU~~ UK	~~Article 67(3) of the *MiFID Org Regulation* sets out requirements concerning the use of information relating to pending *client* orders.~~ …

…

Aggregation and allocation of orders

…

11.3.7A	~~EU~~ UK	~~Article 68(1) of the *MiFID Org Regulation* sets out requirements to be met where a *firm* carries out a *client* order or a transaction for own account in aggregation with another *client* order.~~ …
11.3.7B	R	A *management company* must ensure that the order allocation policy referred to in article 68(1)(c) of the *MiFID Org Regulation*, reproduced at ~~*COBS* 11.3.7AEU~~ *COBS* 11.3.7AUK, is in sufficiently precise terms.

…

Partial execution of aggregated client orders

11.3.8A	~~EU~~ UK	~~Article 68(2) of the *MiFID Org Regulation* sets out requirements concerning partial execution of aggregated *client* orders.~~ …

Aggregation and allocation of transactions for own account

…

11.3.9A ~~EU~~ UK ~~Article 69(1) of the *MiFID Org Regulation* sets out requirements concerning aggregated transactions.~~

…

…

11.3.10A ~~EU~~ UK ~~Article 69(2) of the *MiFID Org Regulation* sets out allocation priorities where a *firm* aggregates a *client* order in accordance with its allocation policy referred to in article 68(1)(c) (see *COBS* 11.3.7AEU).~~

…

…

11.3.11A ~~EU~~ UK ~~Article 69(3) of the *MiFID Org Regulation* introduces requirements for order allocation policy, referred to in article 68(1)(c) (see *COBS* 11.3.7AEU), where transactions for own account are executed in combination with *client* orders.~~

…

…

Provisions which implemented the ~~Transposition of~~ client order handling provisions in the UCITS Implementing Directive

11.3.14 G …

(3) Some of these provisions ~~have been~~ were used to transpose provisions of the *UCITS implementing Directive*, as set out in the table below:

MiFID Org Regulation Provision	**COBS 11.3 provision**	**UCITS implementing Directive transposition**
article 67(1)	~~*COBS* 11.3.2AEU~~ *COBS* 11.3.2AUK	article 27(1) second paragraph
article 67(3)	~~*COBS* 11.3.5AEU~~ *COBS* 11.3.5AUK	article 27(2)
article 68(1)	~~*COBS* 11.3.7AEU~~ *COBS* 11.3.7AUK, as modified by *COBS* 11.3.7BR	article 28(1)
article 68(2)	~~*COBS* 11.3.8AEU~~ *COBS* 11.3.8AUK	article 28(2)

article 69(1)	~~*COBS* 11.3.9AEU~~ *COBS* 11.3.9AUK	article 28(3)
article 69(2)	~~*COBS* 11.3.10AEU~~ *COBS* 11.3.10AUK	article 28(4)

11.4 Client limit orders

Obligation to make unexecuted client limit orders public

11.4-1 R In this chapter provisions marked ~~"EU"~~ "UK" apply to a *firm's* business other than *MiFID business* as if they were *rules*.

…

How client limit orders may be made public

11.4.3A ~~EU~~ UK ~~Article 70(1) of the *MiFID Org Regulation* provides when *client limit orders* shall be considered as being available to the public.~~

70 (1) A client limit order in respect of shares admitted to trading on a regulated market or traded on a trading venue which have not been immediately executed under prevailing market condition as referred to in ~~Article 28(2) of Directive 2014/65/EU~~ [*COBS* 11.4.1R] shall be considered available to the public when the investment firm has submitted the order for execution to a regulated market or a MTF or the order has been published by ~~a data reporting services provider located in one Member State~~ a person authorised to provide data reporting services under the Data Reporting Services Regulations 2017 and can be easily executed as soon as market conditions allow.

…

Orders that are large in scale

11.4.5 R The obligation in *COBS* 11.4.1R to make public a *limit order* is disapplied in respect of transactions that are large in scale compared with normal market as determined under article 4 of *MiFIR*.

…

…

11.5A Record keeping: client orders and transactions

11.5A.1 R (1) Subject to (2), in this chapter provisions marked ~~"EU"~~ "UK" apply to a *firm's* business other than *MiFID business* as if they were *rules*.

(2) Provisions in this chapter which are marked ~~"EU"~~ "UK" do not apply to *corporate finance business* carried on by a *firm* which is not a *MiFID investment firm*.

Recording initial orders received from clients

11.5A.2 ~~EU~~ UK ~~Article 74 of the *MiFID Org Regulation*, together with Section 1 of Annex IV to that Regulation which is reproduced at *COBS* 11.5A.4EU , makes provision for record keeping of initial orders from *clients*.~~

74 An investment firm shall, in relation to every initial order received from a client and in relation to every initial decision to deal taken, immediately record and keep at the disposal of the competent authority at least the details set out in Section 1 of Annex IV [reproduced below at ~~COBS 11.5A.4EU~~ *COBS* 11.5A.4UK] to this Regulation to the extent they are applicable to the order or decision to deal in question.

Where the details set out in Section 1 of Annex IV to this Regulation are also prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014, these details should be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014.

Record keeping in relation to transactions and order processing

11.5A.3 ~~EU~~ UK ~~Article 75 of the *MiFID Org Regulation*, together with Section 2 of Annex IV to that Regulation which is reproduced at *COBS* 11.5A.5EU , makes provision for record keeping in relation to transactions and order processing.~~

75 Investment firms shall, immediately after receiving a client order or making a decision to deal to the extent they are applicable to the order or decision to deal in question, record and keep at the disposal of the competent authority at least the details set out in Section 2 of Annex IV [reproduced below at ~~COBS 11.5A.5EU~~ *COBS* 11.5A.5UK].

Where the details set out in Section 2 of Annex IV are also prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014, they shall be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation (EU) No 600/2014.

Minimum details to be recorded in relation to client orders and decisions to deal

11.5A.4 ~~EU~~ UK ~~Annex IV Section 1 of the *MiFID Org Regulation* makes provision for record keeping of *client* orders and decisions to deal.~~

…

16. The date and exact time of the receipt of the order or the date and exact time of when the decision to deal was made. The exact time must be measured according to the methodology prescribed ~~under the standards on clock synchronisation under Article 50(2) Directive 2014/65/EU~~ in Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical

standards made by the Financial Conduct Authority under paragraph 33 of Schedule 1.

Minimum details to be recorded in relation to transactions and order processing

11.5A.5 ~~EU~~ UK ~~Annex IV Section 2 of the *MiFID Org Regulation* makes provision for record keeping of transactions and order processing.~~

…

32. The date and exact time of submission of the order or decision to deal. The exact time must be measured according to the methodology prescribed ~~under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU~~ in Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical standards made by the Financial Conduct Authority under paragraph 26 of Schedule 3.

…

34. The date and exact time any message that is transmitted to and received from another investment firm in relation to events affecting an order. The exact time must be measured according to the methodology prescribed ~~under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU~~ in Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical standards made by the Financial Conduct Authority under paragraph 26 of Schedule 3.

…

11.7 Personal account dealing

…

Rule on personal account dealing

11.7.1 R

…

11.7.3 G For the purposes of *COBS* 11.7.1R (1)(c), any other obligation of the *firm* under the *UK* provisions which implemented *MiFID* refers to a *firm's* obligations under the *regulatory system* that are not owed to a *customer* ~~and any of the *firm's* obligations under another *EEA States'* implementation of *MiFID* where it operates a *branch* in the *EEA*~~.

Disapplication of rule on personal account dealing

11.7.5 R

…

11.7A Personal account dealing relating to MiFID, equivalent third country or optional exemption business

…

11.7A.2 R

(1) Subject to (2), in this chapter provisions marked ~~"EU"~~ "UK" apply to a *firm* in relation to its equivalent third country or optional exemption business as if they were *rules*.

(2) In this chapter, provisions ~~marked "EU"~~ which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to a *firm* in relation to its business which is the *equivalent business of a third country investment firm* or *MiFID optional exemption business* as *guidance*.

…

Scope of personal transactions

11.7A.4 ~~EU~~ UK

~~EU Article 28 of the *MiFID Org Regulation* sets out the scope of personal transactions.~~

…

Requirements relating to personal transactions

11.7A.5 ~~EU~~ UK

~~Article 29 of the *MiFID Org Regulation* sets out detailed provision concerning personal transactions.~~

…

(2) Investment firms shall ensure that relevant persons do not enter into a personal transaction which meets at least one of the following criteria:

(a) that person is prohibited from entering into it under Regulation (EU) No 596/2014;

(b) it involves the misuse or improper disclosure of that confidential information;

(c) it conflicts or is likely to conflict with an obligation of the investment firm under ~~Directive 2014/65/EU~~ UK law on markets in financial instruments.

…

(6) Paragraphs 1 to 5 shall not apply to the following personal transactions:

…

(b) personal transactions in undertakings for collective investments in transferable securities (UCITS) or AIFs that are subject to supervision under the law of ~~a Member State~~ the United Kingdom which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

…

11 Annex 1 **~~EU~~ UK** **Regulatory Technical Standard 28 (RTS 28)**

COMMISSION DELEGATED REGULATION (EU) ~~…~~ 2017/~~…~~ 576 of 8~~.6.~~ June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council 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 (Text with EEA relevance)

…

HAS ADOPTED THIS REGULATION

Article -2 Application

This Regulation applies to:

a MiFID investment firm and a UK RIE and 'MiFID investment firm' and 'UK RIE' are defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority.

Article -1 Interpretation

(1) Where a term is defined in Article 4 of Directive 2014/65/EU, the same definition applies for this Regulation except where it is defined in Article 2 Regulation 600/2014/EU, as amended by the [Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], in which case that definition applies;

(2) Article 2(1)(57) and (58) of Regulation 600/2014/EU apply for the purposes of this Regulation; and

(3) References to tick size bands are to those in Commission Delegated Regulation 2017/588, as amended by FCA Instrument [ ].

…

Article 3 Information on the top five execution venues and quality of

execution obtained

3. Investment firms shall publish for each class of financial instruments, a summary of the analysis and conclusions they draw from their detailed monitoring of the quality of execution venues where they executed all client orders in the previous year. The information shall include:

…

(h) where applicable, an explanation of how the investment firm has used output of a consolidated tape provider ~~established under Article 65 of Directive 2014/65/EU~~ authorised in accordance with the Data Reporting Services Regulations 2017.

…

…

11A Underwriting and placing

11A.1 Underwriting and placing

General application

11A.1.1 R (1) This chapter applies only to *MiFID or equivalent third country business*.

(2) Subject to (3), in this chapter provisions marked ~~"EU"~~ "UK" apply to the *equivalent business of a third country investment* as if they were *rules*.

(3) In this chapter, provisions ~~marked "EU"~~ which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to the *equivalent business of a third country investment firm as guidance*.

Requirements to provide specific information to issuer clients

11A.1.2 ~~EU~~ UK ~~Article 38(1) of the *MiFID Org Regulation* sets out requirements for firms to provide specified information to issuer *clients* before accepting a mandate to manage an offering.~~

38 (1) Investment firms which provide advice on corporate finance strategy, as set out in ~~Section B(3) of Annex I~~ Paragraph 3 of Part 3A of Schedule 2 to the Regulated Activities Order, and provide the service of underwriting or placing of financial instruments, shall, before accepting a mandate to manage the offering, have arrangements in place to inform the issuer client of the following:

…

Requirements to identify underwriting and placing operations and to ensure that adequate controls are in place to manage conflicts of interest

11A.1.3 ~~EU~~ UK ~~Article 38(2) and (3) of the *MiFID Org Regulation* sets out requirements to identify all underwriting and placing operations of a *firm* and to ensure that adequate controls are in place to manage any potential conflicts of interest.~~

…

Additional requirements in relation to pricings of offerings in relation to the issuance of financial instruments

11A.1.4 ~~EU~~ UK ~~Article 39(1) of the *MiFID Org Regulation* sets out additional requirements in relation to pricing of offerings in relation to issuance of *financial instruments*.~~

…

…

Further requirements concerning the provision of information

11A.1.5 ~~EU~~ UK ~~Article 39(2) of the *MiFID Org Regulation* sets out additional requirements concerning the provision of information.~~

…

Further requirements in relation to placing

11A.1.6 ~~EU~~ UK ~~Article 40 of the *MiFID Org Regulation* sets out additional requirements in relation to placing.~~

…

(3) Investment firms shall not accept any third-party payments or benefits unless such payments or benefits comply with ~~the inducements requirements~~ rules made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 which were relied on before exit day to implement requirements laid down in Article 24 of Directive 2014/65/EU. In particular, the following practices shall be considered not compliant with those requirements and shall therefore be considered not acceptable:

…

Further requirements in relation to advice, distribution and self-placement

11A.1.7 ~~EU~~ UK ~~Article 41 of the *MiFID Org Regulation* sets out additional requirements in relation to advice, distribution and self-placement.~~

41 (1) Investment firms shall have in place systems, controls and procedures to identify and manage the conflicts of interest that arise when providing investment service to an investment client to participate in a new issue, where the investment firm receives commissions, fees or any monetary or non-monetary benefits in relation to arranging the issuance. Any commissions, fees or monetary or non-monetary benefits shall comply with the requirements in ~~Article 24(7), 24(8) and 24(9) of~~

~~Directive 2014/65/EU~~ [*COBS* 2.3A.5R to *COBS* 2.3A.7E, *COBS* 2.3A.15R, *COBS* 2.3A.16R, *COBS* 2.3A.19R and *COBS* 6.2B.11R] and be documented in the investment firm's conflicts of interest policies and reflected in the firm's inducements arrangements.

…

(4) Investment firms which offer financial instruments issued that are by themselves or other group entities to their clients and that are included in the calculation of prudential requirements specified in Regulation (EU) No 575/2013 of the European Parliament and of the Council[1], the law of the United Kingdom or any part of the United Kingdom ("UK law") which was relied on before exit day to implement Directive 2013/36/EU of the European Parliament and of the Council[2] or Directive 2014/59/EU of the European Parliament and of the Council[3], shall provide those clients with additional information explaining the differences between the financial instrument and bank deposits in terms of yield, risk, liquidity and any protection provided in accordance with UK law which was relied on before exit day to implement Directive 2014/49/EU of the European Parliament and of the Council.

…

Further requirements in relation to lending on provision of credit in the context of underwriting or placement

11A.1.8 ~~EU~~ UK ~~Article 42 of the *MiFID Org Regulation* sets out additional requirements in relation to lending on provision of credit in the context of underwriting or placement.~~

…

Record keeping requirements in relation to underwriting or placing

11A.1.9 ~~EU~~ UK ~~Article 43 of the *MiFID Org Regulation* sets out record keeping requirements in relation to underwriting or placing.~~

…

12 Investment research

12.1 Purpose and application

…

Application: Where?

12.1.3 G ~~The *EEA territorial scope rule* modifies the general *rule* of application to the extent necessary to be compatible with European law (see paragraph 1.1 of Part 2 of *COBS* 1 Annex 1). This means that *COBS* 12.2 also applies to *passported activities* carried on by a *UK MiFID investment firm* from a *branch* in another *EEA state*, but does not apply to the *United Kingdom branch* of an *EEA MiFID investment firm* in relation to its *MiFID business*.~~ [deleted]

12.2 Investment research and non-independent research

…

12.2.15 R Where this section applies to a *firm* in relation to business other than its *MiFID business*, provisions in this ~~section marked "EU"~~ section marked "UK" shall apply as if they were *rules*, other than those that copy out recitals, which shall apply as if they were *guidance*.

…

Investment research and non-independent research

12.2.17 ~~EU~~ UK

~~Article 36(1) of the *MiFID Org Regulation* defines *investment research*.~~

36(1) For the purposes of Article 37 investment research shall be research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:

…

(b) if the recommendation in question were made by an investment firm to a client, it would not constitute the provision of investment advice for the purposes of ~~Directive 2014/65/EU~~ UK law on markets in financial instruments.

Non-independent research with reference to investment recommendations as defined in the Market Abuse Regulation

12.2.18 ~~EU~~ UK

~~Article 36(2) of the *MiFID Org Regulation* deals with the treatment of *non-independent research* with reference to *investment recommendations* as defined in the *Market Abuse Regulation* (see *COBS* 12.4) and in contrast to *investment research* as defined in article 36(1) (see *COBS* 12.2.17EU).~~

36(2) A recommendation of the type covered by point (35) of Article 3(1) of Regulation (EU) 596/2014 that does not meet the conditions set out in paragraph 1 shall be treated as a marketing communication for the purposes of ~~Directive 2014/65/EU~~ UK law on markets in financial instruments and investment firms that produce or disseminate that recommendation shall ensure that it is clearly identified as such.

…

Conflicts of interest

12.2.19 ~~EU~~ UK ~~Article 37(1) of the *MiFID Org Regulation* requires firms to apply the conflicts requirements set out in article 34(3) of the *MiFID Org Regulation* to *persons* involved in the production of *investment research* and *non-independent research*. Recitals 51, 52 and 55 to the *MiFID Org Regulation* relate to the required measures and arrangements.~~

…

12.2.20 G …

(2) *COBS* ~~12.2.19EU~~ 12.2.19UK relates to the management of conflicts of interest in relation to *investment research*.

…

Measures and arrangements required for investment research

12.2.21 ~~EU~~ UK ~~Article 37(2) of the *MiFID Org Regulation* requires *firms* to put arrangements in place around the production of *investment research* to ensure the conditions set out in that article are satisfied. Recitals 53, 54 and 56 relate to those arrangements and the article 37(2) conditions.~~

…

Recital 54

Fees, commissions, monetary or non-monetary benefits received by the firm providing investment research from any third party should only be acceptable when they are provided in accordance with requirements specified in Article 24(9) of Directive 2014/65/EU and Article 13 of Commission Delegated Directive (EU) ~~…~~2017 / ~~…~~593 ~~[to be inserted before adoption] of XXX supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits~~.

…

Exemptions from article 37(1) of the MiFID Org Regulation

12.2.22 ~~EU~~ UK ~~Article 37(3) of the *MiFID Org Regulation* provides for exemptions from article 37(1) of the *MiFID Org Regulation* (*COBS* 12.2.19EU).~~

37(3) Investment firms which disseminate investment research produced by another person to the public or to clients shall be exempt from complying with paragraph 1 if the following criteria are met:

…

…

12.4 Investment recommendations

…

12.4.1A ~~EU~~ UK [article 20 of the *Market Abuse Regulation*]

…

12.4.4A ~~EU~~ UK [article 20(1) of the *Market Abuse Regulation*]

…

12.4.8 G The disclosures required under article 20(3) of the *Market Abuse Regulation* may, if the *person* so chooses, be made by graphical means (for example by use of a line graph).

…

16 Reporting information to clients (non-MiFID provisions)

…

16.2 Occasional reporting

Execution of orders other than when managing investments

16.2.1 R …

(6) In relation to subscription and *redemption* orders for *units* in a *UCITS scheme* ~~*or EEA UCITS scheme*~~ executed by an *authorised fund manager*, paragraphs (1), (3) and (5) of this *rule* apply as if references to:

(a) a *client* and to a *retail client* were references to a *Unitholder* in the *scheme*; and

(b) *trade confirmation information* in paragraphs (1)(b) and (5)(b) were to the information in paragraph (7).

(7) The notice referred to in paragraph (1)(b) must, where applicable, for subscription and *redemption* orders for *units* in a *UCITS scheme* ~~or *EEA UCITS scheme*~~ executed by an *authorised fund manager*, include the following information:

…

(e) the identification of the *UCITS scheme* ~~or *EEA UCITS scheme*~~;

…

…

…

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* and he was not present in the *United Kingdom*.

(2) In addition, *COBS* 16.6.8R applies to an *operator* of a *personal pension scheme* or *stakeholder pension scheme* in relation to a *retail client* who elects to make *income withdrawals*.

…

16A Reporting information to clients (MiFID provisions)

16A.1 Application

…

Effect of provisions marked ~~"EU"~~ "UK" for third country investment firms and MiFID optional exemption firms

16A.1.2 R Provisions in this chapter marked ~~"EU"~~ "UK" apply in relation to *MiFID optional exemption business* as if they were *rules* (see *COBS* 1.2.2G).

16A.1.2A G The effect of *GEN* 2.2.22AR is that provisions in this chapter marked ~~"EU"~~ "UK" also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

…

16A.3 Occasional reporting

Execution of orders other than when undertaking portfolio management

16A.3.1 ~~EU~~ UK …

…

Reporting obligations in respect of eligible counterparties

16A.3.5 ~~EU~~ UK …

16A.4 Periodic reporting

Provision by a firm and contents

16A.4.1 ~~EU~~ UK …

60(3) …

The exception provided for in point (b) shall not apply in the case of transactions in financial instruments covered by ~~Article 4(1)(44)(c) of, or any of points 4 to 11 of Section C in Annex I to Directive 2014/65/EU~~ Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order.

…

16A.4.2 G In accordance with *COBS* 2.4.9R, a *firm* may dispatch a *periodic statement* (as required by article 60(1) of the *MiFID Org Regulation*, see *COBS* ~~16A.4.1EU~~ 16A.4.1UK to an agent, other than the *firm* or an associate of the *firm*, nominated by the *client* in writing.

Additional reporting obligations for portfolio management or contingent liability transactions

16A.4.3 ~~EU~~ UK …

…

16A.5 Statements of client financial instruments or clients funds

16A.5.1 ~~EU~~ UK 63(1) Investment firms that hold client financial instruments or client funds shall send at least on a quarterly basis, to each client for whom they hold financial instruments or funds, a statement in a durable medium of those financial instruments or funds unless such a statement has been provided in any other periodic statement. Upon client request, firms shall provide such statement more frequently at a commercial cost.

The first subparagraph shall not apply to a credit institution ~~authorised under Directive 2000/12/EC of the European Parliament and of the Council~~ that is a CRR firm as defined in Article 4(1)(2A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential

	requirements for credit institutions and investment firms in respect of deposits within the meaning of ~~that Directive~~ Article 2(1)(23A) of Regulation (EU) No 600/2014 held by that institution.
63(2)	The statement of client assets referred to in paragraph 1 shall include the following information: … (d) a clear indication of the assets or funds which are subject to the rules of ~~Directive 2014/65/EU and its implementing measures~~ UK law on markets in financial instruments and those that are not, such as those that are subject to Title Transfer Collateral Agreement; …
…	

…

18 Specialist Regimes

…

18.8A OPS firms

…

Interpretation and general modifications

18.8A.2 R Where a *COBS rule* specified in this section applies to an *OPS firm*, the following modifications apply:

…

(3) subject to the modifications in *COBS* 18.8A.6R, *COBS* 18.8A.15R(4) and *COBS* 18.8A.16R(4), *COBS* 1.2.3R (References in COBS to the MiFID Org Regulation) applies where a *COBS* provision marked ~~"EU"~~ "UK" applies to an *OPS firm*.

…

18.8A.14 R The provisions in *COBS* 11.2A (Best execution – MiFID provisions) marked ~~"EU"~~ "UK" and *COBS* 11 Annex 1~~EU~~ UK (Regulatory Technical Standard 28) apply to an *OPS firm* to which (1) applies as if they were *rules*.

Modification of best execution rules

18.8A.15 R …

(2) The requirement in *COBS* ~~11.2A.34EU~~ 11.2A.34UK (see article 65(6) of the *MiFID Org Regulation*) to make public for each class of *financial instruments*:

…

…

(4) In *COBS* 11.2A, a reference to:

…

(b) "*portfolio management*" in *COBS* ~~11.2A.34EU~~ 11.2A.34UK (see article 65(1) of the *MiFID Org Regulation*) is to be construed as a reference to *OPS activity* falling within the scope of *COBS* 18.8A.13R and which involves the *OPS firm* placing orders with other entities for execution that result from decisions by the *OPS firm* to deal in *financial instruments* on behalf of its *client*; and

…

Client order handling

18.8A.16 R …

(2) The provisions in *COBS* 11.3 (Client order handling) marked ~~"EU"~~ "UK" apply to an *OPS firm* as if they were *rules*.

…

…

20 With-profits

20.1 Application

…

20.1.3 R ~~For an *EEA insurer*:~~

~~(1)~~

~~(a) the *rules* and *guidance* on the *with-profits fund* (*COBS* 20.1A), on treating *with-profits policyholders* fairly (*COBS* 20.2.1G to *COBS* 20.2.41G and *COBS* 20.2.53R to *COBS* 20.2.60G), and the governance provisions in *COBS* 20.5. apply only in so far as responsibility for the matter in question has not been reserved to the *firm's Home State regulator* by an *EU* instrument;~~

~~notwithstanding the above:~~

~~(b) *COBS* 20.2.26AR (financial penalties and the *with-profits fund*) applies;~~

~~(c) the *rules* and *guidance* on the notification of *policyholders* where there is a change in the percentage allocation of distributions (*COBS* 20.2.19AR to *COBS* 20.2.19CG) apply but only to the extent that the *UK* is the *State of the commitment*;~~

~~(2) *COBS* 20.3 (Principles and Practices of Financial Management) does not apply;~~

~~(3) the *rule* on providing information to *with-profits policyholders* where the *United Kingdom* is the *State of the commitment* (*COBS* 20.4.4R) applies, but the rest of *COBS* 20.4 (Communications with with-profits policyholders) does not; and~~

~~(4) [deleted]~~

~~(5) references in *COBS* 20 to a *with-profits fund* or to terms derived from the *Solvency II Directive* requiring transposition in the *Home State*, apply as if they were references to the relevant fund or terms established in accordance with the requirements of the *Home State*.~~ [deleted]

…

20.4 Communications with with-profits policyholders

…

~~Requirements on EEA insurers~~

20.4.4 R ~~In relation to any *with-profits policyholder* where the *state of the commitment* is the *United Kingdom*, an *EEA insurer* must:~~

~~(1) provide the information necessary to enable that *policyholder* properly to understand the *insurer's* commitment under the *policy*;~~

~~(2) ensure that the information provided is not narrower in scope or less detailed in content than the information required to be provided in the *PPFM* produced by a *firm* subject to *COBS* 20.3; and~~

~~(3) send the *policyholder* who is affected by any information being changed written notice, setting out:~~

~~(a) any proposed changes to information that is equivalent to the *with-profits principles*, three *months* in advance of the effective date; and~~

~~(b) any changes to information that is equivalent to the *with-profits practices*, within a reasonable time.~~ [deleted]

…

21 Permitted Links

21.1 Application

21.1.1 R The *rules* in this section apply on an ongoing basis to *insurers* who effect *linked long-term* contracts. ~~that are effected by:~~

~~(1) *insurers* other than *EEA insurers*; and~~

~~(2) *EEA insurers* in the *United Kingdom*.~~

…

21.2 Rules for firms engaged in linked long-term insurance business

…

21.2.1B R *Insurers* ~~other than *EEA insurers*~~ effecting *linked long-term contracts* of insurance are obliged to comply with the requirements on investments in the PRA Rulebook Solvency II Firms Investments.

…

21.3 Further rules for firms engaged in linked long-term insurance business

…

21.3.8 G A *firm* should assess the liquidity of a *money-market instrument* in accordance with *CESR's UCITS eligible assets guidelines*, with respect to *UK* provisions which implemented article 4(1) of the *UCITS eligible assets Directive*.

…

Stock lending: requirements

21.3.11 R (1) The *stock lending* arrangement is of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), and:

(a) all the terms of the agreement under which *securities* are to be reacquired by the *firm* for the account of the unit-linked fund are in a form which is acceptable to the *firm* and in accordance with good market practice;

(b) the counterparty is:

(i) an *authorised person*; or

(ii) a *person* authorised ~~by a Home State regulator~~ in an *EEA State*; or

…

…

22 Restrictions on the distribution of certain regulatory capital instruments

…

22.2 Restrictions on the retail distribution of mutual society shares

22.2.1 R (1) The requirements in this section apply to a *firm* when *dealing* in or *arranging a deal* in a *mutual society share* with or for a *retail client* in the ~~*EEA*~~ *United Kingdom* where the *retail client* is to enter into the *deal* as buyer.

…

22.2.4 R …

Title	Type of retail client	Additional conditions
Certified high net worth investor	… ~~(b) an individual in an *EEA State* other than the *UK* who meets requirements which are broadly equivalent to those set out in *COBS* 4.12.6R; or~~ ~~(c)~~ (b) a *person* (or *persons*) legally empowered to make investment decisions on behalf of an individual who meets the	…

	earnings or net asset requirements in (a) ~~or (b)~~ above.	
Certified sophisticated investor	… ~~(b) an individual in an *EEA State* other than the *UK* who meets requirements which are broadly equivalent to those set out in *COBS* 4.12.7R; or~~ ~~(c)~~ (b) an individual who meets the requirements for ~~either~~ (a) ~~or (b)~~ above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the *firm's* client.	…
Self-certified sophisticated investor	… ~~(b) an individual in an *EEA State* other than the *UK* who meets requirements which are broadly equivalent to those set out in *COBS* 4.12.8R; or~~ ~~(c)~~ (b) an individual who meets the requirements for ~~either~~ (a) ~~or (b)~~ above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another *person* who is the *firm's* client.	…

…

22.3 Restrictions on the retail distribution of contingent convertible instruments and CoCo funds

Restrictions

22.3.1 R (1) …

(2) A *firm* must not:

(a) *sell* an *investment* to a *retail client* in the ~~*EEA*~~ *United Kingdom*; or

(b) communicate or approve an invitation or inducement to participate in, acquire or underwrite an *investment* where that invitation or

inducement is addressed to or disseminated in such a way that it is likely to be received by a *retail client* in the ~~*EEA*~~ *United Kingdom*.

…

Exemptions

22.3.2 R …

Title	Type of retail client	Additional conditions
Certified high net worth investor	… ~~(b) an individual in an *EEA State* other than the *UK* who meets requirements which are broadly equivalent to those set out in *COBS* 4.12.6R; or~~ ~~(c)~~ (b) a *person* (or *persons*) legally empowered to make investment decisions on behalf of an individual who meets the earnings or net asset requirements in (a) ~~or (b)~~ above.	…
Certified sophisticated investor	… ~~(b) an individual in an *EEA State* other than the *UK* who meets requirements which are broadly equivalent to those set out in *COBS* 4.12.7R; or~~ ~~(c)~~ (b) an individual who meets the requirements for ~~either~~ (a) ~~or (b)~~ above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the *firm's* client.	…
Self-certified sophisticated investor	… ~~(b) an individual in an *EEA State* other than the *UK* who meets requirements which are broadly equivalent to those set out in *COBS* 4.12.8R; or~~ ~~(c)~~ (b) an individual who meets the requirements for ~~either~~ (a)	…

	~~or (b)~~ above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another *person* who is the *firm's* client.	
…		

…

Sch 1 Record keeping requirements

…

Sch 1.3 G

Handbook reference	Subject of record	Content of record	When record must be made	Retention period
…				
COBS ~~10A.7.2EU~~ 10A.7.2UK	…			
COBS ~~11.5A.4EU~~ 11.5A.4UK	…			
COBS ~~11.5A.5EU~~ 11.5A.5UK	…			
…				
COBS ~~11.7A.5EU~~ 11.7A.5UK	…			
…				
COBS ~~11A.1.9EU~~ 11A.1.9UK	…			
…				
COBS ~~16A.3.1EU~~ 16A.3.1UK	…			

COBS ~~16A.4.1EU~~ 16A.4.1UK	…			
…				

…

Annex B

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

5 Multilateral trading facilities (MTFs)

…

5.3A Systems and controls for algorithmic trading

…

5.3A.8 R A *firm* must have systems and procedures to notify the *FCA* if:

(1) an *MTF* operated by the *firm* is material in terms of the liquidity of trading of a *financial instrument* ~~in the *EEA*~~; and

…

Direct electronic access

5.3A.9 R A *firm* which permits *direct electronic access* to an *MTF* it operates must:

(1) not permit members or participants of the *MTF* to provide such services unless they are:

(a) *MiFID investment firms* ~~authorised under *MiFID*~~; or

…

(g) *firms* that come within ~~article 2.1(a), (e), (i), or (j) of *MiFID*~~ regulation 30(1A) of the *MiFI Regulations* and have a *Part 4A permission* relating to *investment services or activities*;

…

…

5.3A.14 R A *firm* must adopt tick size regimes in:

…

(2) any other *financial instrument* which is traded on that *trading venue*, as required by a regulatory technical standard made under ~~article 49.3 or 49.4 of *MiFID*~~ powers conferred by *MiFIR*.

…

…

5.3A.16 G Nothing in *MAR* 5.3A.14R or *MAR* 5.3A.15R requires a *firm* to act inconsistently with *MiFID RTS 11* or any regulatory technical standards made under ~~article 49.3 or 49.4 of *MiFID*~~ powers conferred by*MiFIR*.

…

…

5.3A.18 G For the purpose of *MAR* 5.3A.17R, ~~the regulatory technical standards made under article 50 of *MiFID*~~ *MiFID RTS 25* ~~provide~~ provides further requirements.

…

5.7 Pre- and post-trade transparency requirements for equity and non-equity instruments: form of waiver and deferral

5.7.1B 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]

…

5A Organised trading facilities (OTFs)

…

5A.3 Specific requirements for OTFs

…

5A.3.2 R The discretion which the *firm* must exercise in executing a *client* order must be either, or both, of the following:

…

(2) the second discretion is whether to match a specific *client* order with other orders available on the *OTF* at a given time, provided the exercise of such discretion is in compliance with specific instructions received from the *client* and in accordance with the *firm's* obligations under ~~article 27 of *MiFID*~~ *COBS* 11.2A (Best execution – *MiFID* provisions).

…

…

5A.5 Systems and controls for algorithmic trading

…

5A.5.8 R A *firm* must have systems and procedures to notify the *FCA* if:

(1) an *OTF* operated by it is material in terms of the liquidity of trading of a *financial instrument* ~~in the *EEA*~~; and

…

Direct electronic access

5A.5.9 R A *firm* which permits *direct electronic access* to an *OTF* it operates must:

(1) not permit members or participants of the *OTF* to provide such services unless they are:

(a) *MiFID investment firms* ~~authorised under *MiFID*~~; or

…

…

…

5A.5.14 R The *firm* must adopt tick size regimes for *financial instruments* as required by a regulatory technical standard made under ~~article 49.3 or 49.4 of *MiFID*~~ powers conferred by *MiFIR*.

…

…

5A.5.16 G Nothing in *MAR* 5A.5.14R or *MAR* 5A.5.15R requires a *firm* to act inconsistently with any regulatory technical standards made under ~~article 49.3 or 49.4 of *MiFID*~~ powers conferred by*MiFIR*.

…

…

5A.5.18 R For the purpose of *MAR* 5A.5.17R, ~~the regulatory technical standards made under article 50 of *MiFID*~~ *MiFID RTS 25* ~~provide~~ provides further requirements.

…

7A Algorithmic trading

…

7A.3 Requirements for algorithmic trading

…

Notifications

7A.3.6 R A *firm* which is a member or participant of a *trading venue* must immediately notify the ~~following~~ *FCA* if it is engaging in *algorithmic trading* in the *UK* or in an *EEA State*.~~:~~

~~(1) the *FCA*; and~~

~~(2) any *competent authority* of a *trading venue* in another *EEA State* where the *firm* engages in *algorithmic trading*.~~

…

…

7A.4 Requirements when providing direct electronic access

…

Notifications

7A.4.4 R A *firm* must immediately notify the ~~following~~ *FCA* if it is providing *DEA* services.~~:~~

~~(1) the *FCA*; and~~

~~(2) the *competent authority* of an *trading venue* in the *EEA* to which the *firm* provides *DEA* services.~~

…

…

9 Data reporting service

9.1 Application, introduction, approach and structure

Application

9.1.1 G This chapter applies to:

…

(2) A ~~UK~~ *UK* branch of a *third country person* seeking authorisation to provide a *data reporting service*;

(3) a ~~*UK*~~ *MiFID investment firm* operating a *trading venue* seeking verification of its rights to provide a *data reporting service* under regulation 5(b) or (c) of the *DRS Regulations*;

…

Introduction

9.1.2 G The original purpose of this chapter was to implement Title V of *MiFID* which sets out harmonised market data services authorisation and supervision requirements. These are designed to ensure a necessary level of quality of trading activity information across ~~*EU*~~ financial markets for users, and for ~~*competent authorities*~~ the regulator to receive accurate and comprehensive information on relevant transactions. These requirements provide for:

…

Approach to ~~transposition~~ onshoring

9.1.3 G The market data services authorisation and supervision requirements in Title V of *MiFID* are ~~implemented in the *UK*~~ onshored through a combination of:

(1)

…

(b) the *MiFI Regulations* which set out additional provisions addressing requirements imposed by *MiFIR* and ~~*EU regulations*~~ *onshored regulations*;

…

(3) ~~*EU regulations*~~ *onshored regulations* including:

…

9.1.3A G See *M2G* for further *guidance* on how the measures referred to in *MAR* 9.1.13G have been amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 and *FCA* instruments made pursuant to the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.

…

9.2 Authorisation and verification

Application form and notification form for members of the management body

9.2.1 D (1) Each of the following must complete the forms in (2):

…

(b) a ~~*UK*~~ *MiFID investment firm* operating a *trading venue* seeking verification of its rights to provide a *data reporting service* under regulation 5(b) and (c) of the *DRS Regulations*; and

…

…

…

9.5 Frequently Asked Questions

9.5.1 G ~~**Q.** Are there any grandfathering arrangements for *ARMs* or trade data monitors operating prior to *MiFID*?~~

~~**A.** No. *Persons* wishing to provide a *data reporting service* must apply to be authorised as a *data reporting services provider*.~~ [deleted]

9.5.2 G **Q.** We are a *trading venue* operator. Can you please clarify how we can provide a *data reporting service* under the derogation from needing authorisation in ~~article 59(2) of *MiFID*~~ regulation 5(b) to (d) of the *DRS Regulations*?

A.

(1) The derogation (or exception) in article 59(2) of *MiFID* ~~allows~~ allowed Member States to allow a *trading venue* operator to provide a *data reporting service* without prior authorisation, if the operator ~~has~~ verified that they ~~comply~~ complied with Title V of *MiFID*.

(2) The *United Kingdom* ~~has~~ adopted this derogation in regulation 5(b) to (d) of the *DRS Regulations*.

…

9.5.6 G **Q.** Does an *investment firm* need to be authorised as an *ARM* to send *transaction reports* to the *FCA*?

A. No. If you are a *MiFID investment firm* that wishes to send *transaction reports* to us to satisfy your own transaction reporting obligations under *MiFIR* or a *third country investment firm* subject to a similar obligation pursuant to *GEN* 2.2.22AR, you do not need to become authorised as an *ARM*. You are permitted to connect directly to us although there will be a requirement to sign a *MIS confidentiality agreement* with us, to satisfy connectivity requirements and to undertake testing associated with connecting to our systems. For the associated costs please see *FEES* 3.2.7R for relevant on-boarding costs. If you want to connect to us to send reports on behalf of other *investment firms* then you must become authorised as an *ARM*.

9.5.7 G **Q.** Where can I find a list of *data reporting services providers*?

A. ~~Article 59(3) of *MiFID* requires *ESMA* to establish a list of all *data reporting services providers*. Further, regulation~~ Regulation 6 of the *DRS Regulations* requires the *FCA* to maintain a register of *data reporting services providers*.

…

10 Commodity derivative position limits and controls, and position reporting

10.1 Application

Introduction

10.1.1 G …

(2) In particular, this chapter sets out the *FCA's* requirements in respect of provisions derived from:

(a) articles 57(1) and 57(6) of *MiFID*, which require it ~~*competent authorities* or *central competent authorities*~~ to establish limits, on the basis of a methodology determined by *ESMA*, on the size of a net position which a *person* can hold, together with those held on the *person's* behalf at an aggregate group level, at all times, in *commodity derivatives* traded on *trading venues* and *economically equivalent OTC contracts* to those *commodity derivatives*;

…

(d) article 58(2) of *MiFID*, which requires *investment firms* trading in *commodity derivatives* or *emission allowances* outside a *trading venue* to provide the *competent authority* ~~or *central competent authority*~~ with reports containing a complete breakdown of their positions held through such contracts traded on a *trading venue* and *economically equivalent OTC contracts*, as well as of those of their *clients* and the clients of those clients until the end client is reached.

…

Scope and territoriality

10.1.2 G …

(2) In respect of position management controls requirements:

(a) the requirements contained or referred to in *MAR* 10.3 apply to *persons* operating a *trading venue* which trades *commodity derivatives* in respect of which the *FCA* is the ~~*Home State* *competent authority*~~; and

…

(3) In respect of position reporting requirements:

(a) the position reporting requirements in *MAR* 10.4 apply to:

(i) a ~~*UK* *regulated market;*~~ and

…

…

10.2 Position limit requirements

Establishing, applying and resetting position limits

10.2.1 G (1) The following provisions of the *MiFI Regulations* regulate the establishment, application and resetting of position limits:

…

(h) ~~Regulation 20(2) imposes an obligation on the *FCA*, where it receives an *ESMA* opinion stating that the establishment of a position limit would be, or is, incompatible with that opinion, to modify the position limit in accordance with *ESMA's* opinion or to notify *ESMA* as to why amendment to the limit is considered to be unnecessary;~~ [deleted]

(i) ~~Regulation 21(1) imposes an obligation on the *FCA* to not establish a position limit in respect of a *commodity derivative* traded on *trading venues* in the *United Kingdom*, where there is a *central competent authority* for that *commodity derivative* other than the *FCA*;~~ [deleted]

…

(k) Regulation 25(1) prohibits the *FCA* from establishing position limits which are more restrictive than permitted under ~~*ESMA's* methodology~~ *MiFID RTS 21*, unless in exceptional cases where more restrictive position limits are objectively justified and proportionate;

(l) Regulation 25(2) to Regulation 25(5) impose obligations on the *FCA* where it establishes position limits which are more restrictive than permitted under ~~*ESMA's* methodology~~ *MiFID RTS 21* in accordance with Regulation 25(1) of the *MiFI Regulations*. The obligations are that the *FCA* must publish that position limit on its website, and not apply that position limit for more than six *months* from the date of publication

unless further subsequent six-*month* application periods for that limit are objectively justified and proportionate~~, and must notify *ESMA* of the position limit and the justification for establishing it~~; and

(m) ~~Regulation 20(5) and Regulation 25(6) impose obligations on the *FCA* to publish a notice on its website explaining the reasons for its decision when, under Regulation 20(2) and Regulation 25(5) of the *MiFI Regulations* respectively, it does not modify a position limit following an *ESMA* opinion incompatible with the limit; and~~ [deleted]

…

…

Application of position limits

10.2.2 D …

(2) A direction made under (1) applies where a *commodity derivative* is traded on a *trading venue* in the *United Kingdom*~~, provided that there is not a *central competent authority* established in an *EEA State* other than the *United Kingdom*.~~

…

…

10.2.5 G ~~Where a position limit is established by a *competent authority* or *central competent authority* other than the *FCA*, a *non-financial entity* should submit its application for exemption, in relation to the position limit, to that *competent authority* or *central competent authority* in the manner it specifies.~~ [deleted]

~~[**Note:** article 8 of *MiFID RTS 21*]~~

…

10.4 Position reporting

Application

10.4.1 G The application of this section is set out in the following table:

Type of firm	Applicable provisions
~~*UK regulated market*~~ *Regulated market*	*MAR* 10.4.2G
…	

~~*UK* *MiFID investment firm*~~	*MAR* 10.4.7D to *MAR* 10.4.9D and *MAR* 10.4.11G
…	
~~*EEA MiFID investment firm* who is a member, participant or a client of a *UK trading venue*~~	~~*MAR* 10.4.10D to *MAR* 10.4.11G~~

…

Position reporting by UK regulated markets

10.4.2 G A ~~*UK*~~ *regulated market* which trades *commodity derivatives* or *emission allowances* must provide position reports in accordance with paragraph 7BB of the Schedule to the *Recognition Requirements Regulations*, as inserted by the *MiFI Regulations*.

[**Note:** article 58(1) of *MiFID*]

Position reporting by UK firms and UK branches of third country investment firms operating an MTF or OTF: Reports

10.4.3 R …

(2) A *firm* must make public and provide to the *FCA* ~~and *ESMA*~~ a weekly report with the aggregate positions held by the different categories of *persons* for the different *commodity derivatives* or *emission allowances* traded on the *trading venue*, where those instruments meet the criteria of article 83 of the *MiFID Org Regulation*, specifying:

…

…

[**Note:** article 58(1) of *MiFID*, *MiFID ITS 4* on position reporting and *MiFID ITS 5* on the format and timing of weekly position reports ~~to *ESMA*~~]

Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Procedure for reporting to the FCA

10.4.5 D …

(2) A *firm* shall report to the *FCA*:

(a) (where it meets the minimum threshold as specified in article 83 of the *MiFID Org Regulation*) the weekly report referred to in *MAR* 10.4.3R(2), by using the form set out in Annex I of

MiFID ITS 4, and publish it on its website ~~and provide the report to *ESMA*~~; and

…

Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Duplication of reporting

10.4.6 G For the purposes of making the weekly report referred to under *MAR* 10.4.3R(2), the *FCA* will accept an email containing a link to the report, as published on the *firm's* website. Emails should be sent to the *FCA* at *COT_reports@fca.org.uk*. ~~This *guidance* does not affect the separate obligation for a *firm* to make the weekly report to *ESMA*.~~

Position reporting by members, participants or clients of UK trading venues: trading venue participant reporting

10.4.7 D …

(3) ~~Paragraph (2) above does not apply to a member, participant or a client of a *trading venue* that is an *EEA person*.~~ [deleted]

…

~~UK~~ MiFID investment firms and UK branches of third country investment firms: OTC reporting to the FCA

10.4.8 D (1) This direction applies to:

(a) a ~~*UK*~~ *MiFID investment firm*; and

…

…

~~UK MiFID investment firms and UK branches of third country investment firms: OTC reporting to EEA competent authorities other than the FCA~~

10.4.9 D ~~(1)~~ ~~This direction applies to:~~

~~(a)~~ ~~a *UK MiFID investment firm*; and~~

~~(b)~~ ~~a *UK branch* of a *third country investment firm*.~~

~~(2)~~ ~~An *investment firm* in (1) trading in a *commodity derivative* or *emission allowance* outside a *trading venue* must, where an *EEA competent authority* other than the *FCA* is the *competent authority* of the *trading venue* where that *commodity derivative* or *emission allowance* is traded, or the *central competent authority* for the~~

~~purposes of that *commodity derivative*, provide that *EEA competent authority* with a report containing a complete breakdown of:~~

~~(a) their positions taken in those *commodity derivatives* or *emission allowances* traded on a *trading venue*;~~

~~(b) *economically equivalent OTC contracts*; and~~

~~(c) the positions of their clients and the clients of those clients until the end client is reached, in accordance with article 26 of *MiFIR*.~~

~~(3) The report in (2) must be submitted to the relevant *EEA competent authority*, for each *business day*, using the form set out in Annex II of *MiFID ITS 4*, by the time specified by that *EEA competent authority*.~~

~~(4) The obligation in (2) does not apply where the *FCA* is the *central competent authority* for that *commodity derivative*.~~ [deleted]

[**Note:** ~~58(2) of *MiFID*, and *MiFID ITS 4* on position reporting~~]

~~EEA~~ MiFID investment firms who are members, participants or clients of UK trading venues: trading venue participant reporting and OTC reporting to the FCA

10.4.10 D ~~(1) This direction applies to an *EEA MiFID investment firm* which is a member, participant or a *client* of a *UK trading venue*.~~

~~(2) *MAR* 10.4.7D applies to an *EEA MiFID investment firm* under (1), as if it were a *UK MiFID investment firm*.~~

~~(3) *MAR* 10.4.8D applies to an *EEA MiFID investment firm* under (1), as if it were a *UK MiFID investment firm*, where the *EEA MiFID investment firm* trades in a *commodity derivative* or *emission allowance* outside a *trading venue*, and the *FCA* is the *competent authority* of the *trading venue* where that *commodity derivative* or *emission allowance* is traded, or the *central competent authority* for the purposes of that *commodity derivative*.~~

~~(4) Paragraphs (2) and (3) above only apply where the *EEA MiFID investment firm* is not subject to a corresponding rule or other requirement imposed by its *Home State competent authority*.~~ [deleted]

10.4.11 G (1) This *guidance* applies to *persons* subject to *MAR* 10.4.8D(2) ~~or *MAR* 10.4.10D(3)~~.

(2) A *firm* subject to *MAR* 10.4.8D(2) ~~or *MAR* 10.4.10D(3)~~ may use a third party technology provider to submit to the *FCA* the report referred to in *MAR* 10.4.8D(2) provided that it does so in a manner consistent with *MiFID*. It will retain responsibility for the completeness, accuracy and timely submission of the report and

should populate field 5 of *MiFID ITS 4* Annex II with its own reporting entity identification. It should be the applicant for, and should complete and sign, the *FCA MDP on-boarding application form*.

…

(4) A *firm* subject to *MAR* 10.4.8D(2) ~~or *MAR* 10.4.10D(3)~~ may arrange for the *trading venue* where that *commodity derivative* or *emission allowance* is traded to provide the *FCA* with the report provided that it does so in a manner consistent with *MiFID*. The *firm* will retain responsibility for the completeness, accuracy and timely submission of the report, submitted on its behalf. The *firm* should populate field 5 of *MiFID ITS 4* Annex II with its own reporting entity identification.

10.5 Other reporting, notifications and information requirements

…

Power to intervene

10.5.2 G The following provisions of the *MiFI Regulations* regulate the power of the *FCA* to intervene in respect of position limits:

(1) Regulation 28 provides that the *FCA* may, if it considers necessary, limit the ability of any *person* to enter into a contract for a *commodity derivative*, restrict the size of positions a *person* may hold in such a contract, or require any *person* to reduce the size of a position held, notwithstanding that the restriction or reduction would be more restrictive than the position limit established by the *FCA* ~~or another *competent authority*~~ in accordance with article 57 of *MiFID* to which the contract relates; and

…

…

Breaches of MAR 10 by unauthorised persons

10.5.4 G (1)

...

(b) a breach of a directly applicable provision imposed by *MiFIR* or any ~~*EU regulation*~~ *onshored regulation* adopted under *MiFID* or *MiFIR*; and

…

Breaches of MAR 10 by authorised persons

10.5.6 G …

(2) a breach of a directly applicable provision imposed by *MiFIR* or ~~*EU regulation*~~ *onshored regulation* adopted under *MiFID* or *MiFIR*; and

…

Territoriality

10.5.7 G The powers of the *FCA* referred to in *MAR* 10.5.1G to *MAR* 10.5.3G can be applied to a *person* regardless of whether the *person* is situated or operating in the *UK* or abroad, where the relevant position relates to a *commodity derivative* or *emission allowance* ~~of~~ for which the *FCA* is ~~the~~ ~~*competent authority* or *central competent authority*~~ responsible for setting a position limit, or *economically equivalent OTC contracts*.

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) (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 FCA 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)
Collective Investment Schemes (COLL)	Annex A
Investment Funds sourcebook (FUND)	Annex B
Regulated Covered Bonds (RCB)	Annex C

Revocation

D. The Alternative Investment Fund Managers Directive (No 2) Instrument 2013 (FCA 2013/54) is revoked.

Citation

E. 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 set out in Annex 2 of the accompanying 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 2 of the consultation paper.

(3) The amendments in this instrument are based on the text of the Handbook in force on 1 July 2018. If amendments are made to the relevant text between 1 July 2018 and 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, rather than the text of the Handbook in force on 1 July 2018.

(4) The consultation is based on the assumption that the Financial Conduct Authority will have the power under the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 to make the proposed rule changes.

Annex A

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Introduction

1.1 Applications and purpose

Application

1.1.1 G (1) This sourcebook, except for *COLL* 9 (Recognised schemes), applies to:

…

(c) *managers* and *trustees* of *authorised unit trust schemes* (*AUTs*); and

(cA) *authorised fund managers*, *depositaries* and *nominated partners* of *authorised contractual schemes* (*ACSs*).~~; and~~

(d) ~~to the extent indicated, *UK UCITS management companies* operating *EEA UCITS schemes*.~~ [deleted]

…

(4) ~~This sourcebook also applies to *EEA UCITS management companies* of *UCITS schemes* to the extent required by the *UCITS Directive*.~~ [deleted]

…

~~EEA territorial scope: compatibility with European law~~

1.1.1B R ~~(1)~~ ~~The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law.~~

~~(2)~~ ~~This *rule* overrides every other *rule* in this sourcebook.~~ [deleted]

~~EEA UCITS management companies of UCITS schemes~~

1.1.1C G ~~An *EEA UCITS management company* that is providing *collective portfolio management* services for a *UCITS scheme* from a *branch* in the *United Kingdom*, or under the freedom to provide *cross border services*, is advised that where it operates a *UCITS scheme* as its designated *management company*, it meets the *Glossary* definition of an "*ACD*" of an *ICVC* or a "*manager*" of an *AUT* or an *authorised contractual scheme manager* of an *ACS*, which in either case is a *UCITS scheme*. Such *firms* should be aware that provisions in this sourcebook that apply to an *ACD*, a *manager* or an~~

~~*authorised fund manager* of a *UCITS scheme* accordingly apply to them, unless otherwise indicated: see *COLL* 12.3 (EEA UCITS management companies) for further details.~~ [deleted]

Purpose

1.1.2 G …

(2) In addition, this sourcebook ~~implements~~ implemented part of the requirements of the *UCITS Directive* ~~to meet *EU* law obligations~~ relevant to *authorised funds* and *management companies*, along with other requirements implemented in other parts of the *Handbook*.

UCITS management company and product passport

1.1.2A G ~~*COLL* 12 provides for the application of *COLL* in relation to the *management company* passport under the *UCITS Directive*. It explains how the passporting regime applies to both *UK UCITS management companies* and *EEA UCITS management companies* when providing *collective portfolio management* services on a cross-border basis. It also explains how the product passport (for *UCITS*) operates and how *UCITS schemes* may be marketed in other *EEA States*.~~ [deleted]

…

1.2 Types of authorised fund

…

Types of authorised fund - explanation

1.2.2 G (1) *UCITS schemes* ~~have to comply with the conditions necessary in order to enjoy the rights available under the *UCITS Directive*. Such *schemes*~~ must in particular comply with:

…

(2) (a) *Non-UCITS retail schemes* are *schemes* that do not comply with all the conditions ~~set out in the *UCITS Directive*~~ necessary to be a *UCITS scheme*.

…

(c) ~~Under~~ The UK may, under the legislation which implemented article 43 of *AIFMD*, ~~where an *AIF* can be *marketed* to *retail client*s~~ impose stricter requirements on ~~the~~ an *AIFM* or ~~the~~ an *AIF* *marketed* to *retail clients* than the requirements that apply to an *AIF marketed* only to *professional clients*.

(d) This sourcebook contains the stricter requirements for an *AIF* which is a *non-UCITS retail scheme*.

….

(f) *Non-UCITS retail schemes* could become *UCITS schemes*, provided they are changed, so as to comply with the necessary conditions ~~set out in the *UCITS Directive*~~.

…

…

(3) …

(c) ~~Under article 43 of *AIFMD*, where an *AIF* can be *marketed* to *retail clients*, Member States may impose stricter requirements on the *AIFM* or the *AIF* than the requirements that apply to an *AIF marketed* only to *professional clients*.~~ [deleted]

(d) This sourcebook contains the stricter requirements for an *AIF* which is a *qualified investor scheme*.

…

…

…

Pension feeder funds

1.2.5 G …

(2) A *pension feeder fund* may not invest in *units* of an *EEA UCITS scheme* unless that *scheme* is a *recognised scheme* ~~under section 264 of the *Act*~~ (see *COLL* 5.6.27R and *COLL* 5.8.2AR).

…

2 Authorised fund applications

2.1 Authorised fund applications

…

~~Application by an EEA UCITS management company to manage a UCITS scheme~~

2.1.5 G ~~An *EEA UCITS management company* that proposes to act as the *authorised fund manager* of an *AUT*, *ACS* or *ICVC* that is a *UCITS scheme*, should be aware that it is required under paragraph 15A(1) of Schedule 3 to the *Act* to apply to the *appropriate regulator* for approval to do so. The form that the *firm* must use for this purpose is set out in *SUP* 13A Annex 3R (EEA UCITS management companies: application for approval to manage a~~

~~UCITS scheme established in the United Kingdom). In addition, those *firms* are required to provide to the *appropriate regulator* certain fund documentation, as specified by *COLL* 12.3.4R (Provision of documentation to the FCA:EEA UCITS management companies).~~ [deleted]

~~[**Note:** article 20(1) of the *UCITS Directive*]~~

…

4 Investor Relations

…

4.2 Pre-sale notifications

…

Provision and filing of the prospectus

4.2.3 R (1) The *authorised fund manager* of an *AUT*, *ACS* or an *ICVC* must:

…

(b) file a copy of the *scheme's* original *prospectus*, together with all revisions thereto, with the *FCA* ~~and, where a *UCITS scheme* is managed by an *EEA UCITS management company*, with that company's *Home State regulator* on request~~.

…

…

Table: contents of the prospectus

4.2.5 R This table belongs to *COLL* 4.2.2R (Publishing the prospectus).

Document status		
…		
Authorised fund manager		
6	The following particulars of the *authorised fund manager*:	
	…	
	(f)	~~if neither its registered office nor its head office is in the *United Kingdom*, the address of its principal place of business in the *United Kingdom*;~~ [deleted]
	…	

…			
Depositary			
8	The following information and particulars concerning the *depositary*:		
	…		
	(e)	~~if neither its registered office nor its head office is in the *United Kingdom*, the address of its principal place of business in the *United Kingdom*;~~ [deleted]	
	…		
…			
Contracts and other relationships with parties			
11	The following relevant details:		
	…		
	(g)	a list of:	
		(i)	the functions which the *authorised fund manager* has delegated in accordance with *FCA rules* ~~or, for an *EEA UCITS management company*, in accordance with applicable *Home State* measures implementing article 13 of the *UCITS Directive*~~; and
		…	
	…		
…			
Marketing in another EEA state			
26	~~A *prospectus* of a *UCITS scheme* which is prepared for the purpose of marketing units in a *EEA State* other than the *United Kingdom*, must give details as to:~~		
	~~(a)~~	~~what special arrangements have been made:~~	
		~~(i)~~	~~for paying in that *EEA State* amounts distributable to *unitholders* resident in that *EEA State*;~~
		~~(ii)~~	~~for *redeeming* in that *EEA State* the *units* of *unitholders* resident in that *EEA State*;~~

		~~(iii)~~	~~for inspecting and obtaining copies in that *EEA State* of the *instrument constituting the fund* and amendments to it, the *prospectus* and the annual and half-yearly long report; and~~
		~~(iv)~~	~~for making public the *price* of *units* of each *class*; and~~
	~~(b)~~	~~how the *ICVC* or the *authorised fund manager* of an *AUT* or *ACS* will publish in that *EEA State* notice:~~	
		~~(i)~~	~~that the annual and half-yearly long report are available for inspection;~~
		~~(ii)~~	~~that a distribution has been declared;~~
		~~(iii)~~	~~of the calling of a meeting of *unitholders*; and~~
		~~(iv)~~	~~of the termination of the *authorised fund* or the revocation of its authorisation.~~ [deleted]

…

Information to be provided on securities financing transactions and total return swaps

…

4.2.5B ~~EU~~ UK [*Editor's note*: We will consider whether amendments are needed to the copy out text in this provision when the relevant statutory instrument onshoring the *Securities Financing Transactions Regulations* is published.]

…

Guidance on contents of the prospectus

4.2.6 G …

(6) The *authorised fund manager* of a *UCITS scheme* should consider the appropriateness of including additional matters in its *prospectus* as a result of the *ESMA* Guidelines on ETFs and other UCITS issues (ESMA 2012/832).~~, which can be found at~~

~~https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf~~

…

4.3 Approvals and notifications

…

Appointment of a new authorised fund manager

4.3.6A R ~~(1)~~ ~~In the case of a *UCITS scheme*, the appointment of a new *ACD* of an *ICVC* under *COLL* 6.5.3R (Appointment of an ACD) or the replacement of the *authorised fund manager* of an *AUT* or *ACS* who proposes to retire under *COLL* 6.5.8R (Retirement of an authorised fund manager of an AUT or ACS) must, if in either case the new *authorised fund manager* is established in a different *EEA State* to the outgoing *authorised fund manager*, be treated as a significant change in accordance with *COLL* 4.3.6R.~~

~~(2)~~ ~~Paragraph (1) does not apply:~~

~~(a)~~ ~~if the appointment of the new *authorised fund manager* is the subject of an *extraordinary resolution* approved by a meeting of *unitholders*; or~~

~~(b)~~ ~~following the termination of the appointment of the *ACD* of an *ICVC* under *COLL* 6.5.4R(2) or *COLL* 6.5.4R(3) (Termination of appointment of an ACD), if the *directors* of the *ICVC* other than the *ACD*, or the *depositary* if there are no such *directors*, consider that it would be in the best interests of *unitholders* to appoint a new *ACD* without delay.~~ [deleted]

Guidance on significant changes

4.3.7 G …

(4) ~~The requirement in *COLL* 4.3.6AR(1) applies in all cases where the outgoing *authorised fund manager* (whether established in the *United Kingdom* or in another *EEA State*) is to be replaced by an *authorised fund manager* established in any other *EEA State* (including the *United Kingdom*).~~ [deleted]

…

Appointment of an AFM without prior written notice to Unitholders

4.3.10 R (1) ~~In the case of a *UCITS scheme*, the appointment of a new *authorised fund manager* as a result of:~~

~~(a)~~ ~~in the case of an *ICVC*, the termination of the appointment of the previous *ACD* under *COLL* 6.5.4R(2) or *COLL* 6.5.4R(3) (Termination of appointment of an ACD); or~~

~~(b)~~ ~~in the case of an *AUT* or *ACS*, the replacement of the *authorised fund manager* under *COLL* 6.5.7R(2) (Replacement of an authorised fund manager of an AUT or ACS);~~

~~must, if the new *authorised fund manager* is established in a different *EEA State* to the outgoing *authorised fund manager*, be notified to *unitholders*.~~ [deleted]

…

…

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 ~~EU~~ UK [*Editor's note*: We will consider whether amendments are needed to the copy out text in this provision when the relevant statutory instrument onshoring the *Securities Financing Transactions Regulations* is published.]

…

Publication and availability of annual and half-yearly long report

4.5.14 R …

(2) The reports referred to in (1) must:

…

(c) for a *UCITS scheme*, be available for inspection by the public at a place designated by the *authorised fund manager* in each *EEA State* other than the *United Kingdom* in which *units* in the *authorised fund* ~~are~~ were marketed before *exit day*, in English and in at least one of that other *EEA State's* official languages; and

(d) be sent to the *FCA* ~~and, if the *UCITS scheme* is managed by an *EEA UCITS management company*, to that company's *Home State regulator* on request~~.

[**Note:** article 74 of the *UCITS Directive*]

…

4.7 Key investor information and marketing communications

…

Key investor information

4.7.2 R …

(8) ~~*Key investor information* for a *UCITS scheme* must be used without alterations or supplements, except translation, in each *EEA State* where a *UCITS marketing notification* has been made so as to enable the *marketing* of the *scheme's units* in that State.~~ [deleted]

[**Note:** article 78 of the *UCITS Directive*]

Form and content of a key investor information document

4.7.3 G The *KII Regulation* sets out the form and content of a *key investor information document*. ~~This Regulation is directly applicable in the *United Kingdom* and accordingly its articles (but not the preceding recitals) are binding on all *firms* to which it applies.~~ Under the Regulation an *authorised fund manager* must ensure that each *key investor information* document it produces for a *UCITS scheme* complies with the requirements of the Regulation. For ease of reference the Regulation is reproduced in *COLL* ~~Appendix 1EU~~ Appendix 1UK (The KII Regulation).

…

Synthetic risk and reward indicators and ongoing charges disclosures in the KII

4.7.8 G …

(3) ~~*Firms* should note that these methodologies may in due course become directly applicable obligations in the light of the European Securities and Markets Authority's powers to develop implementing technical standards in this area.~~ [deleted]

…

4.8 Notifications for UCITS master-feeder arrangements

…

Information to be provided to Unitholders

4.8.3 R …

(2) Where a *UCITS marketing notification* ~~has been~~ was made in relation to a *feeder UCITS* before *exit day*, the *authorised fund manager* of the *feeder UCITS* must ensure that an accurate translation of the information in (1) is provided to *unitholders* in:

(a) the official language, or one of the official languages, of the ~~*feeder UCITS' Host State*~~ state where the *UCITS marketing notification* was made; or

(b) a language approved by the ~~*Host State regulator*~~ *overseas regulator* in the state where the *UCITS marketing notification* was made.

[**Note:** article 64 first and second paragraphs of the *UCITS Directive*]

…

5 Investment and borrowing powers

…

5.2 General investment powers and limits for UCITS schemes

Application

5.2.1 R …

(2) ~~*COLL* 5.2.23CR (Valuation of OTC derivatives) also applies to a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.~~ [deleted]

…

Eligible markets: requirements

5.2.10 R (1) A market is *eligible* for the purposes of the *rules* in this sourcebook if it is:

…

(b) a market in the *UK* or an *EEA State* which is regulated, operates regularly and is open to the public; or

…

…

…

Issuers and guarantors of money-market instruments

5.2.10B R (1) A *UCITS scheme* may invest in an *approved money-market instrument* if it is:

(a) issued or guaranteed by any one of the following:

(i) a central authority of the *UK* or an *EEA State* or, if the *EEA State* is a federal state, one of the members making up the federation;

(ii) a regional or local authority of the *UK* or an *EEA State*;

(iii) the Bank of England, the European Central Bank or a central bank of an *EEA State*;

…

(vi) a public international body to which the *UK* or one or more *EEA States* belong; or

…

(c) issued or guaranteed by an establishment which is:

(i) subject to prudential supervision in accordance with criteria defined by *UK* or *EU* law; or

(ii) subject to and complies with prudential rules considered by the *FCA* to be at least as stringent as those laid down by *UK* or *EU* law.

(2) An establishment shall be considered to satisfy the requirement in (1)(c)(ii) if it is subject to and complies with prudential rules, and fulfils one or more of the following criteria:

…

(d) on the basis of an in-depth analysis of the issuer, it can be demonstrated that the prudential rules applicable to that issuer are at least as stringent as those laid down by *UK* or EU law.

[**Note:** article 6 of the *UCITS eligible assets Directive*]

…

Other money-market instruments with a regulated issuer

5.2.10E G (1) In addition to instruments admitted to or *dealt* in on an *eligible* market, a *UCITS scheme* may also with the express consent of the *FCA* (which takes the form of a *waiver* under sections 138A and 138B of the *Act* as applied by section 250 of the Act or regulation 7 of the *OEIC Regulations*) invest in an *approved money-market instrument* provided:

…

(c) the issuer is a company whose capital and reserves amount to at least EUR 10 million and which presents and publishes its annual accounts in accordance with the requirements of the Companies Act 2006 applicable to public companies limited

by shares or by guarantee, or private companies limited by shares or by guarantee, or, for companies incorporated in the *EEA*, Directive ~~78/660/EEC~~ 2013/34/EU, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

…

(3) A banking liquidity line is a banking facility secured by a financial institution which is an establishment subject to prudential supervision in accordance with criteria defined by *UK* or EU law or an establishment which is subject to and complies with prudential rules considered by the *FCA* (in accordance with *COLL* 5.2.10BR(2)) to be at least as stringent as those laid down by *UK* or EU law.

[**Note:** article 50(1)(h)(iv) of the *UCITS Directive* and article 7 of the *UCITS eligible assets Directive*]

Spread: general

5.2.11 R …

(2) For the purposes of this *rule* companies included in the same group for the purposes of consolidated accounts as defined in accordance with ~~the Seventh Council~~ section 399 of Companies Act 2006, Directive ~~83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts~~ 2013/34/EU or, in the same group in accordance with international accounting standards, are regarded as a single body.

…

…

Spread: government and public securities

5.2.12 R (1) This *rule* applies in respect of a *transferable security* or an *approved money-market instrument* ("such securities") that is issued by:

(a) the *UK* or an *EEA State*;

(b) a local authority of the *UK* or an *EEA State*;

…

(d) a public international body to which the *UK* or one or more *EEA States* belong.

…

Investment in collective investment schemes

5.2.13 R A *UCITS scheme* must not invest in *units* in a *collective investment scheme* ("second *scheme*") unless the second *scheme* satisfies all of the following conditions, and provided that no more than 30% of the value of the *UCITS scheme* is invested in second *schemes* within (1)(b) to (e):

(1) the second *scheme* must:

(a) be a *UCITS scheme* or satisfy the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive* as implemented in the *EEA*; or

(b) be a *recognised scheme* ~~under the provisions of section 272 of the *Act* (Individually recognised overseas schemes)~~ that is authorised by the *supervisory authorities* of Guernsey, Jersey or the Isle of Man (provided the requirements of ~~article 50(1)(e) of the *UCITS Directive*~~ *COLL* 5.2.13AR are met); or

(c) be authorised as a *non-UCITS retail scheme* (provided the requirements of ~~article 50(1)(e) of the *UCITS Directive*~~ *COLL* 5.2.13AR(1)(a), (3) and (4) are met); or

(d) be authorised in ~~another~~ an *EEA State* (provided the requirements of ~~article 50(1)(e) of the *UCITS Directive*~~ *COLL* 5.2.13AR are met); or

(e) be authorised by the competent authority of an *OECD* member country (other than ~~another~~ an *EEA State*) which has:

(i) signed the IOSCO Multilateral Memorandum of Understanding; and

(ii) approved the *scheme's* management company, rules and *depositary*/*custody* arrangements;

(provided the requirements of ~~article 50(1)(e) of the *UCITS Directive*~~ *COLL* 5.2.13AR are met);

…

5.2.13A R The requirements referred to in *COLL* 5.2.13R(1) are that:

(1) the second *scheme* is an undertaking:

(a) with the sole object of collective investment in *transferable securities* or in other liquid financial assets, as referred to in

this chapter, of capital raised from the public and which operate on the principle of risk-spreading; and

(b) with *units* which are, at the request of holders, repurchased or *redeemed*, directly or indirectly, out of those undertakings' assets (action taken by a *scheme* to ensure that the price of its *units* on an investment exchange does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or *redemption*);

(2) the second *scheme* is authorised under laws which provide that they are subject to supervision considered by the *FCA* to be equivalent to that laid down in the law of the *United Kingdom*, and that cooperation between the *FCA* and the *supervisory authorities* of the second *scheme* is sufficiently ensured;

(3) the level of protection for *unitholders* in the second *scheme* is equivalent to that provided for *unitholders* in a *UCITS scheme*, and in particular that the rules on asset segregation, borrowing, lending, and uncovered sales of *transferable securities* and *approved money market instruments* are equivalent to the requirements of this chapter; and

(4) the business of the second *scheme* is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period.

Qualifying non-UCITS collective investment schemes

5.2.14 G …

(2) ~~Article 50 of the *UCITS Directive* sets out the general investment limits. So, a~~ A *scheme* which has the power to invest in gold or immovables would not meet the criteria set out in *COLL* 5.2.13R(1).

(3) In determining whether a *scheme* (other than a *UCITS*) meets the requirements of ~~article 50(1)(c) of the *UCITS Directive*~~ *COLL* 5.2.13AR for the purposes of *COLL* 5.2.13R(1), the *authorised fund manager* should consider the following factors before deciding that the *scheme* provides a level of protection for *unitholders* which is equivalent to that provided to *unitholders* in a *UCITS scheme*:

…

…

(4) The requirement for supervisory equivalence, as described in ~~article 50(1)(c) (first indent) of the *UCITS Directive*~~ *COLL* 5.2.13AR(2), also applies to *schemes* (that are not *EEA UCITS schemes*) established in ~~other~~ *EEA States*. In considering whether the second scheme satisfies this requirement, the *authorised fund manager*

should have regard to the first section of article 26 of *CESR's UCITS eligible assets guidelines*.

…

Valuation of OTC derivatives

5.2.23C R (1) For the purposes of *COLL* 5.2.23R(2), an *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must:

(a) establish, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of the exposures of a *UCITS scheme* ~~or an *EEA UCITS scheme*~~ to *OTC derivatives*; and

…

(2) Where the arrangements and procedures referred to in (1) involve the performance of certain activities by third parties, the *authorised fund manager* ~~or *UK UCITS management company*~~ must comply with the requirements in *SYSC* 8.1.13R (Additional requirements for a management company) and *COLL* 6.6A.4R(5) and (6) (Due diligence requirements of AFMs of UCITS schemes). ~~and EEA UCITS schemes) or, where appropriate, the equivalent requirements of the *UCITS Home State regulator* implementing article 5(2) and article 23(4), second subparagraph, of the *UCITS implementing Directive*.~~

…

…

Disclosure requirements in relation to UCITS schemes ~~or EEA UCITS schemes~~ that employ particular investment strategies

5.2.34 G (1) *Authorised fund managers* of *UCITS schemes* ~~or *EEA UCITS schemes*~~ should bear in mind that where a *UCITS scheme*~~, or an *EEA UCITS scheme* that is a *recognised scheme* under section 264 of the *Act*,~~ employs particular investment strategies such as those in (2), *COBS* 4.13.2R (Marketing communications relating to UCITS schemes ~~or EEA UCITS schemes~~) and *COBS* 4.13.3R (Marketing communications relating to a feeder UCITS) contain additional disclosure requirements in relation to marketing communications that concern those investment strategies.

…

Guidance on syndicated loans

5.2.35 R …

(2) To determine whether an interest in a syndicated loan would be an eligible investment for a *UCITS scheme* in accordance with *COLL* 5.2, an *authorised fund manager* should first consider whether it constitutes a *transferable security* within the meaning of *COLL* 5.2.7R (Transferable securities) and *COLL* 5.2.7AR (which implemented ~~then consider~~ the additional eligibility criteria arising out of the *UCITS eligible assets Directive* that relate to liquidity, valuations and negotiability ~~(see *COLL* 5.2.7AR (Investment in transferable securities))~~.

…

…

5.6 Investment powers and borrowing limits for non-UCITS retail schemes

…

Explanation of COLL 5.6

5.6.2 G (1) This section contains *rules* on the types of permitted investments and any relevant limits with which *non-UCITS retail schemes* must comply. These *rules* allow for the relaxation of certain investment and borrowing powers from the requirements ~~of the *UCITS Directive*~~ applicable to *UCITS schemes*. ~~Consequently, a *scheme* authorised as a *non-UCITS retail scheme* will not qualify for the cross border passporting rights conferred by the *UCITS Directive* on a *UCITS scheme*.~~

(2) Some examples of the different investment and borrowing powers under the *rules* in this section for *non-UCITS retail schemes* are the power to:

…

(c) invest in a wider range of ~~*schemes* which do not comply with the requirements of the *UCITS* Directive~~ *alternative investment funds*;

…

…

Spread: government and public securities

5.6.8 R (1) This *rule* applies in respect of a *transferable security* or an *approved money-market instrument* ("such *securities*") that is issued or guaranteed by:

(a) the *UK* or an *EEA State*; or

(b) a local authority of the *UK* or an *EEA State*; or

…

(d) a public international body to which the *UK* or one or more *EEA States* belong.

…

…

Investment in collective investment schemes

5.6.10 R A *non-UCITS retail scheme*, except for a *feeder NURS* (which must instead comply with *COLL* 5.6.26R), must not invest in *units* in a *collective investment scheme* (second *scheme*) unless the second *scheme* meets each of the requirements at (1) to (5):

(1) the second *scheme*:

(a) is a *UCITS scheme* or satisfies the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive* as implemented in the *EEA*; or

…

…

…

Qualifying collective investment schemes for feeder NURS

5.6.26 R The *authorised fund manager* of a *feeder NURS* must ensure that the *feeder NURS* does not invest in the *qualifying master scheme*, unless the *qualifying master scheme* meets the requirements in (1) to (3):

(1) the *qualifying master scheme*:

(a) is a *UCITS scheme* or satisfies the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive* as implemented in the *EEA*; or

…

…

(3) the *qualifying master scheme*:

(a) is not:

(i) a *feeder UCITS* or an *EEA UCITS scheme* or a *sub-fund* of an *EEA UCITS scheme* which has been

approved by the *overseas regulator* of the *UCITS Home State* to invest at least 85% of its assets in the units of a single *EEA* master *UCITS*; or

…

(b) does not hold units in:

(i) a *feeder UCITS* or an *EEA UCITS* scheme or a *sub-fund* of an *EEA UCITS scheme* which has been approved by the *overseas regulator* of the *UCITS Home State* to invest at least 85% of its assets in the *units* of a single *EEA* master *UCITS*; or

…

5.6.27 R An *EEA UCITS scheme* that is not a *recognised scheme* ~~under section 264 of the *Act*~~ is not a *qualifying master scheme* for *COLL* 5.6.26R(3) for a *pension feeder fund* that is a *feeder NURS.*

…

5.8 Investment powers and borrowing limits for feeder UCITS

…

Permitted types of scheme property

…

5.8.2A R The *authorised fund manager* of a *pension feeder fund* that is a *feeder UCITS* must ensure that the single *master UCITS* is:

(1) a *UCITS scheme*; or

(2) an *EEA UCITS scheme* that is a *recognised scheme* ~~under section 264 of the *Act*~~.

…

[*Editor's note*: the changes proposed in this instrument reflect the Handbook as at 1 July 2018. However, COLL 5.9 was deleted with effect from 20 July 2018 by the Money Market Funds Regulation Instrument 2018 (FCA 2018/37). We have therefore not shown the changes to COLL 5.9 that would have been necessary in relation to the version of the Handbook in force on 1 July 2018.]

6 Operating duties and responsibilities

…

6.3 Valuation and pricing

Application

6.3.1 R …

(2) ~~*COLL* 6.3.3AR to *COLL* 6.3.3DR (Accounting procedures):~~

~~(a) apply to:~~

~~(i) a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*; and~~

~~(ii) an *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* from a *branch* in the *United Kingdom*;~~

~~in addition to applying in accordance with (1); but~~

~~(b) do not apply to an *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* under the freedom to provide *cross border services.*~~ [deleted]

…

Accounting procedures

6.3.3A R (1) An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must ensure the employment of the accounting policies and procedures referred to in *SYSC* 4.1.9R (Accounting policies), so as to ensure the protection of *unitholders*.

…

6.3.3B R An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the ~~*UCITS Home State*~~ *United Kingdom*, so as to ensure that the calculation of the net asset value of each *scheme* it manages is accurately effected, on the basis of the accounting, and that subscription and *redemption* orders can be properly executed at that net asset value.

[**Note:** article 8(2) of the *UCITS implementing Directive*]

…

6.3.3D R An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of each *scheme* it manages.

[**Note:** article 8(3) of the *UCITS implementing Directive*]

…

6.6 Powers and duties of the scheme, the authorised fund manager, and the depositary

…

Maintenance of records

…

6.6.6A R …

(2) ~~*COLL* 6.6A.6R ((Strategies for the exercise of voting rights) also applies to a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State*, as well as applying in accordance with (1).~~ [deleted]

…

…

Committees and delegation

…

6.6.15A R (1) This *rule* applies to:

(a) an *authorised fund manager* ~~(other than an *EEA UCITS management company*)~~ of an *AUT*, *ACS* or an *ICVC* where such *AUT*, *ACS* or *ICVC* is a *UCITS scheme*; and

(aa) a *small authorised UK AIFM* that is the *authorised fund manager* of an *AUT*, *ACS* or an *ICVC* that is *a non-UCITS retail scheme*.~~; and~~

(b) ~~a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.~~ [deleted]

(2) The *authorised fund manager* has the power to retain the services of any *person* to assist it in the performance of its functions, provided that:

(a) a mandate in relation to *managing investments* of the *scheme* is not given to:

…

(iv) any other *person* operating from an establishment in a country other than the *United Kingdom* unless such *person*:

…

(B) is subject to prudential supervision in such country;

and in addition if that *person* is not ~~an *EEA*~~ a *UK firm*, co-operation is ensured between the *FCA* and the *overseas regulator* of that *person*;

…

…

Delegation: guidance

6.6.16 G …

(3) For the purpose of *COLL* 6.6.15AR (2)(a)(iv), adequate co-operation will be ensured where the *FCA* has entered into a co-operation agreement ~~of the kind referred to in article 102(3) of the *UCITS Directive*~~ providing for the exchange of information with the relevant *overseas regulator* which is subject to guarantees of professional secrecy that prevent recipients of any confidential information divulging it to any person whatsoever, save in summary or aggregate form such that *UCITS schemes*, *management companies* and *depositaries* cannot be individually identified, without prejudice to cases covered by criminal law.

…

…

6.6A Duties of AFMs in relation to UCITS schemes ~~and EEA UCITS schemes~~

Application

6.6A.1 R (1) This section applies to:

(a) an *authorised fund manager* of a *UCITS scheme*, a *depositary*, an *ICVC* and any other *director* of an *ICVC* which is a *UCITS scheme*.~~; and~~

(b) ~~subject to (2), a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* under the freedom to provide *cross border services*.~~ [deleted]

(2) ~~*COLL* 6.6A.6R (Strategies for the exercise of voting rights) also applies to a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State*, as well as applying in accordance with (1).~~ [deleted]

(3) ~~This section does not apply to an *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* under the freedom to provide *cross border services*.~~ [deleted]

Duties of AFMs of UCITS schemes ~~and EEA UCITS schemes~~ to act in the best interests of the scheme and its unitholder

6.6A.2 R An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must:

…

…

Due diligence requirements of AFMs of UCITS schemes ~~and EEA UCITS schemes~~

6.6A.4 R An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must:

…

(3) establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of any *UCITS scheme* ~~or *EEA UCITS scheme*~~ it manages are carried out in compliance with the objectives and the investment strategy and *risk limit system* of the *scheme*;

…

Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company

6.6A.5 R The *authorised fund manager* of a *UCITS scheme* ~~or the *UK UCITS management company* of an *EEA UCITS scheme*~~ must comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

[**Note:** article 14(1)(e) of the *UCITS Directive*]

Strategies for the exercise of voting rights

6.6A.6 R (1) An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must develop adequate and effective strategies for determining when and how voting rights attached to ownership of *scheme property*, ~~or the instruments held by an *EEA UCITS scheme*,~~ are to be exercised, to the exclusive benefit of the *scheme* concerned.

…

(3) An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must make available to *unitholders*:

…

…

Appointment of a single depositary

6.6A.7 R An *authorised fund manager* of a *UCITS scheme*~~, or a *UK UCITS management company* of an *EEA UCITS scheme*,~~ must (for each *scheme* it manages) ensure that:

…

(2) the assets of the ~~*UCITS*~~ *UCITS scheme* are entrusted to the *depositary* for safekeeping in accordance with~~:~~ *COLL* 6.6B.18R and *COLL* 6.6B.19R.

~~(a) for a *UCITS scheme*, *COLL* 6.6B.18R and *COLL* 6.6B.19R; and~~

~~(b) for an *EEA UCITS scheme*, the national laws and regulations in the *Home State* of the *EEA UCITS scheme* that implement article 22(5) of the *UCITS Directive*.~~

[**Note:** article 22(1) and (5) of the *UCITS Directive*]

Eligible depositaries for UCITS schemes

…

6.6A.9 G For a *depositary* to be established in the *United Kingdom*, it must have its registered office ~~or *branch*~~ in the *United Kingdom*.

~~Eligible depositaries for EEA UCITS schemes~~

6.6A.10 R ~~A *UK UCITS management company* must ensure the *depositary* it appoints for each *EEA UCITS scheme* it manages is *established* in the *Home State* of~~

~~the *EEA UCITS scheme* and is eligible to be a *depositary* in that *Home State*.~~ [deleted]

~~[**Note:** article 23(2) of the *UCITS Directive*]~~

Written contract

6.6A.11 R (1) An *authorised fund manager* of a *UCITS scheme*~~, or a *UK UCITS management company* of an *EEA UCITS scheme*,~~ must ensure that the appointment of the *depositary* is evidenced by a written contract.

…

…

6.6A.13 G Article 2 of the *UCITS level 2 regulation* sets out the minimum information that must be included in the written contract between:

(1) (a) the *authorised fund manager* of a *UCITS scheme*; ~~or~~ and

(b) ~~a *UK UCITS management company* of an *EEA UCITS scheme*; and~~ [deleted]

(2) the *depositary*.

6.6B UCITS depositaries

…

Eligible depositaries for UCITS schemes

…

6.6B.6 G For a *depositary* to be *established* in the *United Kingdom*, it must have its registered office ~~or *branch*~~ in the *United Kingdom*.

Depositaries appointed under COLL 6.6A.8R(3) (non-bank depositaries): Capital requirements

6.6B.7 G A *depositary* appointed in accordance with *COLL* 6.6A.8R(3) needs to satisfy the capital requirements in either:

(1) IPRU(INV) 5; or

(2) IFPRU and the ~~*EU CRR*~~ *UK CRR*.

…

6.6B.9 G (1) If the *depositary* is a *full-scope IFPRU investment firm*, it is subject to the capital requirements of *IFPRU* and the ~~*EU CRR*~~ *UK CRR*.

(2) However, these requirements are not in addition to *COLL* 6.6B.8R and therefore that *firm* may use the *own funds* required under *IFPRU* and the ~~*EU CRR*~~ *UK CRR* to meet the £4 million requirement.

6.6B.10 G ~~If the *depositary* appointed in accordance with *COLL* 6.6A.8R(3) is an *incoming EEA firm* that has a *top-up permission* for *acting as trustee or depositary of a UCITS*, it must comply with the applicable capital requirements set out in IPRU(INV) 5.~~ [deleted]

…

Depositary functions: cash monitoring

6.6B.17 R The *depositary* must ensure that the cash flows of each *UCITS scheme* are properly monitored and that:

…

(2) all cash of the *scheme* has been booked in cash accounts which are:

…

(b) at:

…

(iii) a bank authorised in a country other than ~~a third *country*~~ an *EEA State*; and

(c) maintained in accordance with the principles in article 2 (safeguarding of client financial instruments and funds) of the *MiFID Delegated Directive*; and

…

…

Limitation on delegation

…

6.6B.23 G The use of services provided by securities settlement systems, as specified in the ~~*Settlement Finality Directive*~~ Financial Markets and Insolvency (Settlement Finality) Regulations 1999, or similar services provided by ~~third-country~~ securities settlement systems in other countries, does not constitute a delegation by the *depositary* of its functions for the purposes of *COLL* 6.6B.22R.

[**Note:** article 22a(4) of the *UCITS Directive*]

6.6B.24 G …

(2) ~~Paragraph (1) also applies where the *depositary* is the *UK branch* of an *EEA firm* and it performs part of its functions:~~

(a) ~~through a *branch* in another *EEA State*; or~~

(b) ~~from the *EEA State* where it has its registered office.~~ [deleted]

(3) (a) A *depositary* that performs part of its functions through a *branch* ~~or registered office~~ in ~~another~~ an *EEA State* should ensure that those arrangements do not impede the *depositary's* ability to meet the *threshold conditions*.

…

Delegation: safekeeping

6.6B.25 R A *depositary* may delegate the functions in *COLL* 6.6B.18R and *COLL* 6.6B.19R to one or more third parties if:

(1) the tasks are not delegated with the intention of avoiding the requirements of the *UCITS Directive*, as implemented in this chapter;

…

Delegation: third countries

6.6B.26 R A *depositary* may delegate custody tasks in relation to *UCITS custodial assets* to an entity in ~~a third~~ another country even though that entity does not satisfy the conditions in *COLL* 6.6B.25R(4)(b)(i) if:

(1) the law of that ~~third~~ country requires those *UCITS custodial assets* to be held in custody by a local entity;

…

(3) the *depositary* delegates its functions to such a local entity only:

(a) to the extent required by the law of that ~~third~~ country; and

…

(4) the investors of the relevant *UCITS scheme* are informed before their investment:

(a) that such delegation is required due to legal constraints in the ~~third~~ other country;

…

…

…

Reporting of breaches

6.6B.30 R A *depositary* must have appropriate procedures for its employees to report internally, through a specific, independent and autonomous channel, potential or actual breaches of those national provisions ~~transposing~~ which transposed the *UCITS Directive* ~~internally through a specific, independent and autonomous channel~~ before *exit day*.

[**Note:** article 99d(5) of the *UCITS Directive*]

…

6.9 Independence, names and UCITS business restrictions

…

Undesirable or misleading names

6.9.6 G …

(3) The *FCA* is unlikely to approve a name of an *authorised fund* that includes the word "guaranteed" unless:

(a) the guarantee is given by:

(i) an *authorised person*;

(ii) a *person* ~~authorised by a *Home State regulator*~~ which is established in an *EEA State* and equivalent to an *authorised person*; or

(iii) a *person* subject to prudential supervision in accordance with criteria defined by ~~*EU*~~ *UK* law or prudential rules at least as stringent as those laid down by ~~*EU*~~ *UK* law;

other than the *authorised fund manager* or the *depositary*.

…

…

…

Use of the term 'UCITS ETF'

6.9.8B G …

(2) A 'UCITS ETF' should use the identifier 'UCITS ETF' which identifies it as an exchange traded fund. This identifier should be used in its name, fund rules, *instrument of incorporation*, *prospectus*,

key investor information document or marketing communications. The identifier 'UCITS ETF' should be used in all ~~*EU*~~ languages.

…

…

Connected activities: guidance

6.9.10 G …

(2) The ~~restrictions of business imposed by *COLL* 6.9.9R reflect the position under Article 6 of the *UCITS Directive*. In accordance with recital (12) of the Directive the~~ activities referred to at *COLL* 6.9.9R(3)(a) to *COLL* 6.9.9R(3)(c) may be performed on behalf of *EEA UCITS management companies*.

…

6.10 Senior personnel responsibilities

Application

6.10.1 R (1) This section applies to an *authorised fund manager* of a *UCITS scheme*.~~:~~

~~(a) an *authorised fund manager* of a *UCITS scheme*; and~~

~~(b) a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.~~

(2) ~~This section does not apply to an *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* under the freedom to provide *cross border services*.~~ [deleted]

Senior personnel responsibilities

6.10.2 R In complying with *SYSC* 4.3.1R (Responsibility of senior personnel), an *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must ensure that its *senior personnel*:

…

(3) are responsible for ensuring that the *authorised fund manager* ~~or *UK UCITS management company*~~ has a permanent and effective compliance function as referred to in *SYSC* 6.1 (Compliance), even if this function is performed by a third party;

…

6.10.3 R An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must ensure that its *senior personnel* receive, on a regular basis, reports on the implementation of investment strategies and of the internal procedures for taking the investment decisions referred to in *COLL* 6.10.2R(2) to *COLL* 6.10.2R(5).

[**Note:** article 9(5) of the *UCITS implementing Directive*]

6.11 Risk control and internal reporting

Application

6.11.1 R (1) This section applies to an *authorised fund manager* of a *UCITS scheme*.~~:~~

~~(a) an *authorised fund manager* of a *UCITS scheme*; and~~

~~(b) a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.~~

(2) ~~This section does not apply to an *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* under the freedom to provide *cross border services*.~~ [deleted]

Permanent risk management function

6.11.2 R (1) An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must establish and maintain a permanent risk management function.

(2) The function referred to in (1) must be hierarchically and functionally independent from operating units, except where such independence would not be appropriate and proportionate in view of the nature, scale and complexity of the *authorised fund manager's* ~~or *UK UCITS management company's*~~ business and of each *scheme* it manages.

(3) The *authorised fund manager* ~~or *UK UCITS management company*~~ must be able to demonstrate that:

…

(b) its risk management process satisfies the requirements of *COLL* 6.12.3R (Risk management process) ~~or, where appropriate, the relevant *UCITS Home State* measures implementing article 51 of the *UCITS Directive*~~.

[**Note:** articles 12(1) and 12(2) of the *UCITS implementing Directive*]

6.11.3 G Where the risk management function required under *COLL* 6.11.2R(1) is not hierarchically and functionally independent, the *authorised fund manager* ~~or *UK UCITS management company*~~ should nevertheless be able to demonstrate that its risk management process satisfies the requirements of *COLL* 6.12.3R (Risk management process) and that, in particular, the appropriate safeguards have been adopted.

[**Note:** article 12(2) third paragraph and recital (12) of the *UCITS implementing Directive*]

Duties of the permanent risk management function

6.11.4 R (1) The permanent risk management function must:

…

(b) ensure compliance with the *risk limit system*, including statutory limits concerning global exposure and counterparty risk, as required by *COLL* 5.2 (General investment powers and limits for UCITS schemes) and *COLL* 5.3 (Derivative exposure) ~~or, where appropriate, the relevant *UCITS Home State* measures implementing articles 41, 42 and 43 of the *UCITS implementing Directive*~~;

…

(f) review and support, where appropriate, the arrangements for the valuation of *OTC derivatives*, as referred to in *COLL* 5.2.23R (OTC transactions in derivatives), *COLL* 5.2.23CR (Valuation of OTC derivatives) and in this *rule* ~~or, where appropriate, the relevant *UCITS Home State* measures implementing article 44 of the *UCITS implementing Directive*~~.

…

6.12 Risk management policy and risk measurement

Application

6.12.1 R This section applies to an *authorised fund manager* and a *depositary* of a *UCITS scheme*.~~:~~

~~(1) an *authorised fund manager* and a *depositary* of a *UCITS scheme*; and~~

~~(2) a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.~~

6.12.2 G ~~In the *FCA's* view the requirements relating to risk management policy and risk measurement set out in this section are the regulatory responsibility of the *management company's Home State regulator* but to the extent that they constitute *fund application rules*, are also the responsibility of the *UCITS' Home State regulator*. As such, these responsibilities may overlap between the *competent authorities* of the *Home* and *Host States*. *EEA UCITS management companies* providing *collective portfolio management* services for a *UCITS scheme*, whether from a *branch* in the *United Kingdom* or under the freedom to provide *cross border services*, are therefore advised that they will be expected to comply with the requirements of this section, except for *COLL* 6.12.3R(2) which, as a notification requirement, is a matter reserved for the rules of the *management company's Home State*.~~ [deleted]

Risk management process

6.12.3 R (1) (a) An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must use a risk management process enabling it to monitor and measure at any time the risk of the *scheme's* positions and their contribution to the overall risk profile of the *scheme*.

(b) In particular, an *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must not solely or mechanistically rely on credit ratings issued by credit rating agencies, as defined in article 3(1)(b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies the *CRA Regulation*, for assessing the creditworthiness of the *scheme's* assets.

(2) An *authorised fund manager* ~~(excluding the *EEA UCITS management company* of a *UCITS scheme*) or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must regularly notify the following information to the *FCA* and at least on an annual basis:

…

6.12.3A R An *authorised fund manager* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ subject to *COLL* 6.12.3R(2) must notify the *FCA* of the information specified in points (a) and (b) of that *rule*:

(1) annually, within 30 *business days* of 31 October, with information that is accurate as of 31 October of that year;

…

6.12.3B G (1) In addition, an *authorised fund manager* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ subject to *COLL* 6.12.3R(2) should submit a notification to the *FCA* if there has been a significant change to the *fund's* risk profile since its last report, by

sending the form in *COLL* 6 Annex 2R, completed as applicable, to fundsupervision@fca.org.uk.

…

6.12.4 G …

(3) An *authorised fund manager* ~~or a *UK UCITS management company*~~ is expected to demonstrate more sophistication in its risk management process for a *scheme* with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic of non-linear dependence in the value of a position to its underlying.

(4) An *authorised fund manager* ~~or a *UK UCITS management company*~~ should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by *SYSC* 4.1 (General requirements).

…

(6) An *authorised fund manager* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ should undertake the risk assessment required by COLL 5.2.20R (7)(d) (Permitted transactions (derivatives and forwards)) with the highest care when the counterparty to the *derivative* transaction is an *associate* of the *authorised fund manager*~~, the *UK UCITS management company*~~ or the credit issuer.

[**Note:** *CESR's UCITS eligible assets guidelines* with respect to article 8(2)(d) of the *UCITS eligible assets Directive*]

Risk management policy

6.12.5 R (1) An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must establish, implement and maintain an adequate and documented risk management policy for identifying the risks to which that *scheme* is or might be exposed.

(2) The risk management policy must comprise such procedures as are necessary to enable the *authorised fund manager* ~~or *UK UCITS management company*~~ to assess the exposure of each *UCITS* it manages to *market risk*, *liquidity risk* and *counterparty risk*, and to all other risks, including *operational risk*, that might be material for that scheme.

(3) The risk management policy must address at least the following elements:

(a) the techniques, tools and arrangements that enable the *authorised fund manager* ~~or *UK UCITS management*~~

~~*company*~~ to comply with the obligations set out in this section and *COLL* 5.3 (Derivative exposure);

(b) the allocation of responsibilities within the *authorised fund manager* ~~or *UK UCITS management company*~~ pertaining to risk management; and

…

(4) To meet its obligations in (1), (2) and (3) an *authorised fund manager* ~~or a *UK UCITS management company*~~ must take into account the nature, scale and complexity of its business and of the *UCITS* it manages.

[**Note:** article 38 of the *UCITS implementing Directive*]

6.12.6 G ~~*UK UCITS management companies* operating *EEA UCITS schemes* are advised that to the extent that the matters referred to in *COLL* 6.12.5R(3)(a) are viewed by the *UCITS Home State regulator* as falling under its responsibility, they will be expected to comply with the *UCITS Home State* measures implementing articles 40 and 41 of the *UCITS implementing Directive*.~~ [deleted]

Monitoring of risk management policy

6.12.7 R (1) An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must assess, monitor and periodically review:

…

(b) the level of compliance by the *authorised fund manager* ~~or the *UK UCITS management company*~~ with the risk management policy and with those arrangements, processes and techniques referred to in *COLL* 6.12.5R; and

…

(2) The *authorised fund manager* ~~(excluding an *EEA UCITS management company* of a *UCITS scheme*) or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must notify the *FCA* of any material changes to the risk management process.

[**Note:** article 39(1) and 39(2) of the *UCITS implementing Directive*]

6.12.8 G ~~*UK UCITS management companies*~~ *Authorised fund managers* are advised that when they applied for *authorisation* from the *FCA* under the *Act*, their ability to comply with the requirements in *COLL* 6.12.7R would have been assessed by the *FCA* as an aspect of their fitness and properness in determining whether the *threshold conditions* set out in Schedule 6 (Threshold conditions) of the *Act* were met. *Firms* are further advised that their compliance with these requirements is subject to review by the *FCA* on

an ongoing basis in determining whether they continue to meet the *threshold conditions*.

[**Note:** article 39(3) of the *UCITS implementing Directive*]

Measurement and management of risk

6.12.9 R (1) An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must adopt adequate and effective arrangements, processes and techniques in order to:

…

(2) For the purposes of (1), the *authorised fund manager* ~~or a *UK UCITS management company*~~ must take the following actions for each *UCITS* it manages:

…

(3) The arrangements, processes and techniques referred to in (1) should be proportionate in view of the nature, scale and complexity of the business of the *authorised fund manager* ~~or the *UK UCITS management company*~~ and the *UCITS* it manages and be consistent with the *UCITS'* risk profile.

[**Note:** articles 40(1) and 40(2) of the *UCITS implementing Directive*]

6.12.10 G ~~*UK UCITS management companies* operating *EEA UCITS schemes* are advised that to the extent that the matters referred to in *COLL* 6.12.9R(1)(b) are viewed by the *UCITS Home State regulator* as falling under its responsibility, they will be expected to comply with the *UCITS Home State* measures implementing articles 41 and 43 of the *UCITS implementing Directive*.~~ [deleted]

6.12.11 R (1) An *authorised fund manager* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must employ an appropriate *liquidity risk* management process in order to ensure that each *UCITS* it manages is able to comply at any time with *COLL* 6.2.16R (Sale and redemption) ~~or the equivalent *UCITS Home State* measures implementing article 84(1) of the *UCITS Directive*~~.

(2) Where appropriate, the *authorised fund manager* ~~or *UK UCITS management company*~~ must conduct stress tests to enable it to assess the *liquidity risk* of the *UCITS* under exceptional circumstances.

[**Note:** article 40(3) of the *UCITS implementing Directive*]

6.12.12 R An *authorised fund manager* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must ensure that, for each *UCITS* it manages, the liquidity profile of the investments of the *scheme* is appropriate to the *redemption* policy laid down in the *instrument constituting the fund* or the *prospectus*.

[**Note:** article 40(4) of the *UCITS implementing Directive*]

…

6.13 Record keeping

Application

6.13.1 R (1) This section applies to an *authorised fund manager* of a *UCITS scheme*.~~:~~

~~(a) an *authorised fund manager* of a *UCITS scheme*; and~~

~~(b) a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.~~

(2) ~~This section does not apply to an *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* under the freedom to provide *cross border services*.~~ [deleted]

Recording of portfolio transactions

6.13.2 R (1) An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must ensure, for each portfolio transaction relating to a *scheme* it manages, that a record of information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay.

…

Recording of subscription and redemption orders

6.13.3 R (1) An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must take all reasonable steps to ensure that every subscription and *redemption* order it receives relating to *units* in any such *scheme* it manages are centralised and recorded immediately after receipt of that order.

…

Record keeping requirements

6.13.4 R (1) An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must ensure the retention of the records referred to in *COLL* 6.13.2R and *COLL* 6.13.3R for a period of at least five years or, in exceptional circumstances and where directed by the *FCA*, for a longer period, determined by the nature of the instrument or portfolio transaction, where it is necessary to enable the *FCA* to exercise its supervisory functions ~~under the *UCITS Directive*~~ in respect of *UCITS schemes*.

(2) Following the termination of its authorisation, an *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must retain its records referred to in (1) for the outstanding term of the five year period or, if it transfers its responsibilities in relation to the *UCITS scheme* to another *authorised fund manager* ~~or *management company*~~, arrange for those records for the past five years to be accessible to that other manager.

(3) The *authorised fund manager* ~~or the *UK UCITS management company*~~ must retain the records referred to in *COLL* 6.13.2R and *COLL* 6.13.3R in a medium that allows the storage of information in a way accessible for future reference by the *FCA*, and in such a form and manner that the following conditions are met:

…

Electronic data processing

6.13.5 R An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction or subscription or *redemption* order, in order to be able to comply with *COLL* 6.13.2R (Recording of portfolio transactions) and *COLL* 6.13.3R (Recording of subscription and redemption orders).

[**Note:** article 7(1) of the *UCITS implementing Directive*]

6.13.6 R An *authorised fund manager* of a *UCITS scheme* ~~or a *UK UCITS management company* of an *EEA UCITS scheme*~~ must ensure a high level of security during the electronic data processing referred to in *COLL* 6.13.5R as well as the integrity and confidentiality of the recorded information, as appropriate.

[**Note:** article 7(2) of the *UCITS implementing Directive*]

…

6 Annex 2R **UK UCITS management company of UCITS schemes ~~and EEA UCITS schemes~~: Derivative Use Report (FSA042: UCITS)**

… …

6 Annex 3G **Guidance notes on UK UCITS management company of UCITS schemes ~~and EEA UCITS schemes~~: Derivative Use Report (FSA042: UCITS)**

Description	Guidance

Fund name	This is the name of the *scheme* or, where applicable, of the *sub-fund* as it appears on the FS Register ~~or, for an *EEA UCITS scheme*, in the *prospectus*~~.
~~Fund authorisation~~	~~Whether the *scheme* is authorised and regulated in the *United Kingdom* or in another *EEA State*.~~
PRN or LEI	For a *UCITS scheme*, this is the product reference number of the *scheme* or, where applicable, of the *sub-fund* which appears on the FS Register. ~~*EEA UCITS schemes* are not assigned a PRN. Instead, the legal entity identifier (LEI) of the *scheme* or, where applicable, of the *sub-fund*, should be indicated. Where the LEI is not available, please leave the cell blank.~~
…	

7 Suspension of dealings and termination of authorised funds

7.1 Introduction

Application

7.1.1 R …

(2) *COLL* 7.7 (UCITS mergers) applies only to a *domestic UCITS merger* ~~or a *cross-border UCITS merger*~~.

…

7.2 Suspension and restoration of dealings

Requirement

7.2.1 R …

(2) On suspension, the *authorised fund manager*, or the *depositary* if it has required the *authorised fund manager* to suspend *dealings* in *units*, must:

…

(b) as soon as practicable give written confirmation of the suspension and the reasons for it to~~:~~

~~(i)~~ the *FCA*~~.; and~~

~~(ii)~~ ~~the *Home State regulator* in each *EEA State* in which the *authorised fund manager* holds itself out as willing~~

~~to *sell* or redeem *units* of the *authorised fund* concerned.~~

…

(5) The *authorised fund manager* must inform the *FCA* of the proposed restart of *dealings* in *units* and immediately after the restart must confirm this by giving notice to the *FCA* ~~and the authorities mentioned in (2)(b)(ii)~~.

…

…

7.6 Schemes of arrangement

Schemes of arrangement: explanation

7.6.1 G …

(3) *COLL* 7.6.2R(3) to (6) apply to a *domestic UCITS merger* ~~and *cross-border UCITS merger*~~. Arrangements constituting any such merger are in addition subject to the requirements of *COLL* 7.7 (UCITS mergers)~~, implementing the requirements of the *UCITS Directive*~~.

Schemes of arrangement: requirements

7.6.2 R …

(2) For a *UCITS scheme* or a *sub-fund* of a *UCITS scheme*, (1) applies as if the reference to a *regulated collective investment scheme* also excludes any *recognised scheme* but includes any scheme which is authorised in the *EEA* under the *UCITS Directive* and which was ~~other than~~ a ~~*scheme*~~ 'recognised scheme' under section 264 of the *Act* (Schemes constituted in other EEA States) immediately before *exit day*.

…

7.7 UCITS mergers

Application

7.7.1 R This section applies to an *ICVC*, an *authorised fund manager* of an *AUT*, *ACS* or *ICVC*, any other *director* of an *ICVC* and the *depositary* of any such *scheme* where, in each case, the *AUT*, *ACS* or *ICVC* is a *UCITS scheme* that is a party to:

(1) a *domestic UCITS merger*.~~; or~~

(2) ~~a *cross-border UCITS merger*.~~ [deleted]

7.7.2 G (1) The effect of *COLL* 7.7.1R, and in particular the narrow *Glossary* definition of *domestic UCITS merger* ~~which is drafted in accordance with article 2.1(r) of the *UCITS Directive*~~, is that this section will not apply to a merger in the *United Kingdom* between two or more *UCITS schemes* unless one of them ~~has been~~ was the subject of a *UCITS marketing notification* before *exit day*.

(2) ~~For arrangements to constitute a *cross-border UCITS merger*, at least two of the relevant *UCITS* must be:~~

~~(a) established in different *EEA States*; or~~

~~(b) established in the same *EEA State* and be merging into a newly constituted *UCITS* established in another *EEA State*.~~ [deleted]

References to a UCITS scheme

7.7.3 R In this section references to:

(1) a *UCITS scheme*, a *merging UCITS*~~,~~ or to a *receiving UCITS* ~~or to an *EEA UCITS scheme*~~ include the *sub-fund* of any such *scheme*.~~;~~

(2) ~~the *management company* of an *EEA UCITS scheme* are to the *operator* of the *scheme*.~~ [deleted]

[**Note:** article 37 of the *UCITS Directive*]

UCITS mergers

7.7.4 R A *domestic UCITS merger* between two or more *UCITS schemes*~~, or a *cross-border UCITS merger* between one or more *UCITS schemes* which is or are the *merging UCITS* and one or more *EEA UCITS schemes*~~, is permissible provided:

…

(2) in the case of a *UCITS scheme* that is:

(a) a *merging UCITS* ~~in a *domestic* or *cross-border UCITS merger*~~, an *extraordinary resolution* is approved by *unitholders* in accordance with *COLL* 7.6.2R(3) and (4) (Schemes of arrangement: requirements); and

(b) a *receiving UCITS* ~~in a *domestic* or *cross-border UCITS merger*~~, the *authorised fund manager* and *depositary* of the *AUT* or *ACS* and the *directors* of the *ICVC* comply with *COLL* 7.6.2R(5) and (6).

[**Note:** articles 39(1), 39(4) and 44 first paragraph of the *UCITS Directive*]

…

UCITS Regulations 2011

7.7.6 G (1) The requirements and the process which must be followed to give effect to a proposal for a ~~*UCITS merger*~~ *domestic UCITS merger* ~~as specified by Chapter VI of the *UCITS Directive* (see articles 37 to 48) have been~~ are ~~implemented in the *United Kingdom* by the provisions of~~ in Part 4 of the *UCITS Regulations 2011*. The main features of the regime as set out in those provisions include:

(a) ~~the different types of merger operation that will be recognised for a *UCITS merger*~~ the merger must be a *domestic UCITS merger* which takes the form of a scheme of arrangement;

(b) the need for the *FCA* to give prior approval to the proposed merger under regulation 9 (Application for authorisation) of the *UCITS Regulations 2011*~~, where the arrangements proposed constitute either:~~;

~~(i)~~ ~~a *domestic UCITS merger*; or~~

~~(ii)~~ ~~a *cross-border UCITS merger* in which the *merging UCITS* is a *UCITS scheme* (a *UK UCITS*);~~

…

…

Common draft terms of merger

7.7.7 R (1) The *authorised fund manager* of a *UCITS scheme* that is a *merging UCITS* or a *receiving UCITS* in a proposed *UCITS merger*, must in conjunction with any other *authorised fund manager* ~~or, as the case may be, *management company* of an *EEA UCITS scheme* that is a party to the proposed merger,~~ draw up common draft terms of the proposed *UCITS merger*.

(2) The common draft terms in (1) must set out the following particulars:

(a) ~~an identification of the type of *UCITS merger* and of~~ the *UCITS* involved;

…

…

Information to be given to unitholders

7.7.10 R …

(2) Where a *UCITS scheme* is the *merging UCITS* in a *domestic UCITS merger* ~~or *cross-border UCITS merger*~~, its *authorised fund manager* must provide the information *document* in (1):

(a) to the *unitholders* of the *merging UCITS* and the *receiving UCITS* only after the *FCA* has given its approval to the *UCITS merger* proposal under regulation 9 of the *UCITS Regulations 2011*~~; and~~

(b) ~~where the *receiving UCITS* (in the case of a *cross-border UCITS merger*) is an *EEA UCITS scheme*, to the *unitholders* of that *scheme* only after the *Home State regulator* of each *merging UCITS* has authorised the *UCITS merger* proposal under national measures implementing article 39 of the *UCITS Directive*~~; [deleted]

~~and in either case must do so~~ at least 30 days before the last date by which *unitholders* may request repurchase or *redemption* of their *units* or, where applicable, conversion without additional charge.

(3) The information *document* to be provided to the *unitholders* of the *merging UCITS* and the *receiving UCITS* under (1) must include the following:

…

(c) any specific rights *unitholders* have in relation to the proposed *UCITS merger*, including but not limited to:

…

(ii) the right to obtain a copy of the report of the independent auditor or the *depositary* on request prepared for the purposes of regulation 11 of the *UCITS Regulations 2011* ~~or, if applicable, the equivalent national implementing measure of the *UCITS Home State*~~;

(iii) the right to request the repurchase or *redemption* or, where applicable, the conversion of their *units* without charge under regulation 12 of the *UCITS Regulations 2011* ~~or, if applicable, the equivalent national implementing measure of the *UCITS Home State*~~; and

…

…

(4) If a *UCITS marketing notification* in respect of the *merging UCITS* or *receiving UCITS* has been made, the information *document* referred to in (3) must be provided in the official language, or one of the official

languages, of the relevant ~~*Host*~~ *EEA State* in which *units* of the *UCITS scheme* ~~are to be~~ have been marketed, or in a language approved by ~~its *Host State regulator*~~ the *overseas regulator* in that *EEA State*. The *authorised fund manager* of the relevant *UCITS scheme* must provide an accurate translation of the information *document*.

[**Note:** article 43(1), 43(2), 43(3) and 43(4) of the *UCITS Directive*]

General rules regarding the content of merger information to be provided to unitholders

7.7.11 R …

(2) ~~In the case of a proposed *cross-border UCITS merger*, the *authorised fund manager* of the *UCITS scheme*, being either the *merging UCITS* or the *receiving UCITS* respectively, must explain in plain language any terms or procedures relating to the *EEA UCITS scheme* which differ from those commonly used in the *United Kingdom*.~~ [deleted]

…

7.7.12 G …

(2) The reference to "conversion" in *COLL* 7.7.10R(2) means an exchange of *units* in the *merging UCITS* or *receiving UCITS* for *units* in another *UCITS scheme* ~~or *EEA UCITS scheme*~~ that has similar investment policies and that is managed by the same *authorised fund manager* or one of its *affiliated companies*.

[**Note:** recital (1) of the *UCITS implementing Directive No 2*]

Specific rules regarding the content of merger information to be provided to unitholders of the merging UCITS

7.7.13 R (1) ~~Where the *merging UCITS* is a *UCITS scheme*, the~~ The information *document* that ~~its~~ the *authorised fund manager* of a *merging UCITS* must provide to its *unitholders* under *COLL* 7.7.10R(3)(b) must also include:

…

…

Specific rules regarding the content of merger information to be provided to unitholders of the receiving UCITS

7.7.14 R (1) ~~Where the *receiving UCITS* is a *UCITS scheme*, the~~ The information that ~~its~~ the *authorised fund manager* of a *receiving UCITS* must provide to its *unitholders* under *COLL* 7.7.10R(3)(b) must also include an explanation of whether the *authorised fund manager* expects the merger to have any material effect on the portfolio of the

receiving UCITS, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.

…

…

Key investor information

…

7.7.17 R ~~(1)~~ ~~Where a *UCITS scheme* is the *receiving UCITS* in a *cross-border UCITS merger*, its *authorised fund manager* must ensure that an up-to-date version of the *key investor information document* of the *receiving UCITS* is made available to the *management company* of the *merging UCITS* for the purpose of providing it to investors in that *UCITS*.~~

~~(2)~~ ~~Where the *key investor information document* of the *receiving UCITS* has been amended for the purpose of (1), the *authorised fund manager* of the *receiving UCITS* must also provide it to all its existing *unitholders*.~~ [deleted]

~~[**Note:** article 5(2) of the *UCITS implementing Directive No 2*]~~

…

Effective merger date, exchange ratio calculation date and publication of merger

7.7.21 G …

(2) ~~For a *UCITS scheme* which is the *receiving UCITS* in a *cross-border UCITS merger*, the effective date of the merger will be the date agreed by the *FCA* and the *merging UCITS' Home State regulator*.~~ [deleted]

(3) For ~~a *UCITS scheme* which is~~ the *receiving UCITS* in a *domestic UCITS merger* ~~or a *cross-border UCITS merger*~~:

…

(4) ~~For a *UCITS scheme* which is the *merging UCITS* in a *cross-border UCITS merger*, the dates referred to in (2) and (3)(a) will be determined by the laws of the *receiving UCITS Home State*. Those dates will be after the date on which the merger proposal has been approved in accordance with *COLL* 7.7.4 R (2)(a) (UCITS mergers).~~ [deleted]

[**Note:** article 47 of the *UCITS Directive*]

Confirmation obligation on completion of a UCITS merger

7.7.22 R The *authorised fund manager* of ~~a *UCITS scheme* that is~~ the *receiving UCITS* in ~~either~~ a *domestic* ~~or *cross-border*~~ *UCITS merger* must confirm in writing to the *depositary* of the *UCITS scheme* and the *FCA* that the merger transfer is complete.

[**Note:** article 48(4) of the *UCITS Directive*]

…

9 Recognised schemes

…

9.2 Section 264 recognised schemes [deleted]

~~9.2.1~~ ~~G~~ ~~(1)~~ ~~[deleted]~~

~~(2)~~ ~~[deleted]~~

~~(3)~~ ~~[deleted]~~

~~(4)~~ ~~[deleted]~~

~~Marketing of units of an EEA UCITS scheme~~

~~9.2.2~~ ~~G~~ ~~(1)~~ ~~The *units* of an *EEA UCITS scheme* in respect of which a notification has been transmitted to the *FSA* by the *competent authority* of the *UCITS Home State* in accordance with article 93 of the *UCITS Directive* may be marketed in the *United Kingdom*. This is the effect of section 264 (Schemes constituted in other EEA States) read in conjunction with section 238(4)(c) (Restrictions on promotion) of the *Act*.~~

~~(2)~~ ~~Where a *management company* wishes to market the *units* of an *EEA UCITS scheme* it manages, without establishing a *branch* or providing any other services in the *United Kingdom*, a *management company* passport is not required for such *marketing* activities.~~

~~(3)~~ ~~In this Chapter references to an *EEA UCITS scheme* include its *sub-funds*.~~

~~[**Note**: article 16(1) second paragraph, article 91(1) and 91(4) of the *UCITS Directive*]~~

9.3 Section 272 recognised schemes

…

Additional information required in the prospectus for an application under section 272

9.3.2 R An *operator* of a ~~*scheme* recognised under section 272 of the *Act*~~ *recognised scheme* must ensure the prospectus:

…

Preparation and maintenance of prospectus

9.3.3 R (1) An *operator* of ~~a *scheme* which is~~ a *recognised scheme* ~~by virtue of section 272 of the *Act*~~ must comply with the requirements set out in *COLL* 4.2 (Pre-sale notifications).

(2) Where a ~~*scheme* recognised under sections 272 of the *Act*~~ *recognised scheme* is managed and authorised in Guernsey, Jersey or the Isle of Man, the *prospectus* need not comply with the requirements of *COLL* 4.2.5R (Table: contents of prospectus), providing it contains corresponding matter required under the law in its home territory.

Preparation of a key information document in accordance with the PRIIPs regulation

9.3.4 G …

(3) As a result, when a *recognised scheme* ~~under section 272 of the *Act*~~ is made available to *retail clients* in the *United Kingdom* the *operator* must draw up a *key information document* in accordance with the *PRIIPs Regulation*, unless the *operator* of such a scheme is otherwise exempt from such a requirement under the *PRIIPs Regulation* for the time being.

9.4 Facilities in the United Kingdom

General

9.4.1 R (1) The *operator* of a *recognised scheme* ~~under section 264 or section 272 of the Act~~ must maintain facilities in the *United Kingdom* in order to satisfy the requirements of *COLL* 9.4.2R to *COLL* 9.4.6R.

…

Documents

9.4.2 R (1) The *operator* of a *recognised scheme* must maintain facilities in the *United Kingdom* for any *person*, for inspection (free of charge) and for the obtaining (free of charge, in the case of the *documents* at (c), (d) and (e), and otherwise at no more than a reasonable charge) of copies in English of:

…

(c) the latest *prospectus* (which must include the address where the facilities are maintained and details of those facilities); and

(d) for a ~~section 264~~ *recognised scheme* which is an *EEA UCITS scheme*, the *EEA key investor information document*; and

(e) …

(1A) ~~For a section 264 *recognised scheme*, the requirement in (1) for documents to be in English applies only to the *EEA key investor information document* referred to in (1)(d).~~ [deleted]

…

…

11 Master-feeder arrangements ~~under the UCITS Directive~~ for UCITS schemes

11.1 Introduction

Application

…

11.1.1A G It may be possible for a *UCITS scheme* to be the *feeder UCITS* of a *master UCITS* that is an *EEA UCITS scheme*. In such a case, the ability of the *operator*, *AFM*, *depositary*, and auditor of the *feeder UCITS* to comply with the applicable rules may depend upon whether appropriate agreements can be reached with the *management company*, *depositary* and auditor of the *master UCITS*. It is not possible for an *EEA UCITS scheme* to be a feeder of a master *UCITS scheme*.

…

Table of application

11.1.2 R This table belongs to *COLL* 11.1.1R.

Reference	*ICVC*	*ACD*	Any other *directors* of an *ICVC*	*Authorised fund manager* of an *AUT* or *ACS*	*Depositary* of an *ICVC*, *AUT* or *ACS*
…					
~~11.3.10G~~	~~x~~	~~x~~	~~x~~	~~x~~	
…					

…

11.2 Approval of feeder UCITS

Explanation

11.2.1 G (1) Section 283A(1) (Master-feeder structures) of the *Act*~~, in implementation of article 59(1) of the *UCITS Directive*~~, provides that the *operator* of a *UCITS scheme* may not invest a higher proportion of *scheme property* in *units* of another *UCITS* than is permitted by *rules* made by the *FCA* ~~implementing~~ (which implemented article 55 of the *UCITS Directive*), unless the investment is approved by the *FCA* in accordance with that section.

(2) The relevant *rule* which implemented ~~*FCA* has implemented~~ article 55(1) of the *UCITS Directive* ~~in~~ is *COLL* 5.2.11R(9), which provides that not more than 20% in value of a *scheme* is to consist of the *units* of any one *collective investment scheme*.

Application for approval of an investment in a master UCITS

11.2.2 R …

(2) Where the *master UCITS* is an *EEA UCITS scheme*, the application for approval must also be accompanied by an attestation ~~by the *master UCITS's Home State regulator*~~ from a *person* acceptable to the *FCA* that the *master UCITS*:

…

…

11.3 Co-ordination and information exchange for master and feeder UCITS

Authorised fund manager of a master UCITS: provision of documentation

11.3.1 R The *authorised fund manager* of a *UCITS scheme* that is a master *UCITS* must provide the *management company* of its *feeder UCITS* with all *documents* and information necessary for the latter to meet its regulatory obligations under the ~~*UCITS Directive*~~ provisions of *COLL* applicable in respect of a *UCITS scheme* under this chapter.

[**Note:** article 60(1) first paragraph first sentence of the *UCITS Directive*]

11.3.1A R The *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* of a *master UCITS* which is an *EEA UCITS scheme* must make a binding arrangement with the *management company* of the *master UCITS* to obtain all *documents* and information necessary to meet its regulatory obligations under the *Act*.

[**Note:** article 60(1) first paragraph first sentence of the *UCITS Directive*]

Master-feeder agreement and internal conduct of business rules

…

11.3.3 G Where an *authorised fund manager* of a *feeder UCITS* enters into a *master-feeder agreement* or, if applicable, internal conduct of business rules, with the *management company* of an *EEA UCITS scheme*, references in *COLL* 11 Annex 1R and *COLL* 11 Annex 2R to *COLL rules* ~~implementing~~ that implemented provisions in the *UCITS Directive* which are the responsibility of the *EEA UCITS scheme's Home State regulator* should be read as referring to the corresponding provisions in the laws and regulations of that *EEA State*.

…

Law applicable to the master-feeder agreement

11.3.5 R …

(2) Where the ~~*feeder UCITS* and the~~ *master UCITS* ~~are~~ is established in ~~different~~ an *EEA* ~~*States*~~ *State*, the *master-feeder agreement* must provide that the applicable law shall be ~~either~~ *UK* law~~:~~.

~~(a) the law of the *EEA State* in which the *feeder UCITS* is established; or~~

~~(b) the law of the *EEA State* in which the *master UCITS* is established;~~

and that both parties agree to the exclusive jurisdiction of the courts of the ~~*EEA State* whose law they have stipulated to be applicable to the agreement~~ *UK*.

[**Note:** article 14 of the *UCITS implementing Directive No 2*]

11.3.5A R (1) Where paragraph (2) applies a *master-feeder agreement* that is effective prior to exit day need not comply with *COLL* 11.3.5R(2).

(2) This paragraph applies where the applicable law of the *master-feeder agreement* was:

(a) *UK* law before *exit day*, and remains so; or

(b) the law of the *EEA State* in which the *master UCITS* is established, and remains so.

Avoidance of opportunities for market timing

11.3.6 R …

(2) Where ~~either~~ the *master UCITS* ~~or *feeder UCITS*~~ is an *EEA UCITS scheme* managed by an *EEA UCITS management company*, the *authorised fund manager* must co-ordinate with that *management company*.

[**Note:** article 60(2) of the *UCITS Directive*]

…

Obligations of the master UCITS

…

11.3.10 G ~~Where the *FCA* is informed in accordance with *COLL* 11.3.9R that a *feeder UCITS* which is an *EEA UCITS scheme* has invested in *units* of the *master UCITS*, section 261A and section 261Z4 (Information for home state regulator) of the *Act* and regulation 29A (Information for home state regulator) of the *OEIC Regulations* require the *FCA* to inform the *Home State regulator* of the *feeder UCITS* immediately.~~ [deleted]

~~[**Note:** article 66(1) second sentence of the *UCITS Directive*]~~

…

11.3.12 R An *authorised fund manager* of a *master UCITS* must ensure the timely availability of all information that is required in accordance with its obligations under the *regulatory system*, the general law and the *instrument constituting the fund*, to:

…

(2) the ~~*competent authority* of the *feeder UCITS*~~ *FCA*;

…

…

11.4 Depositaries

…

Contents of the information-sharing agreement between depositaries

11.4.2 R …

(2) Where a *master-feeder agreement* exists in accordance with *COLL* 11.3.2R(1) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the *depositaries* must provide that *UK* law applies to that agreement, and both *depositaries* agree to the exclusive jurisdiction of the *UK* courts in relation to that agreement.~~:~~

~~(a) the law of the *EEA State* applying to the *master-feeder agreement* will also apply to the information-sharing agreement; and~~

~~(b) both *depositaries* agree to the exclusive jurisdiction of the courts of that *EEA State*.~~

(3) Where the *master-feeder agreement* has been replaced by internal conduct of business rules in accordance with *COLL* 11.3.2R(2) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the *depositaries* must provide that *UK* law applies to that agreement, and both *depositaries* agree to the exclusive jurisdiction of the *UK* courts in relation to that agreement.~~:~~

~~(a) the law applying to the information-sharing agreement shall be either that of the *EEA State* in which the *feeder UCITS* is established or, where different, that of the *EEA State* in which the *master UCITS* is established; and~~

~~(b) both *depositaries* agree to the exclusive jurisdiction of the courts of the *EEA State* whose law is applicable to the information-sharing agreement.~~

[**Note:** articles 24 and 25 of the *UCITS implementing Directive No 2*]

11.4.2A R (1) Where paragraph (2) applies, an *information-sharing agreement* between the *depositaries* that is effective prior to *exit day* need not comply with *COLL* 11.4.2R.

(2) This paragraph applies where the applicable law of the *information sharing agreement* between the *depositaries* was:

(a) *UK* law before *exit day*, and remains so; or

(b) the law of a given *EEA State* in before *exit day* and remains so.

…

11.5 Auditors

…

Contents of the information-sharing agreement between auditors

11.5.2 R …

(3) Where a *master-feeder agreement* exists in accordance with *COLL* 11.3.2R(1) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the auditors must provide that *UK* law applies to that agreement, and both auditors agree to the exclusive jurisdiction of the *UK* courts in relation to that agreement.~~:~~

~~(a) the law of the *EEA State* applying to the *master-feeder agreement* will also apply to the information-sharing agreement between auditors; and~~

~~(b) both auditors agree to the exclusive jurisdiction of the courts of that *EEA State*.~~

(4) Where the *master-feeder agreement* has been replaced by internal conduct of business rules in accordance with *COLL* 11.3.2R(2) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the auditors must provide that *UK* law applies to that agreement, and both auditors agree to the exclusive jurisdiction of the *UK* courts in relation to that agreement.~~:~~

~~(a) the law applying to the information-sharing agreement shall be either that of the *EEA State* in which the *feeder UCITS* is established or, where different, that of the *EEA State* in which the *master UCITS* is established; and~~

~~(b) both auditors agree to the exclusive jurisdiction of the courts of the *EEA State* whose law is applicable to the information-sharing agreement.~~

[**Note:** articles 27 and 28 of the *UCITS implementing Directive No 2*]

11.5.2A R (1) An *information-sharing agreement* between the auditors that is effective prior to exit day need not comply with *COLL* 11.5.2R.

(2) This paragraph applies where the applicable law of the *information-sharing agreement* between the auditors was:

(a) *UK* law before *exit day*, and remains so; or

(b) the law of a given *EEA State* before *exit day*, and remains so.

…

11.6 Winding up, merger and division of master UCITS

Explanation

11.6.1 G (1) Section 258A(1) and (2) and section 261Z(1) and (2) (Winding up or merger of master UCITS) of the *Act*~~, in implementation of article 60 of the *UCITS Directive*~~, provide that where a *master UCITS* is wound up, for whatever reason, the *FCA* is to direct the *manager* and *trustee* of any *AUT* or the *authorised contractual scheme manager* and *depositary* of any *ACS* which is a *feeder UCITS* of the *master UCITS* to wind up the *scheme*, unless one of the following conditions is satisfied:

…

…

Winding up and liquidation of master UCITS: Time limit within which a master UCITS is to be wound up pursuant to FCA direction

11.6.2 R (1) The commencement of winding up of a *UCITS scheme* that is a *master UCITS* must take place no sooner than 3 months after a notification is made to its *unitholders* and~~, where applicable, the *competent authorities* of the *feeder UCITS Home State*~~, the *FCA* informing ~~them~~ it of the binding decision to wind up the *master UCITS*.

…

…

Repurchase or redemption of units in a master UCITS

11.6.8 G Regulation 12(4) (Right of redemption) of the *UCITS Regulations 2011* provides that where a *UK master UCITS* merges with another *scheme*, the *master UCITS* must enable its *feeder UCITS* to repurchase or *redeem* all the *units* of the *master UCITS* in which they have invested before the consequences of the merger become effective, unless the *FCA* approves the continued investment by the *feeder UCITS* in a *master UCITS* resulting from the merger.

…

COLL 12 (Management company and product passports under the UCITS Directive) is deleted in its entirety. The deleted text of the chapter is not shown but it is marked [deleted] as shown below.

12 Management company and product passports under the UCITS Directive
[deleted]

Amend the following as shown.

Appendix ~~1EU~~ 1UK **KII Regulation**

…

CHAPTER I

SUBJECT MATTER AND GENERAL PRINCIPLES

…

Article 1A

Definitions

(a) ‘Collective Investment Schemes sourcebook’ means the Collective Investment Schemes sourcebook made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 as in force on exit day.

(b) ‘feeder UCITS’ has the meaning given in section 237(3) of the Financial Services and Markets Act 2000;

(c) ‘management company’ has the meaning given in section 237(2) of the Financial Services and Markets Act 2000;

(d) ‘master UCITS’ has the meaning given in section 237(3) of the Financial Services and Markets Act 2000;

(e) ‘UCITS’ has the meaning given in section 236A of the Financial Services and Markets Act 2000; and

(f) ‘UK UCITS’ has the meaning given in section 237(3) of the Financial Services and Markets Act 2000.

Article 2

General principles

1. Requirements laid down in this Regulation shall apply to any management company with regard to each ~~UCITS~~ UK UCITS it manages.

2. This Regulation shall apply to any investment company which has not designated a management company ~~authorised pursuant to Directive 2009/65/EC~~ that has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity specified in article 51ZA of the Regulated Activities Order 2001.

Article 3

Principles regarding the key investor information document

…

3. The key investor information document shall be provided in such a way as to ensure that investors are able to distinguish it from other material. In particular, it shall not be presented or delivered in a way that is likely to lead investors to consider it less important than other information about the ~~UCITS~~ UK UCITS and its risks and benefits.

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

…

4. The identification of the ~~UCITS~~ UK UCITS, including the share class or investment compartment thereof, shall be stated prominently. In the case of an investment compartment or share class, the name of the ~~UCITS~~ UK UCITS shall follow the compartment or share class name. Where a code number identifying the ~~UCITS~~ UK UCITS, investment compartment or share class exists, it shall form part of the identification of the ~~UCITS~~ UK UCITS.

…

12. Authorisation details shall consist of the following statement:

'This fund is authorised in ~~[name of Member State] and regulated by [identity of competent authority]~~ the United Kingdom and regulated by the Financial Conduct Authority'.

~~In cases where the UCITS is managed by a management company exercising rights under Article 16 of Directive 2009/65/EC, an additional statement shall be included:~~

~~*'[Name of management company] is authorised in [name of Member State] and regulated by [identity of competent authority]'.*~~

…

CHAPTER III

CONTENT OF SECTIONS OF THE KEY INVESTOR INFORMATION DOCUMENT

SECTION 1

Objectives and investment policy

Article 7

Specific contents of the description

1. The description contained in the 'Objectives and investment policy' section of the key investor information document shall cover those essential features of the ~~UCITS~~ UK UCITS about which an investor should be informed, even if these features do not form part of the description of objectives and investment policy in the prospectus, including:

…

(b) the possibility that the investor may redeem units of ~~UCITS~~ UK UCITS on demand, qualifying that statement with an indication as to the frequency of dealing in units;

(c) whether the ~~UCITS~~ UK UCITS has a particular target in relation to any industrial, geographic or other market sectors or specific classes of assets;

(d) whether the ~~UCITS~~ UK UCITS allows for discretionary choices in regards to the particular investments that are to be made, and whether this approach includes or implies a reference to a benchmark and if so, which one;

…

For the purposes of point (d), where a reference to a benchmark is implied, the degree of freedom available in relation to this benchmark shall be indicated, and where the ~~UCITS~~ UK UCITS has an index-tracking objective, this shall be stated.

2. The description referred to in paragraph 1 shall include the following information, so long as it is relevant:

(a) where the ~~UCITS~~ UK UCITS invests in debt securities, an indication of whether they are issued by corporate bodies, governments or other entities, and, if applicable, any minimum rating requirements;

(b) where the ~~UCITS~~ UK UCITS is a structured fund, an explanation in simple terms of all elements necessary for a correct understanding of the pay-off and the factors that are expected to determine performance, including references, if necessary, to the details on the algorithm and its workings which appear in the prospectus;

…

(d) where specific asset management techniques are used, which may include hedging, arbitrage or leverage, an explanation in simple terms of the factors that are expected to determine the performance of the ~~UCITS~~ UK UCITS;

(e) where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the ~~UCITS~~ UK UCITS, a statement that this is the case, making it also clear that portfolio transaction costs are paid from the assets of the fund in addition to the charges set out in Section 3 of this Chapter;

(f) where a minimum recommended term for holding units in the ~~UCITS~~ UK UCITS is stated either in the prospectus or in any marketing documents, or where it is stated that a minimum holding period is an essential element of the investment strategy, a statement with the following wording:

'Recommendation: this fund may not be appropriate for investors who plan to withdraw their money within [period of time]'.

…

4. The 'Objectives and investment policy' section of the key investor information document may contain elements other than those listed in paragraph 2, including the description of the ~~UCITS~~ UK UCITS' investment strategy, where these elements are necessary to adequately describe the objectives and investment policy of the ~~UCITS~~ UK UCITS.

SECTION 2

Risk and reward profile

Article 8

Explanation of potential risks and rewards, including the use of an indicator

1. The 'Risk and reward profile' section of the key investor information document shall contain a synthetic indicator, supplemented by:

…

(b) a narrative explanation of risks which are materially relevant to the ~~UCITS~~ UK UCITS and which are not adequately captured by the synthetic indicator.

2. The synthetic indicator referred to in paragraph 1 shall take the form of a series of categories on a numerical scale with the ~~UCITS~~ UK UCITS assigned to one of the categories. The presentation of the synthetic indicator shall comply with the requirements laid down in Annex I.

…

4. The narrative explanation referred to in paragraph 1(a) shall include the following information:

(a) a statement that historical data, such as is used in calculating the synthetic indicator, may not be a reliable indication of the future risk profile of the ~~UCITS~~ UK UCITS;

(b) a statement that the risk and reward category shown is not guaranteed to remain unchanged and that the categorisation of the ~~UCITS~~ UK UCITS may shift over time;

…

(d) a brief explanation as to why the ~~UCITS~~ UK UCITS is in a specific category;

(e) details of the nature, timing and extent of any capital guarantee or protection offered by the ~~UCITS~~ UK UCITS, including the potential effects of redeeming units outside of the guaranteed or protected period.

5. The narrative explanation referred to in paragraph 1(b) shall include the following categories of risks, where these are material:

…

(b) liquidity risk, where a significant level of investment is made in financial instruments, which are by their nature sufficiently liquid, yet which may under certain circumstances have a relatively low level of liquidity, so as to have an impact on the level of liquidity risk of the ~~UCITS~~ UK UCITS as a whole;

…

(e) impact of financial techniques as referred to in ~~Article 50(1)(g) of Directive 2009/65/EC~~ rule 5.2.19 of the Collective Investment Schemes sourcebook such as derivative contracts on the ~~UCITS~~ UK UCITS' risk profile where such techniques are used to obtain, increase or reduce exposure to underlying assets.

Article 9

Principles governing the identification, explanation and presentation of risks

The identification and explanation of risks referred to in Article 8(1)(b) shall be consistent with the internal process for identifying, measuring and monitoring risk adopted by the ~~UCITS~~ UK UCITS' management company as laid down in ~~Directive 2010/43/EU~~ section 6.12 of the Collective Investment Schemes sourcebook. Where a management company manages more than one ~~UCITS~~ UK UCITS, the risks shall be identified and explained in a consistent fashion.

SECTION 3

Charges

Article 10

Presentation of charges

…

2. The table referred to in paragraph 1 shall be completed in accordance with the following requirements:

   (a) entry and exit charges shall each be the maximum percentage which might be deducted from the investor's capital commitment to the ~~UCITS~~ UK UCITS;

   (b) a single figure shall be shown for charges taken from the ~~UCITS~~ UK UCITS over a year, to be known as the 'ongoing charges,' representing all annual charges and other payments taken from the assets of the ~~UCITS~~ UK UCITS over the defined period, and based on the figures for the preceding year;

   (c) the table shall list and explain any charges taken from the ~~UCITS~~ UK UCITS under certain specific conditions, the basis on which the charge is calculated, and when the charge applies.

Article 11

Explanation of charges and a statement about the importance of charges

…

2. The 'Charges' section shall contain a statement about the importance of charges which shall make clear that the charges an investor pays are used to pay the costs of running the ~~UCITS~~ UK UCITS, including the costs of marketing and distributing the ~~UCITS~~ UK UCITS, and that these charges reduce the potential growth of the investment.

Article 12

Additional requirements

…

2. Where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the ~~UCITS~~ UK UCITS, this shall be stated within the 'Objectives and investment policy' section, as indicated in Article 7(2)(e).

3. Performance fees shall be disclosed in accordance with Article 10(2)(c). The amount of the performance fee charged during the ~~UCITS~~ UK UCITS' last financial year shall be included as a percentage figure.

Article 13

Specific cases

1. Where a new ~~UCITS~~ UK UCITS cannot comply with the requirements contained in Article 10(2)(b) and Article 11(1)(b), the ongoing charges shall be estimated, based on the expected total of charges.

…

Article 14

Cross-referencing

The 'Charges' section shall include, where relevant, a cross-reference to those parts of the ~~UCITS~~ UK UCITS prospectus where more detailed information on charges can be found, including information on performance fees and how they are calculated.

SECTION 4

Past performance

Article 15

Presentation of past performance

1. The information about the past performance of the ~~UCITS~~ UK UCITS shall be presented in a bar chart covering the performance of the ~~UCITS~~ UK UCITS for the last 10 years.

   …

2. ~~UCITS~~ UK UCITS with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only.

…

4. For a ~~UCITS~~ UK UCITS which does not yet have performance data for one complete calendar year, a statement shall be included explaining that there is insufficient data to provide a useful indication of past performance to investors.

5. The bar chart layout shall be supplemented by statements which appear prominently and which:

   …

   (d) indicate the currency in which past performance has been calculated.

   The requirement laid down in point (b) shall not apply to ~~UCITS~~ UK UCITS which do not have entry or exit charges.

…

Article 16

Past performance calculation methodology

The calculation of past performance figures shall be based on the net asset value of the ~~UCITS~~ UK UCITS, and they shall be calculated on the basis that any distributable income of the fund has been reinvested.

Article 17

Impact and treatment of material changes

1. Where a material change occurs to a ~~UCITS~~ UK UCITS' objectives and investment policy during the period displayed in the bar chart referred to in Article 15, the ~~UCITS~~ UK UCITS' past performance prior to that material change shall continue to be shown.

…

Article 18

Use of a benchmark alongside the past performance

1. Where the 'Objectives and investment policy' section of the key investor information document makes reference to a benchmark, a bar showing the performance of that benchmark shall be included in the chart alongside each bar showing the ~~UCITS~~ UK UCITS' past performance.

2. For ~~UCITS~~ UK UCITS which do not have past performance data over the required five or 10 years, the benchmark shall not be shown for years in which the ~~UCITS~~ UK UCITS did not exist.

Article 19

Use of 'simulated' data for past performance

1. A simulated performance record for the period before data was available shall only be permitted in the following cases, provided that its use is fair, clear and not misleading:

   (a) a new share class of an existing ~~UCITS~~ UK UCITS or investment compartment may simulate its performance by taking the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the ~~UCITS~~ UK UCITS;

   …

…

3. A ~~UCITS~~ UK UCITS changing its legal status ~~but remaining established in the same Member State~~ shall retain its performance record only where the ~~competent authority of the Member State~~ Financial Conduct Authority reasonably assesses that the change of status would not impact the ~~UCITS~~ UK UCITS' performance.

4. In the case of mergers ~~referred to in Article 2(1)(p)(i) and (iii) of Directive 2009/65/EC~~, as defined in regulation 7 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011, only the past performance of the receiving ~~UCITS~~ UK UCITS shall be maintained in the key investor information document.

SECTION 5

Practical information and cross-references

Article 20

Content of 'practical information' section

1. The 'Practical information' section of the key investor information document shall contain the following information relevant to investors in ~~every Member State in which the UCITS is marketed~~ the United Kingdom:

…

(b) where and how to obtain further information about the ~~UCITS~~ UK UCITS, copies of its prospectus and its latest annual report and any subsequent half-yearly report, stating in which language(s) those documents are available, and that they may be obtained free of charge;

…

(d) a statement that the tax ~~legislation~~ position of the ~~UCITS'~~ UK UCITS ~~home Member State~~ may have an impact on the personal tax position of the investor;

(e) the following statement:

'[Insert name of investment company or management company] may be held liable solely on the basis of any statement contained in this document that is misleading, inaccurate or inconsistent with the relevant parts of the prospectus for the ~~UCITS~~ UK UCITS.'

2. Where the key investor information document is prepared for a ~~UCITS~~ UK UCITS investment compartment, the 'Practical information' section shall include the information specified in Article 25(2) including on investors' rights to switch between compartments.

…

Article 21

Use of cross-references to other sources of information

1. …

Cross-references shall be permitted to the website of the ~~UCITS~~ UK UCITS or the management company, including a part of any such website containing the prospectus and the periodic reports.

…

SECTION 6

Review and revision of the key investor information document

…

Article 23

Publication of the revised version

…

3. A key investor information document with duly revised presentation of past performance of the ~~UCITS~~ UK UCITS shall be made available no later than 35 business days after 31 December each year.

Article 24

Material changes to the charging structure

…

2. Where the 'ongoing charges' calculated in accordance with Article 10(2)(b) are no longer reliable, the management company shall instead estimate a figure for 'ongoing charges' that it believes on reasonable grounds to be indicative of the amount likely to be charged to the ~~UCITS~~ UK UCITS in future.

This change of basis shall be disclosed through the following statement:

'The ongoing charges figure shown here is an estimate of the charges. [Insert short description of why an estimate is being used rather than an ex-post figure.] The ~~UCITS~~ UK UCITS' annual report for each financial year will include detail on the exact charges made.'

CHAPTER IV

PARTICULAR ~~UCITS~~ UK UCITS STRUCTURES

SECTION 1

Investment compartments

Article 25

Investment compartments

1. Where a ~~UCITS~~ UK UCITS consists of two or more investment compartments a separate key investor information document shall be produced for each individual compartment.

2. Each key investor information document referred to in paragraph 1 shall indicate within the 'practical information' section the following information:

   (a) that the key investor information document describes a compartment of a ~~UCITS~~ UK UCITS, and, if it is the case, that the prospectus and periodic reports are prepared for the entire ~~UCITS~~ UK UCITS named at the beginning of the key investor information document;

   …

…

SECTION 2

Share classes

Article 26

Key investor information document for share classes

1. Where a ~~UCITS~~ UK UCITS consists of more than one class of units or shares, the key investor information document shall be prepared for each class of units or shares.

2. The key investor information pertinent to two or more classes of the same ~~UCITS~~ UK UCITS may be combined into a single key investor information document, provided that the resulting document fully complies with all requirements as laid down in Section 2 of Chapter II, including as to length.

3. The management company may select a class to represent one or more other classes of the ~~UCITS~~ UK UCITS, provided the choice is fair, clear and not misleading to potential investors in those other classes. In such cases the 'Risk and reward profile' section of the key investor information document shall contain the explanation of material risk applicable to any of the other classes being represented. A key investor information document based on the representative class may be provided to investors in the other classes.

…

Article 27

Practical information section

If applicable, the Practical information section of the key investor information document shall be supplemented by an indication of which class has been selected as representative, using the term by which it is designated in the ~~UCITS~~ UK UCITS' prospectus.

That section shall also indicate where investors can obtain information about the other classes of the ~~UCITS~~ UK UCITS that are marketed in ~~their own Member State~~ the UK.

SECTION 3

Fund of funds

Article 28

Objectives and investment policy section

Where the ~~UCITS~~ UK UCITS invests a substantial proportion of its assets in other UCITS or other collective investment undertakings as referred to in ~~Article 50(1)(e) of Directive 2009/65/EC~~ rule 5.2.13 of the Collective Investment Schemes sourcebook, the description of the objectives and investment policy of that UCITS in the key investor information document shall include a brief explanation of how the other collective undertakings are to be selected on an ongoing basis.

Article 29

Risk and reward profile

The narrative explanation of risk factors referred to in Article 8(1)(b) shall take account of the risks posed by each underlying collective undertaking, to the extent that these are likely to be material to the ~~UCITS~~ UK UCITS as a whole.

Article 30

Charges section

The description of the charges shall take account of any charges that that ~~UCITS~~ UK UCITS will itself incur as an investor in the underlying collective undertakings. Specifically, any entry and exit charges and ongoing charges levied by the underlying collective undertakings shall be reflected in the ~~UCITS~~ UK UCITS' calculation of its own ongoing charges figure.

SECTION 4

Feeder UCITS

Article 31

Objectives and investment policy section

1. The key investor information document for a feeder UCITS~~, as defined in Article 58 of Directive 2009/65/EC,~~ shall contain, in the description of objectives and investment policy, information about the proportion of the feeder UCITS' assets which is invested in the master UCITS.

…

Article 34

Practical information section

…

2. The information referred to in paragraph 1 shall include:

…

(b) whether the items listed in point (a) are available in paper copies only or in other durable media, and whether any fee is payable for items not subject to free delivery in accordance with ~~Article 63(5) of Directive 2009/65/EC~~ rules 4.2.3 and 4.5.15 of the Collective Investment Schemes sourcebook;

…

…

SECTION 5

Structured ~~UCITS~~ UK UCITS

Article 36

Performance scenarios

1. The key investor information document for structured ~~UCITS~~ UK UCITS shall not contain the 'Past performance' section.

For the purposes of this Section, structured ~~UCITS~~ UK UCITS shall be understood as ~~UCITS~~ UK UCITS which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of financial assets, indices or reference portfolios or ~~UCITS~~ UK UCITS with similar features.

2. For structured ~~UCITS~~ UK UCITS, the 'Objectives and investment policy' section of the key investor information document shall include an explanation of how the formula works or how the pay-off is calculated.

3. The explanation referred to in paragraph 2 shall be accompanied by an illustration, showing at least three scenarios of the ~~UCITS~~ UK UCITS' potential performance. Appropriate scenarios shall be chosen to show the circumstances in which the formula may generate a low, a medium or a high return, including, where applicable, a negative return for the investor.

4. …

They shall be presented in a way that is fair, clear and not misleading, and that is likely to be understood by the average retail investor. In particular, they shall not artificially magnify the importance of the final performance of the ~~UCITS~~ UK UCITS.

…

Article 37

Length

The key investor information document for structured ~~UCITS~~ UK UCITS shall not exceed three pages of A4-sized paper when printed.

CHAPTER V

DURABLE MEDIUM

Article 38

Conditions applying to the provision of a key investor information document or a prospectus in a durable medium other than paper or by means of a website

1. Where~~, for the purposes of Directive 2009/65/EC,~~ the key investor information document or prospectus is to be provided to investors using a durable medium other than paper the following conditions shall be met:

   …

…

CHAPTER VI

FINAL PROVISIONS

Article 39

Entry into force

…

2. …

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

Annex B

Amendments to the Investment Funds sourcebook (FUND)

In this Annex, underlining indicates new text and striking through indicates deleted text.

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
…	
~~*full-scope UK AIFM* of an *EEA AIF*~~	~~Chapters 1, 3 and 10~~
full-scope UK AIFM of a ~~*non-EEA AIF*~~ *non-UK AIF*	Chapters 1, 3 and 10
…	
~~*incoming EEA AIFM branch* of a *UK AIF*~~	~~Chapters 1, 3 and 10~~
…	
~~*depositary* of a *UK ELTIF* managed by a *full-scope EEA AIFM*~~	~~Chapters 1, 3 and 4.2~~

(2) …

(3) *FUND* 10 will apply to a *UK AIFM* ~~or *incoming EEA AIFM*~~ which intends to ~~passport or~~ *market* on a cross-border basis.

Compatibility with ~~European law~~AIFMD and the AIFMD level 2 regulation

1.1.2 R *Handbook rules* which conflict with either a *rule* which ~~transposes~~ transposed *AIFMD* or a provision in the *AIFMD level 2 regulation* are modified to the extent necessary to be compatible with ~~European law~~ those *rules* and provisions.

…

1.2 Structure of the Investment Funds sourcebook

Structure of the Investment Funds sourcebook

1.2.1 G *FUND* is structured as follows:

…

(4) *FUND* 4 sets out some requirements in relation to ~~European AIF~~ the ELTIF regime.

…

1.3 Types of fund manager

Types of fund manager within the scope of ~~European legislation~~ the UK AIFM and UCITS regimes

1.3.1 G The *UK* regulatory regime provides that an *undertaking* which manages an *AIF* or ~~*UCITS*~~ a *UCITS scheme* in the *UK* ~~and is within the scope of *AIFMD* or the *UCITS Directive*~~ must fall into one or both of the following categories:

(1) an *AIFM*; or

(2) a *UCITS management company*.

Types of fund manager outside the scope of ~~European legislation~~ the UK AIFM and UCITS regimes

1.3.2 G An *authorised person* that operates a *collective investment scheme* in the *UK* and falls entirely outside the scope of ~~*AIFMD*~~ the *UK AIFM* or ~~the~~ *UCITS* ~~*Directive*~~ regimes will be a *residual CIS operator*.

…

Full-scope UK AIFM

1.3.4 G (1) A *full-scope UK AIFM* is a *UK AIFM* which is authorised in accordance with ~~*AIFMD*~~ the *UK AIFM* regime and, therefore, subject to its full requirements.

…

Small AIFM

1.3.5 G (1) ~~*AIFMD* provides that an *AIFM* which has assets under management below certain thresholds (a "*small AIFM*") may be subject to limited requirements under *AIFMD*. However, this is subject to the right of *EEA States* to impose stricter requirements.~~ [deleted]

(2) In the *UK*, the regulatory regime provides that an *AIFM* which has assets under management below certain thresholds ("a *small AIFM*"), with a registered office in the *UK* may be either:

…

Small authorised UK AIFM

1.3.6 G (1) …

(2) A *small authorised UK AIFM* may also opt in to the full requirements ~~in~~ of ~~*AIFMD*~~ the UK AIFM regime, in which case it will become a *full-scope UK AIFM*.

Small registered UK AIFM

…

1.3.8 G Under regulation 16 of the *AIFMD UK regulation* a *small registered UK AIFM* may apply to the *FCA* for a *Part 4A permission* to manage an AIF. In its application a *small registered UK AIFM* may apply to become:

(1) …

(2) a *full-scope UK AIFM*~~, in accordance with article 3(4) of *AIFMD*~~.

1.4 AIFM business restrictions

Single AIFM

1.4.1 R A *full-scope UK AIFM* must ensure that for each *AIF* it is appointed to manage, it is the only *AIFM* of that *AIF*, and is responsible for ensuring compliance with ~~*AIFMD*~~ *FUND*, other *rules* in the *Handbook* which, when made, implemented *AIFMD*, the *AIFMD level 2 regulation* and the *AIFMD UK regulation*.

[**Note:** article 5(1) of *AIFMD*]

…

External AIFMs

1.4.3 R An *external AIFM* that is a *full-scope UK AIFM* must not engage in any activities other than:

(1) …

(2) the management of *UCITS*, for which it ~~is subject to authorisation under the *UCITS Directive*~~ must have *permission* to carry on the *regulated activity* of *managing a UK UCITS*;

(3) the management of portfolios of investments in accordance with mandates given by investors on a discretionary client-by-client basis, including portfolios of investments for ~~pension funds and institutions for occupation retirement provisions in accordance with article 19(1)~~

~~of Directive 2003/41/EC~~ occupational pension schemes, within the meaning of section 1(1) of the Pension Schemes Act 1993;

…

…

1.4.6 G In the *FCA's* view an *AIFM* is permitted under *FUND* 1.4.3R to carry out *AIFM management functions* for a collective investment undertaking ~~the management of which falls outside the scope of *AIFMD* or the *UCITS Directive*~~ which is neither an *AIF* nor a *UCITS*.

…

3 Requirements for alternative investment fund managers

3.1 Application

3.1.1 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
Full-scope UK AIFM of a *UK AIF*.	All of chapter 3.
~~*Full-scope UK AIFM* of an *EEA AIF* operating from an establishment in the *UK*.~~	~~All of chapter 3.~~
~~*Full-scope UK AIFM* of an *EEA AIF* operating from a *branch* in another *EEA state*.~~	~~All of chapter 3 with the exception of *FUND* 3.8 (Prime brokerage firms).~~
~~*Incoming EEA AIFM branch* which manages a *UK AIF*.~~	~~*FUND* 3.8 (Prime brokerage firms).~~
Full-scope UK AIFM of a ~~*non-EEA AIF*~~ *non-UK AIF marketed* in the *UK*.	All of chapter 3 with the exception of *FUND* 3.12 (Marketing in the ~~home Member State of the AIFM~~ UK).
Full-scope UK AIFM of a *non-~~EEA~~ UK AIF* not *marketed* in the *UK*.	All of chapter 3 with the exception of *FUND* 3.3 (Annual report of an AIF), *FUND* 3.11 (Depositaries) and *FUND* 3.12 (Marketing in the ~~home Member State of the AIFM~~ UK).
UK depositary of a *UK AIF* or a *non-~~EEA~~ UK AIF*.	*FUND* 3.11 (Depositaries).

3.2 Investor information

…

Prior disclosure of information to investors

3.2.2 R An *AIFM* must, for each *UK AIF* ~~and *EEA AIF*~~ that it manages, and for each *AIF* it *markets* in the ~~*EEA*~~ *UK*, make available to *AIF* investors before they invest, in line with the *instrument constituting the fund*, the following information and any material changes to it:

…

…

3.2.4 R Where the *AIF* is required to publish a *prospectus* under section 85 of the *Act* ~~or the equivalent provision implementing article 3 of the *Prospectus Directive* in the *AIF's Home State*~~, only information referred to in *FUND* 3.2.2R and 3.2.3R that is additional to that contained in the *prospectus* needs to be disclosed, either separately or as additional information in the *prospectus*.

[**Note:** article 23(3) of *AIFMD*]

Periodic disclosure

3.2.5 R An *AIFM* must, for each *UK AIF* ~~and *EEA AIF*~~ it manages, and each *AIF* it *markets* in the ~~*EEA*~~ *UK*, disclose to investors periodically:

…

3.2.6 R An *AIFM* that manages a *UK AIF* ~~or an *EEA AIF*~~ or *markets* an *AIF* in the ~~*EEA*~~ *UK* must, for each such *AIF* that employs *leverage*, disclose on a regular basis:

…

…

3.3 Annual report of an AIF

Application

3.3.1 R This section applies to a *full-scope UK AIFM* of:

(1) a *UK AIF*; and

(2) ~~an *EEA AIF*; and~~ [deleted]

(3) a ~~*non-EEA AIF*~~ *non-UK AIF* *marketed* in the *UK*.

Provision of an annual report

3.3.2 R An *AIFM* must, for each *UK AIF* ~~and *EEA AIF*~~ it manages and for each *AIF* it *markets* in the *UK*:

…

(3) make the annual report available to the *FCA* ~~and, in the case of an *EEA AIF*, to the *competent authority* of that *AIF*~~.

[**Note:** article 22(1) first paragraph and article 24(3)(a) of *AIFMD*]

…

3.3.4 R (1) Where the *AIF* is required to make an annual financial report public under *DTR* 4.1.3R (Publication of annual financial reports) or an equivalent provision ~~implementing article 4.1 of the Transparency Directive in the *Home State* of the *AIF*~~ in the country where the *AIF* is established, only information referred to in *FUND* 3.3.5R that is additional to the annual financial report needs to be provided to investors on request, either separately or as an additional part of the annual financial report.

(2) Where additional information in (1) is provided as an addition to the annual financial report, that report must be made public no later than four months following the end of the financial year, under *DTR* 4.1.3R (Publication of annual financial reports) or an equivalent provision ~~implementing article 4.1 of the Transparency Directive in the *Home State* of the *AIF*~~ in the country where the *AIF* is established.

[**Note:** second paragraph, article 22(1) of *AIFMD*]

…

Accounting information in the annual report

3.3.6 R The accounting information given in the annual report must be:

(1) prepared in accordance with the accounting standards of the ~~*Home State* of the *AIF*~~ *UK* (or, for a ~~*non-EEA AIF*~~ *non-UK AIF*, the accounting standards of the ~~third~~ country where it is *established*) and with the accounting rules set out in the *AIF's instrument constituting the fund*; and

(2) audited by one or more persons empowered by law to audit accounts under the ~~Audit Directive~~ Companies Act 2006 (or for a ~~*non-EEA AIF*~~ *non-UK AIF*, under international auditing standards in force in the country where the ~~*non-EEA AIF*~~ *non-UK AIF* is established).

[**Note:** article 22(3) of *AIFMD*]

…

3.4 Reporting obligations to the FCA

…

Content of reporting information

3.4.3 R An *AIFM* must, for each *UK AIF* and *EEA AIF* it manages, and for each *AIF* it markets in the ~~*EEA*~~ *UK*, provide the following to the *FCA*:

…

…

Additional information

3.4.6A R In addition to the information in *FUND* 3.4.2R, an *AIFM* must regularly report the following information to the *FCA*:

…

(2) the information in *FUND* 3.4.3R for each *non-EEA AIF* it manages that is not *marketed* in the *EEA* or the *UK*, if:

…

(b) that *AIF* is the *master AIF* of a *feeder AIF* which the *AIFM* also manages and that *feeder AIF is*:

…

(ii) a *non-EEA AIF* that is marketed in the *EEA* or the *UK*.

…

3.4.6B G Further details in relation to the additional reporting requirements in *FUND* 3.4.6AR can be found in *ESMA*'s opinion on the "Collection of information for the effective monitoring of systemic risk under article 24(5), first sub-paragraph, of the AIFMD" (ESMA 2013/1340).

~~(https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-esma-1340_opinion_on_collection_of_information_under_aifmd_for_publication.pdf) dated 1 October 2013.~~

3.4.6C R In addition to the information in *FUND* 3.4.2R, an *AIFM* must regularly report to the *FCA* the information in *FUND* 3.4.3R for each *non-EEA AIF* it manages that is not marketed in the ~~*EEA*~~ *UK* if the *AIFM* is subject to quarterly reporting under article 110 of the *AIFMD level 2 regulation* (see *SUP* ~~16.18.4EU~~ 16.18.4UK) for that *AIF*.

…

Guidelines

3.4.8 G *ESMA*'s guidelines on reporting obligations under articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD (ESMA 2013/1339)

~~(https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-1339_final_report_on_esma_guidelines_on_aifmd_reporting_for_publication_revised.pdf)~~

provide further details in relation to the requirements in this section.

…

3.5 Investment in securitisation positions

Application

3.5.1 R This section applies to a *full-scope UK AIFM* of:

(1) a *UK AIF*; and

(2) ~~an *EEA AIF*; and~~ [deleted]

(3) a ~~*non-EEA AIF*~~ *non-UK AIF*.

…

Subordinate measures

3.5.3 G Articles 50 to 56 of the *AIFMD level 2 regulation* provide detailed rules supplementing the ~~provisions in *AIFMD*~~ *rules* on investment in securitisation positions.

3.6 Liquidity

Application

3.6.1 R This section applies to a *full-scope UK AIFM* of:

(1) a *UK AIF*; and

(2) ~~an *EEA AIF*; and~~ [deleted]

(3) a ~~*non-EEA AIF*~~ *non-UK AIF*.

…

3.7 Risk management

Application

3.7.1 R This section applies to a *full-scope UK AIFM* of:

(1) a *UK AIF*; and

(2) ~~an *EEA AIF*; and~~ [deleted]

(3) a ~~*non-EEA AIF*~~ *non-UK AIF*.

Functional and hierarchical separation

…

3.7.3	~~EU~~ UK	Functional and hierarchical separation of the risk management function	
		1.	…
		…	

3.7.4	~~EU~~ UK	Safeguards against conflicts of interest	
		1.	The safeguards against conflicts of interest referred to in the UK legislation that implemented Article 15(1) of Directive 2011/61/EU shall ensure, at least, that:
			…
		…	

…

3.8 Prime brokerage firms

Application

3.8.1 R This section applies to:

(1) a *full-scope UK AIFM* of:

(a) a *UK AIF*; and

(b) ~~an *EEA AIF* managed or *marketed* from an establishment in the *UK*; and~~ [deleted]

(c) a ~~*non-EEA AIF*~~ *non-UK AIF*.~~; and~~

(2) ~~an *incoming EEA AIFM branch* which manages or *markets* a UK AIF.~~ [deleted]

…

3.9 Valuation

Application

3.9.1 R This section applies to a *full-scope UK AIFM* of:

(1) a *UK AIF*; and

(2) ~~an *EEA AIF*; and~~ [deleted]

(3) a ~~*non-EEA AIF*~~ *non-UK AIF*.

…

3.10 Delegation

Application

3.10.1 R This section applies to a *full-scope UK AIFM* of:

(1) a *UK AIF*; and

(2) ~~an *EEA AIF*; and~~ [deleted]

(3) a ~~*non-EEA AIF*~~ *non-UK AIF*.

in relation to the delegation of those *AIFM management functions* for which it is responsible, other than supporting tasks such as administrative or technical functions.

[**Note:** recital 31 of *AIFMD*]

General delegation requirements

3.10.2 R An *AIFM* must ensure the following conditions are met when a delegate carries out any function on its behalf:

…

(2) …

(d) in addition to (c), where the delegation of *AIFM investment management functions* is conferred on a ~~third-country~~ non-*UK* delegate, cooperation between the *FCA* and the supervisory authority of the delegate is ensured;

…

…

…

3.10.3 G For the purposes of *FUND* 3.10.2R(2)(d*)* cooperation is ensured between the *FCA* and the supervisory authorities of a ~~third-country~~ delegate which is not *established* in the *UK* where a cooperation arrangement is in place

between the two authorities in accordance with ~~*AIFMD* and~~ article 78(3) of the *AIFMD level 2 regulation*.

…

3.11 Depositaries

Application

3.11.1 R This section applies in accordance with the table in *FUND* 3.11.2R and *FUND* 3.11.3R.

3.11.2 R This table belongs to *FUND* 3.11.1R.

Rule	*Full-scope UK AIFM* of a *UK AIF* ~~or an *EEA AIF*~~ (other than a ~~*non-EEA feeder AIF*~~ *non-UK feeder AIF* which is *marketed* in the *UK*)	*Full-scope UK AIFM* of a ~~*non-EEA AIF*~~ *non-UK AIF* or a ~~*non-EEA feeder AIF*~~ *non-UK feeder AIF* which is *marketed* in the *UK*	*UK depositary* of a *UK AIF* (other than a ~~*non-EEA feeder AIF*~~ *non-UK feeder AIF* which is *marketed* in the *UK*) managed by a *full-scope UK AIFM* ~~or an *EEA AIFM*~~	*UK depositary* of a ~~*non-EEA AIF*~~ *non-UK AIF* or a ~~*non-EEA feeder AIF*~~ *non-UK feeder AIF* which is *marketed* in the *UK*
…				
~~3.11.18R~~	~~x~~			
…				

3.11.3 R A *UK depositary* of a ~~*non-EEA AIF*~~ *non-UK AIF* or a ~~*non-EEA feeder AIF*~~ *non-UK feeder AIF* which is *marketed* in the *UK* that does not perform all of the functions of cash monitoring, safekeeping and oversight for the *AIF* need only comply with the following *rules* that are applicable to the functions it performs:

…

Appointment of a single depositary

3.11.4 R An *AIFM* must, for each ~~*AIF*~~ *UK AIF* it manages, ensure that:

…

(2) the assets of the *AIF* are entrusted to the *depositary* for safekeeping in accordance with *FUND* 3.11.21R and *FUND* 3.11.23R.

~~(a) for a *UK AIF*, *FUND* 3.11.21R and *FUND* 3.11.23R; or~~

~~(b) for an *EEA AIF*, the national laws and regulations in the *Home State* of the *AIF* implementing article 21(8) of *AIFMD*.~~

[**Note:** article 21(1) and (8) of *AIFMD*]

…

Eligible depositaries for UK AIFs

3.11.10 R Subject to *FUND* 3.11.12R, an *AIFM* must, for each *UK AIF* it manages, ensure the appointment of a *depositary* which is a *firm established* in the *UK* and which is one of the following:

…

(2) a *MiFID investment firm* or an *EEA MiFID investment firm* which:

…

…

3.11.11 G For a *depositary* to be *established* in the *UK*, it must have its registered office or *branch* in the *UK*. A *MiFID investment firm* that has its registered office in the *UK* must be a *full-scope IFPRU investment firm* to meet the requirements of *FUND* 3.11.10R(2). ~~*A MiFID investment firm*~~ An *EEA MiFID investment firm* that has a *branch* in the *UK* must meet the capital requirements under the *EU CRR* for a *CRD full-scope firm* as implemented in its *Home State* to meet the requirements of *FUND* 3.11.10R(2).

…

3.11.15 G For certain types of closed-ended *AIFs* (such as private equity, venture capital and real estate funds) a wider range of entities than those specified in *FUND* 3.11.10R may perform the relevant *depositary* functions. The *FCA* requires such entities to obtain authorisation as a *depositary* to demonstrate that they can meet the commitments inherent in those functions, but imposes a lower level of capital requirements in recognition of the different degree of risk implied by the characteristics of the *AIF*. The capital requirements of such *firms* are contained in *IPRU-INV* 5 (particularly *IPRU-INV* 5.4.3R (Own funds requirement)) but if the *firm* also undertakes *MiFID business*, its capital requirements will be contained in *IFPRU*, the *UK CRR*, and the *EU CRR*, or in *GENPRU* and *BIPRU* depending on the scope of that *MiFID business*.

[**Note:** recital 34 of *AIFMD*]

Additional requirements for depositaries of authorised AIFs

…

3.11.17 G Where the *firm* referred to in *FUND* 3.11.16R is a *full-scope IFPRU investment firm* which is a *depositary* for an *authorised AIF* appointed in line with *FUND* 3.11.10R(2), it is subject to the capital requirements of *IFPRU* and the *UK CRR* or *EU CRR*. However, these requirements are not in addition to *FUND* 3.11.16R and, therefore, a *firm* subject to this *rule* may use the *own funds* required under *IFPRU* and the *UK CRR* or *EU CRR* to meet the £4 million requirement.

~~Eligible depositaries for EEA AIFs~~

3.11.18 R ~~An *AIFM* must, for each *EEA AIF* it manages, ensure the appointment of a *depositary* which is established in the *Home State* of the *AIF* and which is eligible to be a depositary in that *Home State* in accordance with article 21(3) of *AIFMD*.~~ [deleted]

~~[**Note:** article 21(3) and (5)(a) of *AIFMD*]~~

…

Depositary functions: cash monitoring

3.11.20 R A *depositary* must ensure that the *AIF's* cash flows are properly monitored and that:

(1) …

(2) all cash of the *AIF* has been booked in cash accounts opened:

…

(b) at:

…

(iii) a bank authorised in a ~~third~~ non-*EEA* country; or

(iv) another entity of the same nature, in the relevant market where cash accounts are required, provided such an entity is subject to effective prudential regulation and supervision which have the same effect as ~~*EU*~~ *UK* law and are effectively enforced and in accordance with the principles set out in article 2 (safeguarding of client financial instruments and funds) of the *MiFID Delegated Directive*; and

…

Depositary functions: safekeeping of financial instruments

…

3.11.22 ~~EU~~ UK

Financial instruments to be held in custody		
1.	Financial instruments belonging to the AIF or to the AIFM acting on behalf of the AIF which are not able to be physically delivered to the depositary shall be included in the scope of the custody duties of the depositary where all of the following requirements are met:	
	(a)	they are transferable securities including those which embed derivatives as referred to in *COLL* 5.2.19R(3) (see the last subparagraph of Article 51(3) of Directive 2009/65/EC and Article 10 of Commission Directive 2007/16/EC), money market instruments or units of collective investment undertakings;
	…	
…		
[**Note:** Article 88 of the *AIFMD level 2 regulation*]		

…

Delegation: general prohibition

…

3.11.27 G The use of services provided by securities settlement systems, as specified in the ~~*Settlement Finality Directive*~~ Financial Markets and Insolvency (Settlement Finality) Regulations 1999, or similar services provided by securities settlement systems in other countries, does not constitute a delegation by the *depositary* of its functions.

[**Note:** article 21(11) fifth paragraph of *AIFMD*]

3.11.27 A G (1) (a) If a *depositary* performs part of its functions through a *branch* in ~~another~~ an *EEA State* this is not a delegation by the *depositary* of its functions to a third party.

…

(2) Paragraph (1) also applies where the *depositary* is the *UK branch* of an *EEA firm* and it performs part of its functions:

(a) through a *branch* in ~~another~~ an *EEA State*; or

(b) …

(3) (a) A *depositary* that performs part of its functions through a *branch* or registered office in ~~another~~ an *EEA State* should ensure that those arrangements do not impede the *depositary's* ability to meet the *threshold conditions*.

(b) (i) …

(ii) For example, the *FCA's* ability to supervise the *depositary* might be impeded if the *depositary* performed tasks other than administrative and supporting tasks from its *branch* or registered office in ~~another~~ an *EEA State*.

Delegation: safekeeping

3.11.28 R A *depositary* may delegate the functions in *FUND* 3.11.21R and *FUND* 3.11.23R to third parties, subject to the following conditions:

(1) the tasks are not delegated with the intention of avoiding the requirements of ~~*AIFMD*~~ those *rules* or the *AIFMD level 2 regulation*;

…

Delegation: ~~third~~ countries other than the UK

3.11.29 R A *depositary* may delegate custody tasks in relation to *AIF custodial assets* to an entity in a ~~third~~ country other than the UK that does not satisfy the conditions in *FUND* 3.11.28R(4)(b), provided that:

(1) the law of that ~~third~~ country requires those *AIF custodial assets* to be held in custody by a local entity;

…

(3) the *depositary* delegates its functions to such a local entity only to the extent required by the law of that ~~third~~ country and only for as long as there is no local entity that satisfied the delegation conditions in *FUND* 3.11.28R(4)(b);

(4) the investors of the relevant *AIF* are informed before their investment that such delegation is required due to legal constraints in ~~the third~~ that country and of the reasons as to why the delegation is necessary; and

…

…

AIFM of a ~~non-EEA AIF~~ non-UK AIF

3.11.33 R An *AIFM* of a ~~*non-EEA AIF*~~ *non-UK AIF* or a ~~*non-EEA feeder AIF*~~ *non-UK feeder AIF* which is *marketed* in the *UK* must:

…

…

3.12 Marketing in the ~~home Member State of the AIFM~~ UK

Application

3.12.1 R This section applies to:

(1) a *full-scope UK AIFM* of a *UK AIF*.

~~(a) a *UK AIF*; and~~

~~(b) an *EEA AIF*; and~~

(2) ~~a *full-scope EEA AIFM* of:~~

~~(a) a *UK AIF*; and~~

~~(b) an *EEA AIF*.~~ [deleted]

Marketing application

3.12.2 D Under regulation 54 (FCA approval for marketing) of the *AIFMD UK regulation*, a *full-scope UK AIFM* ~~and a *full-scope EEA AIFM*~~ may apply to *market* a *UK AIF* ~~or *EEA AIF*~~ it manages in the *UK* by submitting a notice to the *FCA* in the form set out in *FUND 3* Annex 1D.

3.12.3 G If the *UK AIF* ~~or *EEA AIF*~~ is a *feeder AIF*, the *master AIF* needs to be an *AIF* that is not managed by a ~~*non-EEA AIFM*~~ *non-UK AIFM* or is not a ~~*non-EEA AIF*~~ *non-UK AIF* for it to be *marketed* in accordance with regulation 54 of the *AIFMD UK Regulation*. If the *master AIF* is managed by a ~~*non-EEA AIFM*~~ *non-UK AIFM* or is a ~~*non-EEA AIF*~~ *non-UK AIF*, the *AIF* may be marketed in the *UK* in accordance with regulation ~~57~~ 59 ~~(Marketing under article 36 of the directive)~~ of the *AIFMD UK regulation* (see *FUND* ~~10.5.3G~~ 10.5.9G (Marketing ~~under article 36 of AIFMD)~~ of AIFs managed by other third country AIFMs).

3.12.4 G (1) A *full-scope UK AIFM* may use the form set out in *FUND* 3 Annex 1D to apply to *market* a *UK AIF* ~~or *EEA AIF*~~ (that is not a *feeder AIF*, the *master AIF* of which is managed by a *non-~~EEA~~ UK AIFM* or is a *non-~~EEA~~ UK AIF*) to *professional clients* and/or *retail clients*.

(2) A *full-scope UK AIFM* may inform the *FCA* of its intention to *market* such an *AIF* in the *UK* in its application to become authorised as a *Full-scope UK AIFM*, in which case the *firm* does not also have

to submit the form in *FUND* 3 Annex 1D in respect of that *marketing*.

(3) ~~A *full-scope UK AIFM* may also use the form in *FUND* 3 Annex 1D to apply to the *FCA* to *market* an *AIF* in other *EEA States* using the *AIFMD* marketing passport and to notify the *FCA* of material changes to domestic and cross-border *marketing*.~~ [deleted]

3.12.5 G ~~(1) A *full-scope EEA AIFM* that wishes to *market* a *UK AIF* or *EEA AIF* (that is not a *feeder AIF*, the *master AIF* of which is managed by a *non-EEA AIFM* or is a *non-EEA AIF*) to *professional clients* should do so using the *marketing* passport provided for under *AIFMD* and should, therefore, apply to its *Home State* regulator for permission to do so.~~

~~(2) In accordance with regulation 49 (Marketing by *full-scope EEA AIFMs* of certain AIFs) of the *AIFMD UK Regulation*, a *full-scope EEA AIFM* may *market* such an *AIF* to *retail clients* in the *UK* if the *FCA* has received a regulator's notice in relation to the *marketing* in accordance with Schedule 3 to the *Act* (EEA Passport rights) or if the *AIFM* has applied to the *FCA* for permission to *market* the *AIF* using the form in *FUND* 3 Annex 1D and the *FCA* has approved such *marketing*.~~

~~(3) As such, a *full-scope EEA AIFM* may use the form in FUND 3 Annex 1D to apply to *market* such an *AIF* in the *UK* to *retail clients*, but should not use this form to apply to *market* such an *AIF* to *professional clients* in the *UK*.~~ [deleted]

3.12.6 G A *full-scope UK AIFM* ~~or a *full-scope EEA AIFM*~~ that intends to *market* to *retail clients* should consider the application of the *financial promotions* regime and ensure it is compliant with the relevant requirements (see *PERG* 8.37.14G (Application of the financial promotion and scheme promotion restrictions)).

…

4 ~~European~~ Specialist AIF Regimes

[*Editor's note*: The changes to this Chapter will be consulted on in a separate consultation paper.]

10 Operating on a cross-border basis

10.1 Application and purpose

Application

10.1.1 R (1) This chapter applies to the following types of *firm* in relation to the activities in (2):

(a) …;

(b) ~~a *full scope EEA AIFM*~~; [deleted]

(c) a ~~*small non-EEA AIFM*~~ *small-non-UK AIFM*; and

(d) an ~~*above threshold non-EEA AIFM*~~ *above threshold-non-UK AIFM*.

…

…

Introduction

10.1.3 G ~~An *AIFM* operates on a cross-border basis when it manages or *markets* an *AIF* in an *EEA State* other than the state in which it has its registered office (which may include, in certain cases, a state which is a *non-EEA State*).~~ [deleted]

10.1.4 G ~~(1) *AIFMD* allows certain types of *AIFM* to operate on a cross-border basis using a passport. There are two types of passport that are provided for in *AIFMD*:~~ [deleted]

~~(a) a management passport, which allows an *AIFM* to establish a *branch* in, or provide *cross-border services* into, another *EEA State* to manage an *AIF*; and~~

~~(b) a marketing passport, which allows an *AIFM* to provide *cross-border services* into another *EEA State* to *market* an *AIF* to investors that are *professional clients*.~~

~~(2) The following types of *AIFM* are allowed to operate on a cross-border basis using the management and *marketing* passport:~~

~~(a) a *full-scope UK AIFM* of:~~

~~(i) a *UK AIF*; and~~

~~(ii) an *EEA AIF*; and~~

~~(b) a *full-scope EEA AIFM* of:~~

~~(i) a *UK AIF*; and~~

~~(ii) an *EEA AIF*.~~

10.1.5 G (1) ~~*AIFMD* also contains~~ There are specific provisions for third country *AIFs* and *AIFMs* (ie, in relation to ~~*non-EEA AIFs*~~ *non-UK AIFs* and ~~*non-EEA AIFMs*~~ *non-UK AIFMs*) and the *marketing* of a *UK AIF* or ~~an *EEA AIF*~~ *non-UK AIF* that is a *feeder AIF*, the *master AIF* of which is managed by a ~~*non-EEA AIFM*~~ *non-UK AIFM* or is a ~~*non-EEA AIF*~~ *non-UK AIF*.

(2) ~~In line with these provisions, the following types of *AIFM* are~~ A *UK AIFM* is allowed to manage a ~~*non-EEA AIF*~~ *non-UK AIF* from ~~an *EEA State*~~ the *UK*.~~:~~

~~(a) a *full-scope UK AIFM*; and~~

~~(b) a *full-scope EEA AIFM*.~~

(3) In addition, ~~*EEA States* may allow~~ the *UK* allows the *marketing* by the following types of *AIFM* in ~~their territory only~~ the *UK*:

…

…

FUND 10.2 (AIFM management passport) and 10.3 (EEA AIFM marketing passport in the UK) are deleted in their entirety. The deleted text of each section is not shown but the sections are marked [deleted] as shown below.

10.2 AIFM management passport [deleted]

10.3 EEA AIFM marketing passport in the UK [deleted]

10.4 AIFM third country management

Application

10.4.1 R This section applies to a *full-scope UK AIFM* of a ~~*non-EEA AIF*~~ *non-UK AIF* that is not *marketed* in the ~~*EEA*~~ *UK* to ~~*EEA*~~ *UK* investors.

Applicable requirements

10.4.2 G A *full-scope UK AIFM* may manage a ~~*non- EEA AIF*~~ *non-UK AIF* subject to the satisfaction of certain conditions. If the *AIF* is not *marketed*, these conditions are that:

(1) the *AIFM* complies with the full requirements of ~~*AIFMD*~~ *FUND*, other *rules* in the *Handbook* which, when made, implemented

AIFMD, the *AIFMD level 2 regulation* and the *UK AIFMD regulation* in respect of that *AIF*, except ~~article 21 (Depositaries) and article 22~~ *FUND* 3.3 (Annual reporting) and *FUND* 3.11 (Depositaries); and

(2) (in accordance with regulation 33 of the *AIFMD UK regulation*) appropriate cooperation arrangements are in place between the ~~*competent authorities* of the *Home State* of the *AIFM*~~ *FCA* and the supervisory authorities of the country where the ~~*non-EEA AIF*~~ *non-UK AIF* is *established* in order to ensure an efficient exchange of information that allows the ~~*competent authority* of the *Home State* of the *AIFM*~~ *FCA* to carry out its duties in accordance with ~~*AIFMD*~~ *FUND*, other *rules* in the *Handbook* which, when made, implemented *AIFMD*, the *AIFMD level 2 regulation* and the *UK AIFMD regulation*.

10.4.3 G As a result, a *full-scope UK AIFM* of a ~~*non-EEA AIF*~~ *non-UK AIF* that is not *marketed* is required to comply with:

(1) all of *FUND* 3 with the exception of *FUND* 3.3 (Annual report of an *AIF*), *FUND* 3.11 (Depositaries) and *FUND* 3.12 (Marketing in the ~~home Member State of the AIFM~~ UK); and

(2) …

10.4.4 G If a *full-scope UK AIFM* wishes to market in the *UK* ~~a *non-EEA AIF*~~ *non-UK AIF* that it manages, the *AIFM* must comply with the relevant requirements, as explained in *FUND* 10.5.3G to *FUND* 10.5.5G (Marketing ~~under article 36 of AIFMD~~ of third country AIFs managed by full-scope UK AIFMs).

…

10.5 National private placement

Application

10.5.1 G This section applies to the following types of *AIFM* that intend to market an *AIF* in the *UK*:

(1) a *full-scope UK AIFM* of:

(a) a *feeder AIF* that is a *UK AIF* ~~or an *EEA AIF*~~, the *master AIF* of which is managed by a ~~*non-EEA AIFM*~~ *non-UK AIFM* or is a ~~*non-EEA AIF*~~ *non-UK AIF*; and

(b) a ~~*non-EEA AIF*~~ *non-UK AIF*;

(2) ~~a *full-scope EEA AIFM* of:~~ [deleted]

~~(a) a *feeder AIF* that is a *UK AIF* or an *EEA AIF*, the *master AIF* of which is managed by a *non-EEA AIFM* or is a *non-EEA AIF*; and~~

~~(b) a *non-EEA AIF*;~~

(3) ~~a *small non-EEA AIFM* of:~~ [deleted]

~~(a) a *UK AIF*;~~

~~(b) an *EEA AIF*; and~~

~~(c) a *non-EEA AIF*; and~~

(4) an ~~*above-threshold non-EEA AIFM*~~ *above-threshold non-UK AIFM* of:

(a) a *UK AIF*; and

(b) ~~an *EEA AIF*; and~~ [deleted]

(c) a ~~*non-EEA AIF*~~ *non-UK AIF*.

Introduction

10.5.2 G ~~*AIFMD* permits *EEA States* to allow the *marketing* in their territory~~ *Marketing* in the *UK* only of the types of *AIF* set out in *FUND* 10.5.1G~~,~~ is permitted subject to certain conditions~~. This has been implemented in the *UK* by~~ (see Part 6 (Marketing) of the *AIFMD UK regulation*). In accordance with these provisions, an *AIFM* of the type set out in *FUND* 10.5.1G may *market* an *AIF* in the *UK* providing it has notified the *FCA* of its intention to *market*, it meets the relevant conditions in the *AIFMD UK regulation* and the *FCA* has not suspended or revoked the *AIFM's* entitlement to *market* the *AIF*. The *AIFM* is entitled to *market* the *AIF* as soon as a notification containing all of the required information has been sent to the *FCA*.

Marketing ~~under article 36 of the AIFMD~~ of third country AIFs managed by full-scope UK AIFMs

10.5.3 G In accordance with regulation 57 ~~(Marketing under Article 36 of the directive)~~ of the *AIFMD UK regulation*, a *full-scope UK AIFM* ~~and a *full-scope EEA AIFM*~~ may *market* the following types of *AIF* in the *UK* by submitting a notification to the *FCA* in the form in *FUND* 10 Annex 1D:

(1) a *feeder AIF* that is a *UK AIF* ~~or an *EEA AIF*,~~ the *master AIF* of which is managed by a ~~*non-EEA AIFM*~~ *non-UK AIFM* or is a ~~*non-EEA AIF*~~ *non-UK AIF*; and

(2) a ~~*non- EEA AIF*~~ *non-UK AIF*.

10.5.4 G To allow the *AIFM* to comply with regulation 57(4), the notification includes a statement from the *AIFM* confirming that the following conditions are met:

(1) subject to (2), the *AIFM* complies with the requirements of ~~*AIFMD*~~ *FUND*, other *rules* in the *Handbook* which, when made, implemented *AIFMD*, the *AIFMD level 2 regulation* and the *UK AIFMD regulation* in respect of that *AIF*;

(2) the *AIFM* is not required to comply with the requirements of ~~article 21~~ *FUND* 3.11 (Depositaries) ~~of *AIFMD*~~ provided the *AIFM*:

(a) ensures that one or more entities, other than the *AIFM*, are appointed to carry out the duties in ~~article 21(7) to (9) of *AIFMD*~~ *FUND* 3.11.20R to 3.11.23R and 3.11.25R; and

…

(3) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the *FCA* and the supervisory authorities of the relevant third country to ensure an efficient exchange of information that enables the *FCA* to carry out its duties in accordance with ~~*AIFMD*~~ *FUND*, other *rules* in the *Handbook* which, when made, implemented *AIFMD*, the *AIFMD level 2 regulation* and the *UK AIFMD regulation*; and

(4) the ~~third~~ country where the ~~*non-EEA AIF*~~ *non-UK AIF* is *established* is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force (FATF).

10.5.5 G (1) As a result of *marketing* an *AIF* in the *UK*, a *full-scope UK AIFM* is required to comply with:

(a) all of *FUND* 3, except certain sections of *FUND* 3.11 (Depositaries) (as set out in *FUND* 3.11.33R (AIFM of a ~~non-EEA AIF~~ non-UK AIF)) and (Marketing in the ~~home Member State of the AIFM~~ UK); and

(b) …

(2) A *full-scope UK AIFM* managing a ~~*non-EEA AIF*~~ *non-UK AIF* that is not *marketed* should note that the *rules* it needs to comply with will change in relation to that *AIF* as a result of the *AIF* being *marketed* (see *FUND* 10.4.3G for details of the rules that apply to a *full-scope UK AIFM* managing~~,~~ a ~~*non-EEA AIF*~~ *non-UK AIF* that is not *marketed*). In particular, an *AIFM* will be subject to the annual report

requirements in *FUND* 3.3 (Annual report of an AIF) and some of the depositary provisions in *FUND* 3.11 (Depositaries) (as set out in *FUND* 3.11.33R (AIFM of a non-EEA AIF)).

Marketing of AIFs managed by small third-country AIFMs

10.5.6 G In accordance with regulation 58 (Marketing of AIFs managed by small third country AIFMs) of the *AIFMD UK regulation*, a ~~*small non-EEA AIFM*~~ *small non-UK AIFM* may *market* an *AIF* in the *UK* managed by it by submitting a notification to the *FCA* in the form set out in *FUND* 10 Annex 1D.

10.5.7 G To allow the *AIFM* to comply with the requirements of regulation 58(2), the notification includes a statement from the *AIFM* confirming that the following conditions are met:

(1) …

(2) the *AIFM* is a ~~*small non-EEA AIFM*~~ *small non-UK AIFM*.

10.5.8 G As a result of *marketing* an *AIF* in the *UK*, a ~~*small non-EEA AIFM*~~ *small non-UK AIFM* is required to provide the *FCA* with information on:

…

Marketing ~~under article 42 of the directive~~ of AIFs managed by other third country AIFMs

10.5.9 G In accordance with regulation 59 ~~(Marketing under article 42 of the directive)~~ of the *AIFMD UK regulation*, an ~~*above-threshold non-EEA AIFM*~~ *above-threshold non-UK AIFM* may *market* a *UK AIF*~~, an *EEA AIF*~~ or a ~~*non-EEA AIF*~~ *non-UK AIF* in the *UK* managed by it by submitting a notification to the *FCA* in the form in *FUND* 10 Annex 1D.

10.5.10 G To allow the *AIFM* to comply with the requirements of regulation 59(2), the notification includes a statement from the *AIFM* confirming that the following conditions are met:

…

(2) the *AIFM* complies with the requirements of ~~articles 22 to 24 *AIFMD*~~ *FUND* 3.2, 3.3 and 3.4 in so far as such provisions are relevant to the *AIFM* and the *AIF* to be *marketed*;

…

(4) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between:

(a) the *FCA* and, if applicable, the *competent authorities* of the other ~~*EEA State*~~ country where the *AIF* is *established*; and

(b) the supervisory authorities of the country where the ~~*non-EEA AIFM*~~ *non-UK AIFM* is *established* and, if applicable, of the country where the ~~*non-EEA AIF*~~ *non-UK AIF* is *established*,

to ensure an efficient exchange of information that enables the *FCA* to carry out its duties in accordance with *AIFMD*; and

(5) the ~~third~~ country where the ~~*non-EEA AIF*~~ *non-UK AIF* is *established* is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force (FATF).

10.5.11 G As a result of *marketing* an *AIF* in the *UK*, an ~~*above-threshold non-EEA AIFM*~~ *above-threshold non-UK AIFM* is required to comply with:

…

10.5.11A G (1) (a) A provision of *FUND* 3.2 (Investor Information), *FUND* 3.3 (Annual report of the AIF) or *FUND* 3.4 (Reporting obligations to the FCA) will not be relevant to an ~~*above-threshold non-EEA AIFM*~~ *above-threshold non-UK AIFM* and the *AIF* it *markets*, if it relates to another provision to which the *AIFM* is not subject.

…

…

…

App 1 Written Notice decision procedures under the AIFMD UK regulation

App 1.1 Section title

…

App 1.1.4G

Regulation	Description	Decision Maker
…		
54(6)	Where the *FCA* proposes to refuse an application to *market* an *AIF* by a *full-scope UK AIFM* ~~or a *full-*~~	*Executive procedures*

	~~*scope EEA AIFM*~~ under regulation 54 (FCA approval for marketing) of the *AIFMD UK regulation*.	
54(7)(a)	Where the *FCA* decides to refuse an application to *market* an *AIF* by a *full-scope UK AIFM* ~~or a *full-scope EEA AIFM*~~ under regulation 54 (FCA approval for marketing) of the *AIFMD UK regulation*.	*Executive procedures*
…		

Annex C

Amendments to the Regulated Covered Bonds sourcebook (RCB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Introduction

1.1 Introduction to sourcebook

…

Purpose

1.1.2 G The general purpose of this sourcebook is to set out the guidance, directions and rules made by the *FCA* under the *RCB Regulations*. Those regulations enable bonds to be issued which ~~comply with Article 52(4) of the *UCITS Directive*~~ qualify under *COLL* 5.2.11R(5A) and 5.6.7R(3A) for a concession from the general spread of risk requirements in respect of *transferable securities*.

…

1.1.7 G An *insurer* (which is not a UK *Solvency II firm*~~,~~ or a *non-directive friendly society*~~, *incoming EEA firm* or an *incoming Treaty firm*~~) may benefit from increased counterparty limits under *INSPRU* 2.1.22R(3)(b). An *insurer* which is a *UK Solvency II firm* is subject to the *rules* in the PRA Rulebook which transposed the *Solvency II Directive* and also to the *Solvency II Regulation* (EU) 2015/35 of 10 October 2014.

…

1.1.9 G (1) *Issuers* which are subject to an obligation to publish a prospectus under the ~~*Prospectus Directive*~~ *Act* and the *Prospectus Rules* are required by Article 3 of the *PD Regulation* to disclose risk factors. These requirements are set out in *PR* 2.3.1~~EU~~ UK and *PR* App 3.1.1~~EU~~ UK.

…

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) (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 FCA 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)
Cross-cutting definitional changes	Annex A
Supervision manual (SUP)	Annex B
Consumer Redress Schemes sourcebook (CONRED)	Annex C

Amendments to material outside the Handbook

D. The Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD) is amended in accordance with Annex D to this instrument.

E. The Wind-down Planning Guide (WDPG) is amended in accordance with Annex E to this instrument.

F. The MiFID 2 Guide (M2G) is amended in accordance with Annex F to this instrument. It is also renamed the MiFID 2 Onshoring Guide.

Citation

G. 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 set out in Annex 2 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 2 of the consultation paper.

(3) The amendments in this instrument are based on the text of the Handbook in force on 1 July 2018. If amendments are made to the relevant text between 1 July 2018 and 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, rather than the text of the Handbook in force on 1 July 2018.

(4) The consultation is based on the assumption that the Financial Conduct Authority will have the power under the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 to make the proposed rule changes.

Annex A

Cross-cutting definitional changes

Part 1: In the following provisions, delete the references to *EU CRR* and insert references to *UK CRR*.

Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

SYSC 7.1.17R

SYSC 7.1.21R

SYSC 10.1.1R

SYSC 19D.1.9G

SYSC 19D.3.34R

Prudential sourcebook for Investment Firms (IFPRU)

IFPRU 1.1.4G

IFPRU 1.1.7G

IFPRU 1.1.16G

IFPRU 1.1.17G

IFPRU 1.4.1R

IFPRU 1.4.2G

IFPRU 2.2.7R

IFPRU 2.2.14R

IFPRU 2.2.18R

IFPRU 2.2.23R

IFPRU 2.2.28R

IFPRU 2.2.34R

IFPRU 2.2.37R

IFPRU 2.2.40G

IFPRU 2.2.50R

IFPRU 2.2.56G

IFPRU 2.2.70G

IFPRU 2.2.73G

IFPRU 2.3.4G

IFPRU 2.3.7G

IFPRU 2.3.8G

IFPRU 2.3.10G

IFPRU 2.3.20G

IFPRU 2.3.36G

IFPRU 2.3.50R

IFPRU 2.3.51R

IFPRU 2.3.52R

IFPRU 3.1.5G

IFPRU 3.1.6R

IFPRU 3.2.2G

IFPRU 3.2.3R

IFPRU 3.2.4G

IFPRU 3.2.10R

IFPRU 3.2.17R

IFPRU 3.2.18G

IFPRU 3.2.19G

IFPRU 3.2.20G

IFPRU 4.1.2G

IFPRU 4.2.1R

IFPRU 4.2.2G

IFPRU 4.2.3R

IFPRU 4.2.5G

IFPRU 4.2.7G

IFPRU 4.2.8G

IFPRU 4.2.9G

IFPRU 4.2.10G

IFPRU 4.2.11G

IFPRU 4.3.1G

IFPRU 4.3.2G

IFPRU 4.3.7G

IFPRU 4.3.10G

IFPRU 4.3.11G

IFPRU 4.3.14G

IFPRU 4.3.15G

IFPRU 4.3.16G

IFPRU 4.3.17G

IFPRU 4.4.1G

IFPRU 4.4.6G

IFPRU 4.4.7G

IFPRU 4.4.8G

IFPRU 4.4.9G

IFPRU 4.4.10G

IFPRU 4.4.11G

IFPRU 4.4.12G

IFPRU 4.4.13G

IFPRU 4.4.14G

IFPRU 4.4.15G

IFPRU 4.4.16G

IFPRU 4.4.17G

IFPRU 4.5.1G

IFPRU 4.5.3G

IFPRU 4.5.5G

IFPRU 4.5.6G

IFPRU 4.6.5G

IFPRU 4.6.8G

IFPRU 4.6.13G

IFPRU 4.6.22G

IFPRU 4.6.23G

IFPRU 4.6.24G

IFPRU 4.6.29G

IFPRU 4.6.31G

IFPRU 4.6.32G

IFPRU 4.7.3G

IFPRU 4.7.4G

IFPRU 4.7.5G

IFPRU 4.7.6G

IFPRU 4.7.7G

IFPRU 4.7.9G

IFPRU 4.7.10G

IFPRU 4.7.12G

IFPRU 4.7.13G

IFPRU 4.7.17G

IFPRU 4.7.19G

IFPRU 4.8.1G

IFPRU 4.8.2G

IFPRU 4.8.7G

IFPRU 4.8.12G

IFPRU 4.8.15G

IFPRU 4.8.16G

IFPRU 4.8.22G

IFPRU 4.8.23G

IFPRU 4.8.24G

IFPRU 4.8.25G

IFPRU 4.8.26G

IFPRU 4.8.28G

IFPRU 4.9.1G

IFPRU 4.10.1G

IFPRU 4.10.2G

IFPRU 4.11.2G

IFPRU 4.11.3G

IFPRU 4.11.8G

IFPRU 4.11.11G

IFPRU 4.11.14G

IFPRU 4.11.18G

IFPRU 4.11.19G

IFPRU 4.12.1R

IFPRU 4.12.3G

IFPRU 4.12.8G

IFPRU 4.12.10G

IFPRU 4.12.13G

IFPRU 4.12.24G

IFPRU 4.12.27G

IFPRU 4.12.32G

IFPRU 4.12.35G

IFPRU 4.12.37G

IFPRU 4.12.42G

IFPRU 4.13.1R

IFPRU 4.14.1R

IFPRU 4.14.2R

IFPRU 4.14.4G

IFPRU 4.14.5G

IFPRU 4.15.1G

IFPRU 5.2.2G

IFPRU 6.1.2G

IFPRU 6.1.3R

IFPRU 6.1.4R

IFPRU 6.1.15R

IFPRU 6.1.17G

IFPRU 6.2.1G

IFPRU 6.2.2G

IFPRU 6.2.8G

IFPRU 6.3.1G

IFPRU 6.3.3G

IFPRU 6.3.5G

IFPRU 6.3.12G

IFPRU 6.3.17G

IFPRU 6.3.18G

IFPRU 6.3.19G

IFPRU 6.3.25G

IFPRU 7.1.2G

IFPRU 7.1.5R

IFPRU 7.1.6R

IFPRU 8.1.2G

IFPRU 8.1.3R

IFPRU 8.1.4R

IFPRU 8.1.5R

IFPRU 8.1.6G

IFPRU 8.1.7G

IFPRU 8.1.8G

IFPRU 8.1.9G

IFPRU 8.1.10G

IFPRU 8.1.11G

IFPRU 8.1.14G

IFPRU 8.1.18G

IFPRU 8.1.19G

IFPRU 8.1.21G

IFPRU 8.2.1R

IFPRU 8.2.3G

IFPRU 8.2.4G

IFPRU 8.2.7R

IFPRU 8.2.8R

IFPRU 8.2.10R

IFPRU 10.4.1R

IFPRU 10.4.3R

IFPRU 10.6.5G

IFPRU TP 1.4R

IFPRU TP 1.6R

IFPRU TP 1.8R

IFPRU TP 1.9R

IFPRU TP 1.10R

IFPRU TP 1.11G

IFPRU TP 1.12G

IFPRU TP 3.2G

IFPRU TP 3.4R

IFPRU TP 3.5R

IFPRU TP 3.6R

IFPRU Sch 1(3)

IFPRU Sch 2(3)

Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

BIPRU 8.1.2AR

BIPRU 8.1.2BR

BIPRU 12.4.-1R

BIPRU TP 2.3G

BIPRU TP 15.3G

BIPRU TP 15.4R

Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

MIPRU 4.2.5R

MIPRU 4.4.1R

Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

IPRU(INV) 4.2.4G

IPRU(INV) 11.6.5G

Collective Investment Schemes sourcebook (COLL)

COLL 5.6.7R

COLL 5.7.5R

COLL 6.6A.8R

COLL 6.6B.7G

COLL 6.6B.9G

Regulated Covered Bonds sourcebook (RCB)

RCB 1.1.6G

RCB 2.3.13G

Energy Market Participants Guide (EMPS)

EMPS 1.2.3G

Oil Market Participants Guide (OMPS)

OMPS 1.2.2G

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.

General Prudential sourcebook (GENPRU)

GENPRU 2.1.46R

Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

BIPRU 1.1.3R

BIPRU 8.5.8G

Prudential sourcebook for Investment Firms (IFPRU)

IFPRU 1.1.3G

IFPRU 3.2.20G

Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

IPRU(INV) 11.6.4R

IPRU(INV) 11.6.5G

IPRU(INV) 11.7.1G

Collective Investment Schemes sourcebook (COLL)

COLL 6.9.9R

Annex B

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3 Auditors

3.1 Application

…

~~Incoming firms~~

3.1.3 R ~~This chapter applies to an *incoming EEA firm* (and the auditor of such a *firm*) only if it has a *top-up permission*.~~ [deleted]

3.1.4 G ~~The application of *SUP* 3.10 to the auditor of an *incoming EEA firm* with a *top-up permission* is qualified in *SUP* 3.10.3R.~~ [deleted]

3.1.5 R ~~This chapter does not apply to an *incoming Treaty firm*, which:~~

~~(1) does not have a *top-up permission*; and~~

~~(2) is not required to comply with the *client asset rules*.~~ [deleted]

3.1.6 G ~~The application of *SUP* 3.7 to an *incoming Treaty firm* or an auditor of such a *firm* is further qualified in *SUP* 3.7.1G.~~ [deleted]

…

3.7 Notification of matters raised by auditor

~~Application~~

3.7.1 G ~~*SUP* 3.7 does not apply to an *incoming Treaty firm* which does not have a *top-up permission*.~~ [deleted]

…

3.10 Duties of auditors: notification and report on client assets

…

3.10.3 R *SUP* 3.10.5R(3) does not apply to an auditor of a *lead regulated firm* ~~or an *incoming EEA firm*~~. [deleted]

…

4 Actuaries

4.1 Application

…

4.1.3 R **Applicable sections**

(1)	Category of firm		(2) Applicable sections or rules
(1)	A *long-term insurer*, other than:		*SUP* 4.1, *SUP* 4.2, *SUP* 4.3 and *SUP* 4.5
	(a)	…	
	(b)	an *incorporated friendly society* that is a *flat rate benefits business friendly society*; and	
	(c)	~~an *incoming EEA firm*; and~~ [deleted]	
	(d)	…	
…			

…

6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements

6.1 Application, interpretation and purpose

…

6.1.3 G ~~This chapter applies to an *incoming firm* or a *UCITS qualifier* only in respect of a *top-up permission*. An *incoming firm* or a *UCITS qualifier* should refer to *SUP* 14 (Variation of passport rights by incoming EEA firms and ending authorisation) for the procedures for changes to *permission* granted under Schedules 3, 4 or 5 of the *Act*.~~ [deleted]

…

6.2 Introduction

…

~~UK firms exercising EEA or Treaty rights~~

6.2.12 G ~~A *UK firm* should assess the effect of any change to its *Part 4A permission*, or any *requirements*, on its ability to continue to exercise any *EEA right* or *Treaty right* and discuss any concerns with its appropriate supervisory~~

~~contact(s). This may also change the *applicable provisions* with which it is required to comply by a *Host State*.~~ [deleted]

6.2.13 G ~~A *UK firm* which, as well as applying to vary or cancel its *Part 4A permission*, wishes to vary or terminate any business which it is carrying on in another *EEA State* under one of the *Single Market Directives*, should follow the procedures in *SUP* 13 (Exercise of passport rights by UK firms) on varying or terminating its *branch* or *cross border services* business.~~ [deleted]

…

6.3 Applications for variation of permission and/or imposition, variation or cancellation of requirements

…

6.3.3 G In applying for a variation of *Part 4A permission*, a branch of a *firm* from outside the ~~*EEA*~~ *UK* should be mindful of any continuing requirements referred to in the rest of the *Handbook*.

…

6.3.6 G If a *firm* is seeking a variation of *Part 4A permission* to add categories of *regulated activities*, it should be mindful of the ~~directive~~ requirements referred to at *SUP* 6.3.42G relating to the need to commence new activities within 12 months.

…

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 the *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 2.15.8AG.

…

Annex C

Amendments to the Consumer Redress Schemes sourcebook (CONRED)

In this Annex, striking through indicates deleted text.

1 General

…

1.4 Scope of a consumer redress scheme

…

1.4.2 G A *consumer redress scheme* could apply to all *authorised persons*, *electronic money issuers* or *payment service providers* or to a specified description of *authorised person*, *electronic money issuer* or *payment service provider*. This means the *FCA* could create a scheme that applied to a named list of firms. ~~Given that a scheme can apply to *authorised persons*, it could also apply to *incoming EEA firms* that are authorised under Schedule 3 to the *Act*. However, the *FCA* would need to consider on a case-by-case basis the extent to which this was both practicable and appropriate (having regard to the division of responsibilities between *Home* and *Host State regulators* under the various *EU* Directives that apply to financial services firms).~~

…

1.4.9 G The section 404 power could be used in relation to non-UK consumers if they are protected by the underlying law ~~(e.g. some *FCA rules* apply to *UK* firms doing business in another *EEA State*)~~.

…

Annex D

Amendments to the Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD)

In this Annex, underlining indicates new text and striking through indicates deleted text.

…

Distributor responsibilities

1.25 …

Notes:	
(1)	The Guide represents our view based on the law, regulation and other circumstances that exist as at the publication date, but also takes into account changes to the Handbook including those ~~to implement~~ <u>that implemented</u> the Markets in Financial Instruments Directive (MiFID).
…	

Annex E

Amendments to the Wind-down Planning Guide (WDPG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Application and interpretation

2.1 Application and interpretation

2.1.1 G This guide aims to assist *FCA* solo-regulated *firms* authorised with a *Part 4A permission* ~~and for which the *FCA* is the *Home State regulator*~~ with wind-down planning. It is not relevant where a *firm* is already in administration or liquidation, nor is it directly relevant to recovery strategies a *firm* may engage in as part of its recovery plan. While the guide does not impose any obligation on a *firm* to create a wind-down plan, it shows what an effective wind-down plan might include.

…

3 The concept and process of wind-down planning

3.1 What is wind-down planning?

…

3.1.6 G We know that some *firms* may have carried our similar planning exercises under different but related regulatory processes (e.g. *ICAAP*, *RRD*). This guide does not replace or re-interpret those processes. However, *firms* may want to take this guide into account to further strengthen their wind-down planning as well as to consider how consistent these processes are with one another.

[**Note:** Internal Capital Adequacy Assessment Process (*ICAAP*) is for *firms* which are subject to the *UK* provisions which implemented *CRD* IV / *BIPRU*. Some of these *firms* are also subject to the *UK* provisions which implemented the Recovery and Resolution Directive (*RRD*).]

…

3.4 Effective risk management

…

3.4.6 G *Firms* may consider potential options for recovery in the face of adverse business conditions, such as selling part of the business or seeking a capital injection. This is known as *recovery planning*. Even if a *firm* has carried out *recovery planning*, wind-down planning can still be relevant as there is no guarantee that recovery options would save the *firm's* business.

[**Note:** Some *firms* are required to prepare *recovery plans*, i.e. those subject to the *UK* provisions which implemented the Recovery and Resolution Directive (*RRD*).]

Annex F

The MiFID 2 Onshoring Guide (M2G)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 ~~Implementation~~ Onshoring for Trading Venues & Data Reporting Service Providers

1.1 Background

1.1.1 This guide sets out an overview of the FCA's approach to ~~transposition~~ onshoring of the recast Markets in Financial Instruments Directive 2 (MiFID 2) in the MAR and REC sourcebooks. ~~, by explaining how they fit within the context of the overall implementation of the legislation at a UK and EU level~~. "Onshoring", for these purposes, refers to the process by which law deriving from EU legislation at exit day is retained or adapted, post exit day. This guide focuses on the regulatory regime in MiFID 2 for UK trading venues (as defined by article ~~4(1)(24) MiFID~~ 2(16A) MiFIR: this term comprises UK regulated markets, multilateral trading facilities and organised trading facilities, but not systematic internalisers) and UK data reporting services providers (DRSPs).

1.1.2 ~~MiFID 2 is made up of MiFID (2014/65/EU) and the Markets in Financial Instruments Regulation (MiFIR - 600/2014/EU). MiFID is addressed to all Member States and being a directive is binding as to the result to be achieved, albeit leaving the choice of form and methods of implementation to national authorities. The UK has implemented the directive through a combination of primary legislation, secondary legislation and regulatory rules. As an EU regulation, MiFIR is binding in its entirety and directly applicable, its content becomes law in the UK without the need for domestic legislative intervention.~~ [deleted]

1.1.3 MiFID 2 enables the Commission to make secondary legislation in several places. That legislation takes the form of a combination of delegated acts (for example as provided for in article 4(2) MIFID to specify elements of the definitions), regulatory technical standards (RTS) and implementing technical standards (ITS). Delegated acts under MiFID 2 are both drafted and made by the Commission, after it receives advice from the European Securities and Markets Authority (ESMA), and may take the form of either directives or directly applicable regulations. As for RTS and ITS, these are prepared in draft by ESMA and subject to public consultation, before endorsement and making by the Commission; both take the form of regulations and so are directly applicable. RTS and ITS feature, in particular, in the MiFID 2 provisions relating to trading venues and DRSPs. After exit day, in the UK, in broad terms, the former role of the Commission is discharged by the Treasury and ESMA's functions are performed by the FCA. For further details, see the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.

1.1.4 You can be subject to a MiFID derived or MiFIR requirement, even if you are not an authorised financial institution. ~~This is the effect of article 1 MiFID and article 1 MiFIR. In the case of article 1 MiFID, this~~ Article 30 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 applies algorithmic trading requirements to certain persons exempt under MiFID, where they are members of a regulated market or multilateral trading facility (article 1(5) MiFID). Similarly, article 1 MiFIR requires non-financial counterparties above the clearing threshold in article 10 of the European Market Infrastructure Regulation ('EMIR') (Regulation 648/2012/EU. See our EMIR webpage (https://www.fca.org.uk/markets/emir) for further details about non-financial counterparties and the clearing threshold) to comply with the obligations in Title V MiFIR. This means trading certain classes of derivatives on organised venues only, UK regulated markets, UK multilateral trading facilities (MTFs), UK organised trading facilities (OTFs) and permitted third country venues (article 28 MiFIR). EEA venues are treated as third country venues for these purposes.

1.1A Transitional onshoring provisions

1.1A.1 The effect of section 3 of the European Union (Withdrawal) Act 2018 is that "direct EU legislation" became part of UK law, as at exit day (and is known as "retained EU law" in accordance with section 6 of the same legislation). As such, MiFIR and all directly applicable regulations made under MiFID and MiFIR, including the MiFID Org Regulation (Commission Delegated Regulation [2017/565]), the MiFIR Delegated Regulation (Commission Delegated Regulation [2017/567]) and technical standards became part of UK law, as at exit day.

1.1A.2 Each of these pieces of legislation is subject to the power in section 8 of the European Union (Withdrawal) Act 2018 to deal with deficiencies arising out of the UK's withdrawal from the EU. The Treasury has exercised this power in the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (the 'Exit Regulations') to amend each of the following:

- MiFIR;
- MiFID Org Regulation;
- MiFIR Delegated Regulation;
- Data Reporting Services Regulations; and
- The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.

A reference to any of the above in the remaining text of this guide is to the legislation as amended by the Exit Regulations.

1.1A.3 The FCA has exercised its power under Part 2 of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations

2018 in relation to a number of technical standards [insert link to FCA webpage] and to amend rules in MAR referred to in M2G 1.2.3G.

1.2 MiFID ~~implementation~~ onshoring in UK legislation and the FCA Handbook

1.2.1 The UK's ~~implementation~~ onshoring of the directive takes the form of a combination of legislation made by HM Treasury, in the form of a number of statutory instruments, and rules contained in the FCA Handbook and the PRA Rulebook.

1.2.2 The Treasury legislation is set out in the following statutory instruments as amended by the Exit Regulations~~, (links to statutory instruments relate to the instrument when made and users may need to update their searches of the relevant legislation)~~:

- Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 ~~[~~('MiFI regulations'), SI 2017/701~~:~~ ~~http://www.legislation.gov.uk/uksi/2017/701/contents/made~~
- The Data Reporting Services Regulations 2017 ('DRS regulations'), SI 2017/699~~: http://www.legislation.gov.uk/uksi/2017/699/made~~
- Financial Services and Markets Act 2000 (Regulated Activities) ~~(Amendment)~~ Order ~~2017~~ 2001 ('RAO ~~Amendment Order~~'), SI ~~2017/488~~ 2001/544~~:~~ ~~http://www.legislation.gov.uk/uksi/2017/488/contents/made~~
- **The MiFI regulations amend** Part XVIII FSMA and the Recognition Requirements Regulations ('RRRs') applying to recognised investment exchanges. This includes implementing the regulatory regimes relating to a market operator operating an organised trading facility and data reporting services, as well as obligations in regard to the management body and systems and controls. It also includes applying algorithmic trading requirements in relation to unauthorised entities and position management requirements for trading venues on which commodity derivatives are traded. ~~The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013, SI 2013/419 is updated by the MiFI regulations so that FCA supervisory and enforcement powers under FSMA may be applied in the event of breach of MiFIR and regulations made under MiFID and MiFIR.~~
- …
- **The RAO ~~Amendment Order imposes~~ reflects** scope changes arising out of MiFID, notably the ~~new~~ investment service of operating an organised trading facility and the extension of "financial instruments" to include emission allowances. The onshoring amendments to Part 1 of Schedule 2 to the RAO essentially preserve the pre-exit day scope of regulation relating to physically-settled power forward contracts.

1.2.3 ~~The amendments to the~~ The FCA Handbook ~~complement~~ complements the Treasury legislation, referred to above, so for example:

- REC contains, in REC 2, extracts of the RRRs ~~as amended by the MiFI regulations~~ and 'Notes' signposting ~~further~~ ~~directly applicable~~ technical standards ~~made under MiFID or MiFIR~~ which are relevant to recognised investment exchanges' compliance with certain RRRs. These include having adequate systems and controls for algorithmic trading (see REC 2.5), and sufficient price transparency to ensure fair and orderly trading (see REC 2.6). ~~Where REC 2 previously copied out EU legislation which has been repealed by MIFID or MiFIR, this has now been deleted and, where appropriate, replaced with a simple reference to the equivalent MiFID or MiFIR provision.~~

- REC 3, which contains ~~existing~~ FCA rules requiring certain notifications to be made by RIEs to the FCA, ~~has been amended to include~~ also includes 'Notes' signposting ~~further new~~ notification requirements set out in the ~~amended~~ RRRs or ~~directly applicable~~ technical standards ~~made under MIFID or MiFIR~~.

- MAR 5 ~~is amended to apply~~ applies the MiFID requirements on systems and controls for algorithmic trading to MTFs, including requirements in the areas of systems resilience, algorithmic market-making, tick sizes and clock synchronisation. It ~~is~~ also ~~amended to align~~ aligns further the organisational requirements on MTFs with those for regulated markets, in the areas of conflicts of interest and risk management, and the management of technical operations. Rules on the suspension and removal of financial instruments also align with those for regulated markets. The ~~rules concerning pre- and post-transparency are removed, given the directly applicable nature of these requirements imposed by MiFIR, while~~ chapter contains guidance on the ability to register an MTF as an SME Growth Market ~~is new~~.

- MAR 5A ~~introduces~~ imposes a regime for OTFs. OTFs are distinguished from MTFs and regulated markets by the requirement for discretionary order execution and by trading only being permitted on these venues in bonds, structured finance products, emission allowances or derivatives. Restrictions on proprietary and matched principal trading applicable to MTFs and regulated markets are more relaxed for OTFs. In other respects, however, the regulation of these venues aligns with that for MTFs, and also, therefore, substantially with that for regulated markets.

- MAR 6 ~~is amended to remove areas relating to systematic internalisers that are now covered by directly applicable regulations – in particular, by Title III of MiFIR. The notification requirement for~~ relates to systematic internalisers ~~remains, however,~~ and the article 27(3) MiFID execution quality publication requirement (applying to systematic internalisers, amongst other execution venues). This

requirement has been ~~incorporated~~ preserved as part of onshoring as a rule (see MAR 6.3A).

- ~~MAR 7 concerning disclosure of over-the-counter trades conducted by systematic internalisers is deleted because this subject matter is now covered by Title III of MiFIR.~~

- MAR 7A ~~transposes~~ corresponds to article 17 of the recast MiFID ~~for authorised firms~~. It imposes systems and controls and notification requirements on firms engaging in algorithmic trading, as well as providing for market making obligations where a firm engages in a high-frequency algorithmic trading technique. It also imposes systems and controls and notification requirements on firms providing direct electronic access services. The services of a general clearing member are ~~now~~ also subject to ~~new~~ rules~~,~~ of a similar nature.

- MAR 9 provides directions and guidance applicable to the operation of the ~~new~~ data reporting services regime, set out in the DRS regulations.

- …

1.2.4 More generally, where requirements in MiFID ~~have been transposed in~~ correspond to FCA rules, the source of the corresponding requirement is referred to below the relevant provision, for example MAR 5A.3.5: ~~-~~

5A.3.5 R A firm must not engage in:

(1) *matched principal trading* on an *OTF* operated by it except in bonds, *structured finance products*, *emission allowances* and *derivatives* which have not been declared subject to the clearing obligation in accordance with article 5 of *EMIR*, where the client has consented; or

(2) *dealing on own account* on an *OTF* operated by it, excluding *matched principal trading*, except in sovereign debt instruments for which there is not a liquid market.

[**Note:** article 20(2) and (3) of *MiFID*]

1.2.5 ~~Amendments to the~~ The scope of MIFID ~~are~~ is the subject of guidance in PERG 2 and 13.

1.3 Markets in Financial Instruments Regulation ('MiFIR')

1.3.1 ~~Although MiFIR is a separate piece of legislation, recital 7 of the recast MiFID notes 'both instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets, data reporting services providers and third country firms providing investment services or activities in the Union. The Directive should therefore be read together with that Regulation'.~~ [deleted]

1.3.2 ~~As MiFIR is directly applicable, we have not copied out its content into the Handbook. This means that, for example, the previous Handbook material in REC 2 and MAR 5 relating to transparency requirements for recognised investment exchanges and MTFs under the existing MiFID have been deleted and the new MiFIR provisions referenced instead in the relevant sections of REC 2 and MAR 5.~~ [deleted]

1.3.3 MiFIR as onshored also provides for delegated acts and technical standards on amongst other things:

- price transparency for equity and derivative instruments, see REC 2, MAR 5 and MAR 5A;
- straight-through processing of clearing for derivative instruments, see REC 2, MAR 5 and MAR 5A; and
- transaction reporting, see SUP 17A.

1.4 ~~MIFID 2 technical~~ Technical standards and delegated acts

1.4.1 ~~MiFID 2 also requires the Commission, in certain places, to adopt technical standards, submitted by ESMA. These technical~~ Technical standards, which take the form of regulatory technical standards or implementing technical standards, are, as their names suggest, technical in nature ~~and according to articles 10 and 15 of the ESMA regulation (1095/2010/EU) (see *http://data.europa.eu/eli/reg/2010/1095/oj*) '… shall not imply strategic decisions or policy choices'~~.

…

1.4.3 ~~Given their directly applicable nature and length, we~~ We have not copied out the onshored technical standards into the Handbook, but instead adopted the signposting convention illustrated above.

1.4.4 In addition to enabling the FCA and PRA to make technical standards, ~~MiFID II~~ the Exit Regulations also ~~contains~~ onshore delegated acts prepared by the Commission, itself, in the form of regulations (see, for example, references to the MiFID Org Regulation (Commission Delegated Regulation (EU) 2017/565) and the MiFIR Delegated Regulation (EU) 2017/567).

1.5 ESMA Guidelines

1.5.1 ~~In addition to being required to submit draft technical standards to the Commission, where required by MiFID and MIFIR, ESMA may be required to issue guidelines, for example, on the requirements for the management body of a market operator and a data reporting services provider.~~ [deleted]

…

1.5.3 As a general practice, when the FCA ~~decides~~ decided to comply with the guidelines issued by ESMA it ~~will signpost~~ signposted a reference to these by

means of a note at the beginning of the relevant section of the Handbook. ~~Although the FCA is required to notify ESMA whether it will comply or intends to comply with the guidelines, with reasons for any non-compliance, financial market participants are not required to report to ESMA (for notification of regulatory breaches by firms to the FCA, see, generally, SUP 15).~~ The FCA have issued non-handbook guidance setting out the FCA's approach to ESMA guidelines after exit day. The guidance can be found on the FCA website at [URL to be added].

1.6 Third country firms

1.6.1 MiFIR and the ~~EU~~ onshored regulations ~~made under MiFID 2~~ forming part of "retained EU law" (see [M2G 1.1A.1G]) apply to ~~EU~~ UK firms ~~and EEA firms (when adopted by the EEA states)~~. For the UK branches of ~~non-EEA~~ non-UK firms (third country firms), these regulations are not of general application and it is necessary to ensure~~, via domestic measures,~~ that these branches do not receive more favourable treatment than their ~~EU~~ UK counterparts ~~(see Recital 109 of the recast MiFID)~~. ~~A new rule,~~ GEN 2.2.22AR~~,~~ is included for this purpose.

1.6.2 MiFIR, the MiFIR Delegated Regulation and the MiFID Org Regulation apply to EEA firms with temporary Part 4A permissions to the extent specified in the Exit Regulations. Technical standards deriving from MiFID apply to these firms to the extent provided for by GEN 2.2.29R.

1.7 Overview

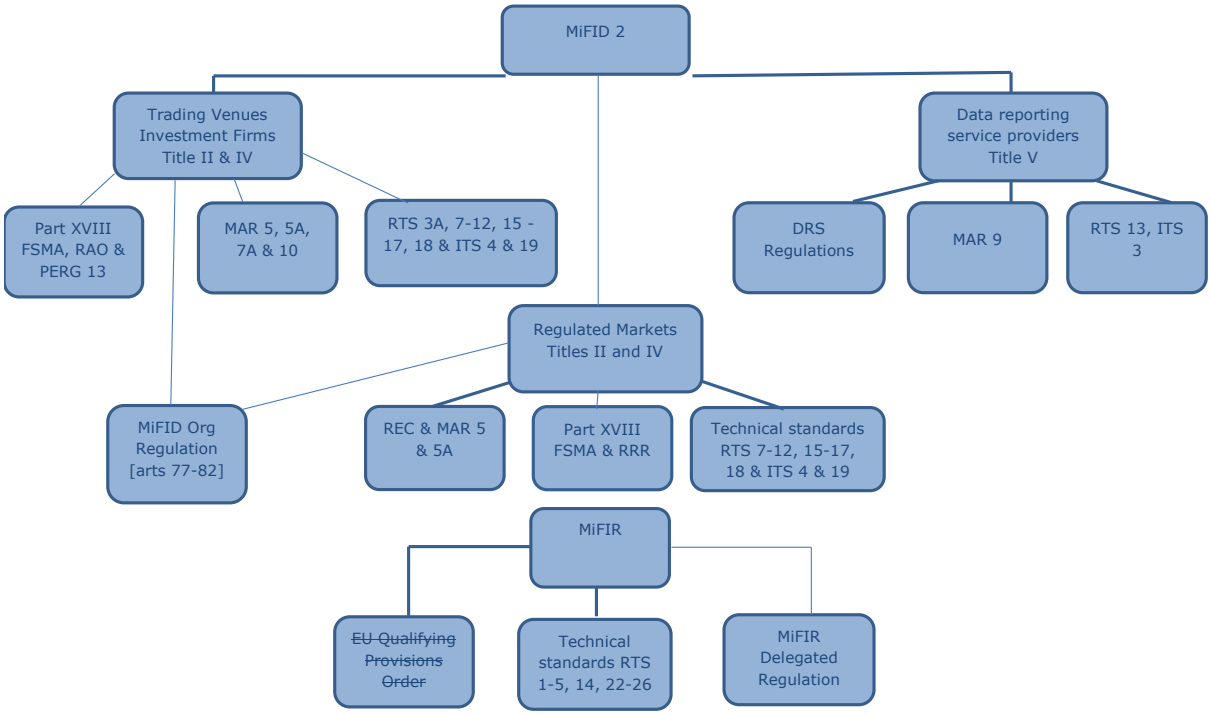
1.7.1 The diagram in M2G 1 Annex 1 provides an overview of trading venue and DRSP requirements ~~deriving from MiFID 2~~ and the location of their implementation. The references to "technical standards" are to those described in the FCA Handbook Glossary. ~~The technical standards can be accessed from the Commission website.~~

1.7.2 In addition to MAR and other requirements noted in the overview, firms operating an MTF or OTF will be subject to other ~~MiFID~~ requirements applying elsewhere in the Handbook, notably in SYSC, COBS and SUP 17A.

1.7.3 SUP 17A sets out rules and guidance for transaction reporting and supply of reference data: it also cross-refers to the relevant ~~EU~~ legislation in articles 26 and 27 MiFIR and MiFID RTS 22 and 23 ~~(see Glossary (MIFID 2) Instrument 2017 (FCA 2017/36) at https://www.handbook.fca.org.uk/instrument/2017/FCA_2017_36.pdf)~~. It further confirms that we will allow operators of trading venues and investment firms to use third party technology providers when supplying financial instrument reference data to the FCA.

1 Annex 1 MiFID and Market Infrastructure: An Overview

Annex 1 An overview of MiFID and Market Infrastructure:



…

2 ~~Implementation for~~ Onshoring of senior management arrangements and systems and controls obligations

2.1 Background

2.1.1 This guide sets out an overview of the FCA's approach to the ~~transposition~~ onshoring of the Markets in Financial Instruments Directive II (MiFID II) in the SYSC sourcebook. ~~It explains how this fits within the context of the overall implementation of the legislation at EU and UK levels~~. The guide focuses on the regulatory regime for UK firms and is aimed at UK MiFID investment firms, that is investment firms ~~authorised~~ that would require authorisation under MiFID and credit institutions carrying on MiFID business, and MiFID Optional exemption firms. The latter comprise advisers or arrangers who do not hold client money or assets and meet other conditions imposed under article 3 MiFID II, so as to be exempt from the Directive's full application. See PERG 13 Q49~~, as updated by the Conduct, Perimeter Guidance and Miscellaneous Provisions (MiFID 2) Instrument 2017, FCA 2017/39~~.

2.1.2 ~~MiFID II (2014/65/EU) is addressed to all Member States and is binding as to the result to be achieved, albeit leaving the choice and method to national authorities. The UK has implemented the Directive via a combination of primary legislation, secondary legislation and regulatory rules.~~ [deleted]

2.1.3 MiFID II contains revised senior management and systems and controls obligations relating to firms. With the exception of one aspect ~~of the~~

~~implementation~~ of the whistleblowing obligations in MiFID II ~~by way of~~ contained in primary legislation, ~~transposition~~ onshoring of the MiFID II Level 1 requirements takes the form of regulatory rules. The relevant FCA rules are mainly contained in SYSC but PRA-authorised firms will also be subject to rules in the General Organisational Requirements in the PRA Rulebook.

2.1.4 ~~MiFID II also enables the European Commission to make secondary legislation which is of particular importance in the case of systems and controls.~~ The Commission Delegated Regulation 2017/565 of 25 April 2016 (the MiFID Org Regulation ~~(see http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0565)~~), as onshored by the Exit Regulations, contains detailed organisational requirements for those firms to which it applies, including authorised MiFID investment firms and credit institutions. References to the MiFID Org Regulation in M2G are to the regulation as amended by the Exit Regulations. ~~These 'Level 2' obligations supplement the more general systems and controls obligations in MiFID II itself. As an EU regulation, the MiFID Org Regulation is binding in its entirety and directly applicable, and it becomes law in the UK without the need for domestic legislation.~~

2.1.5 ~~Many of the obligations in the MiFID Org Regulation feature in the MiFID implementing Directive (2006/73/EC) and so were implemented in SYSC by way of regulatory rules. The use of a regulation in MiFID II to impose many detailed requirements necessitates revisiting the corresponding rules in SYSC implementing MiFID and adapting the structure of SYSC.~~ [deleted]

2.2 MiFID I implementation and SYSC **[deleted]**

~~2.2.1~~ ~~The main Handbook sourcebook for implementing the MiFID requirements in relation to the management body, general organisational requirements, conflicts of interest and whistleblowing is SYSC. As regards the obligations on the management body, general organisational requirements and conflicts of interest, the corresponding requirements in MiFID I were implemented using the 'common platform'. The common platform requirements in SYSC 4 to 10 covered the following areas:~~

- ~~SYSC 4 (General organisational requirements including persons who effectively direct the business and responsibility of senior personnel);~~
- ~~SYSC 5 (Employees, agents and other relevant persons);~~
- ~~SYSC 6 (Compliance, internal audit and financial crime);~~
- ~~SYSC 7 (Risk control);~~
- ~~SYSC 8 (Outsourcing);~~
- ~~SYSC 9 (Record-keeping);~~
- ~~SYSC 10 (Conflicts of interest).~~

~~2.2.2~~ ~~The common platform was initially devised to ensure that a single set of requirements apply to firms subject to MiFID and CRD, as opposed to similar, but different, regulatory requirements arising from these Directives being imposed upon the same business functions. A unified set of requirements is simpler and more cohesive for firms, and was supported in consultation responses. The common platform requirements in SYSC 4-10 were then adapted and extended to non-MiFID firms, including investment advisers and arrangers subject to the article 3 MiFID exemption. The adaptation of the common platform requirements took the form of applying various rules as guidance to these firms, as set out in the application tables in SYSC 1 Annex 1 Part 3.~~

…

2.4 MiFID II ~~implementation~~ onshoring and SYSC

2.4.1 The combination of senior management and systems and controls requirements for firms in a directive and regulation means that FCA rules are ~~still required in order~~ used to ~~implement~~ onshore the provisions in the directive. As such, the approach to ~~implementation~~ onshoring ~~of~~ MiFID II retains the familiar approach of the common platform ~~but adapts the existing structure of SYSC in~~ and the following ~~principal ways~~:

- ~~updates~~ the application of common platform requirements in SYSC 1 Annex 1 Part 3 and ~~creates a new~~ Table B for MiFID optional exemption firms;
- ~~creates~~ a ~~new~~ rule which has the effect, amongst other things, of extending the application of certain parts of the MiFID Org Regulation to all of a UK MiFID investment firm's designated investment business, MiFID or otherwise (SYSC 1 Annex 1 2.8AR);
- ~~creates~~ a ~~new~~ rule which extends the application of the MiFID Org Regulation in relation to general organisational requirements, compliance, risk management, internal audit, responsibility of senior management, remuneration policies and practices and outsourcing to all of a MiFID optional exemption firm's designated investment business, by way of rule or guidance depending on the individual provision (SYSC 1 Annex 1 3.2CR discussed further in M2G 2.5);
- ~~uses~~ signposting references in the application provisions to individual SYSC chapters to identify the relevant articles of the MiFID Org Regulation which supplement the rules implementing the MiFID requirements. These are also listed in ~~the new~~ Table C in SYSC 1 Annex 1;
- ~~creates a new~~ chapter ~~(~~SYSC 10A~~)~~ on recording telephone conversations and electronic communications ~~to implement new obligations imposed by MiFID II, supplemented by the MiFID Org Regulation~~;
- ~~creates a new~~ section ~~(~~SYSC 18.6~~)~~ on the whistleblowing obligations imposed upon MiFID investment firms ~~and~~ which includes a signposting mechanism pointing firms to similar obligations ~~in~~ derived from other single market legislation; and

- ~~creates a new~~ section ~~(~~SYSC 19F~~) to implement a new obligation~~ in respect of remuneration and performance management of sales staff.

…

2.8 Other firms- Collective portfolio management <u>investment</u> firms and authorised professional firms

This short summary focuses only on MiFID II transposition and not obligations arising under other single market legislation<u>.</u>

2.8.1 A collective portfolio management investment firm ('CPMI') ~~is a firm which is subject to authorisation under UCITS or AIFMD which does MiFID business, in accordance with article 6 UCITS directive or article 6 AIFMD. A CPMI~~ takes the ~~forms~~ <u>form</u> of a 'UCITS investment firm' or <u>an</u> 'AIFM investment firm', as defined in the FCA Handbook Glossary. A UCITS investment firm is subject to the common platform requirements as set out in Column A+ in SYSC 1 Annex 1 Table A. An AIFM investment firm is subject to the requirements listed in Column A in SYSC 1 Annex 1 Table A in relation to their MiFID business. …

2.8.2 Authorised professional firms ~~exempt from MiFID II under article 2(1)(c) of the directive~~ <u>falling within the exemption in paragraph 1(d) of Part 1 of Schedule 3 to the RAO</u> will be subject to common platform requirements as set out in Column B in SYSC 1 Annex 1 Table A. If they satisfy the criteria of a MiFID optional exemption firm <u>(in accordance with Chapter 1 of Part 2 of the MiFI Regulations)</u> they will be subject to the provisions in the SYSC 1 Annex 1 Part 3 Table B column A. If they fall within both the ~~article 2(1)(c) and 3~~ exemptions <u>in paragraph 1(d) of Part 1 of Schedule 3 to the RAO and Chapter 1 of Part 2 of the MiFI Regulations</u>, they are entitled to comply only with the common platform requirements relating to article 2(1)(c) exempt firms in Column B in SYSC 1 Annex 1 Table A. Where they ~~are~~ <u>would be</u> required to be authorised by MiFID II, they will be subject to common platform requirements in Column A in SYSC 1 Annex 1 Table A and other SYSC requirements as a UK MiFID investment firm, except to the extent indicated otherwise (including SYSC 1 Annex 1 2.5R).

…

2.9 Other organisational requirements

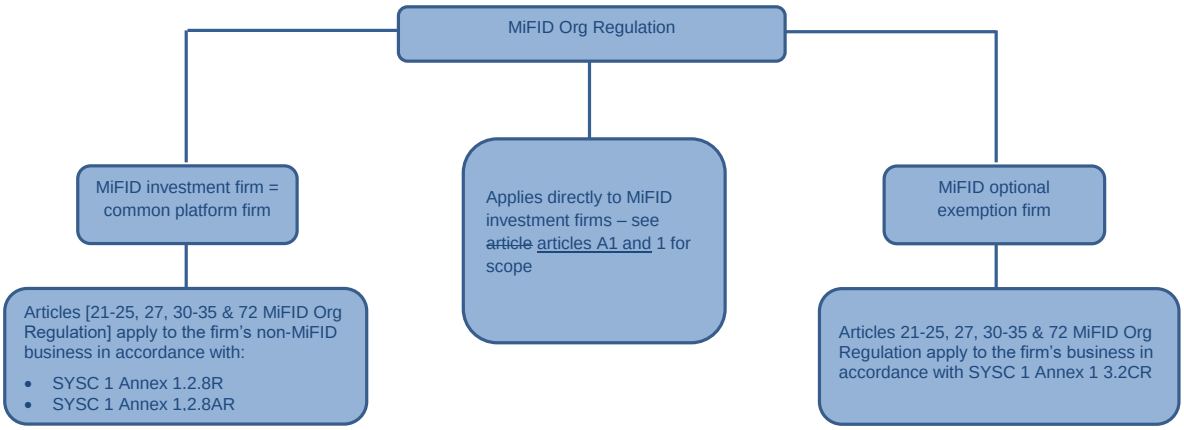
2.9.1 In addition to the SYSC obligations outlined above, firms will find MiFID II-related organisational requirements in respect of complaints handling in DISP, client money and assets (CASS) and product governance obligations in PROD. Firms will also remain subject to ~~domestic~~ obligations in the form of the relevant senior management, certification, COCON and approved persons requirements.

2 Annex 1 Overview

Annex 1 …

The diagram focuses on the position of UK MiFID investment firms (other than CPMI and authorised professional ~~firm~~ firms) and MiFID optional exemption firms.

MiFID II Organisational requirements for firms



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 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 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 set out in Annex 2 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 2 of the consultation paper.

(3) Further amendments proposed to the Glossary in a later instrument may also effect the meaning of provisions consulted in instruments accompanying this consultation paper. In due course we will publish a consolidated version of all amendments proposed to the Glossary.

(4) The amendments in this instrument are based on the text of the Handbook in force on 1 July 2018. If amendments are made to the relevant text between 1 July 2018 and 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, rather than the text of the Handbook in force on 1 July 2018.

(5) The consultation is based on the assumption that the Financial Conduct Authority will have the power under the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 to make the proposed rule changes.

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

Annex 1 activities	has the meaning in article 4(1)(26A) of the *UK CRR*.
Capital Requirements Regulations 2013	the Capital Requirements Regulations 2013 (SI 2013/3115).
CRA Regulation	means the *UK* 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 *UK* law by virtue of the *EUWA*.
CRR ITS on supervisory reporting	the *UK* 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 *UK* law by virtue of the *EUWA*.
CRD ITS on templates, definitions and IT-solutions	the *UK* 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 *CRD*, which is part of *UK* law by virtue of the *EUWA*.
CRD RTS on the identification of the geographical location of credit exposures for calculating institution-specific countercyclical capital buffer rates	the *UK* 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 *UK* law by virtue of the *EUWA*.
EU CRR	the *EU* 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.

EU MiFIR	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.
EU OTF	(as defined in Article 2(1)(15B) 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 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 15th May 2014.
EU regulated market	(as defined in Article 2(1)(13B) of *MiFIR*) 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 15th May 2014.
EU Securities Financing Transactions Regulation	the *EU* 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.
EUWA	the European Union (Withdrawal) Act 2018.
exit day	as defined in section 20(1) of the *EUWA*, means 29 March 2019 at 11 p.m. or such date as is specified further to section 20(2) to (5)).
General data protection regulation	the *UK* version of 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 *UK* law by virtue of the *EUWA*.
IAS Regulation	the *UK* 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 *UK* law by virtue of the *EUWA*.
Insolvency Proceedings Regulation	the *UK* version of Regulation (EC) No.1346/2000 on 29 May 2000 on insolvency proceedings, 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*.
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*.
Regulatory technical standards 1152/2014	the *UK* 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 *UK* law by virtue of the *EUWA*.
RRD Regulation	the *UK* 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 *UK* law by virtue of the *EUWA*.
SSR Delegated Regulation 1	the *UK* 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 *UK* law by virtue of the *EUWA*.
SSR Delegated Regulation 2	the *UK* 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 *UK* law by virtue of the *EUWA*.

SSR Implementing Regulation

the *UK* 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 *UK* law by virtue of the *EUWA*.

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 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.

above-threshold non-~~EEA~~ UK AIFM	a *non-~~EEA~~ UK AIFM* that is not a *small AIFM*.
additional tier 1 capital	as defined in article 61 of the ~~*EU CRR*~~ *UK CRR*.
additional tier 1 instrument	a capital instrument that qualifies as an additional tier 1 capital instrument under article 52 of the ~~*EU CRR*~~ *UK CRR*.
agreeing to carry on a regulated activity	the *regulated activity* specified in article 64 of the *Regulated Activities Order* (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: … (ca) *managing a UK UCITS*; …

AIFM investment firm	a *firm* which: (a) is: (i) a *full-scope UK AIFM*; ~~or~~ and (ii) ~~an *incoming EEA AIFM branch*; and~~ [deleted] (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)-(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*]

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*]

(2) …

ancillary services undertaking

(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*.
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]

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) …

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.

…

(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) …

(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~~

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)]

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~~

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)]

certificates 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)	…
	(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 derivative		~~those *financial instruments* defined in:~~
	~~(a)~~	~~point (44)(c) 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*.~~
		~~[Note: article 2(1)(30) of *MiFIR*]~~ 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 *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 …

(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) …

(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 *COLL*) an authority exercising functions corresponding to the functions referred to in Part VI of the *Act* under the laws of an *EEA State*.
consolidated basis	has the meaning in article 4(1)(48) of the ~~*EU CRR*~~ *UK CRR*.
consolidated capital resources	(in relation to a *UK consolidation group* or a ~~*non-EEA*~~ *non-UK sub-group* and in *GENPRU* and *BIPRU*) that group's capital resources calculated in accordance with *BIPRU* 8.6 (Consolidated capital resources).
consolidated capital resources requirement	(in relation to a *UK consolidation group* or a ~~*non-EEA*~~ *non-UK sub-group* and in *GENPRU* and *BIPRU*) an amount of *consolidated capital resources* that that group must hold in accordance with *BIPRU* 8.7 (Consolidated capital resources requirement).
consolidated indirectly issued capital	has the meaning in *BIPRU* 8.6.12R (Indirectly issued capital and group capital resources), which is in summary any *capital instrument* issued by a member of a *UK consolidation group* or ~~*non-EEA*~~ *non-UK sub-group* where the conditions in *BIPRU* 8.6.12R are met.
consolidated situation	has the meaning in article 4(1)(47) of the ~~*EU CRR*~~ *UK CRR*.
consolidated tape provider	a *person* permitted under regulation 5 of the *DRS Regulations* to provide the service of: (a) collecting trade reports for *financial instruments* made in accordance with articles 6, 7, 10, 12, 13, 20 and 21 of *MiFIR* from *regulated markets*, *UK MTFs*, *UK OTFs* and *APAs*; and (b) consolidating them into a continuous electronic live data stream providing price and volume data per *financial instrument*.
consolidating supervisor	has the meaning in article 4(1)(41) of the ~~*EU CRR*~~ *UK CRR*.
consolidation Article 12(1) relationship	a relationship between ~~one *undertaking* (the first undertaking) and one~~ two or more ~~other~~ *undertakings* which satisfies ~~satisfying~~ the following conditions ~~set out in Article 12(1) of the *Seventh Company Law Directive*, which in summary are as follows~~:

(a) ~~those~~ the *undertakings* are not connected in the manner~~, as~~ described in ~~article 1(1) or (2) of that Directive~~ section 1162 and Schedule 7 of the Companies Act 2006; and

(b) either ~~one of the following conditions is satisfied~~:

(i) ~~they~~ the *undertakings* are managed on a unified basis pursuant to a contract with one of them ~~concluded with the first undertaking,~~ or provisions in the *undertaking's* memorandum or articles of association ~~of those *undertakings*~~; or

(ii) the administrative, management or supervisory bodies of those *undertakings* consist, for the major part, of the same *persons* in office during the financial year in respect of which it is being decided whether such a relationship exists.

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.]

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)]

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).

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* 3.4.107 R (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*): (a) has the meaning in article 4(1)(1) of the ~~*EU CRR*~~ *UK CRR*; or (b) [deleted] (c) [deleted] (d) [deleted]
	(2)	…
	(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*]
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*.
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*.
CSDR		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 *Settlement Finality Directive* and *MiFID* and the *short selling regulation*, which is part of *UK* law by virtue of the *EUWA*.
current 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)) the larger of zero, or the market value of a transaction or portfolio of transactions within a *netting set* with a counterparty that would be lost upon the default of the counterparty, assuming no recovery on the value of those transactions in bankruptcy. [Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]
current market value		(~~in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and~~ for the purpose of *BIPRU* 13.5 (CCR standardised method)) the net market value of the portfolio of transactions within the *netting set* with the counterparty; both positive and negative market values are used in computing *current market value*. [Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]
deal on own account	(1)	(for the purposes of *GENPRU* and *BIPRU*) has the meaning in *BIPRU* 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 ~~*MIFID*~~ *MiFIR*]

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.]

depositary (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:

…

(p) *managing 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 common equity tier 1 capital	~~(in accordance with article 141(10) of *CRD*)~~ includes: (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)]
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 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, *durable medium* 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. (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) appropriate to the context in which the business is to be carried on; and

(ii) specifically chosen by the recipient when offered the choice between that instrument and paper.

For the purposes of this definition, 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 email address for the purposes of the carrying on of that business is sufficient.

[Note: article 2(f) of, and Recital 20 to, the *Distance Marketing Directive*, article 2(12) of the *Insurance Mediation Directive*, article 4(1)(62) of *MiFID* and article 3(1) of the *MiFID Org Regulation*, articles 75(2) and 81(1) of the *UCITS Directive*, article 20(3) of the *UCITS implementing Directive* and article 7 of the *UCITS implementing Directive No 2*]

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:

(a) an investment firm (as defined in article 4(1) of *MiFID*) which is authorised (within the meaning of article 5) by its *Home State regulator*;

(b) a *credit institution* (as defined in article 4(1)(1) of the *EU CRR*)

(c) a financial institution (as defined in article 41(26) of the *EU CRR*) which is a subsidiary of the kind mentioned in article 34 of the *CRD* and which fulfils the conditions in articles 33 and 34;

(d) ~~an undertaking which has received authorisation under article 14 of the *Solvency II Directive* from its *Home State regulator*;~~ [deleted]

…

EEA MiFID investment firm

~~a *MiFID investment firm* whose *Home State* is not the *United Kingdom*~~ an *EEA firm* which would be a *MiFID investment firm* if it had its head office or registered office in the *UK*.

EEA regulator

(1) a *competent authority* for the purposes of any of the *Single Market Directives* or the *EU auction regulation*.

…

EEA State

(in accordance with Schedule 1 to the Interpretation Act 1978), in relation to any time -

(a) a state which at that time is a member State; or

(b) any other state which is at that time a party to the EEA agreement.

[Note: Current non-member State parties to the EEA agreement are Norway, Iceland and Lichtenstein. ~~[Where the context requires, references to an *EEA State* include references to Gibraltar as appropriate.]~~]

EEA UCITS management company

~~any *incoming EEA firm* that is~~ a *management company* *established* in the *EEA*.

EEA UCITS Scheme

a *collective investment scheme* established in accordance with the *UCITS Directive* in an *EEA State* ~~other than the *United Kingdom*~~.

effective expected 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) 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 money issuer

(1) (except in *DISP*) any of the following *persons* when they issue *electronic money*:

(a) *authorised electronic money institutions*;

(b) *small electronic money institutions*;

(c) ~~*EEA authorised electronic money institutions;*~~ [deleted]

(d) *credit institutions*;

(e) the Post Office Limited;

(f) the Bank of England, ~~the European Central Bank and the national central banks of *EEA States* other than the United Kingdom,~~ when not acting in ~~their~~ its capacity as a monetary authority or other public authority;

…

…

eligible capital has the meaning in article 4(1)(71) of the ~~*EU CRR*~~ *UK CRR*.

eligible institution (in *COLL*):

(a) a *CRD credit institution* authorised by its *Home State regulator*;

(b) an *MiFID investment firm* authorised by the *FCA* or an *EEA MiFID investment firm* authorised by its *Home State regulator*.

ELTIF regulation the *UK* version of Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds ~~(http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_123_R_0010&from=EN),~~ which is part of *UK* law by virtue of the *EUWA*.

EMIR the *UK* version of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories which is part of *UK* law by virtue of the *EUWA*, sometimes referred to as the "European Markets Infrastructure Regulation".

EMIR L2 Regulation the *UK* version of 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 *UK* law by virtue of the *EUWA*.

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~~"~~, which is part of *UK* law by virtue of the *EUWA*.

energy market participant

a firm:

(a) whose permission:

(i) includes a requirement that the firm must not carry on any *designated investment business* other than *energy market activity*;

(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*, *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*.

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 Cross-Border Regulation

the *UK* version of Regulation (EC) No 924/2009 of the European Parliament and of the Council on cross-border payments in the European Community, which is part of *UK* law by virtue of the *EUWA*.

~~*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*.
EuSEF regulation	the *UK* 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 *UK* law by virtue of the *EUWA*.
EuVECA regulation	the *UK* 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 *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 exposure*s 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*]
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) …
exempt CAD firm	(1) (except in *SYSC* and *IPRU(INV)*) a firm as defined in article 4(1)(2)(c) of the ~~*EU CRR*~~ *UK CRR* that is authorised to provide only one or more the following *investment services*: (a) investment advice; (b) receive and transmit orders from investors as referred to in ~~Section A of Annex I of *MiFID*~~ Part 3 of Schedule 2 to the *Regulated Activities Order*.

(2) (in *SYSC* and *IPRU(INV)*) a *firm* in (1) whose head office (or, if it has a registered office, that office) is in the United Kingdom.

exempt IFPRU commodities firm an *IFPRU investment firm* which falls within the meaning in articles 493(1) and 498(1) of the ~~*EU CRR*~~ *UK CRR*.

expected 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)) the average of the distribution of *exposure*s at any particular future date before the longest maturity transaction in the *netting set* matures.

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

expected loss (~~in accordance with Article 4(29) of the *Banking Consolidation Directive* (Definitions) and~~ for the purposes of the *IRB approach* and the *standardised approach* to credit risk) the ratio of the amount expected to be lost on an *exposure* from a potential *default* of a counterparty or dilution over a one year period to the amount outstanding at default.

[Note: article 4(29) of the *Banking Consolidation Directive* (Definitions)]

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 calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the weighted average over time of *expected exposure*s where the weights are the proportion that an individual *expected exposure*s 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 *netting set* mature before one year, over the time period of the longest-maturity contract in the *netting set*.

[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*]

(3) [delete]

(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).

(6) (in *MIPRU*) an asset or liability.

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*.

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 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*]

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(c) 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 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*]

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)]

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*.

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 position*s 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]

…

(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	…	
	(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]

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*.

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 special purpose vehicle	an *undertaking* whether incorporated or not, which has received authorisation in accordance with *UK* provisions which implemented article 211(1) or (3) of the *Solvency II Directive* and:	
	…	
interest-rate contract	interest-rate contracts listed in paragraph 1 of Annex II to the ~~*EU CRR*~~ *UK CRR*.	
internal approaches	one or more of the following, as referred to in the ~~*EU CRR*~~ *UK CRR*:	
	(a)	the Internal Ratings Based Approach in article 143(1);
	(b)	the Internal Models Approach in article 221;
	(c)	the own estimates approach in article 225;
	(d)	the Advanced Measurement Approaches in article 312(2);
	(e)	the Internal Model Method and internal models in articles 283 and 363; and
	(f)	the internal assessment approach in article 259(3).

intra-group transactions	~~(in accordance with Article 2(18) of the *Financial Groups Directive (*Definitions))~~ all transactions by which *regulated entities* within a *financial conglomerate* rely either directly or indirectly upon other *undertakings* within the same *financial conglomerate* or upon any *person* linked to the *undertakings* within that *financial conglomerate* by *close links*, for the fulfilment of an obligation whether or not contractual, and whether or not for payment. [Note: article 2(18) of the *Financial Groups Directive (*Definitions)]
investment firm	(1) any person whose regular occupation or business is the provision of one or more *investment services* 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*] … (3) (in *IFPRU* and *BIPRU* 12) has the meaning in article 4(1)(2) of the ~~*EU CRR*~~ *UK CRR*.
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): …
investment service	~~any of the following involving the provision of a service in relation to a *financial instrument*:~~ any of the services listed in Part 3 of Schedule 2 to the *Regulated Activities Order*, relating to any of the instruments listed in Part 1 of Schedule 2 to that order, that is: …
investment services and/or activities	~~any of the services and activities listed in Section A of Annex I to MiFID relating to any *financial instrument*~~ any of the services and activities listed in Part 3 of Schedule 2 to the *Regulated Activities Order*, relating to any of the instruments listed in Part 1 of Schedule 2 to that order, that is: …

investment trust	a *company* which:	
	(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 *company*, has declared its intention to conduct its affairs so as to obtain such approval)~~.; or~~
	(b)	~~is resident in an *EEA State* other than the *United Kingdom* and would qualify for such approval if resident in the *United Kingdom*.~~ [deleted]
IRB permission	~~an *Article 129 implementing measure*,~~ a *requirement* or a *waiver* that requires a *BIPRU firm* or a *CAD investment firm* to use the *IRB approach*.	
key investor information	(1)	(for a *UCITS*) key information for investors on the essential elements of a *UCITS scheme* ~~or *EEA UCITS scheme*,~~ as detailed ~~in article 78 of the *UCITS Directive* and~~ in the *KII Regulation*.
	(2)	…
KII Regulation	the *UK* version of Commission Regulation (EU) No 583/2010, specifying the form and contents of *key investor information*, the text of which is reproduced in *COLL* ~~Appendix 1EU~~ Appendix 1UK, which is part of *UK* law by virtue of the *EUWA*.	
KIRB	(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)~~) 8% of the *risk weighted exposure amounts* that would be calculated under the *IRB approach* in respect of the *securitised exposures*, had they not been *securitised*, plus the amount of *expected losses* associated with those *exposures* calculated under the *IRB approach*. [Note: Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)]	
large exposure	(1)	(in *BIPRU*) the *exposure* of a *firm* to a *counterparty*, or a *group of connected clients*, whether in the *firm's non-trading book* or *trading book* or both, which in aggregate equals or exceeds 10% of the *firm's capital resources*.
	(2)	(except in (1)) has the meaning in article 392 of the ~~*EU CRR*~~ *UK CRR* (Definition of a large exposure).

lending firm	(~~in accordance with Article 90 of the *Banking Consolidation Directive* (Credit risk mitigation) and~~ for the purposes of *rules* in *BIPRU* about *credit risk mitigation*) a *firm* that has an *exposure*, whether or not deriving from a loan. [Note: article 90 of the *Banking Consolidation Directive* (Credit risk mitigation)]
leverage	~~(in accordance with article 4(1)(v) of *AIFMD*)~~ any method by which an *AIFM i*ncreases the exposure of an *AIF* it manages whether through borrowing of cash or *securities*, or leverage embedded in *derivative* positions or by any other means. [Note: article 4(1)(v) of *AIFMD*]
limited activity firm	has the meaning in article 96(1) of the ~~*EU CRR*~~ *UK CRR*.
limited licence firm	has the meaning in article 95(1) of the ~~*EU CRR*~~ *UK CRR*.
liquidity facility	(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)~~) the *securitisation position* arising from a contractual agreement to provide funding to ensure timeliness of cash-flows to investors. [Note: Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)]
liquidity risk	(1) (in *COLL* ~~and in accordance with article 3(8) of the *UCITS implementing Directive*~~) the risk that a position in a *UCITS'* portfolio cannot be sold, liquidated or closed out at limited 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*] …
listed activity	an activity listed in ~~Annex 1 to the *CRD*~~ the *Annex 1 Activities*.
local firm	has the meaning in article 4(1)(4) of the ~~*EU*~~ *UK CRR*.
long settlement transaction	~~(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions))~~ a transaction where a counterparty undertakes to deliver a security, a *commodity*, or a *foreign currency* amount against cash, other *CRD financial instruments*, or *commodities*, 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 *business days* after the date on which the *person* enters into the transaction.

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

loss ~~(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)) economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument.

[Note: article 4(26) of the *Banking Consolidation Directive* (Definitions)]

(1) (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)) economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument.

[Note: article 4(26) of the *Banking Consolidation Directive* (Definitions)]

(2) (except in (2)) has the meaning in article 5(1) of the ~~*EU CRR*~~ *UK CRR*.

loss given default (in ~~accordance with Article 4(27) of the *Banking Consolidation Directive* (Definitions) and in~~ relation to the *IRB approach*) the ratio of the *loss* on an *exposure* due to the *default* of a counterparty to the amount outstanding at *default*.

[Note: article 4(27) of the *Banking Consolidation Directive* (Definitions)]

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 *depositary* 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~~ 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]
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 (l) 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*]

master AIF

~~(in accordance with article 4(1)(y) of *AIFMD*)~~ an *AIF* in which another *AIF* (a *feeder AIF*) invests or has an exposure in accordance with the definition of *'feeder AIF'*.

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

master UCITS

~~(in accordance with article 58(3) of the *UCITS Directive*)~~ a *UCITS scheme*, an *EEA UCITS scheme* or a *sub-fund* of such a *scheme* where:

(a) at least one of its *Unitholders* is a *feeder UCITS*;

(a) it is not itself a *feeder UCITS*; and

(a) it does not hold *units* of a *feeder UCITS*.

[Note: article 58(3) of the *UCITS Directive*]

merging 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*~~,~~ ~~*EEA UCITS scheme*~~ or *sub-fund* of such a *scheme*, that under the proposed arrangements will be transferring all its assets and liabilities to the *receiving UCITS*.

MiFID investment firm

(1) (in summary) ~~(except in *SUP* 13, *SUP* 13A and *SUP* 14 in relation to notification of *passported activity*)~~ a *firm* to which *MiFID* ~~applies~~ would apply if it had its head office or registered office in the *EEA* including, for some purposes 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 *passported 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 *passported 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]

MiFID ITS 19 the *UK* version of Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical 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*.
mixed-activity holding company	has the meaning given to the definition of "mixed activity holding company" in article 4(1)(22) of the ~~*EU CRR*~~ *UK CRR*.
multilateral system	any system or facility in which multiple third-party buying and selling trading interests in *financial instruments* are able to interact in the system. [Note: article ~~4(1)(19)~~ 2(1)(11) of ~~*MiFID*~~ *MiFIR*]
mutual society share	a *share*, excluding a deferred share issued by a *credit union*, which: (a) meets the requirements for common equity Tier 1 capital instruments under article 28 or 29; and (b) is issued by an institution which is of a type listed in article 27; 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*.
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*.

…

~~*non-EEA*~~ *non-UK bank*

a *bank* which is a *body corporate* or *partnership* formed under the law of any country or territory outside the ~~*EEA*~~ *UK*.

~~*non-EEA*~~ *non-UK feeder AIF*

a *UK AIF* ~~or an *EEA AIF*~~ that is a *feeder AIF*, the *master AIF* of which is a *non-~~EEA~~ UK AIF* or is managed by a *non-~~EEA~~ UK AIFM*.

~~*non-EEA*~~ *non-UK sub-group*

(1) (in *GENPRU* (except *GENPRU* 3) and *BIPRU* (except *BIPRU* 12)) a group of *undertakings* identified as a ~~*non-EEA*~~ *non-UK sub-group* in *BIPRU* 8.3.1R (Main consolidation rule for ~~non-EEA~~ non-UK sub-groups)~~; 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*~~.

(2) (except in (1)) a group of *undertakings* identified in article 22 of the *EU CRR* (Sub-consolidation in cases of entities in third countries).

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]

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*.

official list …

(3) (in *COLL*):

(a) the list maintained by the *FCA* in accordance with section 74(1) of the *Act* (The official list) for the purposes of Part VI of the *Act* (Official Listing);

(b) any corresponding list maintained by a *competent authority* for listing in an *EEA State*.

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*

…

…

own funds

(1) (in *GENPRU* (except *GENPRU* 3 (Cross sector groups) and *BIPRU* (except *BIPRU* 12 (Liquidity standards)) own funds as described in articles 56 to 67 of the *Banking Consolidation Directive*.

(2) [deleted]

(2A) (in *IPRU(INV)* 11) has the meaning in article 4(1)(118) of the ~~*EU CRR*~~ *UK CRR*.

	(3)	(in *IPRU(INV)* 8) capital, as defined in *CREDS* 5.2.1R.
	(3A)	(in *IPRU(INV)* 13) the own funds of a *firm* calculated in accordance with IPRU(INV) 13.1A.14R (Own funds) for a *personal investment firm* that is an *exempt CAD firm*.
	(4)	[deleted]
	(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 (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*]

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 ~~EU~~ UK 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 ~~EU~~ UK where the *firm* is carrying on *optional exemption business*.

[Note: see *COBS* 16A.4.1 ~~EU~~ UK 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)* 11.3.14 ~~EU~~ UK) (Professional negligence).
		[deleted]
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 2033/71/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 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)]

qualifying money market fund

(1) (in ~~*COLL*,~~ *CASS* 7 and *BSOCS*) …

…

(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*):

(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*):

(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

a scheme recognised under section 272 of the *Act* (individually recognised overseas schemes).~~:~~

~~(a) section 264 of the Act (Schemes constituted in other EEA States); or~~

~~(b) [deleted]~~

~~(c) section 272 of the Act (Individually recognised overseas schemes).~~

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:

…

(na) *managing a UK UCITS*;

…

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*; or~~ [deleted]

(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.*

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)]
respondent	(1) (in *DISP*, *FEES* 5, *CREDS* 9 and *GEN* 7) a *firm* (except an ~~*AIFM qualifier* or a *UCITS 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.* …
revolving exposure	(for the purpose of *BIPRU* 9.13 (Securitisations of revolving exposures with early amortisation provisions) ~~and in accordance with Article 100 of the Banking Consolidation Directive (Securitisations of revolving exposures)~~) an *exposure* 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 Banking Consolidation Directive (Securitisations of revolving exposures)]
risk concentration	~~(in accordance with Article 2(19) of the *Financial Groups Directive* (Definitions))~~ all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position in general of

	the *regulated entities* in the *financial conglomerate*, 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 *Financial Groups Directive* (Definitions)]
risk limit system	(in *COLL* ~~and in accordance with article 40(2)(d) of the *UCITS implementing Directive*~~) a documented system of internal limits concerning the measures used by a *management company* to manage and control the relevant risks for each *UCITS* it manages, taking into account all the risks which may be material to the *UCITS*, ~~as referred to in the second paragraph of article 38(1) of the *UCITS implementing Directive* and~~ including, but not limited to, *liquidity risk*, *counterparty risk*, and *operational risk*, and ensuring consistency with the *UCITS'* risk profile. [Note: article 38(1) and 40(2)(d) of the *UCITS implementing Directive*]
risk of excessive leverage	has the meaning in article 4(1)(94) of ~~*EU*~~ *UK CRR*.
risk position	(~~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 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)]
scheme of arrangement	(in *COLL*) an arrangement relating to an *authorised fund* ("transferor fund") or to a *sub-fund* of a *scheme* that is an *umbrella* ("transferor *sub-fund*") under which: …

This arrangement includes an arrangement that constitutes a *domestic UCITS merger* ~~or a *cross-border UCITS merger*~~.

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.]

secured lending transaction

(~~in accordance with point 2 of Part 1 of Annex VIII of the *Banking Consolidation Directive* (Eligibility of credit risk mitigation) and~~ for the purposes of *BIPRU*) any transaction giving rise to an *exposure* secured by collateral which does not include a provision conferring upon the *person* with the *exposure* the right to receive margin frequently.

[Note: point 2 of Part 1 of Annex VIII of the *Banking Consolidation Directive* (Eligibility of credit risk mitigation)]

securities and futures firm

a *firm* whose *permitted activities* include *designated investment business* or *bidding in emissions auctions*, 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 investment firm), *building society*, *collective portfolio management firm*, *credit union*, *friendly society*, *ICVC*, *insurer*, *media firm*~~,~~ 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)* 5 (Investment management firms) or 13 (Personal investment firms), and which is within (a), (b), (c), (d), (e) , (f), (g), (ga) or (h):

…

securities financing transaction

(1) (in *COBS*) an instance of stock lending or stock borrowing or the lending or borrowing of other *financial instruments*, a 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 tranched 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)]
	…	
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 *Insurance Mediation Directive*;

(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*.

small non-~~EEA~~ UK AIFM a *non-~~EEA~~ UK AIFM* that is a *small AIFM*.

small and medium-sized enterprise or *SME* …

(3) (in *IFPRU*) has the meaning in article 4(1)(128D) of the *UK CRR*.

SME growth market a *multilateral trading facility* that is registered as an SME growth market in accordance with ~~article 33 of *MiFID*~~ *MAR* 5.10.

~~[Note: article 4(1)(12) of *MiFID*]~~

Solvency II firm a *firm* 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 ~~authorisation~~ *Part 4A permission* as an insurance or reinsurance undertaking ~~in accordance with article 14 of the *Solvency II Directive*~~ if its head office was situated in the ~~*EEA*~~ *United Kingdom*;

(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*, *APER*, *SUP* 10A 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 disapplies relevant rules ~~implementing~~ which implemented the *Solvency II Directive*.

Solvency II Regulations ~~directly applicable~~ the *UK* versions of EU Commission Delegated Regulations adopted in accordance with the *Solvency II Directive*, which is part of *UK* law by virtue of the *EUWA*.

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*]

specific 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 exposure to a particular counterparty is positively correlated with the *probability of default* of the counterparty due to the nature of the transactions with the counterparty; a *firm* is exposed to *specific wrong-way risk* if the future exposure to a specific counterparty is expected to be high when the counterparty's *probability of default* is also high.

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

specified investment

any of the following *investment*s 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.]

sponsor

(1) …

(2) (in *BIPRU*), ~~in accordance with Article 4(42) of the *Banking Consolidation Directive* (Definitions)~~ and in *MIPRU* 4 and in relation to a *securitisation* within the meaning of paragraph (2) of the definition of securitisation, an *undertaking* other than an *originator* that establishes and manages an *asset backed commercial paper programme* or other *securitisation* scheme that purchases *exposures* from third party entities.

[Note: article 4(42) of the *Banking Consolidation Directive* (Definitions)]

(3) in *IFPRU* and *FUND*) has the meaning in article 4(1)(14) of the ~~*EU CRR*~~ *UK CRR*.

standardised approach

(for the purposes of *BIPRU*) one of the following:

…

(e) (where the one of the approaches in (a) to (d) (c) is being applied on a consolidated basis) that approach as applied on a

consolidated basis in accordance with BIPRU 8 (Group risk - consolidation).~~; or~~

(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]

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*]

suitability report a report which a *firm* must provide to its *client* which, among other things, explains why the *firm* has concluded that a recommended transaction is suitable for the *client* and which is provided pursuant to:

(a) *COBS* 9.4 (Suitability reports) where the *firm* is carrying on *designated investment business* other than any *MiFID, equivalent third country or optional exemption business*;

(b) article 54(12) of the *MiFID Org Regulation* where the *firm* is carrying on *MiFID business*;

(c) *GEN* 2.2.22AR and *COBS* 9A.3.3 ~~EU~~ UK where the *firm* is carrying on the *equivalent business of a third country investment firm*;

(d) COBS 9A.1.2R and COBS 9A.3.3 ~~EU~~ UK where the *firm* is carrying on *MiFID optional exemption business*.

supervisory authority

(1) ~~(in accordance with article 4(1)(al) of *AIFMD*)~~ (for a *non-~~EEA~~ UK AIF*) the national authority or authorities of the ~~*non-EEA*~~ *State* empowered by law or regulation to supervise *AIFs* in that ~~*non- EEA*~~ *State*.

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

(2) ~~(in accordance with article 4(1)(am) of *AIFMD*)~~ (for a *non-~~EEA~~ UK AIFM*) the national authority or authorities of the *~~non-EEA~~ State* empowered by law or regulation to supervise *AIFMs* in that *~~non-EEA~~ State*.

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

supervisory formula method (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)~~) the method of calculating *risk weighted exposure amounts* for *securitisation positions* set out in *BIPRU* 9.12.21*R* – *BIPRU* 9.12.23R and *BIPRU* 9.14.3R.

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

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*]

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 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) is a *bank*;~~

~~(b) is not an *EEA firm*; and~~

~~(c) has its head office outside the *EEA*.~~ [deleted]

third country competent authority a *regulatory body* of a state or territory ~~that is not an *EEA State*~~ other than the *UK*.

third-country competent authority the authority of a country or territory which is not ~~an *EEA State*~~ the *UK* that is empowered by law or regulation to supervise (whether on an individual or group-wide basis) *regulated entities*.

third-country countercyclical buffer authority

(1) the authority of a *third country* empowered by law or regulation with responsibility for setting the *countercyclical buffer rate* for that *third country*; 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.

third country firm (in *SYSC*) either:

(a) a *third country investment firm*; or

(b) the *UK* branch of a ~~*non-EEA bank*~~ *non-UK bank*.

third country IFPRU 730k firm an *overseas firm* that~~:~~

~~(a) is not an *EEA firm*;~~

~~(b) has its head office outside the *EEA*; and~~

~~(c)~~ would be an *IFPRU 730k 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*.

third country investment firm	a *firm* which would be a *MiFID investment firm* if it had its head office in the ~~*EEA*~~ *UK*.	
third country investment services undertaking	(in *BIPRU)* a *CAD investment firm*, a *financial institution* or an *asset management company* in a country other than the *UK* ~~*non-EEA state*~~.	
tier 2 capital	as defined in article 71 of the ~~*EU CRR*~~ *UK CRR*.	
tier 2 instruments	a capital instrument that qualify as tier 2 instruments under article 62 of the ~~*EU CRR*~~ *UK CRR*.	
total return swap	(in *COLL* and *FUND*) a derivative contract defined in article 3(18) of the *EU Securities Financing Transactions Regulation* as it had effect immediately before *exit day*.	
total risk exposure amount	the total risk exposure amount of a *firm* calculated in accordance with article 92(3) of the ~~*EU CRR*~~ *UK CRR* (Own funds requirements).	
trading book	(1)	[deleted]
	(2)	(in *BIPRU* and *GENPRU* in relation to a *BIPRU firm*) has the meaning in *BIPRU* 1.2 (Definition of the trading book) which is in summary, all that *firm's positions* in *CRD financial instruments* and *commodities* held either with trading intent or in order to hedge other elements of the *trading book*, and which are either free of any restrictive covenants on their tradability or able to be hedged.
	(3)	(in *BIPRU* and *GENPRU* and in relation to a *person* other than a *BIPRU firm*) has the meaning in (2) with references to a *firm* replaced by ones to a *person*.
	(4)	(in *IFPRU* and in relation to an *IFPRU investment firm*) has the meaning in article 4(1)(86) of the ~~*EU CRR*~~ *UK CRR*.
	(5)	(in *DTR*) has the meaning in article 4.1(86) of ~~*EU CRR*~~ *UK CRR*.
trading day	[deleted]	
	[deleted]	
	(3)	(in *FINMAR*) as defined in article 2(1)(p) of the *short selling regulation*, ~~a trading day as referred to in article 4 of Regulation (EC) No 1287/2006~~ in relation to a trading venue, means a day during which the trading venue concerned is open for trading.
trading venue	(1)	(except in *FINMAR*) a *regulated market*, an *EU regulated market*, an *MTF* or an *OTF*.

~~[Note: article 4(1)(24) of *MiFID*]~~

(2) (in *FINMAR*) (as defined in article 2(1)(l) of the *short selling regulation*) ~~a *regulated market* or an *MTF*~~:

(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*) a *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*, other than money market instruments for the purposes

of that directive 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*. ~~(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 their 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)) a~~ an *authorised person* 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*~~.
	(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*.

AIFMD host state requirements	Handbook rules transposing articles 12 and 14 of AIFMD and which fall under the responsibility of the *Host State* to supervise where an *AIFM* manages or markets an *AIF* through a branch in that *EEA State*, namely: (a) *FUND* 3.8; (b) *SYSC* 4.1.2CR; (c) *SYSC* 10.1.22 R to *SYSC* 10.1.26R; and (d) *COBS* 2.1.4R.
applicable provisions	the *Host State* rules with which: (a) an *incoming EEA firm* is required to comply when carrying on a *permitted activity* through a *branch* or by providing services (as applicable) in the *United Kingdom*, as defined in paragraphs 13(4) and 14(4) of Part II of Schedule 3 to the *Act* (Exercise of passport rights by EEA firms); or (b) a *UK firm* is required to comply when conducting business through a *branch* (in accordance with paragraph 19(13) of Part III of Schedule 3 to the *Act* (Exercise of passport rights by UK firms)) or by providing services (as applicable) in another *EEA State*.
Article 129 implementing measure	any: (a) measure taken by the *appropriate regulator* under regulations 7-9 of the *Capital Requirements Regulations 2006*; or (b) corresponding measure taken by another *competent authority* to apply an *Article 129 permission* as referred to in the last paragraph of Article 129(2) of the *Banking Consolidation Directive*.
Article 129 permission	a permission of the type referred to in Article 129(2) of the *Banking Consolidation Directive* (permission to apply the *IRB approach*, the *AMA approach* or the *CCR internal model method* on a consolidated basis) or Article 37(2) of the *Capital Adequacy Directive* (permission to apply the *VaR model approach* on a consolidated basis) excluding an *Article 129 implementing measure*.
Article 129 procedure	the procedure described in Article 129(2) of the *Banking Consolidation Directive* (permission to apply the *IRB approach*, the *AMA approach* or the *CCR internal model method* on a consolidated basis) or that applies under Article 37(2) of the *Capital Adequacy Directive* (permission to

	apply the *VaR model approach* on a consolidated basis) for the purpose of applying for and granting or refusing an *Article 129 permission* or the procedure for varying of revoking an *Article 129 permission* in accordance with the *Banking Consolidation Directive* or the *Capital Adequacy Directive.*
branch passport notification	a notification made in accordance article 35(2) of *MiFID* and *MiFID ITS 4A* Annex VI.
central competent authority	(in *MAR* 10) in respect of a particular *commodity derivative* traded in significant volumes on *trading venues* in more than one *EEA* jurisdiction, the *competent authority* of the *trading venue* where the largest volume of trading in the *commodity derivative* takes place in the *EEA*.
consent notice	a notice given by the *FCA* or *PRA* as the case may be to a *Host State regulator* under: (a) paragraph 19(4) (Establishment) of Part III of Schedule 3 to the *Act* (Exercise of Passport Rights by UK firms); or (b) paragraph 20(3A) (Services) of Part III of Schedule 3 to the *Act* (Exercise of Passport Rights by UK firms).
cross border services	(1) (in relation to a *UK firm*) services provided within an *EEA State* other than the *United Kingdom* under the freedom to provide services. (2) (in relation to an *incoming EEA firm* or an *incoming Treaty firm*) services provided within the *United Kingdom* under the freedom to provide services.
cross-border dispute	(as defined in regulation 5 of the *ADR Regulations*) a dispute concerning contractual obligations arising from a *sales contract* or a *service contract* where, at the time the *consumer* orders the goods or services, the *trader* is established in the *United Kingdom* and the *consumer* is resident in another Member State. [Note: article 4(1) of the *ADR Directive*]
cross-border UCITS merger	(in *COLL* and in accordance with article 2(1)(q) of the *UCITS Directive*) a *UCITS merger* of two or more *UCITS*: (a) at least two of which are established in different *EEA States*; or (b) established in the same *EEA State* into a newly constituted *UCITS* established in another *EEA State*; but at least one of which is established in the *United Kingdom*.

EEA authorisation (in accordance with paragraph 6 of Schedule 3 to the *Act* (EEA Passport Rights)):

(a) in relation to an *IMD insurance intermediary* or an *IMD reinsurance intermediary*, registration with its *Home State regulator* under article 3 of the *Insurance Mediation Directive*;

(b) in relation to any other *EEA firm*, authorisation granted to an *EEA firm* by its *Home State regulator* for the purpose of the relevant *Single Market Directive* or the *auction regulation*.

EEA authorised electronic money institution (in accordance with regulation 2(1) of the *Electronic Money Regulations*) a *person* authorised in an *EEA State* other than the *United Kingdom* to issue *electronic money* and provide *payment services* in accordance with the *Electronic Money Directive*.

EEA authorised payment institution

(a) (in accordance with regulation 2(1) of the *Payment Services Regulations*) a *person* authorised in an *EEA State* other than the *United Kingdom* to provide *payment services* in accordance with the *Payment Services Directive* or a *person* entitled to provide *payment services* of the type described in paragraph 1(g) of Schedule 1 to the Payment Services Regulations 2009 under regulation 152(5) of the *Payment Services Regulations*; 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 insurer — 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*.

EEA parent financial holding company

(1) (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*.

(2) (except in (1)) has the meaning as given to EU parent financial holding company in article 4(1)(31) of the *EU CRR*.

EEA parent institution

(1) (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*.

(2) (except in (1)) has the meaning as given to EU parent institution in article 4(1)(29) of the *EU CRR* .

EEA parent mixed financial holding company

(1) (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*.

(2) (except in (1)) has the meaning as given to EU parent mixed financial holding company in article 4(1)(33) of the *EU CRR*.

EEA parent undertaking	(a) an *EEA parent institution*; or (b) an *EEA parent financial holding company*; or (c) an *EEA parent mixed financial holding company*. [Note: article 2(1)(85) of *RRD*]
EEA Passport Rights Regulations	the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (SI 2001/2511).
EEA prudential sectoral legislation	(in relation to a *financial sector*) requirements applicable to *persons* in that *financial sector* in accordance with EEA legislation 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 *EU CRR* and (in relation to a *CAD investment firm*) the *Banking Consolidation Directive* and the *Capital Adequacy Directive*; and (b) (in relation to the *insurance sector*) in particular this includes requirements laid down in the *Solvency II Directive* and *Solvency II Regulations*.
EEA pure reinsurer	a *pure reinsurer* whose head office is in any *EEA State* except the *United Kingdom* and which has received (or is deemed to have received) authorisation under article 14 of the *Solvency II Directive* from its *Home State Regulator*.
EEA registered account information service provider	(in accordance with regulation 2(1) of the *Payment Services Regulations*) a *person* that is registered as an *account information services provider* in an *EEA State* other than the *United Kingdom* under the *Payment Services Directive*.
EEA right	(in accordance with paragraph 7 of Schedule 3 to the *Act* (EEA Passport Rights)) the entitlement of a *person* to establish a *branch* or provide services in an *EEA State* other than that in which he has his relevant office: (a) in accordance with the *Treaty* as applied in the *European Economic Area*; and (b) subject to the conditions of the relevant *Single Market Directive* or the *auction regulation*. In this definition, relevant office means:

(i) in relation to a *person* who has a registered office and whose entitlement is subject to the conditions of the *Insurance Mediation Directive*, his registered office; and

(ii) in relation to any other *person*, his head office.

EEA territorial scope rule *COBS* 1 Annex 1, Part 2 paragraph 1(1) (which provides that the territorial scope of *COBS* is modified to the extent necessary to be compatible with European law).

establishment conditions (in relation to the establishment of a *branch* in the *United Kingdom*) the conditions specified in paragraph 13 of Schedule 3 to the *Act* (EEA Passport Rights), which are that:

(a) if the *firm* falls within paragraph (a), (b), (c), (d) or (f) in the definition of "*EEA firm*":

(i) …

(b) if the *firm* falls within paragraph (e) in the definition of "*EEA firm*":

(i) the *EEA firm* has given its *Home State regulator* notice of its intention to establish a *branch* in the *United Kingdom*;

(ii) the *FCA* or *PRA* (as the case may be) has received notice ("a regulator's notice") from the firm's Home State regulator that the firm intends to establish a *branch* in the *United Kingdom*;

(iii) the EEA firm's Home State regulator has informed it that the regulator's notice has been sent to the *FCA* or *PRA* (as the case may be); and

(iv) one *month* has elapsed beginning with the date on which the EEA firm's Home State regulator informed the *firm* that it had sent the regulator's notice to the *FCA* or *PRA* (as the case may be).

(c) the *EEA firm* has been informed of the *applicable provisions* or two *months* have elapsed beginning with the date when the *FCA* or *PRA* (as the case may be) received the consent notice.

fund application rules (in *COLL* and *SUP*) the *rules* set out in *COLL* 12.3.5 R (*COLL* fund rules under the management company passport: the fund application rules) that relate to the constitution and functioning of a *UCITS scheme* and that an *EEA UCITS management company* must comply with when acting as the *operator* of the *UCITS scheme*, whether from a *branch* in the *United Kingdom* or under the freedom to provide *cross border services*, as required by article 19(3) of the *UCITS Directive*.

Home State authorisation	(as defined in paragraph 3(1)(a) of Schedule 4 to the *Act* (Treaty Rights)) authorisation of a *firm* under the law of its *Home State* to carry on a *regulated activity*.
incoming EEA AIFM	an *incoming EEA firm* which is an *AIFM* and exercising its rights under *AIFMD*.
incoming EEA AIFM branch	an *incoming EEA firm* which is an *AIFM* and exercising its right to establish a *branch* under *AIFMD*.
incoming EEA firm	(in accordance with section 193(1)(a) of the *Act* (Interpretation of this Part)) an *EEA firm* which is exercising, or has exercised, its right to carry on a *regulated activity* in the *United Kingdom* in accordance with Schedule 3 to the *Act* (EEA Passport Rights).
incoming firm	(in accordance with section 193(1) of the *Act* (Interpretation of this Part)) an *incoming EEA firm* or an *incoming Treaty firm*.
incoming Treaty firm	(in accordance with section 193(1)(b) of the *Act* (Interpretation of this Part)) a *Treaty firm* which is exercising, or has exercised, its right to carry on a *regulated activity* in the *United Kingdom* in accordance with Schedule 4 to the *Act* (Treaty rights).
investment services and activities passport notification	a notification made in accordance with article 34(2) of *MiFID* and *MiFID ITS 4* Annex I.
non-EEA firm	a firm that has its registered office (or, if it has no registered office, its head office) in a *non-EEA state*.
non-EEA insurer	an *insurer* whose head office is not in an *EEA State*.
non-EEA state	a country or state that is not an *EEA State*.
notice of intention	a notice of intention (as described in *SUP* 13.5) given by a *UK firm* to: (a) establish a *branch* in an *EEA State* under paragraph 19(2) of Part III of Schedule 3 to the *Act* (Exercise of passport rights by UK firms); or (b) provide services in an *EEA State* under paragraph 20(1) of Part III of Schedule 3 to the *Act* (Exercise of passport rights by UK firms); or (c) establish a *branch* or provide services in an *EEA state* in the exercise of its *EEA right* under the *auction regulation*.
passported activity	an activity carried on by an *EEA firm*, or by a *UK firm*, under an *EEA right*.

passport right	(in accordance with regulation 2(1) of the *Electronic Money Regulations*) the entitlement of a *person* to establish a branch or provide services in an *EEA State* other than that in which they are authorised to provide *electronic money* issuance services: (a) in accordance with the Treaty on the Functioning of the European Union as applied in the *EEA*; and (b) subject to the conditions of the *Electronic Money Directive*.
relevant EEA details	the details listed in regulation 14 of the *EEA Passport Rights Regulations* and set out in *SUP* 13 Annex 1 (Requisite details or relevant details: branches).
service conditions	in accordance with paragraph 14 of Schedule 3 to the *Act* (EEA Passport Rights)) the conditions that: (a) the *firm* has given its *Home State regulator* notice of its intent to provide services in the *United Kingdom*; (b) if the *firm* falls within paragraph (a), (d), (e) or (f) in the definition of "*EEA firm*", the *FCA* or the *PRA* (as the case may be) has received notice from the *firm's Home State regulator* containing such information as may be prescribed; (c) if the *firm* falls within paragraph (d) of that definition, its *Home State regulator* has informed it that the regulator's notice has been sent to the *FCA* or the *PRA* (as the case may be); and (d) if the *firm* falls within paragraph (e) of that definition, one *month* has elapsed beginning with the date on which the *firm's Home State regulator* informed the *firm* that it had sent the regulator's notice to the *FCA* or the *PRA* (as the case may be).
tied agent passport notification	a notification made in accordance with article 35(2) of *MiFID* and *MiFID ITS 4* Annex VII.
top-up permission	a *Part 4A permission* given to an *incoming EEA firm*, an *incoming Treaty firm* or a *UCITS qualifier*.
Treaty activity	(as defined in section 417(1) of the *Act* (Definitions)) an activity carried on under a *permission* obtained in accordance with Schedule 4 to the *Act* (Treaty Rights).
Treaty firm	(as defined in paragraph 1 of Schedule 4 to the *Act* (Treaty Rights)) a *person*: (a) whose head office is situated in an *EEA State* (its "*Home State*") other than the *United Kingdom*; and

(b) which is recognised under the law of that State as its national.

Treaty right	the entitlement of a *Treaty firm* to qualify for *authorisation* under Schedule 4 to the *Act* (Treaty Rights).2001/7
Treaty	the Treaty on the Functioning of the European Union.
UCITS Home State	the Home State of a UCITS scheme or EEA UCITS scheme.
UCITS qualifier	*a firm* (other than an *EEA UCITS management company*) which: (a) for the time being is an *operator*, *trustee* or *depositary* of a *scheme* which is a *recognised scheme* under section 264 of the *Act*; and (b) is an *authorised person* as a result of paragraph 1(1) of Schedule 5 to the *Act* (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.
UK-deposit insurer	a *non-EEA insurer* that has made a deposit in the *United Kingdom* under article 162(2)(e) of the *Solvency II Directive* in accordance with article 167 of that Directive.
UK MiFID investment firm	a *MiFID investment firm* whose *Home State* is the *United Kingdom* (this may include a natural *person* provided the conditions set out in Article 4(1)(1) of *MiFID* are satisfied).

Appendix 2
Draft Binding Technical Standards Instruments

TECHNICAL STANDARDS (CREDIT RATINGS AGENCIES 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) (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:

"Exit Day" has the meaning given in the European Union (Withdrawal) Act 2018.

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 makes the modifications contained in the Annex listed in column (2) to the corresponding EU Regulation listed in column (1) below.

(1)	(2)
Commission Delegated Regulation (EU) 447/2012 of 21 March 2012 supplementing Regulation (EC) 1060/2009 of the European Parliament and of the Council on credit rating agencies by laying down regulatory technical standards for the assessment of compliance of credit rating methodologies	Annex A
Commission Delegated Regulation (EU) 449/2012 of 21 March 2012 supplementing Regulation (EC) 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on information for registration and certification of credit rating agencies	Annex B
Commission Delegated Regulation (EU) 2015/1 of 30 September 2014 supplementing Regulation (EC) 1060/2009 of the European	Annex C

Parliament and of the Council with regard to regulatory technical standards for the periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by the European Securities and Markets Authority	
Commission Delegated Regulation (EU) 2015/2 of 30 September 2014 supplementing Regulation (EC) 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies make available to the European Securities and Markets Authority.	Annex D

Revocations

G. The FCA deletes Commission Delegated Regulation (EU) 2015/3 of 30 September 2014 supplementing Regulation (EC) 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments.

Commencement

H. This instrument comes into force on [29 March 2019 at 11p.m.].

Citation

I. This instrument may be cited as the Technical Standards (Credit Ratings Agencies Regulation) (EU Exit) Instrument 2019.

By order of the Board

[*date*]

Annex A

COMMISSION DELEGATED REGULATION (EU) No 447/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council on credit rating agencies by laying down regulatory technical standards for the assessment of compliance of credit rating methodologies

…

Article 1

Subject matter

This Regulation lays down the rules to be used in the assessment of compliance of credit rating methodologies with the requirements set out in Article 8(3) of Regulation (EC) No 1060/2009.

Article 2

Demonstration of compliance

A credit rating agency shall at all times be able to demonstrate to ~~ESMA~~ the Financial Conduct Authority ("FCA") its compliance with the requirements set out in Article 8(3) of Regulation (EC) No 1060/2009 relating to the use of credit rating methodologies.

Article 3

Assessment of compliance by ~~ESMA~~ the FCA

1. In addition to examining the compliance of credit rating agencies with the provision of Article 8(3) of Regulation (EC) No 1060/2009 in relation to an application for registration according to Article 15 of that Regulation, ~~ESMA~~ the FCA shall examine compliance by each credit rating agency with Article 8(3) of Regulation (EC) No 1060/2009 on an ongoing basis as ~~ESMA~~ the FCA considers appropriate.
2. When examining the compliance of credit rating agencies with the provision of Article 8(3) of Regulation (EC) No 1060/2009 ~~ESMA~~ the FCA shall use all information relevant to assess the process of developing, approving, using and reviewing credit rating methodologies.
3. In determining the appropriate level of assessment, ~~ESMA~~ the FCA shall consider whether a credit rating methodology has a demonstrable history of consistency and accuracy in predicting credit worthiness and may have regard to methods of validation such as appropriate default or transition studies designed to test that specific methodology.

Article 4

Assessing that a credit rating methodology is rigorous

…

4. A credit rating agency shall use credit rating methodologies and their associated analytical models, key credit rating assumptions and criteria that promptly incorporate findings or outcomes from an internal review or a monitoring review undertaken by one or more of the following:

   (a) the credit rating agency's independent members of the ~~administrative or supervisory~~ board;

   (b) the credit rating agency's review function;

   (c) any other relevant person or committee involved in the monitoring and reviewing of credit rating methodologies.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex B

COMMISSION DELEGATED REGULATION (EU) No 449/2012 of 21 March 2012 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on information for registration and certification of credit rating agencies

…

CHAPTER 1

SUBJECT MATTER

Article 1

Subject matter

This Regulation lays down the rules which determine the information to be provided to ~~ESMA~~ The Financial Conduct Authority ("FCA") by a credit rating agency in its application for:

(a) registration, as set out in Annex II to Regulation (EC) No 1060/2009; or

(b) certification and for the assessment of its systemic importance to the financial stability or integrity of financial markets referred to in Article 5 of Regulation (EC) No 1060/2009.

CHAPTER 2

REGISTRATION

SECTION 1

General

…

Article 3

Attestation of the accuracy and completeness of the application

Any information submitted to ~~ESMA~~ the FCA during the registration or certification process shall be accompanied by a letter signed by a member of the credit rating agency's senior management or a representative authorised by the senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission.

Article 4

Number of employees

Any information regarding the number of employees shall be provided on a full time equivalent basis calculated as the total hours worked divided by the maximum number of hours subject to compensation within a working year as defined by ~~the relevant national~~ UK law.

…

Article 6

Policies and procedures

1. Policies and procedures provided in an application shall contain or be accompanied by:

…

(d) an indication of the procedure for reporting to ~~ESMA~~ the FCA a material breach of the policy or procedure which may result in a breach of the conditions for initial registration or certification.

…

Article 7

Identification, legal status and class of credit ratings

A credit rating agency shall provide ~~ESMA~~ the FCA with:

(a) the information listed in Annex II to this Regulation;

(b) an excerpt from the relevant commercial or court register, or other form of evidence of the place of incorporation and scope of business activity of the credit rating agency, as of the application date.

SECTION 2

Ownership structure

Article 8

Owners and parent undertaking of a credit rating agency

1. A credit rating agency shall provide ~~ESMA~~ the FCA with:

(a) a list of each person who directly or indirectly holds 5 % or more of the credit rating agency's capital or of voting rights or whose holding makes it possible to exercise a significant influence over the management of the credit rating agency;

(b) the information set out in points 1 and 2 of Annex III in relation to each such person.

2. A credit rating agency shall also provide the following information to ~~ESMA~~ the FCA:

   (a) a list of any undertakings in which a person referred to in paragraph 1 holds 5 % or more of the capital or voting rights or over whose management that person exercises a significant influence;

   (b) an identification of their business activity referred to in point 3 of Annex III.

3. Where a credit rating agency has a parent undertaking, it shall:

   (a) identify the country where the parent undertaking is established;

   (b) indicate whether the parent undertaking is authorised or registered and subject to supervision.

Article 9

Ownership chart

A credit rating agency shall provide ~~ESMA~~ the FCA with a chart showing the ownership links between any parent undertaking, subsidiaries and any other associated entities established in the ~~Union~~ UK and their branches. The undertakings shown in the chart shall be identified by their full name, legal status and address of the registered office and head office.

SECTION 3

Organisational structure and corporate governance

Article 10

Organisational chart

A credit rating agency shall provide ~~ESMA~~ the FCA with an organisational chart detailing its organisational structure, including a clear identification of significant roles and the identity of the person responsible for each significant role. Significant roles shall include at least senior management, persons who direct the activities of the branches and senior rating analysts. Where the credit rating agency conducts ancillary services, the organisational chart shall also detail its organisational structure in respect of those services.

Article 11

Organisational structure

1. A credit rating agency shall provide to ~~ESMA~~ the FCA information regarding its policies and procedures in relation to its compliance function as set out in point 5 of Section A of Annex I to Regulation (EC) No 1060/2009, review function as set out in point 9 of Section A of Annex I to Regulation (EC) No 1060/2009 and information regarding its policies and procedures established to meet the requirements set out in points 4 and 10 of Section A of Annex I to Regulation (EC) No 1060/2009.

   The information provided under this paragraph shall include the information set out in Annex IV points 1, 3 and 4.

2. Where the policies and procedures referred to in paragraph 1 are carried out at group of undertakings level, a credit rating agency shall also provide ~~ESMA~~ the FCA with the information set out in Annex IV point 2.

3. A credit rating agency shall also provide ~~ESMA~~ the FCA with the information set out in Annex X.

Article 12

Corporate governance

1. A credit rating agency shall provide ~~ESMA~~ the FCA with information regarding its internal corporate governance policies and the procedures and terms of reference which govern its senior management, including the ~~administrative or supervisory~~ board, its independent members and, where established, committees.

2. Where a credit rating agency adheres to a recognised corporate governance code of conduct, it shall identify the code and provide an explanation for any situations where it deviates from the code.

3. A credit rating agency shall provide the information set out in points 1 and 2 of Annex V on the members of its ~~administrative or supervisory~~ board.

4. A credit rating agency shall provide ~~ESMA~~ the FCA with a copy of the documents referred to in point 3 of Annex V.

SECTION 4

Financial resources for the performance of credit rating activities

Article 13

Financial reports

1. A credit rating agency shall provide ~~ESMA~~ the FCA with a copy of its annual financial reports, including individual and consolidated financial statements where applicable, for the three financial years preceding the date of the submission of its application to the extent available. Where the financial statements of the credit rating agency are subject to statutory audit ~~within the meaning given in Article 2(1) of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts ,~~ as required by UK law the financial reports shall include the audit report on the annual and consolidated financial statement.

2. Where the financial reports referred to in paragraph 1 are not available for the requested period of time, a credit rating agency shall provide ~~ESMA~~ the FCA with an interim financial report.

…

4. A credit rating agency shall provide ~~ESMA~~ the FCA with a description of the measures it has adopted to ensure sound accounting procedure.

SECTION 5

Staffing and compensation

Article 14

Staffing policies and procedures

1. A credit rating agency shall provide ~~ESMA~~ the FCA with information regarding the following policies and procedures:

   (a) reporting to the compliance officer of any situations where one of the persons referred to in point 1 of Section C of Annex I to Regulation (EC) No 1060/2009 considers that any other such person has engaged in conduct that he or she considers illegal, pursuant to the provisions of point 5 of Section C of Annex I to Regulation (EC) No 1060/2009;

   (b) the rotation of lead rating analysts, rating analysts and persons approving credit rating;

   (c) the compensation and performance evaluation practices for rating analysts, persons approving credit ratings, senior management and the compliance officer;

   (d) the training and development relevant to the rating process, including any examination or other type of formal assessment required for the conduct of rating activities.

2. A credit rating agency shall also provide ~~ESMA~~ the FCA with:

   (a) a description of the measures in place to mitigate the risk of over-reliance on individual employees;

   (b) for each class of credit ratings, information on the size and experience of the quantitative teams responsible for developing and reviewing methodologies and models;

   (c) the name and function of any employee of the credit rating agency who has obligations, either individually or on behalf of the credit rating agency, to any other entity within the group of credit rating agencies;

   (d) the average annual fixed and variable remuneration of the rating analysts, lead analysts and the compliance officer for each of the preceding three financial years.

3. A credit rating agency shall describe the arrangements in place to ensure that it is informed when a rating analyst terminates his or her employment and joins a rated entity as set out in point 6 of Section C of Annex I to Regulation (EC) No 1060/2009. A credit rating agency shall describe the arrangements in place to ensure that the persons referred in point 1 of Section C of Annex I to Regulation (EC) No 1060/2009 are aware of the prohibition established as set out in point 7 of Section C of Annex I to Regulation (EC) No 1060/2009.

Article 15

Fitness and appropriateness

1. A credit rating agency shall provide ~~ESMA~~ the FCA with the curriculum vitae, including employment history with relevant dates, identification of positions held and a description of the functions occupied, for each of the following:

   (a) members of senior management;

   (b) persons appointed to direct the business of the branches;

   (c) officers responsible for internal audit, internal control, compliance function, risk assessment and review function.

2. A credit rating agency shall provide ~~ESMA~~ the FCA with the following information in respect of each member of its senior management:

   (a) a recent criminal-record file from the country of origin of the relevant person, unless the relevant national authorities do not issue such a file;

   (b) a self-declaration of their good repute including at least the statements set out in Annex VI and signed by the individual.

SECTION 6

Issuance and review of credit ratings

Article 16

Development, validation, review and disclosure of rating methodologies

1. A credit rating agency shall provide ~~ESMA~~ the FCA, for each class of credit rating, with a high-level description of the range of core models and methodologies used to determine credit ratings.

2. A credit rating agency shall provide ~~ESMA~~ the FCA with the following information regarding its policies and procedures:

   (a) information regarding the development, validation and review of its rating methodologies, including at least the information set out in point 1 of Annex VII;

   (b) information regarding the disclosure of the credit methodologies and descriptions of models and key rating assumptions used in its credit rating activities as set out in point 5 of Part I of Section E of Annex I to Regulation (EC) No 1060/2009.

Article 17

Issuance of credit ratings

1. A credit rating agency shall provide ~~ESMA~~ the FCA with the following information:

   (a) the rating nomenclatures used for each class of credit rating;

(b) the definition of any rating action and statuses used by the credit rating agency;

(c) its policies and procedures regarding the issuance of credit ratings, including at least the information set out in point 2 of Annex VII;

(d) the terms of reference of any rating committees;

(e) a description of the arrangements in place for disclosing a rating decision, including at least the information set out in point 3 of Annex VII;

(f) a description of the procedures in place to ensure that a methodology is applied and implemented consistently across classes of credit rating, offices and regions.

2. A credit rating agency shall identify any differences between the treatment of unsolicited and solicited ratings in the policies and procedures provided under points (c) and (e) of paragraph 1.

3. Where the rating process is regularly audited by an independent third party, a credit rating agency shall provide ~~ESMA~~ the FCA with the last audit report.

4. A credit rating agency shall also provide ~~ESMA~~ the FCA with the following information:

(a) details and criteria for the selection of data providers;

(b) details on the reliability of internal and external data input into rating models;

(c) details of the data sources used.

Article 18

Monitoring of credit ratings

A credit rating agency shall provide ~~ESMA~~ the FCA with information regarding its policies and procedures concerning:

(a) the monitoring of ratings, identifying any differences between solicited and unsolicited ratings, and including at least the information set out in point 4 of Annex VII;

(b) the disclosure of the decision to review or change a rating;

(c) the monitoring of the impact of changes in macroeconomic or financial market conditions on credit ratings as described in Article 8(5) of Regulation (EC) No 1060/2009.

SECTION 7

Description of issue and review procedures and methodologies

Article 19

Credit rating presentation requirements

A credit rating agency shall provide ~~ESMA~~ the FCA with information regarding the following items:

(a) policies and procedures with respect to the credit rating disclosure requirements laid down in the following provisions of Regulation (EC) No 1060/2009:

(i) paragraphs 1, 2 and 5 of Article 10;

(ii) Part I of Section D of Annex 1;

(b) where the credit rating agency rates structured instruments, policies and procedures with respect to the following provisions of Regulation (EC) No 1060/2009:

(i) Article 10(3);

(ii) point 4 of Section B of Annex I; (iii) Part II of Section D of Annex I;

(c) samples of typical credit rating reports or other documents demonstrating how the credit rating agency meets or intends to meet these disclosure requirements; and

(d) samples of typical rating letters for each class of credit rating produced by the credit rating agency.

SECTION 8

Conflicts of interest

Article 20

Independence and avoidance of conflicts of interest

1. A credit rating agency shall provide ~~ESMA~~ the FCA with information regarding its policies and procedures with respect to the identification, management and disclosure of conflicts of interest and the rules on rating analysts and other persons directly involved in credit rating activities covering at least the requirements set out in Annex VIII.

…

Article 21

Inventory of conflicts of interest

1. A credit rating agency shall provide ~~ESMA~~ the FCA with an up-to- date inventory of existing and potential conflicts of interest relevant to it. Where a credit rating agency is part of a group of undertakings, it shall include in the inventory any conflicts of interest arising from other entities which belong to its group of undertakings.

…

Article 22

Conflicts of interest with respect to ancillary services

1. A credit rating agency shall provide ~~ESMA~~ the FCA with a description of the resources, both human and technical, shared by the rating and ancillary services of the credit rating agency or shared with the group of undertakings to which it belongs.

2. A credit rating agency shall describe the arrangements in place to prevent, disclose and mitigate any existing or potential conflicts of interest between the rating business and ancillary services.

3. A credit rating agency shall provide ~~ESMA~~ the FCA with a copy of the results of any internal assessment performed to identify any existing or potential conflict of interest between the rating business and ancillary services.

SECTION 9

Programme of operations

Article 23

Information regarding the programme of operations

A credit rating agency shall provide ~~ESMA~~ the FCA with the annual information described in Annex IX covering a period of three years following the date of registration.

SECTION 10

Use of endorsement

Article 24

Expected use of endorsement

Where a credit rating agency intends to endorse credit ratings issued in third countries as set out in Article 4(3) of Regulation (EC) No 1060/2009, it shall provide ~~ESMA~~ the FCA with the information set out in Annex XI.

SECTION 11

Outsourcing

Article 25

Outsourcing requirements

1. Where a credit rating agency outsources any important operational functions, it shall provide ~~ESMA~~ the FCA the following information:

   (a) its policies with respect to outsourcing;

   (b) an explanation on how it intends to identify, manage and monitor the risks posed by the outsourcing of important operational functions;

   (c) a copy of the outsourcing agreements between the credit rating agency and the entity to which the activities are outsourced;

(d) a copy of any internal or external report on the outsourced activities issued in the past five years.

2. For the purposes of paragraph 1, important operational functions shall comprise rating review, lead analyst, rating methodology development and review, rating approval, internal quality control, data storage, IT systems, IT support and accounting.

CHAPTER 3

CERTIFICATION

SECTION 1

Application for certification

Article 26

Information for application for certification

1. A credit rating agency shall provide ~~ESMA~~ the FCA with the following information:

(a) the general information requested in points 1 to 10 of Annex II;

(b) the information regarding its owners referred to in Article 8;

(c) the organisational chart referred to in Article 10;

(d) details on the arrangements in place to prevent, disclose and mitigate any existing or potential conflicts of interest between the rating business and ancillary services;

(e) the information referred to in Article 13 regarding the credit rating agency's financial resources.

2. A credit rating agency shall provide ~~ESMA~~ the FCA with the following information regarding its business activities:

(a) for the preceding three years, the number of employees contracted and involved in the rating and ancillary services both permanent and temporary;

(b) if the applicant has a branch, the number of employees involved in the rating and ancillary business in each branch;

(c) the number of rating analysts contracted to the applicant including, if the credit rating agency has a branch, the number of rating analysts contracted in each branch;

(d) if a credit rating agency is planning to establish a new branch, a description of the type of business activities the new branch is expected to conduct, its full name and address and the timeframe for its establishment;

(e) if a credit rating agency is planning to conduct any new ancillary services, a description of the new services and the timeframe for their commencement;

(f) the revenue generated over the past three years by the credit rating agency from rating and ancillary services as a proportion of total revenue, presented on a financial year basis;

(g) if the credit rating agency has one or more branches, the revenue generated over the past three years by each branch as a proportion of total revenue, presented on a financial year basis.

3. A credit rating agency shall also provide ~~ESMA~~ the FCA with the following information regarding the credit ratings it issues or proposes to issue:

(a) the class of credit ratings;

(b) the rating nomenclatures used for each class of credit rating;

(c) the definition of any rating action and statuses used by the credit rating agency;

(d) details of whether the credit rating agency produces solicited or unsolicited ratings or both;

(e) for each class of credit rating, the number of years of experience it has in producing these ratings;

(f) for each class of credit rating, the current or expected proportion of public ratings and private ratings.

~~4. The credit rating agency shall indicate whether it currently holds, or expects to apply for, External Credit Assessment Institution (ECAI) status in one or more Member States and, if so, it shall identify the relevant Member State~~.

Article 27

General requirements for the application for certification

A credit rating agency shall ensure that its application complies with Articles 2 to 6 regarding the format of its application, the attestation of its accuracy, the class of credit ratings, number of employees and the policies and procedures provided to ~~ESMA~~ the FCA.

SECTION 2

Systemic importance

Article 28

Systemic importance

A credit rating agency shall provide ~~ESMA~~ the FCA with the information set out in Annex XII regarding the systemic importance of its credit ratings and credit rating activities to the financial stability or integrity of the financial markets of ~~one or more Member States~~ the UK.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

ANNEX IV

ORGANISATIONAL STRUCTURE

(Article 11)

1. A credit rating agency shall provide the following information regarding policies and procedures referred to in Article 11(1):

   (a) a description of the roles and responsibilities of the employees;

   (b) a description of the mechanisms to monitor the effectiveness of the policy or procedure;

   (c) the number of employees and the ratio of temporary to permanent employees;

   (d) information on the reporting lines and the frequency of reporting; and

   (e) a description of the interaction between the relevant function and employees directly involved in the rating process and between that function and any other functions.

2. Where the arrangements referred to in point 1 of this Annex are carried out at group of undertakings level, a credit rating agency shall provide ~~ESMA~~ the FCA with a copy of relevant service level agreements that it has entered into, or proposes to enter into, with other group members, and the following information:

   (a) a description of the relevant tasks carried out by each group undertaking, including undertakings located in third countries;

   (b) a clear identification of the undertaking involved in performing the task, specifying its location;

   (c) information on the reporting lines and frequency of reporting of each entity involved and on the way information is collected from each entity; and

   (d) information on any dedicated resources located in the ~~Union~~ UK. In the case of human resources, a credit rating agency shall specify the time devoted to the function on the basis of full time equivalence.

…

ANNEX V

INFORMATION TO BE PRESENTED WITH REGARD TO CORPORATE GOVERNANCE

(Article 12)

1. Identification of the members of the ~~administrative or supervisory~~ board and other committees as established in Article 12(3):

Identification of the member	**Body (~~administrative~~ board, ~~supervisory board,~~ audit committee,**	**Body of other undertakings where the**

	remunerations committee, etc.) and position (Chair, vice-chair, member)	person is a member and position
…	…	
…	…	
…	…	

2. Identification of the independent members of the ~~administrative or supervisory~~ board as established in Article 12(3) and justification of their independence if they are independent members and of their in-depth knowledge and experience at a senior level of the market in structured finance instruments, where the credit agency applies to issue credit ratings of structured finance products, according to Section A(2) of Annex I to Regulation (EC) No 1060/2009:

Identification of the member	Body (~~administrative or supervisory~~ board)	Independent member (YES/NO) and if YES, provide justification	Experience in structured finance instruments (YES/NO) and if YES, provide justification
A. …	B. …		
C. …	D. …		
E. …	F. …		

3. A credit rating agency shall provide to ~~ESMA~~ the FCA a copy of the following documents as established in Article 12(4):

   (a) the last three sets of minutes of the meetings of the ~~administrative and supervisory~~ board;

   (b) the most recent minutes of the meetings of any other committees, such as the remuneration or strategy committees; and

   (c) the last three opinions or reports presented to the ~~administrative or supervisory~~ board by the independent members.

…

ANNEX IX

PROGRAMME OF OPERATIONS

(Article 23)

…

Class of credit ratings

2. The following information regarding the class of credit ratings:

…

(d) the number and volume (in billions of ~~euro~~ pounds sterling) of structured finance ratings;

(e) the number and volume (in billions of ~~euro~~ pounds sterling) of corporate ratings, with the following detail: financial institutions, insurance, corporate issuers; and

…

…

Corporate governance

5. Number of members of the following bodies:

(a) ~~administrative and supervisory~~ the board; and

(b) independent members of the ~~administrative and supervisory~~ board.

…

Human Resources/Staffing

7. Number of permanent and temporary employees working for the following functions and their seniority:

(a) senior management other than members of the ~~administrative or supervisory~~ board and persons appointed to direct the branches;

…

ANNEX XI

USE OF ENDORSEMENT

(Article 24)

…

Assessment of the third-country regulatory regime

3. In relation to each relevant third-country jurisdiction, detailed information, structured analysis and reasoning for each requirement set out in Articles 6 to 12 of Regulation (EC) No 1060/2009, including any reference to the relevant sections of the third-country law/regulation.

The obligation set out in the first subparagraph of this point shall not apply where ~~ESMA~~ the FCA is satisfied that the requirements of the third-country regime are as stringent as the requirements set out in Articles 6 to 12 of Regulation (EC) No 1060/2009.

ANNEX XII

SYSTEMIC IMPORTANCE INDICATORS

(Article 28)

1. A credit rating agency shall provide ~~ESMA~~ the FCA with the volume of outstanding credit ratings it has issued with the details set out in the following table. The information regarding the corporate rating and sovereign and public finance ratings shall be provided on the basis of number of credit ratings and the information regarding structured finance ratings shall be provided on the basis of the amount (in millions of ~~euro~~ pounds sterling) of issuing of the structured finance instruments.

	Total
Corporate ratings (number of credit ratings)	
Financial institution including credit institutions and investment firms	
Insurance undertaking	
Corporate issuer that is not considered a financial institution or an	
Sovereign and public finance ratings (number of credit ratings)	
Structured Finance ratings (amount of the issuing in millions of ~~euro~~ pounds sterling)	

2. A credit rating agency shall provide information on the annual revenues generated in ~~any European Union Member State~~ the UK and in other countries outside the ~~European Union~~ UK (third countries) for the past three years with the following level of detail:

	~~EU Member State 1~~ UK	~~EU Member State 2~~ Third Countries	~~EU Member State 3~~	(…)	~~Other non-EU countries~~	Total
Rating activities						
From rated entities or related third parties						
From subscribers						
Other sources						
Non-rating activities						

~~Member States shall be individually identified.~~

Annex C

COMMISSION DELEGATED REGULATION (EU) 2015/1 of 30 September 2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by the European Securities and Markets Authority

…

Article 1

General principles

1. Registered credit rating agencies shall submit the following types of reports to ~~ESMA~~ The Financial Conduct Authority ("FCA"):
   (a) pricing policies and procedures as set out in Article 2;
   (b) fee data for credit ratings activities provided under the issuer-pays model as set out in Article 3(1);
   (c) fee data for credit rating activities provided under the subscriber- or investor-pays model as set out in Article 3(2).
2. Registered credit rating agencies shall ensure the accuracy and completeness of the information and data reported to ~~ESMA~~ the FCA.
3. For groups of credit rating agencies, the members of each group may mandate one member to submit reports required under this Regulation on their behalf. Each credit rating agency on whose behalf such a report is submitted shall be identified in the data submitted to ~~ESMA~~ the FCA.

Article 2

Pricing policies and procedures

1. Registered credit rating agencies shall provide to ~~ESMA~~ the FCA their pricing policies, fee structure or fee schedules and pricing criteria in relation to those rated entities or financial instruments on which they are issuing credit ratings and, where applicable, pricing policies regarding ancillary services.
2. Registered credit rating agencies shall ensure that for each type of credit rating offered the pricing policies contain or are accompanied by the following items:
   (a) the names of the persons responsible for the approval and maintenance of the pricing policies, fee schedules and/or fee programmes, including those responsible for setting fees, the internal identifier, the function and internal department to which the persons belong;
   (b) any internal guidelines for application of the pricing criteria in the pricing policies, fee schedules and/or fee programmes relating to the setting of individual fees;

(c) a detailed description of the fee range or fee schedule and criteria applicable to the different types of fees, including those provided for in the fee schedules;

(d) a detailed description of any fee programme, including a relationship programme, frequency of use programme, loyalty programme or other programme, and including the criteria of application and fee range, from which individual credit ratings or set of ratings may benefit in fee terms;

(e) where applicable, the pricing principles and rules to be employed whenever there is a relationship or link between the fees charged for credit rating services and ancillary services or any other services provided to the client, within the meaning of the second subparagraph of point 2 of Part II of Section E of Annex I to Regulation (EC) No 1060/2009 (client), by the credit rating agency and/or any of the entities belonging to the credit rating agency's group within the meaning of ~~Articles 1 and 2 of Council Directive 83/349/EEC (1)~~ Articles 22(1)-(5) of Directive 2013/34/EU, as well as any entity linked to the credit rating agency or other company of the credit rating agency's group by a relationship within the meaning of ~~Article 12(1) of Directive 83/349/EEC~~ Article 22(7) of Directive 2013/34/EU;

(f) the geographical scope of application of the pricing policy, fee schedule or fee programme in terms of the location of the clients and the credit rating agency or agencies applying the pricing policy, fee schedule or fee programme;

(g) the names of the persons authorised to set fees and other charges under the respective pricing policy, fee schedule or fee programme, including those responsible for setting fees, the internal identifier, the function and internal department to which the persons belong.

3. Registered credit rating agencies shall ensure that the pricing procedures contain or are accompanied by the following items:

…

(g) a detailed description of the procedure for reporting to ~~ESMA~~ the FCA any material breach of pricing policies or procedures which may result in a breach of point 3c of Section B of Annex I to Regulation (EC) No 1060/2009.

Article 3

List of fees charged to each client

1. Registered credit rating agencies providing credit ratings on an issuer-pays model shall provide to ~~ESMA~~ the FCA the fees charged to each client for individual credit ratings and any ancillary services per legal entity as well as aggregated by group of companies.

2. Registered credit rating agencies providing credit ratings on a subscriber- or investor-pays model shall provide to ~~ESMA~~ the FCA, on a per client basis, the total fees charged for such services as well as for the ancillary services provided.

3. All deviations from pricing policies or pricing procedures, or the non-application of a pricing policy, fee schedule or fee programme, or pricing procedure to a rating shall be recorded by the registered credit rating agencies, with a clear identification of the main

explanations for the deviation and the individual rating involved in the format set out in Table 1 of Annex II. This record shall be made promptly available to ~~ESMA~~ the FCA upon request.

…

Article 5

Data to be provided

1. Registered credit rating agencies shall provide to ~~ESMA~~ the FCA the items set out in Article 2(2) and (3), and the data set out in Tables 1 to 4 of Annex I, as well as the pricing policies, fee schedules, fee programmes and procedures in separate files.
2. Registered credit rating agencies shall provide to ~~ESMA~~ the FCA the data set out in Tables 1 and 2 of Annex II for fees data on each individual credit rating issued and the fees charged for credit ratings and any ancillary services per client in accordance with Article 3(1).
3. Registered credit rating agencies that have provided credit ratings on a subscriber or investor-pays model shall provide to ~~ESMA~~ the FCA the data set out in Table 1 of Annex III for each client of the credit ratings services provided, in accordance with Article 3(2).
4. The data specified in Tables 1 to 4 of Annex I, Tables 1 and 2 of Annex II, and Table 1 of Annex III shall be submitted to ~~ESMA~~ the FCA in separate files.

Article 6

Initial reporting

1. Each registered credit rating agency shall provide data to ~~ESMA~~ the FCA by filling in Tables 1 to 4 of Annex I and separate files for pricing policies, fee schedules, fee programmes and procedures it is applying for each credit rating type in which it is active, in accordance with Article 5(1), within 30 days after ~~the date of entry into force of this Regulation~~ exit day.

~~2. Initial reporting on fees referred to in Article 5(2) and (3) shall be submitted to ESMA nine months after the date of entry into force of this Regulation and shall include the data accumulated from the date of entry into force of this Regulation until 30 June 2015.~~

~~3. The second report on fees referred to in Article 5(2) and (3) shall be submitted to ESMA by 31 March 2016 and shall include the data accumulated from 1 July 2015 until 31 December 2015.~~

Article 7

Ongoing reporting

1. Without prejudice to the initial reporting requirements set out in Article 6, the information submitted in accordance with Article 5 shall be submitted on a yearly basis by 31 March and shall include data and pricing policies, fee schedules, fee programmes and procedures relating to the preceding calendar year.

2. Without prejudice to paragraph 1, material changes to pricing policies, fee schedules, fee programmes and procedures shall be reported to ~~ESMA~~ the FCA on an ongoing basis without undue delay after their adoption and at the latest 30 days after their implementation.

3. Registered credit rating agencies shall notify ~~ESMA~~ the FCA immediately of any exceptional circumstances that may temporarily prevent or delay reporting in accordance with this Regulation.

Article 8

Reporting procedures

1. Registered credit rating agencies shall submit data files in accordance with the technical instructions provided by ~~ESMA~~ the FCA and using ~~ESMA's~~ the FCA's reporting system.

2. Registered credit rating agencies shall store the data files sent to and received by ~~ESMA~~ the FCA under Article 5 as well as the deviation records referred to in Article 3(3) in electronic form for at least five years. Those files shall be made available to ~~ESMA~~ the FCA on request.

3. Where a registered credit rating agency identifies factual errors in data that have been reported, it shall inform ~~ESMA~~ the FCA without undue delay and correct the relevant data according to the technical instructions provided by ~~ESMA~~ the FCA.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

ANNEX I

Table 1

Reporting of pricing policies per rating class in force and subsequent material updates

No.	Field name	Description	Type	Standard

1	CRA identifier	Code used to identify the reporting credit rating agency. It is provided by ~~ESMA~~ the FCA upon registration.	Mandatory	
2	CRA scope	Identification of the CRAs applying the pricing policy.	Mandatory	ISO 17442
3	Pricing policy identifier	Unique identifier of the pricing policy that shall be maintained. All changes other than the scope of the rating types covered by the pricing policy should maintain the same unique identifier. Changes in the scope require a new pricing policy identifier.	Mandatory	Pricing policy identifier in format 'PP_[internal pricing policy identifier]'
4	Pricing policy validity date	The date from which the pricing policy is valid.	Mandatory	ISO 8601 date format (YYYY-MM-DD)
5	Pricing policy end date	The end validity date of the pricing policy.	Mandatory	ISO 8601 date ~~dormat~~ format (YYYY-MM-

				DD) or 9999-01-01
6	Indication of model	Indication of whether the pricing policy relates to issuer-pays ratings or investor-pays or subscriber-pays model. ~~ESMA~~ The FCA understands that CRAs may operate services under more than one model and therefore it is possible that a pricing policy may be used for both types of models. In such cases I and S may both be chosen.	Mandatory	— 'I' for issuer-pays model, and/or — 'S' for investor-pays or subscriber-pays model
…				

…

Table 2

Reporting of fee schedules per rating class in force and subsequent material updates

No.	Field name	Description	Type	Standard

1	CRA identifier	Code used to identify the reporting credit rating agency. It is provided by ~~ESMA~~ the FCA upon registration.	Mandatory	
…				

…

Table 3

Reporting of fee programmes per rating class in force and subsequent material updates

No.	Field name	Description	Type	Standard
1	CRA identifier	Code used to identify the reporting credit rating agency. It is provided by ~~ESMA~~ the FCA upon registration.	Mandatory	
…				

…

Table 4

Reporting of pricing procedures in force and subsequent material updates

No.	Field name	Description	Type	Standard
1	CRA identifier	Code used to identify the reporting credit rating agency. It is provided by ~~ESMA~~ the FCA upon registration.	Mandatory.	
…				

ANNEX II

Table 1

Data to be reported to ~~ESMA~~ the FCA for each individual credit rating assigned under the issuer-pays model

No.	Field name	Description	Type	Standard
1	CRA identifier	Code used to identify the reporting credit rating agency. It is provided by ~~ESMA~~ the FCA upon registration.	Mandatory.	
…				
9	Total amount of fees charged	Identifies the total amount of fees billed for the rating during the prior calendar reporting year. Where no fee was paid for the individual credit rating the amount should be 0 for all but one of the ratings benefitting from the Group Fee.	Mandatory.	Amount in ~~EUR~~ GBP
10	Amount of initial fees paid	Identifies the amount of up-front/initial fees billed during the prior calendar reporting year.	Mandatory.	Amount in ~~EUR~~ GBP
11	Surveillance fees paid	Identifies the annual surveillance/monitoring fees billed in prior calendar year.	Mandatory.	Amount in ~~EUR~~ GBP
12	Other fees charged for rating service	Identifies total of other fees or compensation billed in prior calendar year.	If applicable.	Amount in ~~EUR~~ GBP
…				

Table 2

Data to be provided to ~~ESMA~~ the FCA for fees received on a per client basis for rating services and ancillary services

No.	Field name	Description	Type	Standard
1	CRA identifier	Code used to identify the reporting credit rating agency. It is provided by ~~ESMA~~ the FCA upon registration.	Mandatory.	
…				
4	Total overall fees billed	Total fees billed from the Client in the prior calendar year for issuer-pays rating services.	Mandatory.	Amount in ~~EUR~~ GBP
5	Client ratings	Identifies how many credit ratings the Client has with the credit rating agency at 31 December of the prior calendar year.	Mandatory.	Number of ratings
6	Total fees for programmes	Total fees billed from the Client in the prior calendar year for rating services not derived from an individual rating but from a frequency issuance, relationship or other type of flat fee programme and excess issuance fees, which may cover one or more ratings.	Mandatory.	Amount in ~~EUR~~ GBP
…				
8	Fees received for ancillary services	Total fees billed by the CRA group of companies from the Client for ancillary services in the previous calendar year.	Mandatory.	~~EUR~~ GBP

…				
11	Other services	Indication of whether account was taken for the setting of fees for the credit rating services provided to the Client of any services provided by any entities belonging to the credit rating agency's group within the meaning of ~~Articles 1 and 2 of Directive 83/349/EEC~~ Article 22(1)-(5) of Directive 2013/34/EU as well as any entity linked to the credit rating agency or other company of the credit rating agency's group by a relationship within the meaning of ~~Article 12(1) of Directive 83/349/EEC~~ Article 22(7) of Directive 2013/34/EU.	Mandatory.	—'Y' for Yes, —'N' for No.

ANNEX III

Table 1

Data to be provided to ~~ESMA~~ the FCA for fees received for subscription or investor-pays based rating services

This is to be provided on a per client basis for:

(i) the top 100 Clients in revenue terms for this type of credit rating service;

(ii) as well as all other Clients who are subscribers or pay for ratings as an investor and are also rated by the credit rating agency group.

No.	Field name	Description	Type	Standard
1	CRA identifier	Code used to identify the reporting credit rating agency. It is provided by ~~ESMA~~ the FCA upon registration.	Mandatory.	
…				

3	Fees per client	Total fees billed from the Client for subscription based rating services provided in prior calendar year.	Mandatory.	Amount in ~~EUR~~ GBP
…				
9	Fees received for ancillary services	Total fees billed by the CRA group of companies from the client for ancillary services in the prior calendar year.	Mandatory.	Amount in ~~EUR~~ GBP

Annex D

COMMISSION DELEGATED REGULATION (EU) 2015/2 of 30 September 2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies make available to the European Securities and Markets Authority

…

Article 1

Data to be reported

1. Credit rating agencies shall report data on all their issued or endorsed credit ratings or rating outlooks in accordance with Articles 8, 9, and 11. Credit rating agencies shall report all credit ratings and rating outlooks issued at rated entity level and on all their issued debt instruments, where applicable.
2. Credit rating agencies shall ensure the accuracy, completeness and availability of the data reported to ~~ESMA~~ the Financial Conduct Authority ("FCA") and shall ensure that reports are submitted in accordance with Articles 8, 9 and 11 using appropriate systems developed on the basis of technical instructions provided by ~~ESMA~~ the FCA.
3. Credit rating agencies shall notify ~~ESMA~~ the FCA immediately of any exceptional circumstances that may temporarily prevent or delay their reporting in accordance with this Regulation.
4. For groups of credit rating agencies, the members of each group may mandate one member to submit reports required under this Regulation on their behalf. Each credit rating agency on whose behalf such a report is submitted shall be identified in the data submitted to ~~ESMA~~ the FCA.
5. For the purposes of Article 11(2) and Article 21(4)(e) of Regulation (EC) No 1060/2009, a credit rating agency reporting on behalf of a group may include data on credit ratings and rating outlooks issued by third-country credit rating agencies belonging to the same group and not endorsed. Where a credit rating agency does not report such data it shall give an explanation in its qualitative data report, in Fields 9 and 10 of Table 1 of Part 1 of Annex I to this Regulation.
6. Credit rating agencies shall disclose the solicitation status of each reported credit rating or rating outlook by specifying whether it is unsolicited with participation or unsolicited without participation in accordance with Article 10(5) of Regulation (EC) No 1060/2009 or solicited.

…

Article 4

Corporate ratings

1. Credit rating agencies shall, when reporting corporate ratings, classify them within one of the following industry segments:

   (a) financial institutions, including banks, brokers and dealers;

   (b) insurance;

   (c) all other corporate entities or issuers which are not included in points (a) and (b).

2. Credit rating agencies shall classify corporate issues as one of the following issue types:

   (a) bonds;

   (b) CRR covered bonds as ~~referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council~~ defined in point 128A of Article 4(1) of Regulation (EU) No 575/2013~~and~~ that meet the eligibility requirements set out in paragraphs 1 to 3, 6 and 7 of Article 129 of that Regulation (EU) ~~No 575/2013~~;

   (c) other types of covered bonds, for which the credit rating agency has used specific covered bond methodologies, models or key rating assumptions for issuing the credit rating and which are not included in point (b);

   (d) other types of corporate issues which are not included in points (a), (b) and (c).

3. The country code of a rated entity or its issues in Field 10 of Table 1 of Part 2 of Annex I shall be that of the country of domicile of the entity.

Article 5

Structured finance ratings

1. Structured finance ratings shall relate to a financial instrument or other assets resulting from a securitisation transaction or scheme referred to in ~~Article 4(1)(61) of Regulation (EU) No 575/2013~~ point 1 of Article 2 of Regulation 2017/2402/EU.

2. Credit rating agencies shall, when reporting structured finance ratings, classify them within one of the following asset classes:

…

   (f) other ~~structured finance~~ securitisation instruments which are not included in points (a) to (e), including structured covered bonds, structured investment vehicles, insurance-linked securities and derivative product companies.

3. Where applicable, a credit rating agency shall also indicate which specific sub-asset class each rated instrument belongs to in Field 34 of Table 1 of Part 2 of Annex I.

4. The country code of ~~structured finance~~ securitisation instruments which shall be reported in Field 10 of Table 1 of Part 2 of Annex I and shall be that of the country of domicile of the majority of the underlying assets. Where it is not possible to identify the country of domicile of the majority of the underlying assets, the rated instrument shall be classified as ‘international’.

…

Article 8

Reporting for the purpose of publication on the ~~ERP~~ public rating database

…

Article 9

Reporting for the purpose of ~~ESMA~~ the FCA supervision

1. As referred to in Article 21(4)(e) of Regulation (EC) No 1060/2009, credit rating agencies shall report data on all credit ratings and rating outlooks issued or endorsed, or issued in a third country and not endorsed as referred to in Article 1(5), including information on all entities or debt instruments submitted for their initial review or for preliminary rating, as referred to in point 6 of Part I of Section D of Annex I to Regulation (EC) No 1060/2009.
2. For those credit ratings and rating outlooks to which Article 8 does not apply, credit rating agencies shall report rating data relating to the preceding calendar month on a monthly basis.
3. A credit rating agency that has fewer than 50 employees and that is not part of a group of credit rating agencies may provide the rating data referred to in paragraph 2 every two months, unless ~~ESMA~~ the FCA requires monthly reporting in view of the nature, complexity and range of issues of its credit ratings. That rating data shall refer to the preceding two calendar months.
4. The rating data referred to in paragraph 2 shall be submitted to ~~ESMA~~ the FCA within 15 days from the end of the period that is covered by the report. Where the 15th day of the month falls on a public holiday in the country of domicile of the credit rating agency, or where a credit rating agency reports on behalf of a group in accordance with Article 1(4), the country of domicile of that credit rating agency, the deadline shall be the next working day.
5. Where no credit ratings or rating outlooks referred to in paragraph 1 were issued during the preceding calendar month, the credit rating agency shall not be obliged to submit any data.

Article 10

Reporting for the purpose of historical performance

The credit ratings issued or endorsed, or issued in a third country and not endorsed as referred to in Article 1(5), shall be used by ~~ESMA~~ the FCA for making available the historical performance data, in accordance with Article 11(2) of Regulation (EC) No 1060/2009 and point 1 of Part II of Section E of Annex I to that Regulation.

Article 11

Initial reporting

1. Credit rating agencies registered or certified on or before ~~21 June 2015~~ exit day shall prepare a first report to be reported to ~~ESMA~~ the FCA by ~~1 January 2016~~ exit day, that shall contain ~~all of the following:~~

   ~~(a)~~ information on all credit ratings and rating outlooks referred to in Articles 8 and 9, and that have been issued and not withdrawn by ~~21 June 2015~~ exit day;

   (b) ~~credit ratings and rating outlooks referred to in Articles 8 and 9 that have been issued between 21 June 2015 and 31 December 2015.~~

~~2.~~ ~~Credit rating agencies registered or certified between 21 June 2015 and 31 December 2015 shall comply with this Regulation from 1 January 2016. In their first report, they shall report, in accordance with Articles 8 and 9, all the credit ratings and rating outlooks that were issued from the date of registration or certification.~~

3. Credit rating agencies registered or certified after ~~1 January 2016~~ exit day shall comply with this Regulation within three months after the date of registration or certification. In their first report, they shall report, in accordance with Articles 8 and 9, all the credit ratings and rating outlooks that were issued from the date of registration or certification.

4. In addition to the first report referred to in paragraphs 2 and 3, a credit rating agency that is certified after ~~21 June 2015~~exit day shall also report, pursuant to Article 11(2) of Regulation (EC) No 1060/2009 and point 1 of Part II of Section E of Annex I to that Regulation, its historical performance data relating to at least 10 years before the date of certification or, where it started its rating activity less than 10 years before the date of certification, relating to the period since it started its rating activity. Certified credit rating agencies shall not be required to report those data, partially or totally, where they can demonstrate that this would not be proportionate in view of their scale and complexity.

Article 12

Data structure

1. Credit rating agencies shall submit to ~~ESMA~~ the FCA qualitative data reports in the format specified in the tables in Part 1 of Annex I together with their first report of rating data in accordance with Article 11. Any changes to those qualitative data reports shall be immediately reported to ~~ESMA's~~ the FCA's system as an update, before the rating data which are affected by those changes are submitted to ~~ESMA~~ the FCA. Where a credit rating agency reports on behalf of a group, as referred to in Article 1(4), one set of qualitative data reports may be submitted to ~~ESMA~~ the FCA.

2. Credit rating agencies shall submit rating data reports for ratings referred to in Articles 8, 9 and 11 in the format specified in the tables in Part 2 of Annex I.

Article 13

Reporting procedures

1. Credit rating agencies shall submit the qualitative data reports and rating data reports referred to in Article 12 in accordance with the technical instructions provided by ~~ESMA~~ the FCA and using ~~ESMA's~~ the FCA's reporting system.
2. Credit rating agencies shall store the files sent to and received by ~~ESMA~~ the FCA in electronic form for at least five years. Those files shall be made available to ~~ESMA~~ the FCA on request.
3. Where a credit rating agency identifies factual errors in data that have been reported, it shall correct the relevant data without undue delay according to the technical instructions provided by ~~ESMA~~ the FCA.

~~*Article 14*~~

~~**Repeal and transitional provisions**~~

~~1. The following Regulations are repealed with effect from 1 January 2016:~~

~~(a) Delegated Regulation (EU) No 446/2012;~~

~~(b) Delegated Regulation (EU) No 448/2012.~~

~~2. References to the Regulations set out in paragraph 1 shall be construed as references to this Regulation and read in accordance with the correlation table in Annex II.~~

~~3. Data submitted to the ESMA in accordance with the Regulations set out in paragraph 1 before 1 January 2016 shall be considered as having been submitted in accordance with this Regulation and shall continue to be used by ESMA in accordance with Article 11(2) and Article 21(4)(e) of Regulation (EC) No 1060/2009 and point1 of Part II of Section E of Annex I to that Regulation.~~

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

ANNEX I

PART 1

LIST OF FIELDS FOR THE QUALITATIVE DATA FILE

Table 1

CRA identification and methodology description

This table shall include the elements that provide the identification of the reporting credit rating agency including the legal identification, methodology and policies used.

This table shall contain one line for each reporting credit rating agency.

No	Field name	Description	Type	Standard	Scope
1	CRA identifier	Code used to identify the reporting credit rating agency. It is provided by ~~ESMA~~ the FCA upon registration or certification.	Mandatory.		Technical
…					
3	CRA name	Name used to identify the credit rating agency. It shall correspond to the name used by the credit rating agency in the registration process and all other supervisory procedures within ~~ESMA~~ the FCA. Where one member of a group of credit rating agencies reports for the whole group it shall be the name referring to the group of credit rating agencies.	Mandatory.		Public
…					
9	Geographical reporting scope	In the case of a credit rating agency part of a group, they should mention whether they report all the ratings issued by the group (global scope) or not	Mandatory.	Y — yes N — no	Public

		(only the ~~EU~~ UK and endorsed ratings). Where the coverage is not global, the credit rating agency shall explain why not. For all other CRAs it should be reported as 'global' ('Y').			
…					

…

Table 5

Lead analysts list

This table shall contain a list of all the lead analysts that operate in the ~~Union~~ UK. If a lead analyst worked in different time periods as a lead analyst (with time gaps in between) then the lead analyst should be reported in the table multiple times: one for each lead analyst appointment period. The start and end date of allocation to the function shall not overlap for the same lead analyst. The table shall contain one line for each lead analyst and distinct function period.

…

Table 6

Rating scale

…

…					
8	Rating scale used for ~~CEREP~~ central repository	Indicates if the rating is to be used by ~~ESMA~~ the FCA for the central repository ~~(CEREP)~~ statistics calculations.	Mandatory.	Y — yes N — no	Technical

			For any given period, only one rating scale per combination of rating type and time horizon can be used.			
…						

PART 2

LIST OF FIELDS FOR THE RATING DATA FILE

Table 1

Data describing the rated entity/instrument

This table shall identify and describe all credit ratings issued by the credit rating agency and are to be reported for the scope of this Regulation. This table shall contain one line for each individual credit rating to be reported. Where it applies, for each credit rating line, one or more 'Originators' can be reported.

No	Field name	Description	Type	Standard	Scope
1	CRA identifier	Code used to identify the reporting credit rating agency. It is provided by ~~ESMA~~ the FCA upon registration or certification.	Mandatory.		Technical
2	Reporting CRA LEI	LEI code of the credit rating agency sending the file.	Mandatory.	ISO 17442	Public
3	Responsible CRA LEI	LEI code of the credit rating agency responsible for the rating, i.e. in case of: —a rating issued in the ~~Union~~ UK, the registered credit rating agency that has issued the rating, —an endorsed rating, the registered credit	Mandatory.	ISO 17442	Public

		rating agency that endorsed the rating, —a rating issued by a certified credit rating agency, the certified credit rating agency, —a rating issued in a third country but not endorsed by a registered credit rating agency, the third country credit rating agency that issued the rating.			
4	Issuer CRA LEI	LEI code of the credit rating agency that issued the rating, that is to say in case of: —a rating issued in the ~~Union~~ UK, the registered credit rating agency, —an endorsed rating, the third country credit rating agency that has issued the endorsed rating, —a rating issued by a certified credit rating agency, the certified entity, —a rating issued in a third country but not endorsed by a registered credit rating agency, the third country credit rating agency that issued the rating.	Mandatory.	ISO 17442	Public
5	Rating identifier	Unique identifier of the rating, which shall be maintained unchanged over time. The rating identifier shall be	Mandatory.		Technical

		unique in all reports to ~~ESMA~~ the FCA.			
…					
~~22~~	~~Instrument unique identifier~~[deleted]	~~A combination of instrument's attributes that uniquely identifies the instrument.~~	~~Optional.~~	~~ESMA standard~~	~~Supervision only~~
…					
36	Corporate issues classifications	Classification of covered bonds.	Mandatory. Applicable for 'Rating type' = 'C' and 'Rated object' = 'INT'.	BND —bonds CBR — CRR covered bonds as ~~referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council~~ defined in point 128A of Article 4(1) of Regulation (EU) No 575/2013~~and~~ that meet the eligibility requirements set out in Article 129 of that Regulation ~~(EU) No 575/2013~~ OCB — other types of covered bonds, for which the credit rating agency has used specific covered bonds methodologies, models or key rating assumptions for issuing the credit rating and	Public

				which are not included in point (b) of Article 5(2) of this Regulation OTH — other types of corporate issues which are not included in points (a), (b) and (c) of Article 5(2) of this Regulation.	
…					
49	Type of rating for ~~ERP~~ the public rating database	Identifies the credit ratings that fall under the scope of ~~ERP~~ the public rating database, based on the requirements set out in Article 11a of the Regulation (EC) No 1060/2009.	Mandatory.	NXI — the rating is not exclusively produced for and disclosed to investors for a fee EXI — the rating is exclusively produced for and disclosed to investors for a fee	Technical
50	Relevant for ~~CEREP~~ central repository statistics calculation	Indicates if the rating shall be used for ~~CEREP~~ central repository statistics calculation.	Mandatory.	Y — yes N — no	Technical

Table 2

Data about the individual credit rating actions

This table contains all the rating actions that are issued in relation to the credit ratings reported in Table 1. Where the press releases or the sovereign research reports are issued in multiple languages, multiple versions of the press releases or the sovereign research reports can be reported for the same rating action.

…					
4	Action communication date and time	The date and time of communication of the action to the rated entity. It shall be expressed as Coordinated Universal Time (UTC). Should be reported only for the ratings issued in the ~~Union~~ UK.	Mandatory. Applicable for 'Location of the rating issuance ' = 'I'.	ISO 8601 extended date time format: YYYY-MM-DD (HH:MM:SS)	Supervision only
5	Action decision date	Identifies the date when the action is decided. It shall be the date of preliminary approval (such as by the rating committee) of the action where this is then communicated to the rated entity before final approval. Should be reported only for the ratings issued in the ~~Union~~ UK.	Mandatory. Applicable for 'Location of the rating issuance ' = 'I'.	ISO 8601 date format: (YYYY-MM-DD)	Supervision only
6	Action type	Identifies the type of action carried out by the credit rating	Mandatory.	OR — in case of outstanding rating (only	Public

		agency with respect to a specific rating.		for first time reporting) PR — in case of preliminary rating NW — in case the rating is issued for the first time UP — in case the rating is upgraded DG — in case the rating is downgraded AF — in case the rating is affirmed DF — in case a rated issuer or instrument is assigned to or removed from a default status and the default is not linked with another rating action SP — in case the rating is suspended WD — in case the rating is withdrawn OT — in case the rating is placed to or removed from the	

				outlook/trend status WR — in case the rating is placed to or removed from the watch/review status	
7	Outlook/watch/default status	An outlook/watch/suspension/default status is assigned, kept or removed with respect to the rating~~,~~.	Mandatory. Applicable for 'Action type' = 'OT','WR', 'DF', 'SP' or 'OR'	P — status is placed M — status is maintained R — status is removed	Public
8	Outlook	Identifies the outlook/trend assigned to a rating by the CRA according to its relevant policy.	Mandatory. Applicable for 'Action type' = 'OT' and 'OR'	POS — in case of a positive outlook NEG — in case of a negative outlook EVO — in case of an evolving or developing outlook STA — in case of a stable outlook	Public
9	Watch/Review	Identifies the watch or review status assigned to a rating by the CRA according	Mandatory. Applicable for 'Action type' = 'WR' and 'OR'	POW — in case of a positive watch/review	Public

		to its relevant policy.		NEW — in case of a negative watch/review EVW — in case of an evolving or developing watch/review UNW — in case of a watch/review with uncertain direction	
10	Watch/Review determinant	Identifies the reason for the watch/review status of a rating. Should be reported only for the ratings issued in the ~~Union~~ UK.	Mandatory. Applicable for 'Action type' = 'WR' and 'OR' and 'Location of the rating issuance ' = 'I'.	1 — where the watch/review status is due to changes in methodologies, models or key rating assumptions 2 — where the watch/review status is due to economic, financial or credit reasons 3 — where the watch or review status is due to other reasons (e.g. departure of analysts, occurrence of conflicts of interests)	Public
…					

17	Location of the rating issuance	Specifies the location of the issuance of the credit ratings by: ratings issued in the ~~Union~~ UK by a registered credit rating agency, ratings issued by third country credit rating agency belonging to the same group of credit rating agencies and endorsed in the ~~Union~~ UK, ratings issued by certified credit rating agencies or ratings issued by third country credit rating agency belonging to the same group of credit rating agencies but not endorsed in the ~~Union~~ UK.	Mandatory.	I — issued in the ~~Union~~ UK E — endorsed T — issued in a third country by a certified CRA O — other (not endorsed) N — not available (only valid before 1.1.2011).	Public
18	Lead analyst identifier	Unique identifier of the lead analyst responsible for the rating. Should be reported only for the ratings issued in the ~~Union~~ UK.	Mandatory. Applicable for 'Location of the rating issuance ' = 'I'.	Valid 'Lead analyst internal identifier', previously reported in the 'Lead analysts list'.	Supervision only

…					
21	Press release	Press release	Specifies if the rating action was accompanied by a press release.	Mandatory. Applicable for 'Type of rating for ERP' = 'NXI'.	Y — yes N — no.
22		Press release language	Indicates the language in which the press release was issued.	Mandatory. Applicable for 'Press release' = 'Y'.	ISO 639-1
23		Press release file name	Indicates the file name under which the press release was reported.	Mandatory. Applicable for 'Press release' = 'Y'.	~~ESMA~~ FCA standard
24		Link to press release	Where the rating action is accompanied by the same press release as another rating action, it should state the 'Action identifier' for the action for which the common press release was firstly submitted.	Mandatory. Applicable for press releases that relate to more than one rating action.	Valid 'Action identifier'

25	Research report	Research report	Specifies if the rating action was accompanied by a research report. Applicable only for sovereign ratings reported under the sector: 'SV' or 'SM' or 'IF'	Mandatory. Applicable for 'Rating type' = 'S' and 'Sector' = 'SV' or 'SM' or 'IF'	Y — yes N — no
26		Research report language	Indicates the language under which the research report was issued.	Mandatory. Applicable for 'Sovereign Research Report' = 'Y'	ISO 639-1
27		Research report file name	Indicates the file name under which the research report was reported.	Mandatory. Applicable for 'Sovereign Research Report' = 'Y'	~~ESMA~~ FCA standard
28		Link to research report	Where the rating is accompanied by the same research report as another rating action, it should state the 'Action identifier' for the action for	Optional.	Valid 'Action identifier'

			which the common research report was firstly submitted.		

~~ANNEX II~~

Annex II is deleted in its entirety.

…

FCA 2019/XX

TECHNICAL STANDARDS (ALTERNATIVE INVESTMENT FUNDS MANAGEMENT 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 makes the modifications specified in Annex A to the Commission Delegated Regulation (EU) 694/2014 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers.

Commencement

G. This instrument comes into force on [29 March 2019 at 11p.m.].

Citation

H. This instrument may be cited as the Technical Standards (Alternative Investment Funds Management Directive) (EU Exit) Instrument 2019.

By order of the FCA Board

[*date*]

ANNEX A

COMMISSION DELEGATED REGULATION (EU) No 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers

…

Article 1

Types of AIFMs

1. An AIFM may be either or both of the following:
—an AIFM of open-ended AIF(s);
—an AIFM of closed-ended AIF(s).

…

5. For the purposes of ~~Article 61(3)~~ regulations 74 and 75 ~~(4)~~ of ~~Directive 2011/61/EU~~ the Alternative Investment Fund Managers Regulations 2013, an AIFM in so far as it manages AIFs whose shares or units are, at the request of any of its shareholders or unitholders, repurchased or redeemed prior to the commencement of its liquidation phase or wind-down, directly or indirectly, out of the assets of the AIFs after an initial period of at least 5 years during which redemption rights are not exercisable shall also be considered to be an AIFM of a closed-ended AIF.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

TECHNICAL STANDARDS (UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES) (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.) (Amendments 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 the EU Regulations listed in column (1) below.

(1)
Commission Regulation (EU) 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities.
Commission Implementing Regulation (EU) 2016/1212 of 25 July 2016 laying down implementing technical standards with regard to standard procedures and forms for submitting information in accordance with Directive 2009/65/EC of the European Parliament and of the Council.

Commencement

G. This instrument comes into force on [29 March 2019 at 11p.m.].

Citation

H. This instrument may be cited as the Technical Standards (Undertakings for Collective Investment in Transferable Securities) (EU Exit) Instrument 2019.

By order of the Board
[*date*]

FCA 2019/XX

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) (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)
Commission Implementing Regulation (EU) 1248/2012 of 19 December 2012 laying down implementing technical standards with regard to the format of applications for registration of trade repositories according to Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.	Annex A
Commission Delegated Regulation (EU) 150/2013 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 details of the application for registration as a trade repository.	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 data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data.	Annex C **[The contents of this Annex will be inserted in due course]**

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

COMMISSION IMPLEMENTING REGULATION (EU) No 1248/2012 of 19 December 2012 laying down implementing technical standards with regard to the format of applications for registration of 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 the application

1. An application for registration shall be provided in an instrument which stores information in a durable medium as defined in Article 2(1)(m) of Directive 2009/65/EC of the European Parliament and of the Council.

2. An application for registration shall be submitted in the format set out in the Annex.

3. A trade repository shall give a unique reference number to each document it submits and shall ensure that the information submitted clearly identifies which specific requirement of the delegated act with regard to regulatory technical standards specifying the details of the application for registration of trade repositories adopted pursuant to Article 56(3) of Regulation (EU) No 648/2012 it refers to, in which document that information is provided and also provides a reason if the information is not submitted as outlined in the document references section of the Annex.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex B

COMMISSION DELEGATED REGULATION (EU) No 150/2013 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 details of the application for registration as a trade repository

…

CHAPTER 1

REGISTRATION

SECTION 1

General

Article 1

Identification, legal status and class of derivatives

…

2. The application for registration as a trade repository shall in particular contain the following information:

(a) the corporate name of the applicant and legal address within the ~~Union~~ UK;

…

3. Upon request by ~~ESMA~~ the FCA, the applicants shall also send to it additional information during the examination of the application for registration where such information is needed for the assessment of the applicants' capacity to comply with the requirements set out in Articles 56 ~~to 59~~ and 58 of Regulation (EU) No 648/2012 and for ~~ESMA~~ the FCA to duly interpret and analyse the documentation to be submitted or already submitted.

…

Article 2

Policies and procedures

Where information regarding policies or procedures is to be provided, an applicant shall ensure that the policies or procedures contain or are accompanied by each of the following items:

…

(d) an indication of the procedure for reporting to ~~ESMA~~ the FCA any material breach of policies or procedures which may result in a breach of the conditions for initial registration.

…

Article 9

Senior management and members of the board

1. An application for registration as a trade repository shall contain the following information in respect of each member of the senior management and each member of the board:

(a) a copy of the curriculum vitae in order to enable the assessment on the adequate experience and knowledge to adequately perform their responsibilities;

(b) details regarding any criminal convictions in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement, notably via an official certificate if available within the ~~relevant Member State~~ UK;

…

2. Any information received by ~~ESMA~~ the FCA under paragraph 1 shall only be used for the purpose of registration and compliance at all times with the conditions for registration of the applicant trade repository.

…

SECTION 5

Financial resources for the performance of the trade repository

Article 12

Financial reports and business plans

1. An application for registration as a trade repository shall contain the following financial and business information about the applicant:

(a) a complete set of financial statements, prepared in conformity with international standards adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards;

(b) where the financial statements of the applicant are subject to statutory audit within the meaning given in Article 2(1) of the Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts (reading Article 2(1) as if, for "Union law", there were substituted "retained EU law" as defined in the European (Union) Withdrawal Act 2018), the financial reports shall include the audit report on the annual and consolidated financial statements;

…

Article 14

Confidentiality

1. An application for registration as a trade repository shall contain the internal policies and mechanisms preventing any use of information stored in the prospective trade repository:

(a) for illegitimate purposes;

(b) for disclosure of confidential information;

(c) not permitted for commercial use.

2. The latter shall include a description of the internal procedures on the staff permissions for using passwords to access the data, specifying the staff purpose, the scope of data being viewed and any restrictions on the use of data.

3. Applicants shall provide ~~ESMA~~ the FCA with information on the processes to keep a log identifying each staff member accessing the data, the time of access, the nature of data accessed and the purpose.

…

Article 24

Verification of the accuracy and completeness of the application

1. Any information submitted to the ~~ESMA~~ FCA during the registration process shall be accompanied by a letter signed by a member of the board of the trade repository and of the senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex C

[*Editor's note*: The contents of this Annex will be inserted in due course. The FCA intends to consult on this Annex when H M Treasury publishes relevant material relating to the treatment of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, known as the European Market Infrastructure Regulation).]

FCA 2019/XX

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) (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)
Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive	Annex A

2014/65/EU of the European Parliament and of the Council on markets in financial instruments.	
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
Commission Delegated Regulation (EU) 2017/568 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets.	Annex C
Commission Delegated Regulation (EU) 2017/569 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the suspension and removal of financial instruments from trading.	Annex D
Commission Delegated Regulation (EU) 2017/570 of 26 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 determination of a material market in terms of liquidity in relation to notifications of a temporary halt in trading.	Annex E
Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers.	Annex F
Commission Delegated Regulation (EU) 2017/573 of 6 June 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 on requirements to ensure fair and non-discriminatory co-location services and fee structures.	Annex G
Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks.	Annex H
Commission Delegated Regulation (EU) 2017/575 of 8 June 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 concerning the data to be published by execution venues on the quality of execution of transactions.	Annex I
Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council 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.	Annex J
Commission Delegated Regulation (EU) 2017/578 of 13 June 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 specifying the requirements on market making agreements and schemes.	Annex K

Commission Delegated Regulation (EU) 2017/584 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying organisational requirements of trading venues.	Annex L
Commission Delegated Regulation (EU) 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives.	Annex M
Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business.	Annex N
Commission Implementing Regulation (EU) 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 pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial Instruments.	Annex O
Commission Implementing Regulation (EU) 2017/1005 of 15 June 2017 laying down implementing technical standards with regard to the format and timing of the communications and the publication of the suspension and removal of financial instruments pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial Instruments.	Annex P
Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators.	Annex Q
Commission Implementing Regulation (EU) 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 and related notifications pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial Instruments.	Annex R
Commission Delegated Regulation (EU) 2017/1943 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms.	Annex S

Revocations

G. The FCA revokes the following EU Regulations.

(1)
Commission Delegated Regulation (EU) No 2017/586 regarding the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations.

Implementing Regulation (EU) No 2017/980 on standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities.
Implementing Regulation (EU) No 2017/981 on standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation.
Implementing Regulation (EU) No 2017/988 on standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State.
Delegated Regulation (EU) No 2017/1018 specifying information to be notified by investment firms, market operators and credit institutions.
Implementing Regulation (EU) No 2017/1111 on procedures and forms for submitting information on sanctions and measures.
Commission Implementing Regulation (EU) No 2017/1944 regarding standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm.
Commission Implementing Regulation (EU) No 2017/2382 regarding standard forms, templates and procedures for the transmission of information.

Commencement

H. This instrument comes into force on [29 March 2019 at 11.00p.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 A

COMMISSION IMPLEMENTING REGULATION (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments

…

Article -2

Application

This Regulation applies to operators of 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.
4. References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators' requirements which would give effect to that EU legislation if the United Kingdom were a Member State.

Article 1

Definitions

For the purposes of this Regulation, the following definitions apply:

1. 'relevant operator' means:
   (a) an investment firm operating a multilateral trading facility (MTF);
   (b) an investment firm operating an organised trading facility (OTF);

(c) a market operator operating an MTF;

(d) a market operator operating an OTF;

2. 'asset classes' means the categories of financial instruments as set out in Section C of Annex I to Directive 2014/65/EU.

Article 2

Information to be provided on MTFs and OTFs

1. A relevant operator shall provide ~~its~~ the competent authority with the following information:

(a) the asset classes of financial instruments traded on the MTF or OTF;

(b) the rules and procedures for making financial instruments available for trading, together with details of the publication arrangements used to make that information available to the public;

(c) the rules and procedures to ensure the objective and non-discriminatory access to the trading facilities together with details on the publication arrangements used to make that information available to the public;

(d) the measures and procedures to ensure that sufficient information is publicly available to users of the MTF or OTF to form an investment judgement, taking into account both the nature of the users and the classes of financial instruments traded;

(e) the systems, procedures and arrangements to ensure compliance with the conditions laid down in UK law corresponding to Articles 48 and 49 of Directive 2014/65/EU;

(f) a detailed description of any arrangements to facilitate the provision of liquidity to the system such as market making schemes;

(g) the arrangements and procedures to monitor transactions as required by UK law corresponding to Article 31 of Directive 2014/65/EU;

(h) the rules and procedures for suspension and removal of financial instruments from trading as required by UK law corresponding to Article 32 of Directive 2014/65/EU;

(i) the arrangements to comply with pre-trade and post-trade transparency obligations that apply to the financial instruments traded and the trading functionality of the MTF or OTF; that information shall be accompanied by information on any intention to use waivers under Articles 4 and 9 of Regulation (EU) No 600/2014 and deferred publication under Articles 7 and 11 of that Regulation;

(j) the arrangements for the efficient settlement of the transactions effected under its systems and for ensuring that users are aware of their respective responsibilities in this regard;

(k) a list of the members or participants of the MTF or OTF which it operates.

2. A relevant operator shall provide ~~its~~ the competent authority with a detailed

description of the functioning of its trading system specifying:

(a) whether the system represents a voice, electronic or hybrid functionality;

(b) in the case of an electronic or hybrid trading system, the nature of any algorithm or program used to determine the matching and execution of trading interests;

(c) in the case of a voice trading system, the rules and protocols used to determine the matching and execution of trading interests;

(d) a description explaining how the trading system satisfies each element of the definition of an MTF or an OTF.

3. A relevant operator shall provide ~~its~~ the competent authority with information on how and in what instances the operation of the MTF or OTF will give rise to any potential conflicts between the interests of the MTF or OTF, its operator or its owners and the sound functioning of the MTF or OTF. The relevant operator shall specify the procedures and arrangements to comply with the requirements set out in UK law corresponding to Article 18(4) of Directive 2014/65/EU.

4. A relevant operator shall provide its competent authority with the following information on its outsourcing arrangements that relate to the management, operation or oversight of the MTF or OTF:

(a) the organisational measures to identify the risks in relation to those outsourced activities and to monitor the outsourced activities;

(b) the contractual agreement between the relevant operator and the entity providing the outsourced service in which the nature, scope, objectives, and service level agreements are outlined.

5. A relevant operator shall provide its competent authority with information on any links to or participation by a regulated market, MTF, OTF or systematic internaliser owned by the same relevant operator.

Article 3

Additional information to be provided on MTFs

In addition to the information set out in Article 2, a relevant operator shall provide its competent authority with the following information relating to the requirements set out in UK law corresponding to Article 19(3) of Directive 2014/65/EU:

(a) a description of the arrangements and the systems implemented to manage the risks to which the operator is exposed, to identify all significant risks to its operation and to put in place effective measures to mitigate those risks;

(b) a description of the arrangements implemented to facilitate the efficient and timely finalisation of the transactions executed under the operator's systems;

(c) having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which the operator is exposed, a description of the financial resources considered sufficient to facilitate its orderly functioning.

…

Article 6

Additional information to be provided on OTFs

In addition to Article 2, a relevant operator operating an OTF shall provide its competent authority with the following information:

(a) information on whether another investment firm is engaged to carry out market making on its OTF on an independent basis in accordance with UK law corresponding to Article 20(5) of Directive 2014/65/EU;

(b) a detailed description of how and under what circumstances it executes orders on the OTF on a discretionary basis in accordance with UK law corresponding to Article 20(6) of Directive 2014/65/EU;

(c) the rules, procedures and protocols which allow the operator to route the trading interest of a member or participant outside the facilities of the OTF;

(d) a description of the use of matched principal trading which complies with UK law corresponding to Article 20(7) of Directive 2014/65/EU;

(e) the rules and procedures to ensure compliance with UK law corresponding to Articles 24, 25, 27 and 28 of Directive 2014/65/EU for transactions concluded on the OTF where those rules are applicable to the relevant operator in relation to an OTF user.

…

Article 8

Material changes

1. A relevant operator shall provide ~~its~~ the competent authority with a description of any material changes to the information previously submitted in accordance with this Regulation which would be relevant to an assessment of that operator's compliance with Directive 2014/65/EU and Regulation (EU) No 600/2014.

2. Where a relevant operator sends new information to ~~its~~ the competent authority to correct, update or clarify information previously submitted in accordance with this Regulation, it does not need to include information which is of a purely minor or technical nature that would not be relevant to an assessment of its compliance with UK law corresponding to Directive 2014/65/EU or Regulation (EU) No 600/2014.

3. An investment firm or market operator authorised to operate an MTF under Directive 2004/39/EC which is operating at the date of application of this Regulation shall, in addition to paragraph 1 of this Article, provide its competent authority with a description of any material changes to the information previously submitted to the competent authority in respect of that MTF under that Directive.

Article 9

Format for providing the description

…

3. A relevant operator shall provide the information required by this Regulation to ~~its~~the competent authority in an electronic format.

…

~~Article 10~~

~~**Notification to ESMA**~~

~~A competent authority shall notify ESMA of the authorisation of a relevant operator as an MTF or an OTF in electronic format and in the format set out in Table 2 of the Annex.~~

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

ANNEX

Formats

…

~~Table 2~~

~~**Information to be sent to ESMA**~~

~~Notifying competent authority~~	~~Name of the relevant operator~~	~~Name of the MTF or OTF operated~~	~~MIC code~~	~~Services provided by MTF or OTF~~

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.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex C

COMMISSION DELEGATED REGULATION (EU) 2017/568 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets

…

Article -2

Application

This Regulation applies to a 'UK RIE' as defined in the Glossary of the Handbook of Rules and Guidance published by the Financial Conduct Authority immediately after Exit Day.

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. References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators' requirements which would give effect to that EU legislation if the United Kingdom were a Member State.
4. Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

…

Article 2

Transferable securities — fair, orderly and efficient trading

1. When assessing whether a transferable security is capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the information required to be prepared under UK law corresponding to Directive 2003/71/EC or information that is otherwise publicly available such as:
   (a) historical financial information;

(b) information about the issuer;

(c) information providing a business overview.

2. In addition to paragraph 1, when assessing whether a share is capable of being traded in a fair, orderly and efficient manner a regulated market shall take into account the distribution of those shares to the public.

3. When assessing whether a transferable security referred to in ~~Article 4(1)(44) of Directive 2014/65/EU~~ Article 2(1)(24) of Regulation 600/2014/EU is capable of being traded in a fair, orderly and efficient manner, the regulated market shall take into account, depending on the nature of the security being admitted, whether the following criteria are satisfied:

(a) the terms of the security are clear and unambiguous and allow for a correlation between the price of the security and the price or other value measure of the underlying;

(b) the price or other value measure of the underlying is reliable and publicly available;

(c) there is sufficient information publicly available of a kind needed to value the security;

(d) the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measures of the underlying;

(e) where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying as well as adequate arrangements to obtain relevant information about it.

Article 3

Transferable securities — official listing

A transferable security that is officially listed in accordance with UK law corresponding to Directive 2001/34/EC, and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.

Article 4

Units and shares in collective investment undertakings

1. A regulated market shall, when admitting units or shares of a collective investment undertaking to trading, ensure that those units or shares are permitted to be marketed in ~~the Member State of the regulated market~~ the United Kingdom.

2. When assessing whether units or shares in an open-ended collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the following:

(a) the distribution of those units or shares to the public;

(b) whether there are appropriate market-making arrangements, or whether the management company of the scheme provides appropriate alternative arrangements for investors to redeem the units or shares;

(c) in the case of exchange-traded funds, whether in addition to market making arrangements appropriate alternative arrangements for investors to redeem units or shares are provided, at least in cases where the value of the units or shares significantly varies from the net asset value;

(d) whether the value of the units or shares is made sufficiently transparent to investors by means of the periodic publication of the net asset value.

3. When assessing whether units or shares in a closed-end collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the following:

(a) the distribution of those units or shares to the public;

(b) whether the value of the units or shares is made sufficiently transparent to investors, either by publication of information on the fund's investment strategy or by the periodic publication of the net asset value.

Article 5

Derivatives

1. When assessing whether a financial instrument referred to in ~~points 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 are capable of being traded in a fair, orderly and efficient manner, a regulated market shall verify that the following conditions are satisfied:

(a) the terms of the contract establishing the financial instrument are clear and unambiguous, and enable a correlation between the price of the financial instrument and the price or other value measure of the underlying;

(b) the price or other value measure of the underlying is reliable and publicly available;

(c) sufficient information of a kind needed to value the derivative is publicly available;

(d) the arrangements for determining the settlement price of the contract is such that the price properly reflects the price or other value measures of the underlying;

(e) where the settlement of the derivative requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate arrangements to enable market participants to obtain relevant information about that underlying as well as adequate settlement and delivery procedures for the underlying.

2. Point (b) of paragraph 1 of this Article shall not apply to financial instruments referred to in ~~points 5, 6, 7 and 10 of Section C of Annex I to Directive 2014/65/EU~~ paragraphs

5, 6, 7 and 10 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001, where the following conditions are fulfilled:

(a) the contract establishing that instrument is likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying, where the price or value measure is not otherwise publicly available;

(b) the regulated market ensures that appropriate supervisory arrangements are in place to monitor trading and settlement in such financial instruments;

(c) the regulated market ensures that settlement and delivery, whether physical delivery or by cash settlement, can be effected in accordance with the contract terms and conditions of those financial instruments.

Article 6

Emission allowances

Any emission allowance referred to in ~~point 11 of Section C of Annex I to Directive 2014/65/EU~~ paragraph 11 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 recognised for compliance with the requirements of Directive 2003/87/EC, is eligible for admission to trading on a regulated market with no further requirements.

Article 7

Verification of issuer obligations

1. Regulated markets shall adopt and publish on their website procedures for verifying compliance by an issuer of a transferable security with its obligations under ~~Union~~ UK law.

2. Regulated markets shall ensure that compliance with the obligations referred to in paragraph 1 is checked effectively in accordance with the nature of the obligation under review taking into account the supervisory tasks performed by ~~relevant competent authorities~~ the competent authority.

…

Article 8

Facilitation of access to information

Regulated markets shall have arrangements which are easily accessible, free of charge and published on their website to facilitate access of their members or participants to information which has been made public in accordance with ~~Union~~ UK law.

Article 9

Entry into force and application

…

It shall apply from the date that appears in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex D

COMMISSION DELEGATED REGULATION (EU) 2017/569 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the suspension and removal of financial instruments from trading

…

Article -2

Application

This Regulation applies to operators of 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 it 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.

(4) A reference to the 'Regulated Activities Order' is to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

Article 1

Connection between a derivative related or referenced to a financial instrument suspended or removed from trading and the original financial instrument

A market operator of a regulated market and an investment firm or market operator operating a multilateral trading facility (MTF) or an organised trading facility (OTF shall suspend or remove a derivative referred to in ~~points~~ paragraphs 4 to 10 of ~~Section C of Annex I to Directive 2014/65/EU~~ Part 1 of Schedule 2 to the Regulated Activities Order from trading where that derivative is related or referenced to only one financial instrument, and that financial instrument has been suspended or removed from trading.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex E

COMMISSION DELEGATED REGULATION (EU) 2017/570 of 26 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 determination of a material market in terms of liquidity in relation to notifications of a temporary halt in trading

…

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) References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators' requirements which would give effect to that EU legislation if the United Kingdom were a Member State.

(4) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

Article 1

Material market in terms of liquidity

For the purposes of the second subparagraph of UK law corresponding to Article 48(5) of Directive 2014/65/EU, the material market in terms of liquidity shall be considered to be:

(a) in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments, the trading venue which is the most relevant market in terms of liquidity for the instrument as set out in Article 4 of Commission Delegated Regulation (EU) 2017/587;

(b) in respect of financial instruments other than those set out in point (a) which are admitted to trading on a regulated market, the regulated market where the financial instrument was first admitted to trading;

(c) in respect of financial instruments other than those set out in point (a) which are not admitted to trading on a regulated market, the trading venue where the financial instrument was first traded.

Article 2

Entry into force and application

…

This Regulation shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex F

COMMISSION DELEGATED REGULATION (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers

…

Article -2

Application

This Regulation applies to persons.

Article -1

Interpretation

(1) Where a term is defined in Directive 2014/65/EU that term shall apply for the purposes of this Regulation except where (2) or (3) applies;

(2) Subject to (3), where a term is defined in the Data Reporting Services Regulations 2017, that definition shall apply for the purposes of this Regulation**.**

(3) Where a term it 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.

CHAPTER I

AUTHORISATION

(Article 61(2) of Directive 2014/65/EU)

Article 1

Information to competent authorities

1. An applicant seeking authorisation to provide data reporting services shall submit to the competent authority the information set out in Articles 2, 3 and 4 and the information regarding all the organisational requirements set out in Chapters II and III.

2. A data reporting services provider shall promptly inform the competent authority ~~of its home Member State~~ of any material change to the information provided at the time of the authorisation and thereafter.

Article 2

Information on the organisation

1. An applicant seeking authorisation to provide data reporting services shall include in its application for authorisation a programme of operations referred to in ~~Article 61(2) of Directive 2014/65/EU~~ regulation 7 of the Data Reporting Services Regulations 2017. The programme of operations shall include the following information:

   (a) information on the organisational structure of the applicant, including an organisational chart and a description of the human, technical and legal resources allocated to its business activities;

   (b) information on the compliance policies and procedures of the data reporting services provider, including:

      (i) the name of the person or persons responsible for the approval and maintenance of those policies;

      (ii) the arrangements to monitor and enforce the compliance policies and procedures;

      (iii) the measures to be undertaken in the event of a breach which may result in a failure to meet the conditions for initial authorisation;

      (iv) a description of the procedure for reporting to the competent authority any breach which may result in a failure to meet the conditions for initial authorisation;

   (c) a list of all outsourced functions and resources allocated to the control of the outsourced functions;

2. A data reporting services provider offering services other than data reporting services shall describe those services in the organisational chart.

…

Article 4

Information on the members of the management body

1. An applicant seeking authorisation to provide data reporting services shall include in its application for authorisation the following information in respect of each member of the management body:

   (a) name, date and place of birth, personal national identification number or an equivalent thereof, address and contact details;

   (b) the position for which the person is or will be appointed;

(c) a curriculum vitae evidencing sufficient experience and knowledge to adequately perform the responsibilities;

(d) criminal records, notably through an official certificate, or, where such a document is not available ~~in the relevant Member State~~, a self-declaration of good repute and the authorisation to the competent authority to inquire whether the member has been convicted of any criminal offence in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement;

(e) a self-declaration of good repute and the authorisation to the competent authority to inquire whether the member:

(i) has been subject to an adverse decision in any proceedings of a disciplinary nature brought by a regulatory authority or government body or is the subject of any such proceedings which are not concluded;

(ii) has been subject to an adverse judicial finding in civil proceedings before a court in connection with the provision of financial or data services, or for misconduct or fraud in the management of a business;

(iii) has been part of the management body of an undertaking which was subject to an adverse decision or penalty by a regulatory authority or whose registration or authorisation was withdrawn by a regulatory authority;

(iv) has been refused the right to carry on activities which require registration or authorisation by a regulatory authority;

(v) has been part of the management body of an undertaking which has gone into insolvency or liquidation while the person held such position or within a year after which the person ceased to hold such position;

(vi) has been otherwise fined, suspended, disqualified, or been subject to any other sanction in relation to fraud, embezzlement or in connection with the provision of financial or data services, by a professional body;

(vii) has been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of misconduct or malpractice;

(f) An indication of the minimum time that is to be devoted to the performance of the person's functions within the data reporting services provider;

(g) a declaration of any potential conflicts of interest that may exist or arise in performing the duties and how those conflicts are managed.

CHAPTER II

ORGANISATIONAL REQUIREMENTS

(Article 64(3), (4) and (5), Article 65(4), (5) and (6), and Article 66(2), (3) and (4) of Directive 2014/65/EU)

…

Article 6

Organisational requirements regarding outsourcing

…

6. Where a data reporting services provider outsources any critical function, it shall provide the competent authority ~~of its home Member State~~ with:

   (a) the identification of the third party service provider;

   (b) the organisational measures and policies with respect to outsourcing and the risks posed by it as specified in paragraph 4;

   (c) internal or external reports on the outsourced activities.

For the purpose of the first sub paragraph 6, a function shall be regarded as critical if a defect or failure in its performance would materially impair the continuing compliance of the data reporting services provider with the conditions and obligations of its authorisation or its other obligations under ~~Directive 2014/65/EU~~ the Data Reporting Services Regulation 2017.

Article 7

Business continuity and back-up facilities

1. A data reporting services provider shall use systems and facilities that are appropriate and robust enough to ensure continuity and regularity in the performance of the services provided referred to in ~~Directive 2014/65/EU~~ the Data Reporting Services Regulation 2017.

…

5. A data reporting services provider shall publish on its website and promptly inform the competent authority ~~of its home Member State~~ and its clients of any service interruptions or connection disruptions as well as the time estimated to resume a regular service.

~~6. In the case of ARMs, the notifications referred to in paragraph 5 shall also be made to any competent authority to whom the ARM submits transaction reports.~~

Article 8

Testing and capacity

…

3. A data reporting services provider shall promptly notify the competent authority ~~of its home Member State~~ of any planned significant changes to the IT system prior to their implementation.

~~4. In the case of ARMs, the notifications referred to in paragraph 3 shall also be made to any competent authority to whom the ARM submits transaction reports.~~

…

Article 9

Security

1. A data reporting services provider shall set up and maintain procedures and arrangements for physical and electronic security designed to:
   (a) protect its IT systems from misuse or unauthorised access;
   (b) minimise the risks of attacks against the information systems as defined in Article 2(a) of Directive 2013/40/EU of the European Parliament and of the Council;
   (c) prevent unauthorised disclosure of confidential information;
   (d) ensure the security and integrity of the data.
2. Where an investment firm ('reporting firm') uses a third party ('submitting firm') to submit information to an ARM on its behalf, an ARM shall have procedures and arrangements in place to ensure that the submitting firm does not have access to any other information about or submitted by the reporting firm to the ARM which may have been sent by the reporting firm directly to the ARM or via another submitting firm.
3. A data reporting services provider shall set up and maintain measures and arrangements to promptly identify and manage the risks identified in paragraph 1.
4. In respect of breaches in the physical and electronic security measures referred to in paragraphs 1, 2 and 3, a data reporting services provider shall promptly notify:
   (a) the competent authority ~~of its home Member State~~ and provide an incident report, indicating the nature of the incident, the measures adopted to cope with the incident and the initiatives taken to prevent similar incidents;
   (b) its clients that have been affected by the security breach.

~~5. In the case of ARMs, the notification referred to in paragraph 4(a) shall also be made~~

~~to any other competent authorities to whom the ARM submits transaction reports.~~

Article 10

Management of incomplete or potentially erroneous information by APAs and CTPs

…

Article 11

Management of incomplete or potentially erroneous information by ARMs

…

4. An ARM shall perform periodic reconciliations at the request of the competent authority ~~of its home Member State or the competent authority to whom the ARM submits transaction reports~~ between the information that the ARM receives from its client or generates on the client's behalf for transaction reporting purposes and data samples of the information provided by the competent authority.

…

8. An ARM shall promptly notify the client of the details of the error or omission and provide an updated transaction report to the client. An ARM shall also promptly notify the competent authority ~~of its home Member State and the competent authority to whom the ARM reported the transaction report~~ about the error or omission.

Article 12

Connectivity of ARMs

1. An ARM shall have in place policies, arrangements and technical capabilities to comply with the technical specification for the submission of transaction reports required by the competent authority ~~of its home Member State and by other competent authorities to whom the ARM sends transaction reports~~.

…

CHAPTER III

PUBLICATION ARRANGEMENTS

(Article 64(1) and (2) and Article 65(1) of Directive 2014/65/EU)

Article 14

Machine readability

1. APAs and CTPs shall publish the information which has to be made public in accordance with ~~Articles 64(1) and 65(1) of Directive 2014/65/EU~~ regulations 14(1) and 15(1) of the Data Reporting Services Regulations 2017 in a machine readable way.

~~2. CTPs shall publish the information which has to be made in accordance with Article 65(2) of Directive 2014/65/EU in a machine readable way~~.

…

Article 20

Details to be published by the CTP

A CTP shall make public:

(a) for transactions executed in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments, the details of a transaction specified in Table 2 of Annex I to Delegated Regulation (EU) 2017/587 and use the appropriate flags listed in Table 3 of Annex I to Delegated Regulation (EU) 2017/587;

~~(b) for transactions executed in respect of bonds, structured finance products, emission allowances and derivatives the details of a transaction specified in Table 1 of Annex II to Delegated Regulation (EU) 2017/583 and use the appropriate flags listed in Table 2 of Annex II to Delegated Regulation (EU) 2017/583~~.

Article 21

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in *the Official Journal of the European Union*.

It shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU. ~~However, Articles 14(2) and 20(b) shall apply from the first day of the ninth month following the date of application of Directive 2014/65/EU.~~

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex G

COMMISSION DELEGATED REGULATION (EU) 2017/573 of 6 June 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 on requirements to ensure fair and non-discriminatory co-location services and fee structures

…

Article -2

Application

This Regulation applies to operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014/EU, 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) References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators' requirements which would give effect to that EU legislation if the United Kingdom were a Member State.

(4) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

…

Article 3

Fair and non-discriminatory fees

1. Trading venues shall charge the same fee and provide the same conditions to all users of the same type of services based on objective criteria. Trading venues shall only

establish different fee structures for the same type of services where those fee structures are based on non-discriminatory, measurable and objective criteria relating to:

(a) the total volume traded, the numbers of trades or cumulated trading fees;

(b) the services or packages of services provided by the trading venue;

(c) the scope or field of use demanded;

(d) the provision of liquidity in accordance with UK law corresponding to Article 48(2) of Directive 2014/65/EU or in a capacity of being a market maker as defined in Article 4~~(1)(7) of Directive 2014/65/EU~~ 2(1)(6) of Regulation 600/2014/EU;

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex H

COMMISSION DELEGATED REGULATION (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks

…

Article -2

Application

This Regulation applies to:

(1) Operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018]; and

(2) members or participants of UK trading venues.

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) or (3) apply.

(2) Where a term it 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) 'Algorithmic trading' is defined in regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.

(4) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

Article 1

Reference time

Operators of trading venues and their members or participants shall synchronise the business clocks they use to record the date and time of any reportable event with the Coordinated Universal Time (UTC) issued and maintained by the timing centres listed in the latest Bureau international des poids et mesures Annual Report on Time Activities. Operators of trading venues and their members or participants may also synchronise the business clocks they use

to record the date and time of any reportable event with UTC disseminated by a satellite system, provided that any offset from UTC is accounted for and removed from the timestamp.

Article 2

Level of accuracy for operators of trading venues

1. Operators of trading venues shall ensure that their business clocks adhere to the levels of accuracy specified in Table 1 of the Annex according to the gateway to gateway latency of each of their trading systems.

   Gateway to gateway latency shall be the time measured from the moment a message is received by an outer gateway of the trading venue's system, sent through the order submission protocol, processed by the matching engine, and then sent back until an acknowledgement is sent from the gateway.

2. By derogation from paragraph 1, operators of trading venues that operate a voice trading system, request for quote system where the response requires human intervention or does not allow algorithmic trading, or a system that formalises negotiated transactions in accordance with Article 4(1)(b) of Regulation (EU) No 600/2014 of the European Parliament and of the Council shall ensure that their business clocks do not diverge by more than one second from UTC referred to in Article 1 of this Regulation. The operator of the trading venue shall ensure that times are recorded to at least a one second granularity.

3. Operators of trading venues that operate multiple types of trading systems shall ensure that each system adheres to the level of accuracy applicable to that system in accordance with paragraphs 1 and 2.

Article 3

Level of accuracy for members or participants of a trading venue

1. Members or participants of trading venues shall ensure that their business clocks used to record the time of reportable events adhere to the level of accuracy specified in Table 2 of the Annex.

2. Members or participants of trading venues that engage in multiple types of trading activities shall ensure that the systems that they use to record reportable events adhere to the level of accuracy applicable to each of these trading activities in accordance with the requirements set out in Table 2 of the Annex.

Article 4

Compliance with the maximum divergence requirements

Operators of trading venues and their members or participants shall establish a system of traceability to UTC. They shall be able to demonstrate traceability to UTC by documenting the system design, functioning and specifications. They shall be able to identify the exact point at which a timestamp is applied and demonstrate that the point within the system where the timestamp is applied remains consistent. They shall conduct a review of the compliance of the traceability system with this Regulation at least once a year.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex I

COMMISSION DELEGATED REGULATION (EU) 2017/575 of 8 June 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 concerning the data to be published by execution venues on the quality of execution of transactions

…

Article -2

Application

This Regulation applies to a MiFID investment firm and a UK RIE.

Article -1

Interpretation

1. Where a term is defined in article 4 of Directive 2014/65/EU, the same definition applies for this Regulation except that:

   (a) where it is defined in article 2 Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], that definition applies; and

   (b) 'limit order' is defined as 'an order to buy or sell a financial instrument, as specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities Order 2001) [SI 2001/544], at its specified price limit or better and for a specified size'.

2. Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this Regulation; and

3. 'MiFID investment firm' and 'UK RIE' are defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority immediately after Exit Day.

Article 1

Subject matter

Subject to the 'Application' and 'Interpretation' provisions above, ~~This~~ this Regulation lays down the specific content, the format and the periodicity of the data to be published by

execution venues relating to the quality of execution of transactions. It shall apply to trading venues, systematic internalisers, market makers, or other liquidity providers.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex J

COMMISSION DELEGATED REGULATION (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council 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

…

Article -2

Application

This Regulation applies to (a) a MiFID investment firm and a UK RIE.

Article -1

Interpretation

(1) Where a term is defined in article 4 of Directive 2014/65/EU, the same definition applies for this Regulation except where it is defined in article 2 Regulation 600/2014/EU, as amended by [Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], in which case that definition applies;

(2) Article 2(1)(62) and (63) of Regulation 600/2014/EU apply for the purposes of this Regulation;

(3) References to tick size bands are to those in Commission Delegated Regulation 2017/588, as amended at Exit Day; and

(4) "MiFID investment firm" and "UK RIE" are defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority, immediately after Exit Day.

…

Article 3

Information on the top five execution venues and quality of execution obtained

…

3. Investment firms shall publish for each class of financial instruments, a summary of the analysis and conclusions they draw from their detailed monitoring of the quality of

execution obtained on the execution venues where they executed all client orders in the previous year. The information shall include:

(a) an explanation of the relative importance the firm gave to the execution factors of price, costs, speed, likelihood of execution or any other consideration including qualitative factors when assessing the quality of execution;

(b) a description of any close links, conflicts of interests, and common ownerships with respect to any execution venues used to execute orders;

(c) a description of any specific arrangements with any execution venues regarding payments made or received, discounts, rebates or non-monetary benefits received;

(d) an explanation of the factors that led to a change in the list of execution venues listed in the firm's execution policy, if such a change occurred;

(e) an explanation of how order execution differs according to client categorisation, where the firm treats categories of clients differently and where it may affect the order execution arrangements;

(f) an explanation of whether other criteria were given precedence over immediate price and cost when executing retail client orders and how these other criteria were instrumental in delivering the best possible result in terms of the total consideration to the client;

(g) an explanation of how the investment firm has used any data or tools relating to the quality of execution, including any data published under Delegated Regulation (EU) 2017/575;

(h) where applicable, an explanation of how the investment firm has used output of a consolidated tape provider authorised in accordance with the Data Reporting Services Regulations 2017 ~~established under Article 65 of Directive 2014/65/EU~~.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex K

COMMISSION DELEGATED REGULATION (EU) 2017/578 of 13 June 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 specifying the requirements on market making agreements and schemes (Text with EEA relevance)

Article -2

Application

This Regulation applies to operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014/EU, 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) References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators' requirements which would give effect to that EU legislation if the United Kingdom were a Member State.

(4) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

…

Article 2

Content of market making agreements

1. The content of a binding written agreement referred to in UK law corresponding to Article 17(3)(b) and Article 48(2) of Directive 2014/65/EU shall include at least:

   (a) the financial instrument or instruments covered by the agreement;

   (b) the minimum obligations to be met by the investment firm in terms of presence, size and spread that shall require at least posting firm, simultaneous two-way quotes of comparable size and competitive prices in at least one

financial instrument on the trading venue for at least 50% of daily trading hours of during which continuous trading takes place excluding opening and closing auctions and calculated for each trading day;

(c) where appropriate, the terms of the applicable market making scheme;

(d) the obligations of the investment firm in relation to the resumption of trading after volatility interruptions;

(e) the surveillance, compliance and audit obligations of the investment firm enabling it to monitor its market making activity;

(f) the obligation to flag firm quotes submitted to the trading venue under the market making agreement in order to distinguish those quotes from other order flows;

(g) the obligation to maintain records of firm quotes and transactions relating to the market making activities of the investment firm, which are clearly distinguished from other trading activities and to make those records available to the trading venue and the competent authority upon request.

2. Trading venues shall continuously monitor the effective compliance of the relevant investment firms with the market making agreements.

Article 3

Exceptional circumstances

The obligation for investment firms to provide liquidity on a regular and predictable basis laid down in UK law corresponding to Article 17(3)(a) of Directive 2014/65/EU shall not apply in any of the following exceptional circumstances:

(a) a situation of extreme volatility triggering volatility mechanisms for the majority of financial instruments or underlyings of financial instruments traded on a trading segment within the trading venue in relation to which the obligation to sign a market making agreement applies;

(b) war, industrial action, civil unrest or cyber sabotage;

(c) disorderly trading conditions where the maintenance of fair, orderly and transparent execution of trades is compromised, and evidence of any of the following is provided:

(i) the performance of the trading venue's system being significantly affected by delays and interruptions;

(ii) multiple erroneous orders or transactions;

(iii) the capacity of a trading venue to provide services becoming insufficient;

(d) where the investment firm's ability to maintain prudent risk management practices is prevented by any of the following:

(i) technological issues, including problems with a data feed or other system that is essential to carry out a market making strategy;

(ii) risk management issues in relation to regulatory capital, margining and access to clearing,

(iii) the inability to hedge a position due to a short selling ban;

(e) for non-equity instruments, during the suspension period referred to in Article 9(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council.

…

Article 5

Obligation for trading venues to have market making schemes in place

1. Trading venues shall not be required to have market making scheme as referred to in the UK law corresponding to Article 48(2)(b) of Directive 2014/65/EU in place except for any of the following classes of financial instruments traded through a continuous auction order book trading system:

   (a) shares and exchange traded funds for which there is a liquid market as defined in accordance with Article 2(1)(17)of Regulation (EU) No 600/2014 and as specified in Commission Delegated Regulation (EU) 2017/567;

   (b) options and futures directly related to the financial instruments set out in point (a);

   (c) equity index futures and equity index options for which there is a liquid market as specified in accordance with point (c) of Article 9(1) and point (c) of Article 11(1) of Regulation (EU) No 600/2014 and Commission Delegated Regulation (EU) 2017/583.

2. For the purposes of paragraph 1, a continuous auction order book trading system means a system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with buy orders on the basis of the best available price on a continuous basis.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex L

COMMISSION DELEGATED REGULATION (EU) 2017/584 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying organisational requirements of trading venues

…

Article -2

Application

This Regulation applies to operators of UK trading venues, as defined by article 2(1)(16A) of Regulation 600/2014/EU, 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:
   (i) where it is defined in article 2 of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], in which case that definition shall apply for the purposes of this Regulation;
   (ii) in the case of 'algorithmic trading' and 'direct electronic access' or 'DEA' which are as defined in regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;
   (iii) in the case of the definition of 'senior management', where the definition in the Handbook of Rules and Guidance published by the Financial Conduct Authority immediately after Exit Day shall apply.
2. References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators' requirements which would give effect to that EU legislation if the United Kingdom were a Member State.
3. Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

CHAPTER I

GENERAL ORGANISATIONAL REQUIREMENTS FOR TRADING VENUES ENABLING OR ALLOWING ALGORITHMIC TRADING THROUGH THEIR SYSTEMS

Article 1

Subject matter and scope

(Article 48 of Directive 2014/65/EU)

1. This Regulation lays down detailed rules for the organisational requirements of the systems of the trading venues allowing or enabling algorithmic trading, in relation to their resilience and capacity, requirements on trading venues to ensure appropriate testing of algorithms and requirements in relation to the controls concerning DEA pursuant to the UK law corresponding to Article 48(12)(a),(b) and (g) of Directive 2014/65/EU.
2. For the purposes of this Regulation, it is considered that a trading venue allows or enables algorithmic trading where order submission and order matching is facilitated by electronic means.
3. For the purposes of this Regulation, any arrangements or systems that allow or enable algorithmic trading shall be considered 'algorithmic trading systems'.

Article 2

Self-assessments of compliance with Article 48 of Directive 2014/65/EU

(Article 48 of Directive 2014/65/EU)

1. Before the deployment of a trading system and at least once a year, trading venues shall carry out a self-assessment of their compliance with the UK law corresponding to Article 48 of Directive 2014/65/EU, taking into account the nature, scale and complexity of their business. The self-assessment shall include an analysis of all parameters set out in the Annex to this Regulation.
2. Trading venues shall keep a record of their self-assessment for at least five years.

…

Article 6

Outsourcing and procurement

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues outsourcing all or part of their operational functions in relation to the systems allowing or enabling algorithmic trading shall ensure that:

(a) the outsourcing agreement exclusively relates to operational functions and does not alter the responsibilities of the senior management and the management body;

(b) the relationship and obligations of the trading venue towards its members, competent authorities, or any third parties, such as clients of data feed services are not altered;

(c) they meet the requirements that they must comply with in order to be authorised in accordance with the UK law corresponding to Title III of Directive 2014/65/EU.

…

5. Trading venues shall report to the competent ~~authorities~~ authority their intention to outsource operational functions in the following cases:

(a) where the service provider provides the same service to other trading venues;

(b) where critical operational functions necessary for business continuation would be outsourced, in which case the trading venues shall request a prior authorisation from the competent authority.

6. For the purposes of point (b) in paragraph 5, critical operational functions shall include those functions necessary to comply with the obligations referred to in the UK law corresponding to Article 47(1)(b), (c) and (e) of Directive 2014/65/EU.

7. Trading venues shall inform the competent authority ~~authorities~~ of any outsourcing agreements not subject to prior authorisation requirement immediately after the signature of the agreement.

…

CHAPTER II

CAPACITY AND RESILIENCE OF TRADING VENUES

Article 21

Pre-determination of the conditions to provide direct electronic access

(Article 48(7) of Directive 2014/65/EU)

Trading venues permitting DEA through their systems shall set out and publish the rules and conditions pursuant to which their members may provide DEA to their own clients. Those rules and conditions shall at least cover the specific requirements set out in Article 22 of Commission Delegated Regulation (EU) 2017/589.

Article 22

Specific requirements for trading venues permitting sponsored access

(Article 48(7) of Directive 2014/65/EU)

1. Trading venues shall make the provision of sponsored access subject to their authorisation and shall require that firms having sponsored access are subject to at least the same controls as those referred to in Article 18(3)(b).
2. Trading venues shall ensure that sponsored access providers are at all times exclusively entitled to set or modify the parameters that apply to the controls referred to in paragraph 1 over the order flow of their sponsored access clients.
3. Trading venues shall be able to suspend or withdraw the provision of sponsored access to clients having infringed the UK law corresponding to Directive 2014/65/EU, Regulations of the European Parliament and of the Council (EU) No 600/2014 and (EU) No 596/2014 or the trading venue's internal rules.

Article 23

Security and limits to access

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues shall have in place procedures and arrangements for physical and electronic security designed to protect their systems from misuse or unauthorised access and to ensure the integrity of the data that is part of or passes through their systems, including arrangements that allow the prevention or minimisation of the risks of attacks against the information systems as defined in the UK law corresponding to Article 2(a) of Directive 2013/40/EU of the European Parliament and of the Council.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex M

COMMISSION DELEGATED REGULATION (EU) 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives

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Article -2

Application

This Regulation applies to:

(1) a person to whom a position limit imposed under regulation 16 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 may apply;

(2) a non-financial entity; and

(3) where applicable, the Financial Conduct Authority as competent authority.

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.

(4) A reference to the 'Regulated Activities Order' is to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

(5) A reference to a "CRD credit institution", "UK UCITS" and an "occupational pension scheme" is to the definition in the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority immediately after Exit Day.

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Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) 'non-financial entity' means a natural or legal person other than:

(a) an investment firm authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or in accordance with Directive 2014/65/EC,

(b) a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council or a CRD credit institution,

(c) an insurance undertaking authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or in accordance with Council Directive 73/239/EEC,

(d) an assurance undertaking authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or in accordance with Directive 2002/83/EC of the European Parliament and of the Council,

(e) a reinsurance undertaking authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or in accordance with Directive 2005/68/EC of the European Parliament and of the Council,

(f) a UCITS or UK UCITS and, where relevant, its management company, authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or in accordance with Directive 2009/65/EC of the European Parliament and of the Council,

(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 corresponding UK law, including an occupational pension scheme,

(h) an alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU of the European Parliament and of the Council or authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or registered as such pursuant to the Alternative Fund Managers Regulations 2013,

(i) a CCP authorised in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council or recognised as such by means of a recognition order under Part XVIII of the Financial Services and Markets Act 2000,

(j) a central securities depositary authorised in accordance with 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 Financial Services and Markets Act 2000.

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.

(2) 'spot month contract' means the commodity derivative contract in relation to a particular underlying commodity whose maturity is the next to expire in accordance with the rules set by the trading venue.

(3) ‘other months' contract’ means any commodity derivative contract that is not a spot month contract.

CHAPTER II

METHOD FOR CALCULATING THE SIZE OF THE NET POSITION OF A PERSON

Article 3

Aggregation and netting of positions in a commodity derivative

(Article 57(1) of Directive 2014/65/EU)

1. The net position of a person in a commodity derivative shall be the aggregation of its positions held in that commodity derivative traded on a trading venue, ~~in commodity derivatives considered the same commodity derivative to that commodity derivative in accordance with paragraph 1 of Article 5,~~ and in economically equivalent OTC contracts pursuant to Article 6.

…

~~Article 5~~

~~**Same commodity derivatives and significant volumes**~~

~~(Article 57(6) of Directive 2014/65/EU)~~

~~1. A commodity derivative traded on a trading venue shall be considered the same commodity derivative as a commodity derivative traded on another trading venue where the following conditions are met:~~

~~(a) both commodity derivatives have identical contractual specifications, terms and conditions, excluding post trade risk management arrangements;~~

~~(b) both commodity derivatives form a single fungible pool of open interest or, in the case of commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU, of securities in issue by which the positions held in a commodity derivative traded on one trading venue may be closed out against the positions held in the commodity derivative traded on the other trading venue.~~

~~2. A commodity derivative shall be considered to be traded in a significant volume on a trading venue when the trading in the commodity derivative on that trading venue over a consecutive three month period:~~

~~(a) exceeds an average daily open interest of 10,000 lots in the spot and other months' combined; or~~

~~(b) in the case of commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU, when the number of units traded multiplied by the price exceeds an average daily amount of 1 million EUR.~~

~~3. The trading venue where the largest volume of trading in the same commodity derivative takes place shall be the trading venue that over one year has:~~

~~(a) the largest average daily open interest; or~~

~~(b) in the case of commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU, the highest average daily amount.~~

Article 6

OTC contracts economically equivalent to commodity derivatives traded on trading venues

(Article 57(1) of Directive 2014/65/EU)

An OTC derivative shall be considered economically equivalent to a commodity derivative traded on a trading venue where it has identical contractual specifications, terms and conditions, excluding different lot size specifications, delivery dates diverging by less than one calendar day and different post trade risk management arrangements.

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Article 8

Application for the exemption from position limits

(Article 57(1) of Directive 2014/65/EU)

1. A non-financial entity holding a qualifying position in a commodity derivative shall apply for the exemption referred to in ~~the second subparagraph of paragraph 1 of Article 57 of Directive 2014/65/EU to the competent authority which sets the position limit for that commodity derivative~~ regulation 17 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.

2. The person referred to in paragraph 1 shall submit to the competent authority the following information which demonstrates how the position reduces risks directly relating to the non-financial entity's commercial activity:

   (a) a description of the nature and value of the non-financial entity's commercial activities in the commodity to which the commodity derivative for which an exemption is sought is relevant;

   (b) a description of the nature and value of the non-financial entity's activities in the trading of and positions held in the relevant commodity derivatives traded on trading venues and in their economically equivalent OTC contracts;

(c) a description of the nature and size of the exposures and risks in the commodity which the non-financial entity has or expects to have as a result of its commercial activities and which are or would be mitigated by the use of commodity derivatives;

(d) an explanation of how the non-financial entity's use of commodity derivatives directly reduces its exposure and risks in its commercial activities.

3. The competent authority shall approve or reject the application within 21 calendar days after it has received the application and shall notify the non-financial entity of its approval or rejection of the exemption.

4. The non-financial entity shall notify the competent authority if there is a significant change to the nature or value of the non-financial entity's commercial activities or its trading activities in commodity derivatives and the change is relevant to the information set out in point (b) of paragraph 2 and shall submit a new application for the exemption if it intends to continue to use it.

CHAPTER III

METHODOLOGY FOR THE COMPETENT ~~AUTHORITIES~~ AUTHORITY TO CALCULATE POSITION LIMITS

SECTION 1

Determination of baseline figures

Article 9

Methodology for determining the baseline figure for spot month limits

(Article 57(4) of Directive 2014/65/EU)

1. ~~Competent authorities~~ The competent authority shall determine a baseline figure for the spot month position limit in a commodity derivative by calculating 25% of the deliverable supply for that commodity derivative.

2. The baseline figure shall be specified in lots which shall be the unit of trading used by the trading venue on which the commodity derivative trades representing a standardised quantity of the underlying commodity

3. Where ~~a~~ the competent authority establishes different position limits for different times within the spot month period, those position limits shall decrease on an incremental basis towards the maturity of the commodity derivative and shall take into account the position management arrangements of the trading venue.

4. By way of derogation to paragraph 1, the competent ~~authorities~~ authority shall determine the baseline figure for the spot month position limit for any derivative contract with an underlying that qualifies as food intended for human consumption with a total combined open interest in spot and other months' contracts exceeding 50,000 lots over a consecutive three month period by calculating 20% of the deliverable supply in that commodity derivative.

Article 10

Deliverable supply

(Article 57(3) of Directive 2014/65/EU)

1. ~~Competent authorities~~ The competent authority shall calculate the deliverable supply for a commodity derivative by identifying the quantity of the underlying commodity that can be used to fulfil the delivery requirements of the commodity derivative.
2. ~~Competent authorities~~ The competent authority shall determine the deliverable supply for a commodity derivative referred to in paragraph 1 by reference to the average monthly amount of the underlying commodity available for delivery over the one year period immediately preceding the determination.
3. In order to identify the quantity of the underlying commodity meeting the conditions of paragraph 1, the competent ~~authorities~~ authority shall take into account the following criteria
   (a) the storage arrangements for the underlying commodity;
   (b) the factors that may affect the supply of the underlying commodity.

Article 11

Methodology for determining the baseline figure for other months' limits

(Article 57(4) of Directive 2014/65/EU)

1. ~~Competent authorities~~ The competent authority shall determine a baseline figure for the other months' position limit in a commodity derivative by calculating 25% of the open interest in that commodity derivative.
2. The baseline figure shall be specified in lots which shall be the unit of trading used by the trading venue on which the commodity derivative trades representing a standardised quantity of the underlying commodity.

Article 12

Open interest

(Article 57(3) of Directive 2014/65/EU)

~~Competent authorities~~ The competent authority shall calculate the open interest in a commodity derivative by aggregating the number of lots of that commodity derivative that are outstanding on trading venues at a point in time.

Article 13

Methodology for determining the baseline figure in respect of certain contracts

(Article 57(4) of Directive 2014/65/EU)

1. By way of derogation to Article 9, the competent ~~authorities~~ authority shall determine the baseline figure for the spot month position limits for cash settled spot month contracts which are under ~~C(10) of Annex I to Directive 2014/65/EU~~ paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order and which have no measurable deliverable supply of their underlying commodities by calculating 25% of the open interest in those commodity derivative contracts

2. By way of derogation to Articles 9 and 11, the competent ~~authorities~~ authority shall determine the baseline figure for the position limits for commodity derivatives defined under ~~Article 4(1)(44) of Directive 2014/65/EU~~ Article 2(1)(24) of Regulation 600/2014 by calculating 25% of the number of securities issued. The baseline figure shall be specified in number of securities.

3. By way of derogation to Articles 9 and 11, where a commodity derivative provides that the underlying is delivered constantly over a specified period of time, the baseline figures calculated pursuant to Articles 9 and 11 shall apply to related commodity derivatives for the same underlying to the extent that their delivery periods overlap. The baseline figure shall be specified in units of the underlying.

SECTION II

Factors relevant for the calculation of position limits

Article 14

Assessment of factors

(Article 57(3) of Directive 2014/65/EU)

~~Competent authorities~~ The competent authority shall set the spot month and other months' position limits for a commodity derivative by taking the baseline figure determined in accordance with Articles 9, 11 and 13 and adjusting it according to the potential impact of the factors referred to in Articles 16 to 20 on the integrity of the market for that derivative and for its underlying commodity to a limit:

(a) between 5% and 35%; or

(b) between 25% and 35%, for any derivative contract with an underlying that qualifies as food intended for human consumption with a total combined open interest in spot and other months' contracts exceeding 50,000 lots over a consecutive three month period.

Article 15

New and illiquid contracts

(Article 57(3)(g) of Directive 2014/65/EU)

1. By way of derogation to Article 14,

   (a) for commodity derivatives traded on a trading venue with a total combined open interest in spot and other months' contracts not exceeding 10,000 lots over a consecutive three month period, the competent ~~authorities~~ authority shall set the limit of positions held in those commodity derivatives at 2,500 lots;

   (b) for commodity derivatives traded on a trading venue with a total combined open interest in spot and other months' contracts in excess of 10,000 but not exceeding 20,000 lots over a consecutive three month period, the competent ~~authorities~~ authority shall set the spot and other months' position limit between 5% and 40%;

   (c) for commodity derivatives as defined in ~~Article 4(1)(44) of Directive 2014/65/EU~~ Article 2(1)(24) of Regulation 600/2014/EU with a total number of securities in issue not exceeding 10 million over a consecutive three month period, the competent authority shall set the limit of positions held in those commodity derivatives at 2.5 million securities;

   (d) for commodity derivatives as defined in ~~Article 4(1)(44) of Directive 2014/65/EU~~ Article 2(1)(24) of Regulation 600/2014/EU with a total number of securities in issue in excess of 10 million but not exceeding 20 million over a consecutive three month period, the competent authority shall set the spot and other months' position limit between 5% and 40%.

2. The trading venue shall notify the competent authority when the total open interest of any such commodity derivative reaches any of the amounts of lots or number of securities in issue mentioned in the previous paragraph over a consecutive three month period. ~~Competent authorities~~ The competent authority shall review the position limit upon receiving such notifications.

Article 16

The maturity of the commodity derivatives contracts

(Article 57(3)(a) of Directive 2014/65/EU)

1. For spot month position limits, if the commodity derivative has a short maturity, the competent ~~authorities~~ authority shall adjust the position limit downwards.

2. For other months' position limits, where the commodity derivative has a large number of separate expiries, the competent ~~authorities~~ authority shall adjust the position limit upwards.

Article 17

Deliverable supply in the underlying commodity

(Article 57(3)(b) of Directive 2014/65/EU)

Where the deliverable supply in the underlying commodity can be restricted or controlled or if the level of deliverable supply is low relative to the amount required for orderly settlement the competent ~~authorities~~ authority shall adjust the position limit downwards. ~~Competent authorities~~ The competent authority shall assess the extent to which this deliverable supply is used also as the deliverable supply for other commodity derivatives.

Article 18

The overall open interest

(Article 57(3)(c) of Directive 2014/65/EU)

1. Where there is a large volume of overall open interest, the competent ~~authorities~~ authority shall adjust the position limit downwards.
2. Where the open interest is significantly higher than the deliverable supply, the competent ~~authorities~~ authority shall adjust the position limit downwards.
3. Where the open interest is significantly lower than the deliverable supply, the competent ~~authorities~~ authority shall adjust the position limit upwards.

Article 19

The number of market participants

(Article 57(3)(e) of Directive 2014/65/EU)

1. Where the daily average number of market participants holding a position in the commodity derivative over a period of one year is high the competent authority shall adjust the position limit downwards.

2. By way of derogation to Article 14, the competent ~~authorities~~ authority shall set the spot month and other months' position limit between 5% and 50% if:

(a) the average number of market participants holding a position in the commodity derivative in the period leading up to the setting of the position limit is lower than 10; or

(b) the number of investment firms acting as a market maker in accordance with ~~Article 4(1)(7) of Directive 2014/65/EU~~ Article 2(1)(6) of Regulation 600/2014/EU in the commodity derivative at the time the position limit is set or reviewed is lower than 3.

For the purposes of the first subparagraph, the competent ~~authorities~~ authority may establish different position limits for different times within the spot month period, the other months' period or for both periods.

Article 20

Characteristics of the underlying commodity market

(Article 57(3)(f) of Directive 2014/65/EU)

1. ~~Competent authorities~~ The competent authority shall take into account how the characteristics of the underlying market impact on the functioning and trading of the commodity derivative and on the size of the positions held by market participants, including having regard to the ease and speed of access which market participants have to the underlying commodity.

2. The assessment of the underlying commodity market referred to in paragraph 1 shall take into account:

   (a) whether there are restrictions on the supply of the commodity, including the perishability of the deliverable commodity;

   (b) the method of transportation and delivery of the physical commodity, including the following:

      (i) whether the commodity can be delivered to specified delivery points only;

      (ii) the capacity constraints of specified delivery points.

   (c) the structure, organisation and the operation of the market, including the seasonality present in extractive and agricultural commodity markets whereby physical supply fluctuates over the calendar year;

   (d) the composition and role of market participants in the underlying commodity market, including consideration of the number of market participants which provide specific services that enable the functioning of the underlying commodity market such as risk management, delivery, storage, or settlement services;

   (e) macroeconomic or other related factors that influence the operation of the underlying commodity market including the delivery, storage, and settlement of the commodity;

   (f) the characteristics, physical properties and lifecycles of the underlying commodity.

Article 21

Volatility of the relevant markets

(Article 57(3)(d)) of Directive 2014/65/EU)

After having applied the factors referred to in Articles 16 to 20 which are relevant to set the position limit for each contract in commodity derivatives referred to in ~~Article 57(4) of Directive 2014/65/EU~~ regulation 16 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, the competent ~~authorities~~ authority shall further adjust that position limit where the following conditions are met:

(a) there is excessive volatility in the price of commodity derivative or in the underlying commodity;

(b) a further adjustment of the position limit would effectively reduce the excessive volatility in the price of that commodity derivative or in the underlying commodity.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex N

COMMISSION DELEGATED REGULATION (EU) 2017/592 of 1 December 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business

…

Article -2

Application

This Regulation applies to persons.

Article -1

Interpretation

(1) Where a term is defined in Directive 2014/65/EU that term 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 not apply for the purposes of this Regulation.

(4) References in this Regulation to 'the Union' are to be interpreted as if the United Kingdom continues to be a Member State.

(5) "CRD credit institution" is defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority, immediately after Exit Day.

Article 1

Application of thresholds

~~The activities of persons referred to in points (i) and (ii) of Article 2(1)(j) of Directive 2014/65/EU~~ An "article 2.1(j) activity", as referred to in article 72J(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 shall be considered to be ancillary to the main business of the group if those activities meet the conditions set out in Article 2 and constitute a minority of activities at group level in accordance with Article 3.

Article 2

Overall market threshold

1. The size of the activities referred to in Article 1 calculated in accordance with paragraph 2 divided by the overall market trading activity calculated in accordance with paragraph 3 shall, in each of the following asset classes, account for less than the following values:

   (a) 4% in relation to derivatives on metals;

   (b) 3% in relation to derivatives on oil and oil products;

   (c) 10% in relation to derivatives on coal;

   (d) 3% in relation to derivatives on gas;

   (e) 6% in relation to derivatives on power;

   (f) 4% in relation to derivatives on agricultural products;

   (g) 15% in relation to derivatives on other commodities, including freight and commodities referred to in ~~Section C 10 of Annex I to Directive 2014/65/EU~~ paragraph 10 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001;

   (h) 20% in relation to emission allowances or derivatives thereof.

2. The size of the activities referred to in Article 1 undertaken in the Union by a person within a group in each of the asset classes referred to in paragraph 1 shall be calculated by aggregating the gross notional value of all contracts within the relevant asset class to which that person is a party.

   The aggregation referred to in the first subparagraph shall not include contracts resulting from transactions referred to in points (a), (b) and (c) of the fifth subparagraph of Article 2(4) of Directive 2014/65/EU or contracts where the person within the group that is a party to any of them is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU of the European Parliament and of the Council or in accordance with Part 4A of the Financial Services and Markets Act 2000 to provide investment services or perform investment activities or accept deposits (as a CRD credit institution).

3. The overall market trading activity in each of the asset classes referred to in paragraph 1 shall be calculated by aggregating the gross notional value of all contracts that are not traded on a trading venue within the relevant asset class to which any person located in the Union is a party and of any other contract within that asset class that is traded on a trading venue located in the Union during the relevant annual accounting period referred to in Article 4(2).

4. The aggregate values referred to in paragraphs 2 and 3 shall be denominated in EUR.

Article 3

Main business threshold

1. The activities referred to in Article 1 shall be considered to constitute a minority of activities at group level where they comply with any of the following conditions:

   (a) the size of those activities calculated in accordance with the first subparagraph of paragraph 3 does not account for more than 10% of the total size of the trading activity of the group calculated in accordance with the second subparagraph of paragraph 3;

   (b) the estimated capital employed for carrying out those activities calculated in accordance with paragraphs 5 to 7 does not account for more than 10% of the capital employed at group level for carrying out the main business calculated in accordance with paragraph 9.

2. The following derogations from paragraph 1(a) shall apply:

   (a) where the size of the activities referred to in Article 1 calculated in accordance with the first subparagraph of paragraph 3 accounts for more than 10% but less than 50% of the total size of the trading activity of the group calculated in accordance with the second subparagraph of paragraph 3, ancillary activities shall be considered to constitute a minority of activities at group level only where the size of the trading activity for each of the asset classes referred to in Article 2(1) accounts for less than 50% of the threshold established by Article 2(1) for each relevant asset class;

   (b) where the size of the trading activities calculated in accordance with the first subparagraph of paragraph 3 accounts for equal to or more than 50% of the total size of the trading activity of the group calculated in accordance with the second subparagraph of paragraph 3, ancillary activities shall be considered to constitute a minority of activities at group level only where the size of the trading activity for each of the asset classes referred to in Article 2(1) accounts for less than 20% of the threshold established by Article 2(1) for each relevant asset class.

3. The size of the activities referred to in Article 1 undertaken by a person within a group shall be calculated by aggregating the size of the activities undertaken by that person with respect to all of the asset classes referred to in Article 2(1) in accordance with the same calculation criteria as that referred to in Article 2(2).

   The total size of the trading activity of the group shall be calculated by aggregating the gross notional value of all contracts in commodity derivatives, emission allowances and derivatives thereof to which persons within that group are a party to.

4. The aggregation referred to in the first subparagraph of paragraph 3 shall not include contracts where the person within the group that is a party to any of those contracts is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU or in accordance with Part 4A of the Financial Services and Markets Act 2000 to provide investment services or perform investment activities or accept deposits (as a CRD credit institution).

5. The estimated capital employed for carrying out the activities referred to in Article 1 shall be the sum of the following:

(a) 15% of each net position, long or short, multiplied by the price for the commodity derivative, emission allowance or derivatives thereof;

(b) 3% of the gross position, long plus short, multiplied by the price for the commodity derivative, emission allowance or derivatives thereof.

6. For the purposes of paragraph 5, point (a), the net position in a commodity derivative, an emission allowance or derivative thereof shall be determined by netting long and short positions:

(a) in each type of commodity derivative contract with a particular commodity as underlying in order to calculate the net position per type of contract with that commodity as underlying;

(b) in an emission allowance contract in order to calculate the net position in that emission allowances contract; or

(c) in each type of emission allowance derivative contract in order to calculate the net position per type of emission allowance derivative contract.

For the purposes of paragraph 5, point (a), net positions in different types of contracts with the same commodity as underlying or different types of derivative contracts with the same emission allowance as underlying can be netted against each other.

7. For the purposes of paragraph 5, point (b), the gross position in a commodity derivative, an emission allowance or a derivative contract thereof, shall be determined by computing the sum of the absolute values of the net positions per type of contract with a particular commodity as the underlying, per emission allowance contract or per type of contract with a particular emission allowance as the underlying.

For the purposes of paragraph 5, point (b), net positions in different types of derivative contracts with the same commodity as underlying or different types of derivative contracts with the same emission allowance as underlying cannot be netted against each other.

8. The calculation of the estimated capital shall not include positions resulting from transactions referred to in points (a), (b) and (c) of subparagraph 5 of Article 2(4) of Directive 2014/65/EU.

9. The capital employed for carrying out the main business of a group shall be the sum of the total assets of the group minus its short-term debt as recorded in its consolidated financial statements of the group at the end of the relevant annual calculation period. For the purposes of the first sentence, short-term debt means debt with a maturity of less than 12 months.

10. The values resulting from the calculations referred to in this Article shall be denominated in EUR.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex O

COMMISSION IMPLEMENTING REGULATION (EU) 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 pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments

Article -2

Application

This Regulation applies to:

Operators of "UK trading venues" as defined by article 2(1)(16A) of Regulation 600/2014/EU.

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 it 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.

(4) References to 'GMT' and 'BST' are to be read in accordance with The Summer Time Act 1972.

Article 1

Reporting deadlines

Market operators and investment firms operating trading venues ~~referred to in Article 58(1) of Directive 2014/65/EU~~ shall send ~~ESMA~~ the competent authority the weekly report referred to in point (a) of that Article regarding the aggregate positions held at the close of business of each week no later than Wednesday 17.30 ~~CET~~ GMT or BST (where applicable) of the following week.

Where either Monday, Tuesday or Wednesday of the week in which that report is to be submitted is not a working day for the market operator or investment firm referred to in the first paragraph, that market operator or investment firm shall submit the report as soon as possible and no later than Thursday 17.30 ~~CET~~ GMT or BST (where applicable) of that week.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex P

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1005 of 15 June 2017 laying down implementing technical standards with regard to the format and timing of the communications and the publication of the suspension and removal of financial instruments pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments

…

Article -2

Application

This Regulation applies to:

(1) Operators of 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]; and

(2) MiFID investment firms, as defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority, immediately after Exit Day.

Article -1

Interpretation

Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.

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.

Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

Article 1

Scope

This Regulation sets down the format and timing for the following communications and publications:

(a) publication by a market operator operating a regulated market or by an investment firm or a market operator operating an MTF or an OTF of its decision to suspend or

remove a financial instrument and, where relevant, related derivatives from trading or to lift a suspension;

(b) communication of the decisions referred to in point (a) to the ~~relevant~~ competent authority;

(c) publication by a competent authority of its decision to suspend trading or remove from trading a financial instrument and, where relevant, related derivatives or to lift a suspension~~;~~.

~~(d) communication by a competent authority to ESMA and other competent authorities of the decision to suspend trading or to remove from trading a financial instrument and, where relevant, related derivatives or to lift a suspension;~~

~~(e) communication by a notified competent authority to ESMA and other competent authorities of its decision on whether to follow a decision as referred to in point (d).~~

Article 2

Definition of the term 'trading venue operator'

For the purposes of this Regulation, 'trading venue operator' means any of the following:

(a) a market operator operating a regulated market, an MTF or an OTF;

(b) an investment firm operating an MTF or an OTF.

…

Article 4

Timing of the publications and communications by trading venue operators

1. Trading venue operators shall publish the decisions referred to in point (a) of Article 1 immediately.

2. Trading venue operators shall not publish the decisions referred to in point (a) of Article 1 by other means prior to their publication in accordance with Article 3(1).

3. Trading venue operators shall communicate the decisions referred to in point (a) of Article 1 to the ~~relevant~~ competent authority simultaneously with its publication or immediately thereafter.

Article 5

Format of the publications and communications by competent authorities

1. ~~Competent authorities~~ The competent authority shall publish the decision referred to in point (c) of Article 1 on a website in the format set out in Table 3 of the Annex.

2. ~~Competent authorities shall communicate the decisions referred to in points (d) and (e) of Article 1 in a standard machine-readable format using the formats set out in Tables 3 and 4 of the Annex, respectively.~~

Article 6

Timing of the publications and communications by competent authorities

1. ~~Competent authorities~~ The competent authority shall publish the decision referred to in point (c) of Article 1 immediately.
2. ~~Competent authorities shall communicate the decision referred to in point (d) of Article 1 simultaneously with its publication or immediately thereafter.~~
3. ~~A notified competent authority shall communicate the decision referred to in point (e) of Article 1 without undue delay upon receipt of the communication referred to in point (d) of Article 1.~~

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

ANNEX

Table 3

Format of the publication and communication by the Competent ~~Authorities~~ Authority of the decision to suspend or remove a financial instrument and related derivatives from trading and to lift a suspension of a financial instrument and related derivatives

FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
Competent authority	Field to be populated with the acronym of the competent authority doing the publication / communication.	{ALPHANUM-10}
~~Member State of the competent authority~~	~~Field to be populated with the country code of the Member State of the competent authority doing the publication / communication.~~	~~{COUNTRYCODE_2}~~

FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
Trading venue ~~operator~~ as initiator of the action	Field to be populated with: — true, if the initiator of the action is a trading venue operator; or — false, if the initiator of the action is not a trading venue operator but a competent authority.	'True' — Trading venue initiator 'False' — Not a trading venue initiator
…		

~~Table 4~~

~~Format of the communication to ESMA and other competent authorities by competent authorities of their decisions on whether to follow a suspension, a removal or a lifting of a suspension~~

~~FIELD~~	~~DETAILS TO BE REPORTED~~	~~FORMAT FOR REPORTING~~
~~Competent authority~~	~~Field to be populated with the acronym of the competent authority that communicated the original action.~~	~~{ALPHANUM-10}~~
~~Member State of the competent authority~~	~~Field to be populated with the country code of the Member State of the competent authority that communicated the original action.~~	~~{COUNTRYCODE_2}~~
~~Competent authority initiating the current action~~	~~Field to be populated with the acronym of the competent authority following or not following the original action.~~	~~{ALPHANUM-10}~~
~~Member State of the competent authority initiating the current action~~	~~Field to be populated with the country code of the Member State of the competent authority following or not following the original action.~~	~~{COUNTRYCODE_2}~~
~~Original action type~~	~~Field to be populated with the type of the original action.~~	~~Suspension, removal, lifting of a suspension.~~

Decision to follow, if applicable	Field to be populated, if applicable, with: true if the action is followed; or false if the action is not followed.	'True' Action is followed 'False' Action is not followed
Reasons for the decision not to follow a removal, suspension or lifting thereof, if applicable	Field to be populated with the reasons for the decision not to follow a removal, suspension or lifting thereof, if applicable.	{ALPHANUM-350}
Date and time of the communication	Field to be populated with the date and time of the communication of the current action.	{DATE_TIME_FORMAT}
Effective from	Field to be populated with the date and time from which the current action is effective.	{DATE_TIME_FORMAT}
Effective to	Field to be populated with the date and time until which the current action is effective.	{DATE_TIME_FORMAT}
Ongoing	Field to be populated with 'true' if the action is ongoing, or 'false' otherwise.	'True' Action is ongoing 'False' Action is not ongoing
Trading venue(s)	Field to be populated with the MIC or MICs of the trading venues(s) or segments thereof to which the current action relates.	{MIC} If multiple MICs have to be provided, this field shall be populated with multiple MICs separated by comma.

FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
Issuer name	Field to be populated with the name of the issuer of the instrument to which the action relates.	{ALPHANUM-350}
Issuer	Field to be populated with the LEI of the issuer of the instrument to which the action relates.	{LEI}

Instrument identifier	Field to be populated with the ISIN of the instrument.	{ISIN}
Instrument full name	Field to be populated with the name of the instrument.	{ALPHANUM-350}
Related derivatives	Field to be populated with the ISINs of the related derivatives as specified in Delegated Regulation (EU) 2017/569, to which the action also relates.	{ISIN} If multiple ISINs have to be provided, this field shall be populated with multiple ISINs separated by comma.
Other related instruments	Field to be populated with the ISINs of the related derivatives affected by the action.	{ISIN} If multiple ISINs have to be provided, this field shall be populated with multiple ISINs separated by comma.
Comments	Field to be populated with comments.	{ALPHANUM-350}

Annex Q

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators

…

Article -2

Application

This Regulation applies to:

(1) Operators of 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]; and

(2) MiFID investment firms, as defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority immediately after Exit Day.

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 1

Weekly reports

1. Investment firms or market operators operating a trading venue shall prepare the weekly report referred to in ~~Article 58(1)(a) of Directive 2014/65/EU~~ chapter 10 of the Market Conduct sourcebook published by the Financial Conduct Authority immediately after Exit Day, separately for each commodity derivative, emission allowance or derivative thereof that is traded on that trading venue, in accordance with the format set out in the tables of Annex I to this Regulation.

2. The reports referred to in paragraph 1 shall contain the aggregate of all positions held by the different persons in each of the categories set out in Table 1 to Annex I in an individual commodity derivative, emission allowance or derivative thereof that is traded on that trading venue.

Article 2

Daily reports

1. Investment firms shall provide the competent authority with the breakdown of their positions as referred to in ~~Article 58(2) of Directive 2014/65/EU~~ the direction in chapter 10.4.8 of the Market Conduct sourcebook published by the Financial Conduct Authority immediately after Exit Day by means of a daily position report in the format set out in the tables to Annex II to this Regulation.
2. The report referred to in paragraph 1 shall contain all positions across all maturities of all contracts.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex R

COMMISSION IMPLEMENTING REGULATION (EU) 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 pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments

Article -2

Application

This Regulation applies to persons.

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) or (3) applies;

(2) Subject to (3), where a term is defined in the Data Reporting Services Regulations 2017, that definition shall apply for the purposes of this Regulation.

(3) Where a term it 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.

Article 1

Designation of a contact point

~~Competent authorities~~ The competent authority shall designate a contact point for handling all information received from applicants seeking authorisation as a data reporting services provider. The contact details of the designated contact point shall be made public and regularly updated on the competent ~~authorities' websites~~ authority's website.

Article 2

Provision of information and notification to the competent authority

1. An applicant for authorisation to provide data reporting services under the ~~provisions of Title V of Directive 2014/65/EU~~ Data Reporting Services Regulations 2017 shall provide the competent authority with all information in-accordance with ~~Article 61(2)~~

~~of Directive 2014/65/EU~~ regulation 7 of the Data Reporting Services Regulations 2017 by filling in the application form set out in Annex I.

2. The applicant shall notify the competent authority with information of all members of its management body by filling in the notification form set out in Annex II.

3. The applicant shall clearly identify in its submission which specific requirement under the provisions of it refers to and in which document attached to its submission that information is provided.

4. The applicant shall indicate in its submission whether any specific requirement under the provisions of ~~Title V of Directive 2014/65/EU~~ the Data Reporting Services Regulations 2017 or Commission Delegated Regulation (EU) 2017/571 is not applicable to the data reporting service that it is applying for.

5. ~~Competent authorities~~ The competent authority shall indicate on ~~their websites~~ its website whether duly completed application forms, notifications and any related additional information are to be submitted on paper, electronically, or both.

…

Article 7

Entry into force and application

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex S

COMMISSION DELEGATED REGULATION (EU) 2017/1943 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms

…

Article -1

Interpretation

1. Where a term is defined in Directive 2014/65/EU that term shall apply for the purposes of this Regulation except where (2) applies;

2. Where a term it 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.

Article 1

General information

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation implementing Title II of Directive 2014/65/EU shall submit to the competent authority an application that includes the following general information:

(a) its name (including its legal name and any other trading name to be used); legal structure (including information on whether it will be a legal person or, where allowed by national legislation, a natural person), address of the head office and, for existing companies, registered office; contact details; its national identification number, where available; as well as:

  (i) for domestic branches: information on where the branches will operate;

  (ii) for domestic tied agents: details on its intention to use tied agents;

(b) the list of investment services and activities, ancillary services and financial instruments to be provided, and whether clients' financial instruments and funds will be held (even on a temporary basis).

(c) copies of corporate documents and evidence of registration with the national register of companies, where applicable.

Article 2

Information on capital

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation implementing Title II of Directive 2014/65/EU shall provide to the competent authority information and, where available, evidence on the sources of capital available to it. The information shall include:

(a) details on the use of private financial resources including the origin and availability of those funds;

(b) details on access to capital sources and financial markets including details of financial instruments issued or to be issued;

(c) any relevant agreements and contracts regarding the capital raised;

(d) information on the use or expected use of borrowed funds including the name of relevant lenders and details of the facilities granted or expected to be granted, including maturities, terms, pledges and guarantees, along with information on the origin of the borrowed funds (or funds expected to be borrowed) where the lender is not a supervised financial institution;

(e) details on the means of transferring financial resources to the firm including the network used to transfer such funds.

For the purposes of point (b), information on types of capital raised shall refer, where relevant, to the types of capital specified under Regulation (EU) No 575/2013, specifically whether the capital comprises Common Equity Tier 1 items, Additional Tier 1 items or Tier 2 items.

Article 3

Information on shareholders

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation implementing Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its shareholders:

(a) the list of persons with a direct or indirect qualifying holding in the investment firm, and the amount of these holdings and, for indirect holdings, the name of the person through which the stake is held and the name of the final holder;

(b) for persons with a qualifying holding (direct or indirect) in the investment firm the documentation required from proposed acquirers for the acquisition and increases in qualifying holdings in investment firms in accordance with Articles 3, 4 and 5 of Commission Delegated Regulation 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm;

(c) for corporate shareholders that are members of a group, an organisational chart of the group indicating the main activities of each firm within the group, identification of any regulated entities within the group and the names of the relevant supervisory authorities as well as the relationship between the financial entities of the group and other non-financial group entities.

(d) For the purposes of point (b), where the holder of a qualifying holding is not a natural person, the documentation shall also relate to all members of the management body and the general manager, or any other person performing equivalent duties.

Article 4

Information on the management body and persons who direct the business

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation implementing Title II of Directive 2014/65/EU shall provide to the competent authority the following information:

(a) in respect of members of the management body and persons effectively directing the business and their related powers and any proxies:

(i) personal details comprising the person's name, date and place of birth, personal national identification number, where available, address and contact details;

(ii) the position for which the person is/will be appointed;

(iii) a curriculum vitae stating relevant education and professional training, professional experience, including the names of all organisations for which the person has worked and nature and duration of the functions performed, in particular for any activities within the scope of the position sought; for positions held in the previous 10 years, when describing those activities, details shall be included on all delegated powers and internal decision-making powers held and the areas of operations under control;

(iv) documentation relating to person's reputation and experience, in particular a list of reference persons including contact information, letters of recommendation;

(v) criminal records and information on criminal investigations and proceedings relevant civil and administrative cases, and disciplinary actions opened against them (including disqualification as a company director, bankruptcy, insolvency and similar procedures), notably through an official certificate (if and so far as it is available from the relevant ~~Member State or~~ third country), or through another equivalent document; for ongoing investigations, the information may be provided through a declaration of honour;

…

Article 5

Financial information

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation implementing Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its financial situation:

(a) forecast information at an individual and, where applicable, at consolidated group and sub-consolidated levels, including:

(i) forecast accounting plans for the first three business years including:

— forecast balance sheets;

— forecast profit and loss accounts or income statements;

(ii) planning assumptions for the above forecasts as well as explanations of the figures, including expected number and type of customers, expected volume of transactions/orders, expected assets under management;

(iii) where applicable, forecast calculations of the firm's capital requirements and liquidity requirements under Regulation (EU) No 575/2013 of the European Parliament and of the Council and forecast solvency ratio for the first year;

(b) for companies that are already active, statutory financial statements, at an individual and, where applicable, at consolidated group and sub-consolidated levels for the last three financial periods, approved, where the financial statements are audited, by the external auditor, including:

(i) the balance sheet;

(ii) the profit and loss accounts or income statements;

(iii) the annual reports and financial annexes and any other documents registered with the relevant registry or authority in the particular territory relevant to the company financial statements and, where applicable, a report by the company's auditor of the last three years or since the beginning of the activity;

(c) an analysis of the scope of consolidated supervision under Regulation (EU) No 575/2013, including details on which group entities will be included in the scope of consolidated supervision requirements post-authorisation and at which level within the group these requirements will apply on a full or sub-consolidated basis.

Article 6

Information on the organisation of the firm

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation implementing Title II of Directive2014/65/EU shall provide to the competent authority the following information on its organisation:

(a) a programme of initial operations for the following three years, including information on planned regulated and unregulated activities detailed information on the geographical distribution and activities to be carried out by the investment firm. Relevant information in the programme of operations shall include:

(i) the domicile of prospective customers and targeted investors;

(ii) the marketing and promotional activity and arrangements, including languages of the offering and promotional documents; identification of the ~~Member States~~ country where advertisements are most visible and frequent; type of promotional documents (in order to assess where effective marketing will be mostly developed);

(iii) the identity of direct marketers, financial investment advisers and distributors, geographical localisation of their activity;

(b) details of the firm's auditors, when available at time of application for authorisation;

(c) the organisational structure and internal control systems of the company, comprising:

(i) the personal details of the heads of internal functions (management and supervisory), including a detailed curriculum vitae, stating relevant education and professional training, professional experience;

(ii) the description of the resources (in particular human and technical) allocated to the various planned activities;

(iii) in relation to holding client financial instruments and funds, information, specifying any client asset safeguarding arrangements (in particular, where financial instruments and funds are held in a custodian, the name of the custodian, and related contracts);

(iv) an explanation of how the firm will satisfy its prudential and conduct requirements.

(d) information on the status of the application undertaken by the investment firm to become a member of the investor compensation scheme of the ~~Home Member State~~ UK or evidence of membership to the investor compensation scheme, where available;

…

Article 7

General requirements

1. The information to be provided to the competent authority ~~of the~~ ~~home Member State~~, as set out in Articles 1 and 6, shall refer to both the head office of the firm and its branches and tied agents.

2. The information to be provided to the competent authority ~~of the home Member State~~, as set out in Articles 2 to 5, shall refer to the head office of the firm.

…

Article 9

Requirements applicable to shareholders and members with qualifying holdings

The competent authority shall verify that the request of an applicant for authorisation as an investment firm, in accordance to the United Kingdom's legislation implementing Title II of Directive 2014/65/EU, offers sufficient guarantees for a sound and prudent management of the entity by assessing the suitability of proposed shareholders and members with qualifying

holdings, having regard to the likely influence on the investment firm of each proposed shareholder or member with qualifying holdings, against all of the following criteria:

(a) the reputation and experience of any person who will direct the business of the investment firm;

(b) the reputation of the proposed shareholders and members with qualifying holdings;

(c) the financial soundness of the proposed shareholders and members with qualifying holding, in particular in relation to the type of business pursued and envisaged in the investment firm;

(d) whether the investment firm will be able to comply and continue to comply with the prudential requirements set out in the United Kingdom's legislation implementing Article 15 of Directive 2014/65/EU and, where applicable, the United Kingdom's legislation implementing Directives 2002/87/EC and 2013/36/EU of the European Parliament and of the Council and in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision~~, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities~~;

(e) whether there are reasonable grounds to suspect that, in connection with the authorisation of the investment firm, money laundering or terrorist financing within the meaning of the United Kingdom's legislation implementing Article 1 of Directive 2005/60/EC of the European Parliament and of the Council (3) is being or has been committed or attempted, or that the authorisation of the investment firm could increase the risk thereof.

Article 10

Effective exercise of supervisory functions

A group structure within which the investment firm will operate shall be considered to be an obstacle to the exercise of the supervisory function of the competent authority for the purposes of the United Kingdom's legislation implementing Article 10(1) and (2) of Directive 2014/65/EU in any of the following cases:

(a) it is complex and not sufficiently transparent;

(b) it has a geographical location of group entities;

(c) it includes activities performed by the group entities that may prevent the competent authority to effectively appraise the suitability of the shareholders or members with qualifying holdings or the influence of close links with the investment firm.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

FCA 2019/XX

TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE) (EU EXIT) (No 2) 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) (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 and the Prudential Regulation Authority ("the PRA") are the appropriate regulators for the Markets in Financial Instruments Directive EU Regulations specified in Part 4 of the Schedule to the Regulations ("the specified MiFID regulations").

C. The FCA proposes to exercise the power in regulation 3 of the Regulations to modify the specified MiFID regulations and proposes that the specified MiFID regulations make separate provision for persons described as follows:

- firms with Part 4A permission within the meaning of Part 4A of the Financial Services and Markets Act 2000, except PRA-authorised firms, being firms within the meaning of section 2B (5) of the Financial Services and Markets Act 2000, in the case of Commission Implementing Regulation (EU) 2017/1945 and Commission Delegated Regulation (EU) 2017/1946; and

- firms with Part 4A permission within the meaning of Part 4A of the Financial Services and Markets Act 2000 and persons subject to regulation 30 and 32(2) of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, in the case of Commission Delegated Regulation (EU) 2017/589.

D. The FCA has consulted the PRA on a division of responsibility and on the modifications contained in Annexes A to C to this instrument in accordance with regulations 4 and 5 of the Regulations.

E. The FCA has prepared the instrument in accordance with regulation 6 of the Regulations.

F. 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

G. 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.

Division

H. The following EU regulations, as they have effect in domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018, are each divided into two identical versions of the same, headed "Part 1 (FCA)" and "Part 2 (PRA)" respectively:

Commission Implementing Regulation (EU) 2017/1945
Commission Delegated Regulation (EU) 2017/1946

I. Immediately before Article 1 in Part 1 (FCA) in those regulations is inserted:

"*Article A1*
This Part of the Regulation applies to persons that are firms with Part 4A permissions within the meaning of Part 4A of the Financial Services and Markets Act 2000, except PRA-authorised firms, being firms within the meaning of section 2B (5) of the Financial Services and Markets Act 2000."

J. Immediately before Article 1 in Part 2 (PRA) is inserted:

"*Article A1*
This Part of the Regulation applies to PRA-authorised firms."

K. The following EU regulation, as it has effect in domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018, is divided into two identical versions of the same, headed "Part 1 (FCA)" and "Part 2 (PRA)" respectively:

Commission Delegated Regulation (EU) 2017/589.

L. Immediately before Article 1 in Part 1 (FCA) is inserted:

"*Article A1*
This Part of the Regulation applies to persons that are firms with Part 4A permission within the meaning of Part 4A of the Financial Services and Markets Act 2000 or persons subject to regulation 30 and 32(2) of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017."

M. Immediately before Article 1 in Part 2 (PRA) is inserted:

"*Article A1*
This Part of the Regulation applies to PRA-authorised persons, within the meaning of section 2B (5) of the Financial Services and Markets Act 2000."

Modifications

N. The FCA thereafter amends the following EU Regulations in accordance with Annexes A–C of this instrument.

(1)	(2)
Part 1 (FCA) Commission Delegated Regulation (EU) 2017/589 of 19 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading.	Annex A
Part 1 (FCA) Commission Implementing Regulation (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council.	Annex B
Part 1 (FCA) Commission Delegated Regulation (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm.	Annex C

Commencement

O. This instrument comes into force on [29 March 2019 at 11p.m.].

Citation

P. This instrument may be cited as the Technical Standards (Markets in Financial Instruments Directive) (EU Exit) (No 2) Instrument 2019.

By order of the Board
[*date*]

Annex A

COMMISSION DELEGATED REGULATION (EU) 2017/589 of 19 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading

Article -2

Application

(1) This Regulation applies to:

(a) a MiFID investment firm; and

(b) a person to whom regulation 30 or 32 (2) of the MiFI Regulations applies.

Article -1

Interpretation

(1) Where a term is defined in Directive 2014/65/EU that term shall apply for the purposes of this Regulation except where (2) or (3) 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) 'Algorithmic trading' and 'direct electronic access' or 'DEA' are defined in regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;

(4) References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators' requirements which would give effect to that EU legislation if the United Kingdom were a Member State; and

(5) References to 'investment firm' are to the persons referred to in article -2(1) above unless the context indicates otherwise.

(6) 'MiFID investment firm' and the 'MiFI Regulations' are defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the FCA immediately after Exit Day.

…

SECTION 2

Post-deployment management

Article 9

Annual self-assessment and validation

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall annually perform a self-assessment and validation process and on the basis of that process issue a validation report. In the course of that process the investment firm shall review, evaluate and validate the following:

   (a) its algorithmic trading systems, trading algorithms and algorithmic trading strategies;

   (b) its governance, accountability and approval framework;

   (c) its business continuity arrangement;

   (d) its overall compliance with UK law corresponding to Article 17 of Directive 2014/65/EU, having regard to the nature, scale and complexity of its business.

The self-assessment shall also include at least an analysis of compliance with the criteria set out in Annex I to this Regulation.

2. The risk management function of the investment firm, referred to in Article 23(2) of Commission Delegated Regulation (EU) 2017/565, shall draw up the validation report and, for that purpose, involve staff with the necessary technical knowledge. The risk management function shall inform the compliance function of any deficiencies identified in the validation report.

3. The validation report shall be audited by the firm's internal audit function, where such function exists, and be subject to approval by the investment firm's senior management.

4. An investment firm shall remedy any deficiencies identified in the validation report.

5. Where an investment firm has not established a risk management function referred to in Article 23(2) of Delegated Regulation (EU) 2017/565, the requirements set out in relation to the risk management function in this Regulation shall apply to any other function established by the investment firm in accordance with Article 23(2) of ~~Delegated Regulation (EU) 2017/565~~ that Regulation.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

ANNEX I

Criteria to be considered in the investment firm's self-assessment as referred to in Article 9(1)

1. When considering the nature of its business, an investment firm shall consider the following, where applicable:

   (a) the regulatory status of the firm and, where applicable, of its DEA clients, including the regulatory requirements to which it is subject as an investment firm as a result of UK law corresponding to ~~under~~ Directive 2014/65/EU, and other relevant regulatory requirements;

…

ANNEX II

…

Table 3

Information relating to outgoing and executed orders

N.	Field/Content	Description	Format
1	Buy-Sell indicator	Indicates whether the order is to buy or to sell, as determined in the description of field 8 of table 2.	‘BUYI’ — buy ‘SELL’ — sell
2	The trading capacity	Indicates whether the order submission results from the member, participant or client of the trading venue is carrying out matched principal trading under UK law corresponding to Article 4(38) of Directive 2014/65/EU, or is dealing on its own account ~~under Article 4(6) of Directive 2014/65/EU~~ as defined by article 2(1)(5) of Regulation 600/2014/EU. Where the order submission does not result from the member, participant or client of the trading venue carrying out matched principal trading or dealing on its own account, the field shall indicate that the transaction was carried out under any other capacity.	‘DEAL’ — Dealing on own account ‘MTCH’ — Matched principal ‘AOTC’ — Any other capacity
3	Liquidity provision activity	Indicates whether an order is submitted to a trading venue as part of a market making strategy pursuant to UK law corresponding to Articles 17 and 48 of Directive 2014/65/EU, or is submitted as part of another activity in accordance with Article 3 of Commission	‘true’ ‘false’

		Delegated Regulation (EU) 2017/575.	
4	…		
26	New order, order modification, order cancellation, order rejections, partial or full execution	New order: receipt of a new order by the operator of the trading venue.	‘NEWO’ — New order
		Triggered: an order which becomes executable or, as the case may be, non-executable upon the realisation of a pre-determined condition.	‘TRIG’ — Triggered
		Replaced by the member, participant or client of the trading venue: where a member, participant or client of the trading venue decides upon its own initiative to change any characteristic of the order it has previously entered into the order book.	‘REME’ — Replaced by the member or participant or client of the trading venue.
		Replaced by market operations (automatic): where any characteristic of an order is changed by the trading venue operator's IT systems. This includes where a peg order's or a trailing stop order's current characteristics are changed to reflect how the order is located within the order book.	‘REMA’ — Replaced by market operations (automatic).
		Replaced by market operations (human intervention): where any characteristic of an order is changed by a trading venue operator's staff. This includes the situation where a member, participant or client of the trading venue has IT issues and needs its orders to be cancelled urgently.	‘REMH’ — Replaced by market operations (human intervention).
		Change of status at the initiative of the member, participant or client of the trading venue. This includes activation and deactivation.	‘CHME’ — Change of status at the initiative of the member/participant/client of the trading venue.
		Change of status due to market operations.	‘CHMO’ — Change of status due to market operations.

		Cancelled at the initiative of the member, participant or client of the trading venue.	‘CAME’ — Cancelled at the initiative of the member or participant or client of the trading venue.
		Cancelled by market operations. This includes a protection mechanism provided for investment firms engaging in algorithmic trading to pursue a market making strategy as laid down in UK law corresponding to Articles 17 and 48 of Directive 2014/65/EU.	‘CAMO’ -Cancelled by market operations.
		Rejected order: an order received but rejected by the operator of the trading venue.	‘REMO’ — Rejected order
		…	

…

ANNEX B

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council

…

Article -1

Interpretation

1. Where a term is defined in Directive 2014/65/EU that term shall apply for the purposes of this Regulation except where (2) applies;
2. Where a term it 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.

Article 1

Designation of a contact point

Competent authorities shall designate a contact point for handling all information received from applicants seeking authorisation as an investment firm in accordance with the United Kingdom's legislation implementing Title II of Directive 2014/65/EU. The contact details on the designated contact point shall be made public and regularly updated on the competent authorities' websites.

Article 2

Submission of the application

1. An applicant seeking authorisation as an investment firm in accordance with the United Kingdom's legislation implementing Title II of Directive 2014/65/EU shall submit to the competent authority its application by filling in the template set out in Annex I.
2. The applicant shall notify the competent authority of the information on all members of its management body by filling in the template set out in Annex II.

…

Article 6

Communication of the decision

1. The competent authority shall inform the applicant of its decision to grant or not the authorisation in paper form, by electronic means or both, within the 6-month period referred to in the United Kingdom's legislation implementing Article 7(3) of Directive 2014/65/EU.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex C

COMMISSION DELEGATED REGULATION (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm

(Text with EEA relevance)

Article -2

Application

This Regulation applies to persons.

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. References to the 'Regulated Activities Order' are to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

…

Article 13

Reduced information requirements

1. By way of derogation from Article 2, where the proposed acquirer is an entity authorised and supervised within the ~~Union~~ United Kingdom and the target entity meets the criteria set out in paragraph 2, the proposed acquirer shall submit the following information to the competent authority of the target entity:

(a) where the proposed acquirer is a natural person:

(1) the information set out in Article 3(1);

(2) the information set out in points (c) to (g) of Article 4;

(3) the information set out in Articles 6, 7 and 9;

(4) the information set out in Article 8(1);

(5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20 %, a document on strategy as set out in Article 10;

(6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity between 20% and 50%, a document on strategy as set out in Article 11;

(b) where the proposed acquirer is a legal person:

(1) the information set out in Article 3(2)

(2) the information set out in points (c) to (j) of Article 5(1) and, where relevant, the information set out in Article 5(3);

(3) the information set out in Articles 6, 7 and 9;

(4) the information set out in Article 8(1);

(5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20 %, a document on strategy as set out in Article 10;

(6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity between 20% and 50%, a document on strategy as set out in Article 11;

(c) where the proposed acquirer is a trust:

…

2. The target entity referred to in paragraph 1 shall meet the following criteria:

(a) it does not hold assets of its clients;

(b) it is not authorised for the investment services and activities 'Dealing on own account' or 'Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis' referred to in ~~points (3) and (6) of Section A of Annex I of Directive 2004/39/EC~~ Part 3 of Schedule 2 to the Regulated Activities Order;

(c) where it is authorised for the investment service of 'Portfolio management' as referred to in ~~point (4) of Section A of Annex I of Directive 2004/39/EC~~ Part 3 of Schedule 2 to the Regulated Activities Order, the assets under management by the firm are below [EUR 500 million].

3. Where the proposed acquirer referred to in paragraph 1 has been assessed by the competent authority of the target entity within the previous two years regarding the information referred to in Articles 4 and 5, that proposed acquirer shall only provide those pieces of information that have changed since the previous assessment.

Where the proposed acquirer only provides those pieces of information that have changed since the previous assessment in accordance with the first subparagraph, the proposed acquirer shall sign a declaration informing the competent authority of the target entity that there is no need to update the rest of information.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS REGULATION) (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) (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 Act) 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 Act.

Amendments to EU Regulations

F. The following EU Regulations are amended in accordance with Annexes A–H of this instrument.

(1)	(2)
Commission Delegated Regulation (EU) 2016/2020 of 26 May 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation.	Annex A

Commission Delegated Regulation (EU) 2016/2022 of 14 July 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards concerning the information for registration of third-country firms and the format of information to be provided to the clients.	Annex B
Commission Delegated Regulation (EU) 2017/572 of 2 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of the offering of pre-and post-trade data and the level of disaggregation of data.	Annex C
Commission Delegated Regulation (EU) 2017/579 of 13 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the direct, substantial and foreseeable effect of derivative contracts within the Union and the prevention of the evasion of rules and obligations.	Annex D
Commission Delegated Regulation (EU) 2017/580 of 24 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments.	Annex E
Commission Delegated Regulation (EU) 2017/585 of 14 July 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council 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.	Annex F
Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities.	Annex G
Commission Delegated Regulation (EU) 2017/2194 of 14 August 2017 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to package orders.	Annex H

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 (Markets in Financial Instruments Regulation) (EU Exit) (No 1) Instrument 2019.

By order of the Board
[*date*]

Annex A

COMMISSION DELEGATED REGULATION (EU) 2016/2020 of 26 May 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 criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation

…

Article -3

Application

This Regulation applies to the Financial Conduct Authority as a competent authority.

Article -2

Interpretation

1. References in this Regulation to Regulation 600/2014/EU shall mean Regulation 600/2014/EU as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].
2. For the purposes of this Regulation, where a term is defined in Article 2 of Regulation 600/2014/EU the same definition applies.
3. Paragraph 2 is subject to the specific definition set out in Article -1.

Article -1

Definitions

For the purposes of this Regulation, the following definition applies:

"trading venue" means any of the venues referred to in article 28(1)(a) to (d) of Regulation 600/2014, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].

Article 1

Sufficient third party buying and selling interest

When establishing whether a class of derivatives or relevant subset thereof has sufficient third-party buying and selling interest to be considered sufficiently liquid for the trading obligation, ~~ESMA~~ the competent authority shall apply the criteria in Article 32(3) of Regulation (EU) No 600/2014, as further specified in Articles 2 to 5 below.

Article 2

Average frequency of trades

1. In relation to the average frequency of trades, ~~ESMA~~ the competent authority shall take into consideration the following elements:

   (a) the number of days on which trading took place;

   (b) the number of trades.

2. ~~ESMA's~~ The competent authority's analysis of the criteria in paragraph 1 shall take into account the distribution of trading executed on trading venues and executed OTC. ~~ESMA~~ The competent authority shall assess these criteria over a period of time of sufficient length to determine whether the liquidity of each class of derivatives or a relevant subset thereof is subject to seasonal or structural factors. ~~ESMA~~ The competent authority shall also consider whether trades are concentrated at certain points in time and over certain sizes over the period assessed and determine to what extent such concentration constitutes predictable patterns.

Article 3

Average size of trades

1. In relation to the average size of trades, ~~ESMA~~ the competent authority shall take into consideration the following elements:

   (a) the average daily turnover whereby the notional size of all trades combined shall be divided by the number of trading days;

   (b) the average value of trades whereby the notional size of all trades combined shall be divided by the number of trades.

2. ~~ESMA~~ The competent authority's analysis of the criteria in paragraph 1 shall take into account the factors specified in Article 2(2).

Article 4

Number and type of active market participants

1. In relation to the number and type of active market participants, ~~ESMA~~ the competent authority shall take into consideration the following elements:

   (a) the total number of market participants trading in that class of derivatives or relevant subset thereof is not lower than two;

   (b) the number of trading venues that have admitted to trading or are trading the class of derivatives or a relevant subset thereof;

   (c) the number of market makers and other market participants under a binding

written agreement or an obligation to provide liquidity.

2. ~~ESMA~~ The competent authority analysis shall compare the ratio of market participants to the findings in the data obtained for the analyses of average size of trades and the average frequency of trades.

Article 5

Average size of spreads

1. In relation to the average size of spreads, ~~ESMA~~ the competent authority shall take into consideration the following elements:

   (a) the size of weighted spreads, including volume weighted spreads, over different periods of time;

   (b) spreads at different points in time of trading sessions.

2. Where information on spreads is not available, ~~ESMA~~ the competent authority shall take into consideration a proxy for the assessment of this criterion.

Article 6

Entry into force and application

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex B

COMMISSION DELEGATED REGULATION (EU) 2016/2022 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards concerning the information for registration of third- country firms and the format of information to be provided to the clients

…

Article -1

Interpretation

(1) Where a term is defined in Directive 2014/65/EU that term 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.

Article 1

Information necessary for the registration

A third-country firm applying for the provision of investment services or performance of activities ~~throughout the Union~~ in the United Kingdom in accordance with the second subparagraph of Article 46(4) of Regulation (EU) No 600/2014 shall submit the following information to ~~ESMA~~ the Financial Conduct Authority:

(a) full name of the firm, including its legal name and any other trading name to be used by the firm;

~~(b)~~ contact details of the firm, including the head office address, telephone number and email address;

(c) contact details of the person in charge of the application, including telephone number and email address;

(d) website, where available;

(e) national identification number of the firm, where available;

(f) legal entity identifier (LEI) of the firm, where available;

(g) Business Identifier Code (BIC) of the firm, where available;

(h) name and address of the competent authority of the third country that is responsible for the supervision of the firm; where more than one authority is responsible for supervision, the details of the respective areas of competence shall be provided;

(i) the link to the register of each competent authority of the third country, where available;

(j) information on which investment services, activities, and ancillary services it is authorised to provide in the country where the firm is established;

(k) the investment services to be provided and activities to be performed in the ~~Union~~ United Kingdom, together with any ancillary services.

Article 2

Information submission requirements

1. The third-country firm shall inform ~~ESMA~~ the Financial Conduct Authority, within 30 days, of any change of the information provided under Article 1(a) to (g), (j) and (k).

2. Information provided to ~~ESMA~~ the Financial Conduct Authority under Article 1(j) shall be provided through a written declaration issued by a competent authority of the third country.

3. The information provided to ~~ESMA~~ the Financial Conduct Authority under Article 1 shall be in English, using the Latin alphabet. Any accompanying documents provided to ~~ESMA~~ the Financial Conduct Authority under Article 1 and in paragraph 2 of this Article shall be in English or, where they have been written in a different language, a certified English translation shall also be provided.

Article 3

Information concerning type of clients in the ~~Union~~United Kingdom

1. A third-country firm shall provide the information referred to in Article 46(5) of Regulation (EU) No 600/2014 to the clients in a durable medium.

2. The information referred to in Article 46(5) of Regulation (EU) No 600/2014, shall be:

(a) provided in English ~~or in the official language, or one of the official languages, of the Member State where the services are to be provided~~;

(b) presented and laid out in a way that is easy to read, using characters of readable size; (c) without using colours that may diminish the

comprehensibility of the information.

Article 4

Entry into force and application

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex C

COMMISSION DELEGATED REGULATION (EU) 2017/572 of 2 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of the offering of pre-and post-trade data and the level of disaggregation of data.

…

Article -2

Application

This Regulation applies to operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].

Article -1

Interpretation

1. Where a term is defined in article 2 Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], the same definition applies for the purposes of this Regulation.
2. Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex D

COMMISSION DELEGATED REGULATION (EU) 2017/579 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 direct, substantial and foreseeable effect of derivative contracts within the Union and the prevention of the evasion of rules and obligations

…

Article -1

Interpretation

1. For the purposes of this Regulation, where a term is defined in Article 2 of Regulation 600/2014/EU that definition applies.

2. Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this Regulation.

Article 1

Definitions

For the purposes of this Regulation the following definition shall apply:

‘guarantee’ means an explicitly documented legal obligation by a guarantor to cover payments of the amounts due or that may become due pursuant to the OTC derivative contracts covered by that guarantee and entered into by the guaranteed entity in favour of the beneficiary where there is a default as defined in the guarantee or where no payment has been effected by the guaranteed entity.

Article 2

Contracts with a direct, substantial and foreseeable effect within the ~~Union~~ United Kingdom

1. An OTC derivative contract shall be considered as having a direct, substantial and foreseeable effect within the ~~Union~~ United Kingdom when at least one third country entity benefits from a guarantee provided by a financial counterparty established in the ~~Union~~ United Kingdom which covers all or part of its liability resulting from that OTC derivative contract, to the extent that the guarantee meets both following conditions:

   (a) it covers the entire liability of a third country entity resulting from one or more OTC derivative contracts for an aggregated notional amount of at least EUR 8 billion or the equivalent amount in the relevant foreign currency, or it covers only a part of the liability of a third country entity resulting from one or more

OTC derivative contracts for an aggregated notional amount of at least EUR 8 billion or the equivalent amount in the relevant foreign currency divided by the percentage of the liability covered;

(b) it is at least equal to 5 per cent of the sum of current exposures, as defined in Article 272(17) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (1), in OTC derivative contracts of the financial counterparty established in the ~~Union~~ United Kingdom issuing the guarantee.

2. When the guarantee is issued for a maximum amount which is below the threshold set out in paragraph 1(a), the contracts covered by that guarantee shall not be considered to have a direct, substantial and foreseeable effect within the ~~Union~~ United Kingdom unless the amount of the guarantee is increased, in which case the direct, substantial and foreseeable effect of the contracts within the ~~Union~~ United Kingdom shall be re-assessed by the guarantor against the conditions set out in points (a) and (b) of paragraph 1 on the day of the increase.

3. Where the liability resulting from one or more OTC derivative contracts is below the threshold set out in paragraph 1(a), such contracts shall not be considered to have a direct, substantial and foreseeable effect within the ~~Union~~ United Kingdom even where the maximum amount of the guarantee covering such liability is equal to or above the threshold set out in paragraph 1(a) and even where the condition set out in paragraph 1(b) has been met.

4. In the event of an increase in the liability resulting from the OTC derivative contracts or of a decrease of the current exposure, the guarantor shall re-assess whether the conditions set out in paragraph 1 are met. Such assessment shall be done respectively on the day of the increase of liability for the condition set out in paragraph 1(a), and on a monthly basis for the condition set out in paragraph 1(b).

5. OTC derivative contracts for an aggregate notional amount of at least EUR 8 billion or the equivalent amount in the relevant foreign currency concluded before a guarantee is issued or increased, and subsequently covered by a guarantee that meets the conditions set out in paragraph 1, shall be considered as having a direct, substantial and foreseeable effect within the ~~Union~~ United Kingdom.

6. An OTC derivative contract shall be considered as having a direct, substantial and foreseeable effect within the ~~Union~~ United Kingdom where the two entities established in a third country enter into the OTC derivative contract through their branches in the ~~Union~~ United Kingdom and would qualify as financial counterparties if they were established in the ~~Union~~ United Kingdom.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex E

COMMISSION DELEGATED REGULATION (EU) 2017/580 of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments

…

Article -2

Application

This Regulation applies to operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].

Article -1

Interpretation

1. 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;
2. Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.
3. References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators' requirements which would give effect to that EU legislation if the United Kingdom were a Member State.

Article 1

Scope, standards and format of relevant order data

1. Operators of trading venues shall keep at the disposal of ~~their~~ the competent authority the details of each order advertised through their systems set out in Articles 2 to 13 as specified in the second and third columns of Table 2 of the Annex insofar as they pertain to the order concerned.
2. Where the competent ~~authorities request~~ authority requests any of the details referred to in paragraph 1 in accordance with Article 25(2) of Regulation (EU) No 600/2014,

the operators of trading venues shall provide such details using the standards and formats prescribed in the fourth columns of Table 2 of the Annex to this Regulation.

Article 2

Identification of the relevant parties

1. For all orders, operators of trading venues shall maintain the records on the following:

   (a) the member or participant of the trading venue who submitted the order to the trading venue, identified as specified in field 1 of Table 2 of the Annex;

   (b) the person or computer algorithm within the member or participant of the trading venue to which an order is submitted that is responsible for the investment decision in relation to the order, identified as specified in field 4 of the Table 2 of the Annex;

   (c) the person or computer algorithm within the member or participant of the trading venue that is responsible for the execution of the order, identified as specified in field 5 of Table 2 of the Annex;

   (d) the member or participant of the trading venue who routed the order on behalf of and in the name of another member or participant of the trading venue, identified as a non-executing broker as specified in field 6 of Table 2 of the Annex;

   (e) the client on whose behalf the member or participant of the trading venue submitted the order to the trading venue, identified as specified in field 3 of Table 2 of the Annex.

2. Where a member or participant or client of the trading venue is authorised under ~~the~~ United Kingdom legislation ~~of a Member State~~ to allocate an order to its client following submission of the order to the trading venue and has not yet allocated the order to its client at the time of the submission of the order, that order shall be identified as specified in field 3 of Table 2 of the Annex.

3. Where several orders are submitted to the trading venue together as an aggregated order, the aggregated order shall be identified as specified in field 3 of Table 2 of the Annex.

…

Article 13

Trading phases and indicative auction price and volume

1. Operators of trading venues shall maintain a record of the order details as specified in Section K of Table 2 of the Annex.

2. Where the competent ~~authorities request~~ authority requests details referred to in Section K pursuant to Article 1, the details referred to in fields 9 and 15 to 18 of Table 2 of the Annex shall also be considered as details pertaining to the order concerned by that request.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

ANNEX

…

Table 2

Details of orders

…

Section B — Trading capacity and liquidity provision

7	Trading capacity	Indicates whether the order submission results from the member or, participant of the trading venue is carrying out matched principal trading under Article 4(1)(38) ~~of~~ as defined by Directive 2014/65/EU, or dealing on its own account ~~under~~ as defined by ~~Article 4(6) of Directive 2014/65/EU~~ Article 2(1)(5) of Regulation 600/2014/EU. Where the order submission does not result from the member or participant of the trading venue carrying out matched principal trading or dealing on its own account, the field shall indicate that the transaction was carried out under any other capacity.	'DEAL' — Dealing on own account 'MTCH' — Matched principal 'AOTC' — Any other capacity

8	Liquidity provision activity	Indicates whether an order is submitted to a trading venue as part of a market-making strategy pursuant to Articles 17 and 48 of Directive 2014/65/EU or UK law corresponding to these provisions, or is submitted as part of another activity in accordance with Article 3 of this Regulation.	'true' 'false'

…

Annex F

COMMISSION DELEGATED REGULATION (EU) 2017/585 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council 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

…

Article -2

Application

This Regulation applies to:

a MiFID investment firm (other than a collective portfolio management investment firm) and a UK RIE.

Article -1

Interpretation

In this technical standard, unless the contrary intention appears:

(1) words and expressions used have the same meaning as in Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018];

(2) in accordance with article 2(1)(62) of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], all references in this technical standard to a 'trading venue' are to a 'UK trading venue;

(3) references to the 'Regulated Activities Order' are to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; and

(4) 'MiFID investment firm', 'collective portfolio management investment firm' and 'UK RIE' are defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority immediately after Exit Day.

Article 1

Content, standards, form and format of reference data

Trading venues and systematic ~~internalises~~ internalisers shall provide the competent ~~authorities~~ authority with all details of financial instrument reference data ('reference data') referred to in Table 3 of the Annex that pertain to the financial instrument concerned. All details provided shall be submitted in accordance with the standards and formats specified in Table 3 of the Annex, in an electronic and machine-readable form and in a common XML template in accordance with the ISO 20022 methodology.

Article 2

Timing for provision of reference data to the competent ~~authorities~~ authority

Trading venues and systematic internalisers shall provide ~~their~~ the competent authority by 21.00 CET each day they are open for trading with the reference data for all financial instruments that are admitted to trading or that are traded, including where orders or quotes are placed through their system, before 18.00 CET on that day.

…

Article 4

Arrangements to ensure effective receipt of reference data

1. ~~Competent authorities~~ The competent authority shall monitor and assess the completeness of the reference data ~~they receive~~ it receives from a trading venue or systematic internaliser, and the compliance of that data with the standards and formats specified in Table 3 of the Annex.
2. Following receipt of reference data in respect of each day on which trading venues and systematic internalisers are open for trading, the competent ~~authorities~~ authority shall notify trading venues and systematic internalisers of any incompleteness in that data and of any failure to deliver reference data by the deadlines set out in Article 2.
3. ~~ESMA shall monitor and assess the completeness of reference data it receives from competent authorities, and compliance of the data with the standards and formats specified in Table 3 of the Annex.~~
4. ~~Following receipt of reference data from competent authorities, ESMA shall notify them of any incompleteness in that data and of any failure to deliver reference data by the deadlines set out in Article 7(1).~~

Article 5

Arrangements to ensure the quality of the reference data

~~Competent authorities~~ The competent authority shall conduct quality assessments regarding the content and accuracy of the reference data received pursuant to Article 27(1) of Regulation (EU) No 600/2014 on at least a quarterly basis.

Article 6

Methods and arrangements for supplying reference data

1. Trading venues and systematic internalisers shall ensure that they provide complete and accurate reference data to ~~their~~ the competent ~~authorities~~ authority pursuant to Articles 1 and 3.

2. Trading venues and systematic internalisers shall put methods and arrangements in place that enable them to identify incomplete or inaccurate reference data previously submitted. A trading venue or systematic internaliser detecting that submitted reference data is incomplete or inaccurate shall promptly notify ~~its~~ the competent authority and transmit to the competent authority complete and correct relevant reference data without undue delay.

Article 7

Arrangements for ~~efficient exchange and~~ publication of reference data

~~1. Competent authorities shall transmit complete and accurate reference data to ESMA each day no later than 23.59 CET using the secure electronic communication channel established for that purpose between competent authorities and ESMA.~~

2. On the day following receipt of reference data ~~in accordance with paragraph 1~~, ~~ESMA~~ the competent authority shall consolidate the data received from each ~~competent authority~~ trading venue and systematic internaliser.

~~3. ESMA shall make the consolidated data available to all competent authorities by 8.00 CET on the day following its receipt using the secure electronic communication channels referred to in paragraph 1.~~

4. ~~Competent authorities~~ The competent authority shall use the consolidated data in respect of a given day and other available relevant data it considers necessary to validate the transaction reports in respect of transactions executed on that given day and reported pursuant to Article 26 of Regulation (EU) No 600/2014.

~~5. Each competent authority shall use the consolidated data for a given day to exchange transaction reports submitted on that given day in accordance with the second subparagraph of Article 26(1) of Regulation (EU) No 600/2014.~~

6. ~~ESMA~~ The competent authority shall publish ~~the~~ consolidated reference data from trading venues and systematic internalisers in an electronic, downloadable and machine-readable form.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

ANNEX

…

Table 2

Details to be reported as financial instrument reference data

N.	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
General Fields			
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	Instrument classification	Taxonomy used to classify the financial instrument. A complete and accurate CFI code shall be provided.	{CFI_CODE}

4	Commodities or emission allowance derivative indicator	Indication as to whether the financial instrument falls within the definition of commodities derivative under Article 2(1) (30) of Regulation (EU) No 600/2014 or is a derivative relating to emission allowances referred to in ~~Section C(4) of Annex I to Directive 2014/65/EU.~~ paragraph 4 of Part 1 of Schedule 2 to the Regulated Activities Order.	'true' – Yes 'false' – No

Annex G

COMMISSION DELEGATED REGULATION (EU) 2017/590 of 28 July 2016 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

…

Article -2

Application

This Regulation applies to:

a MiFID investment firm (other than a collective portfolio management investment firm) and a UK RIE.

Article -1

Interpretation

In this technical standard, unless the contrary intention appears:

(1) words and expressions used have the same meaning as in Regulation 600/2014/EU, (as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018]);

(2) in accordance with article 2(1)(62) of Regulation 600/2014/EU, all references in this technical standard to a 'trading venue' are to a 'UK trading venue;

(3) references to 'UK or Union trading venues' include 'UK trading venues' as defined in article 2(16A) of Regulation 600/2014/EU and 'trading venues' as defined by article 4(1)(24) of Directive 2014/65/EU and operated by a person authorised under Directive 2014/65/EU; and

(4) references to a 'MiFID investment firm' 'collective portfolio management investment firm' and 'UK RIE' are to the terms as defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority, immediately after Exit Day.

…

Article 2

Meaning of transaction

For the purposes of Article 26 of Regulation (EU) No 600/2014, the conclusion of an acquisition or disposal of a financial instrument referred to in Article 26(2) of Regulation (EU) No 600/2014 shall constitute a transaction.

…

5. A transaction for the purposes of Article 26 of Regulation (EU) No 600/2014 shall not include the following:

   (a) securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council;

…

The exclusion provided for in point (a) of the first subparagraph shall not apply to the securities financing transactions to which a member of the European System of Central Banks or Bank of England is a counterparty.

…

Article 4

Transmission of an order

1. An investment firm transmitting an order pursuant to Article 26(4) of Regulation (EU) No 600/2014 (transmitting firm) shall be deemed to have transmitted that order only if the following conditions are met:

   (a) the order was received from its client or results from its decision to acquire or dispose of a specific financial instrument in accordance with a discretionary mandate provided to it by one or more clients;

   (b) the transmitting firm has transmitted the order details referred to in paragraph 2 to another investment firm (receiving firm);

   (c) the receiving firm is a MiFID investment firm and is subject to Article 26(1) of Regulation (EU) No 600/2014 and agrees either to report the transaction resulting from the order concerned or to transmit the order details in accordance with this Article to another MiFID investment firm.

   For the purposes of point (c) of the first subparagraph the agreement shall specify the

time limit for the provision of the order details by the transmitting firm to the receiving firm and provide that the receiving firm shall verify whether the order details received contain obvious errors or omissions before submitting a transaction report or transmitting the order in accordance with this Article;

2. The following order details shall be transmitted in accordance with paragraph 1, insofar as pertinent to a given order:

(a) the identification code of the financial instrument;

(b) whether the order is for the acquisition or disposal of the financial instrument;

(c) the price and quantity indicated in the order;

(d) the designation and details of the client of the transmitting firm for the purposes of the order;

(e) the designation and details of the decision maker for the client where the investment decision is made under a power of representation;

(f) a designation to identify a short sale;

(g) a designation to identify a person or algorithm responsible for the investment decision within the transmitting firm;

(h) country of the branch of the investment firm supervising the person responsible for the investment decision and country of the investment firm's branch that received the order from the client or made an investment decision for a client in accordance with a discretionary mandate given to it by the client;

(i) for an order in commodity derivatives, an indication whether the transaction is to reduce risk in an objectively measurable way in accordance with ~~Article 57 of Directive 2014/65/EU~~ regulation 17 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;

(j) the code identifying the transmitting firm.

For the purposes of point (d) of the first subparagraph, where the client is a natural person, the client shall be designated in accordance with Article 6.

For the purposes of point (j) of the first subparagraph, where the order transmitted was received from a prior firm that did not transmit the order in accordance with the conditions set out in this Article, the code shall be the code identifying the transmitting firm. Where the order transmitted was received from a prior transmitting firm in accordance with the conditions set out in this Article, the code provided pursuant to point (j) referred to in the first subparagraph shall be the code identifying the prior transmitting firm.

3. Where there is more than one transmitting firm in relation to a given order, the order details referred to in points (d) to (i) of the first subparagraph of paragraph 2 shall be transmitted in respect of the client of the first transmitting firm.

4. Where the order is aggregated for several clients, information referred to in paragraph 2 shall be transmitted for each client.

…

Article 6

Designation to identify natural persons

1. A natural person shall be identified in a transaction report using the designation resulting from the concatenation of the ISO 3166-1 alpha-2 (2 letter country code) of the nationality of the person, followed by the national client identifier listed in Annex II based on the nationality of the person.
2. The national client identifier referred to in paragraph 1 shall be assigned in accordance with the priority levels provided in Annex II using the highest priority identifier that a person has regardless of whether that identifier is already known to the investment firm.
3. Where a natural person is a national of more than one ~~European Economic Area (EEA)~~ country, the country code of the ~~first~~ nationality ~~when sorted alphabetically by its~~ which appears first in the ISO 3166-1 alpha-2 code column in Annex II and the identifier of that nationality assigned in accordance with paragraph 2 shall be used. ~~Where a natural person has a non-EEA nationality, the highest priority identifier in accordance with the field referring to 'all other countries' provided in Annex II shall be used. Where a natural person has EEA and non-EEA nationality, the country code of the EEA nationality and the highest priority identifier of that nationality assigned in accordance with paragraph 2 shall be used.~~

…

Article 13

Conditions upon which legal entity identifiers are to be developed, attributed and maintained

1. ~~Member States~~ The United Kingdom shall ensure that legal entity identifiers are developed, attributed and maintained in accordance with the following principles:
   (a) uniqueness;
   (b) accuracy;
   (c) consistency;

(d) neutrality;

(e) reliability;

(f) open source;

(g) flexibility;

(h) scalability;

(i) accessibility.

~~Member States~~ The United Kingdom shall also ensure that legal entity identifiers are developed, attributed and maintained using uniform global operational standards, are subject to the governance framework of the Legal Entity Identifier Regulatory Oversight Committee and are available at a reasonable cost.

2. An investment firm shall not provide a service triggering the obligation to submit a transaction report for a transaction entered into on behalf of a client who is eligible for the legal entity identifier code, prior to obtaining the legal entity identifier code from that client.

3. The investment firm shall ensure that the length and construction of the code are compliant with the ISO 17442 standard and that the code is included in the Global LEI database maintained by the Central Operating Unit appointed by the Legal Entity Identifier Regulatory Oversight Committee and pertains to the client concerned.

Article 14

Reporting transactions executed by branches

~~1. An investment firm shall report transactions executed wholly or partly through its branch to the competent authority of the home Member State of the investment firm unless otherwise agreed by the competent authorities of the home and host Member States.~~

2. Where an investment firm executes a transaction wholly or partly through its branch, it shall report the transaction ~~only once~~ to the competent authority.

3. Where country code details in respect of an investment firm's branch are required to be included in a transaction report in accordance with fields 8, 17, 37, 58 or 60 of Table 2 of Annex I due to the partial or full execution of a transaction through that branch, the investment firm shall provide in the transaction report the ISO 3166 country code for the relevant branch in all of the following cases:

(a) where the branch received the order from a client or made an investment decision for a client in accordance with a discretionary mandate given to it by the client;

(b) where the branch has supervisory responsibility for the person responsible for

the investment decision concerned;

(c) where the branch has supervisory responsibility for the person responsible for execution of the transaction;

(d) where the transaction was executed on a trading venue or an organised trading platform located outside the ~~Union~~ United Kingdom using the branch's membership of that trading venue or an organised trading platform.

4. Where one or more of the cases provided in paragraph 3 do not apply to a branch of the investment firm, the relevant fields in Table 2 of Annex I shall be populated with the ISO country code ~~for the home Member State of the investment firm, or, in the case of a third country firm, the country code~~ of the country where the firm has established its head office or registered office.

5. ~~The branch of a third country firm shall submit the transaction report to the competent authority which authorised the branch. The branch of a third country firm shall fill in the relevant fields in Table 2 of Annex I with the ISO country code for the Member State of the authorising competent authority~~.

~~Where a third country firm has set up branches in more than one Member State within the Union, those branches shall jointly choose one of the competent authorities from the Member States to whom transaction reports are to be sent pursuant to paragraphs 1 to 3.~~

Article 15

Methods and arrangements for reporting financial transactions

1. The methods and arrangements by which transaction reports are generated and submitted by trading venues and investment firms shall include:

(a) systems to ensure the security and confidentiality of the data reported;

(b) mechanisms for authenticating the source of the transaction report;

(c) precautionary measures to enable the timely resumption of reporting in the case of a failure of the reporting system;

(d) mechanisms for identifying errors and omissions within transaction reports;

(e) mechanisms to avoid the reporting of duplicate transaction reports, including where an investment firm relies on a trading venue to report the details of transactions executed by the investment firm through the systems of the trading venue in accordance with Article 26(7) of Regulation (EU) No 600/2014;

(f) mechanisms to ensure that the trading venue only submits reports on behalf of those investment firms that have chosen to rely on the trading venue to send reports on their behalf for transactions completed through systems of the trading venue;

(g) mechanisms to avoid reporting of any transaction where there is no obligation to report under Article 26(1) of Regulation (EU) No 600/2014 either because there is no transaction within the meaning of Article 2 of this Regulation or because the instrument which is the subject of the transaction concerned does not fall within the scope of Article 26(2) of Regulation (EU) No 600/2014;

(h) mechanisms for identifying unreported transactions for which there is an obligation to report under Article 26 of Regulation (EU) No 600/2014, including cases where transaction reports rejected by the competent authority concerned have not been successfully re-submitted.

2. Where the trading venue or investment firm becomes aware of any error or omission within a transaction report submitted to ~~a~~ the competent authority, any failure to submit a transaction report including any failure to resubmit a rejected transaction report for transactions that are reportable, or of the reporting of a transaction for which there is no obligation to report, it shall promptly notify the ~~relevant~~ competent authority of this fact.

3. Investment firms shall have arrangements in place to ensure that their transaction reports are complete and accurate. Those arrangements shall include testing of their reporting process and regular reconciliation of their front- office trading records against data samples provided to them by ~~their~~ the competent ~~authorities~~ authority to that effect.

4. Where the competent ~~authorities do~~ authority does not provide data samples, investment firms shall reconcile their front-office trading records against the information contained in the transaction reports that they have submitted to the competent ~~authorities~~ authority, or in the transaction reports that ARMs or trading venues have submitted on their behalf. The reconciliation shall include checking the timeliness of the report, the accuracy and completeness of the individual data fields and their compliance with the standards and formats specified in Table 2 of Annex I.

5. Investment firms shall have arrangements in place to ensure that their transaction reports, when viewed collectively, reflect all changes in their position and in the position of their clients in the financial instruments concerned at the time transactions in the financial instruments are executed.

6. Where an ARM, in accordance with instructions from the investment firm, cancels or corrects a transaction report submitted on behalf of an investment firm, the investment firm shall retain the details of the corrections and cancellations provided to it by the ARM.

~~7. The reports referred to in Article 26(5) of Regulation (EU) No 600/2014 shall be sent to the competent authority of the home Member State of the trading venue.~~

~~8. Competent authorities shall use secure electronic communication channels when exchanging transaction reports with each other.~~

~~Article 16~~

~~Determination of the most relevant market in terms of liquidity~~

1. ~~In the case of a transferable security within the meaning of Article 4(1)(44)(a) of Directive 2014/65/EU, an emission allowance or a unit in a collective investment undertaking, the most relevant market in terms of liquidity for that financial instrument (the most relevant market) shall be determined once each calendar year on the basis of the data of the previous calendar year, provided that the financial instrument was admitted to trading or traded at the beginning of the previous calendar year, as follows:~~

   (a) ~~for instruments admitted to trading on one or more regulated markets, the most relevant market shall be the regulated market where the turnover, as defined in Article 17(4) of Commission Delegated Regulation (EU) 2017/587 (1) for the previous calendar year for that instrument is the highest;~~

   (b) ~~for instruments not admitted to trading on regulated markets, the most relevant market shall be the MTF where the turnover for the previous calendar year for that instrument is the highest;~~

   (c) ~~for the purposes of points (a) and (b), the highest turnover shall be calculated by excluding all transactions that benefit from pre-trade transparency waivers pursuant to Article 4(1)(a), (b) or (c) of Regulation (EU) No 600/2014.~~

2. ~~By derogation from paragraph 1 of this Article, where a transferable security within the meaning of Article 4(1)(44)(a) of Directive 2014/65/EU, an emission allowance or a unit in a collective investment undertaking was not admitted to trading or traded at the beginning of the previous calendar year or where there is insufficient or non-existent data to calculate the turnover in accordance with point (c) of paragraph 1 of this Article for the purpose of determining the most relevant market for that financial instrument, the most relevant market for the financial instrument shall be the market of the Member State in which a request for admission to trading was first made or where the instrument was first traded.~~

3. ~~In the case of a transferable security within the meaning of Article 4(1)(44)(b) of Directive 2014/65/EU or a money market instrument whose issuer is established in the Union, the most relevant market shall be the market of the Member State where the registered office of the issuer is situated.~~

4. ~~In the case of a transferable security within the meaning of Article 4(1)(44)(b) of Directive 2014/65/EU or a money market instrument whose issuer is established outside the Union, the most relevant market shall be the market of the Member State where the request for admission to trading of that financial instrument was first made or where the financial instrument was first traded on a trading venue.~~

5. ~~In the case of a financial instrument which is a derivative contract or a contract for difference or a transferable security within the meaning of Article 4(1)(44)(c) of Directive 2014/65/EU, the most relevant market shall be determined as follows:~~

~~(a) where the underlying in the financial instrument is a transferable security within the meaning of Article 4(1)(44)(a) of Directive 2014/65/EU or an emission allowance which is admitted to trading on a regulated market or is traded on an MTF, the most relevant market shall be the market deemed to be the most relevant market for the underlying security in accordance with paragraph 1 or 2 of this Article;~~

~~(b) where the underlying in a financial instrument is a transferable security within the meaning of Article 4(1)(44)(b) of Directive 2014/65/EU or a money market instrument which is admitted to trading on a regulated market or traded on an MTF or an OTF the most relevant market shall be the market deemed to be the most relevant market for the underlying financial instrument in accordance with paragraph 3 or 4 of this Article;~~

~~(c) where the underlying in a financial instrument is a basket which contains financial instruments, the most relevant market shall be the market of the Member State in which the financial instrument was first admitted to trading or traded on a trading venue;~~

~~(d) where the underlying in a financial instrument is an index which contains financial instruments, the most relevant market shall be the market of the Member State in which the financial instrument was first admitted to trading or traded on a trading venue;~~

~~(e) where the underlying of the financial instrument is a derivative admitted to trading or traded on a trading venue, the most relevant market shall be the market of the Member State in which that derivative is admitted to trading or traded on a trading venue.~~

~~6. For financial instruments that are not covered by paragraphs 1 to 5, the most relevant market shall be the market of the Member State of the trading venue which first admitted the financial instrument to trading or on which the financial instrument was first traded.~~

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

ANNEX

…

Table 2

Details to be reported in transaction reports

All fields are mandatory, unless stated otherwise.

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
…			
3	Trading venue transaction identification code	This is a number generated by UK or Union trading venues and disseminated to both the buying and the selling parties in accordance with Article 12 of Commission Delegated Regulation (EU) 2017/580([1]). This field is only required for the market side of a transaction executed on a UK or Union trading venue.	{ALPHANUM-52}
…			
5	Investment Firm covered by Directive 2014/65/EU	Indicates whether the entity identified in field 4 is ~~an investment firm covered by Article 4(1) of Directive 2014/65/EU~~ a MiFID investment firm	'true'- yes 'false'- no
6	Submitting entity identification code	Code used to identify the entity submitting the transaction report to the competent authority in accordance with Article 26(7) of Regulation (EU) No 600/2014. Where the report is submitted by the executing firm directly to the competent authority, it shall be populated with the LEI of the executing firm (where the executing firm is a legal entity). Where the report is submitted by a trading venue, it shall be populated with the LEI of the operator of the trading venue. Where the report is submitted by an ARM, it shall be populated with the LEI of the ARM.	{LEI}

Buyer details

— For joint accounts fields 7-11 shall be repeated for each buyer.

— Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, the information in fields 7-15 shall be populated by the receiving firm in the receiving firm's report with the information received from the transmitting firm.

— Where the transmission is for a transmitted order that has not met the conditions for transmission set out in Article 4 the receiving firm shall treat the transmitting firm as the buyer

7	Buyer identification code	Code used to identify the acquirer of the financial instrument. Where the acquirer is a legal entity, the LEI code of the acquirer shall be used. Where the acquirer is a non-legal entity, the identifier specified in Article 6 shall be used. Where the transaction was executed on: a UK or Union trading venue or on an organised trading platform outside of the UK or Union that utilises a central counterparty (CCP) and where the identity of the acquirer is not disclosed, the LEI code of the CCP shall be used. Where the transaction was executed on a UK or Union trading venue or on an organised trading platform outside of the UK or Union that does not utilise a CCP and where the identity of the acquirer is not disclosed, the MIC code of the trading venue or of the organised trading platform outside of the UK or Union shall be used. …	{LEI} {MIC} {NATIONAL_ID} 'INTC'
8	Country of the branch for the buyer	Where the acquirer is a client, this field shall identify the country of the branch that received the order from the client or made an investment decision for a client in accordance with a discretionary mandate given to it by the client as required by Article 14(3). Where this activity was not conducted by a branch this shall be populated with the country code of the ~~home Member State of the investment firm~~ ~~or the country code of the~~ country where the investment firm has established its head office or registered office ~~(in the case of third country firms).~~ Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated using the information received from the transmitting firm.	{COUNTRYCODE_2}
…			

…

16	Seller identification code	Code used to identify the disposer of the financial instrument. Where the disposer is a legal entity, the LEI code of the disposer shall be used. Where the disposer is a non-legal entity, the identifier specified in Article 6 shall be used. Where the transaction was executed on a trading venue or on an organised trading platform outside of the ~~Union~~ UK that utilises a CCP and where the identity of the disposer is not disclosed, the LEI code of the CCP shall be used. Where the transaction was executed on a trading venue or on an organised trading platform outside of the ~~Union~~ UK that does not utilise a CCP and where the identity of the disposer is not disclosed, the MIC code of the trading venue or of the organised trading platform outside of the ~~Union~~ UK shall be used. …	{LEI} {MIC} {NATIONAL_ID} 'INTC'

…

Transaction details

28	Trading date time	Date and time when the transaction was executed. For transactions executed on a UK or Union trading venue, the level of granularity shall be in accordance with the requirements set out in Article of Commission Delegated Regulation (EU) 2017/574 (2). For transactions not executed on a UK or Union trading venue, the date and time shall be when the parties agree the con-tent of the following fields: quantity, price, currencies in fields 31, 34 and 44, instrument identification code, in-strument classification and underlying instrument code, where applicable. For transactions not executed on a UK or Union trading venue the time reported shall be at least to the nearest second. Where the transaction results from an order transmitted by the executing firm on behalf of a client to a third party where the conditions for transmission set out in Article 4 were not satisfied, this shall be the date and time of the transaction rather than the time of the order transmission.	{DATE_TIME_FORMAT}
…			

36	Venue	Identification of the venue where the transaction was executed. Use the ISO 10383 segment MIC for transactions executed on a UK or Union trading venue, a UK or Union Systematic Internaliser (SI) or organised trading platform outside of the UK or Union. 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 UK or Union trading venue or for which a request for admission was made to a UK or Union trading venue, where the transaction on that financial instrument is not executed on a UK or Union trading venue, UK or Union SI or organised trading platform outside of the UK or Union , or where an investment firm does not know it is trading with another investment firm acting as an UK or Union SI. Use MIC code 'XXXX' for financial instruments that are not admitted to trading or traded on a UK or Union trading venue or for which no request for admission has been made and that are not traded on an organised trading platform outside of the UK or Union but where the underlying is admitted to trading or traded on a UK or Union trading venue.	{MIC}
37	Country of the branch membership	Code used to identify the country of a branch of the investment firm whose market membership was used to execute the transaction. Where a branch's market membership was not used, this field shall be populated with the country code of the ~~home Member State of the~~ investment firm or the country where the firm has established its head office or registered office ~~(in the case of third country firms)~~. This field shall only be populated for the market side of a transaction executed on a trading venue or on an organised trading platform outside of the UK or Union.	{COUNTRYCODE_2}
…			

Instrument details

41	Instrument identification code	Code used to identify the financial instrument This field applies to financial instruments for which a re-quest for admission to trading has been made to a United Kingdom or Union trading venue, that are admitted to trading or traded on a United Kingdom or Union trading venue or on a United Kingdom or Union systematic internaliser. It also applies to financial instruments which have an ISIN and are traded on organised trading platform outside of the ~~Union~~ United Kingdom where the underlying is a financial instrument traded on a United Kingdom or Union trading venue.	{ISIN}

Fields 42-56 are not applicable where:
transactions are executed on a UK or Union trading venue or with an investment firm acting as a UK or Union SI; or field 41 is populated with an ISIN that exists on the reference data list ~~from ESMA~~

42	Instrument full name	Full name of the financial instrument	{ALPHANUM-350}
43	Instrument classification	Taxonomy used to classify the financial instrument A complete and accurate CFI code shall be provided.	{CFI_CODE}
44	Notional currency 1	Currency in which the notional is denominated. In the case of an interest rate or currency derivative contract, this will be the notional currency of leg 1 or the currency 1 of the pair. In the case of swaptions where the underlying swap is single-currency, this will be the notional currency of the underlying swap. For swaptions where the underlying is multi-currency, this will be the notional currency of leg 1 of the swap.	{CURRENCYCODE_3}
45	Notional currency 2	In the case of multi-currency or cross-currency swaps the currency in which leg 2 of the contract is denominated. For swaptions where the underlying swap is multi-currency, the currency in which leg 2 of the swap is denominated	{CURRENCYCODE_3}

46	Price multiplier	Number of units of the underlying instrument represented by a single derivative contract. Monetary value covered by a single swap contract where the quantity field indicates the number of swap contracts in the transaction. For a future or option on an index, the amount per index point. For spreadbets the movement in the price of the underlying instrument on which the spreadbet is based. The information reported in this field shall be consistent with the values provided in fields 30 and 33.	{DECIMAL-18/17}

…

Trader, algorithms, waivers and indicators

57	Investment decision within firm	Code used to identify the person or algorithm within the investment firm who is responsible for the investment decision. For natural persons, the identifier specified in Article 6 shall be used If the investment decision was made by an algorithm, the field shall be populated as set out in Article 8. Field only applies for investment decision within the firm. Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated by the receiving firm within the receiving firm's report using the information received from the transmitting firm.	{NATIONAL_ID} – Natural persons {ALPHANUM-50} – Algorithms
58	Country of the branch supervising the person responsible for the investment decision	Code used to identify the country of the branch of the investment firm for the person responsible for the investment decision, as set out in Article 14(3)(b). Where the person responsible for the investment decision was not supervised by a branch, this field shall be populated with the country code of ~~the home Member State of the investment firm or the country code of~~ the country where the firm has established its head office or registered office ~~(in the case of third country firms)~~.	{COUNTRYCODE_2}
…			
60	Country of the branch supervising the person responsible for the execution	Code used to identify the country of the branch of the investment firm for the person responsible for the execution of the transaction, as set out in Article 14(3)(c). Where the person responsible was not supervised by a branch, this field shall be populated with the country code of the ~~home Member State of the investment firm country code of the~~ country where the firm has established its head office or registered office (~~in the case of third country firms~~) . This field is not applicable when the execution was made by an algorithm.	{COUNTRYCODE_2}

…			
64	Commodity derivative indicator	Indication as to whether the transaction reduces risk in an objectively measurable way in accordance with regulation 17 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 ~~Article 57 of Directive 2014/65/EU~~. Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated by the receiving firm in the receiving firm's reports using the information received from the transmitting firm. This field is only applicable for commodity derivative transactions.	'true' – yes 'false' – no
…			

ANNEX II
National client identifiers for natural persons to be used in transaction reports

ISO 3166 — 1 alpha 2	Country Name	1st priority identifier	2nd priority identifier	3rd priority identifier
GB	United Kingdom	UK National Insurance number	CONCAT	
[..]				
~~GB~~	~~United Kingdom~~	~~UK National Insurance number~~	~~CONCAT~~	
[..]				

Annex H

COMMISSION DELEGATED REGULATION (EU) 2017/2194 of 14 August 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to package orders

…

Article -2

Application

This technical standard applies in accordance with Regulation 600/2014/EU, as amended by the [Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].

Article -1

Interpretation

Where a term is defined in article 2 Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], the same definition applies for the purposes of this Regulation.

Article 2(1)(62) of Regulation 600/2014/EU shall also apply to references to 'trading venue' in this Regulation.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

FCA 2019/XX

TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS REGULATION) (EU EXIT) (No 2) 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 Markets in Financial Instruments Regulation EU Regulations 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 and regulations 28 and 29 of Regulation 600/2014/EU as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].

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)
Commission Delegated Regulation (EU) 2017/581 of 24 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties.	Annex A

Commission Delegated Regulation (EU) 2017/582 of 29 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing.	Annex B
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.	Annex C

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 (Markets in Financial Instruments Regulation) (EU Exit) (No 2) Instrument 2019.

By order of the Board
[*date*]

ANNEX A

Commission Delegated Regulation (EU) 2017/581 of 24 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties (Part 1) (FCA)

…

Article -1

Interpretation

1. Where a term is defined in article 2 of Regulation 600/2014/EU, that definition shall apply for the purposes of this Regulation save where the context requires otherwise.

2. References to "trading venue" are to the defined term in article 2(1)(16) of Regulation 600/2014/EU

CHAPTER I

NON-DISCRIMINATORY ACCESS TO CCPs AND TRADING VENUES

SECTION 1

…

Article 7

Denial of access by a trading venue based on other factors creating significant undue risks

A trading venue may deny an access request on grounds of significant undue risks in any of the following cases:

(a) threat to the economic viability of the trading venue or its ability to meet minimum capital requirements under

~~Article 47(1)(f) of Directive 2014/65/EU of the European Parliament and of the Council~~ paragraph 1 of the Schedule to the Financial Services and Markets Act (Recognition Requirements Regulations) 2001 ~~(1)~~;

(b) incompatibility of trading venue rules and CCP rules that the trading venue cannot remedy in cooperation with the CCP.

…

CHAPTER II

CONDITIONS UNDER WHICH ACCESS MUST BE PERMITTED

Article 9

Conditions under which access must be permitted

1. The parties shall agree on their respective rights and obligations arising from the access granted, including the applicable law governing their relationships. The terms of the access agreement shall:

   (a) be clearly defined, transparent, valid and enforceable;

   (b) where two or more CCPs have access to the trading venue specify the way in which transactions on the trading venue will be allocated to the CCP that is party to the agreement;

   (c) contain clear rules concerning the moment of entry of transfer orders, construed pursuant to ~~Directive 98/26/EC of the European Parliament and of the Council~~ ~~(2)~~ the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, into relevant systems and the moment of irrevocability;

…

Article 13

Netting of economically equivalent contracts

A CCP shall apply to economically equivalent contracts referred to in Article 12(1) of this Regulation the same netting procedures irrespective of where the contracts were traded, provided that any netting procedure it applies is valid and enforceable in accordance with ~~Directive 98/26/EC~~ the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 and applicable insolvency law.

…

~~Article 16~~

~~**Notification procedure from the competent authority to ESMA and the CCP college**~~

~~Relevant competent authorities shall notify ESMA and the CCP college of every decision to approve a transitional arrangement in accordance with Article 35(5) of Regulation (EU) No 600/2014 in writing without undue delay and no later than one month from the decision, using Form 2 set out in the Annex to this Regulation.~~

~~Article 17~~

~~**Notification procedure from the trading venue to its competent authority regarding the initial transitional period**~~

~~Where a trading venue does not wish to be bound by Article 36 of Regulation (EU) No 600/2014, it shall submit a notification to its competent authority and ESMA in written form, using Forms 3.1 and 3.2 set out in the Annex to this Regulation.~~

Article 18

Notification procedure from the trading venue to its competent authority regarding an extension of the transitional period

Where a trading venue wishes to continue not to be bound by Article 36 of Regulation (EU) No 600/2014 for a further thirty months, it shall submit a notification to ~~its competent authority and ESMA~~ the FCA in written form, using Forms 4.1 and 4.2 set out in the Annex to this Regulation.

…

Article 20

Approval and verification method by ~~ESMA~~ the competent authority

1. ~~For the purposes of verification in accordance with Article 36(6)(d) of Regulation (EU) No 600/2014, the trading venue shall submit to ESMA on request all facts and figures on which the calculation is based.~~

2. For the purposes of verification in accordance with Article 36(6)(d) of Regulation 600/2014, when ~~When~~ verifying the submitted annual notional amount figures, ~~ESMA~~ the competent authority shall also consider relevant post-trade data and annual statistics.

3. ~~ESMA shall approve or reject the opt-out within three months of the reception of all relevant information for the notification in accordance with either Article 16 or 17, including the information specified in Article 19.~~

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

ANNEX

…

Form 2

~~Notification referred to in Article 16~~

~~Name of the CCP~~	~~Relevant contact details~~	~~Date of approval decision~~	~~Dates of beginning and end of transitional period~~	~~Name(s) of trading venue(s) connected by close links~~	~~Jurisdiction(s) of trading venue(s) connected by close links~~
			~~Beginning: End:~~	~~1.~~ ~~2.~~ ~~3.~~ ~~…~~	~~1.~~ ~~2.~~ ~~3.~~ ~~…~~

~~Form 3.1~~

~~General notification referred to in Article 17~~

~~Name of the trading venue~~	~~Relevant contact details~~	~~Name(s) and jurisdiction(s) of trading venues in the same group based in the Union~~	~~Name(s) and jurisdiction(s) of CCP(s) connected by close links~~
		~~1.~~ ~~2.~~ ~~3.~~ ~~…~~	~~1.~~ ~~2.~~ ~~3~~ ~~…~~

Form 3.2

Notification of notional amount referred to in Article 17

Trading Venue:	Traded notional amount in 2016
Asset class X:	
Asset class Y:	
Asset class Z: …	

Form 4.1

General notification referred to in Article 18

Name of the trading venue	Relevant contact details	Name(s) and jurisdiction(s) of trading venues in the same group based in the ~~Union~~ UK	Name(s) and jurisdiction(s) of CCP(s) connected by close links
		1. 2. 3. …	1. 2. 3. …

…

Annex B

COMMISSION DELEGATED REGULATION (EU) 2017/582 of 29 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing

…

Article -1

Interpretation

1. References in this Regulation to Regulation 600/2014/EU shall mean Regulation 600/2014/EU as amended by [Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].

2. For the purposes of this Regulation, where a term is defined in Article 2 of Regulation 600/2014/EU that definition applies.

3. Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this Regulation.

...

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Annex C

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.

…

Article – 2

Application

This Regulation applies in accordance with Regulation 600/2014/EU, as amended by the [Markets in Financial Instruments (Amendment) (EU Exit Regulations 2018].

Article -1

Interpretation

1. For the purposes of this Regulation, where a term is defined in Article 2 of Regulation 600/2014/EU that definition applies.
2. Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this Regulation.

Article 1

Definitions

For the purposes of this Regulation the following definitions apply:

(a) 'client' means a client as defined in Article 2(15) of Regulation (EU) No 648/2012;

(b) 'indirect client' means a client of a client as defined in point (a);

(c) 'indirect clearing arrangements' means the set of contractual relationships between providers and recipients of indirect clearing services provided by a client, an indirect client or a second indirect client;

(d) 'second indirect client' means a client of an indirect client as defined in point (b);

(e) 'third indirect client' means a client of a second indirect client as defined in point (d).

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;

   (b) the client provides indirect clearing services on reasonable commercial terms and publicly discloses the general terms and conditions under which it provides those services;

   (c) the clearing member has agreed to the general terms and conditions referred to in point (b) of this paragraph.

2. The client referred to in paragraph 1 and the indirect client shall conclude, in writing, an indirect clearing arrangement. The indirect clearing arrangement shall include at least the following contractual terms:

   (a) the general terms and conditions referred to in paragraph 1(b);

   (b) the client's commitment to honour all obligations of the indirect client towards the clearing member with regard to the transactions covered by the indirect clearing arrangement.

All aspects of the indirect clearing arrangement shall be clearly documented.

3. A CCP shall not prevent the conclusion of indirect clearing arrangements that are entered into on reasonable commercial terms.

…

Article 7

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 investment firms or entities established in a third country that would be considered to be a credit institution or an investment firm if those entities were established in the ~~Union~~ United Kingdom;

   (b) the clearing member and the client are part of the same group, but the indirect client is not part of that group;

   (c) the indirect client and the second indirect client are part of the same group, but the third indirect client is not part of that group;

   (d) the second indirect client and the third indirect client conclude, in writing, an indirect clearing arrangement. The indirect clearing arrangement shall include at least the following contractual terms:

(i) the general terms and conditions referred to in Article 2(1)(b);

(ii) the second indirect client's commitment to honour all obligations of the third indirect client towards the indirect client with regard to transactions covered by the indirect clearing arrangement;

(e) the assets and positions of the third indirect client are held by the clearing member in an account as referred to in Article 4(2)(a).

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

FCA 2019/XX

TECHNICAL STANDARDS (SHORT SELLING 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) (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)
Commission Delegated Regulation (EU) 826/2012 of 29 June 2012 supplementing Regulation (EU) 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.	Annex A
Commission Implementing Regulation (EU) 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	Annex B

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) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps.	
Commission Delegated Regulation (EU) 919/2012 of 5 July 2012 supplementing Regulation (EU) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments.	Annex C

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 (Short Selling Regulation) (EU Exit) Instrument 2019.

By order of the Board

[*date*]

In this Instrument, deleted text is shown struck through and additional text is shown underlined.

ANNEX A

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

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down regulatory technical standards specifying the following:

(a) the details of the information on net short positions to be provided to ~~competent authorities~~ the FCA and disclosed to the public by a natural or legal person pursuant to Article 9(5) of Regulation (EU) No 236/2012;

~~(b) the details of the information to be provided to the European Securities and Markets Authority (hereinafter 'ESMA') by the competent authority pursuant to Article 11(3) of Regulation (EU) No 236/2012;~~

(c) the method for calculation of turnover to determine the principal venue for the trading of a share pursuant to Article 16(3) of Regulation (EU) No 236/2012.

CHAPTER II

DETAILS OF THE INFORMATION ON NET SHORT POSITIONS TO BE NOTIFIED AND DISCLOSED

(ARTICLE 9 OF REGULATION (EU) No 236/2012)

Article 2

Notification of net short positions in shares, sovereign debt and uncovered sovereign credit default swaps to competent authorities

1. A notification made under Article 5(1), Article 7(1) or Article 8 of Regulation (EU) No 236/2012 shall contain the information specified in Table 1 of Annex I to this Regulation.

The notification shall be made using a form issued by the ~~competent authority~~ FCA which shall take the format set out in Annex II.

2. Where the ~~competent authority~~ FCA has secure systems in place that allows it to fully identify the person filing the notification and the position holder, including all the

information contained in fields 1 to 7 of Table 1 of Annex I, the corresponding fields in the form may be left blank in the notification format.

3. A natural or legal person who has submitted a notification referred to in paragraph 1 which contains an error shall send, on becoming aware of the error, a cancellation to the ~~relevant competent authority~~ FCA.

The cancellation shall be made using a form issued by ~~that competent authority~~ the FCA which shall take the format set out in Annex III.

The natural or legal person concerned shall submit a new notification in accordance with paragraphs 1 and 2 if necessary.

...

~~**CHAPTER III**~~

~~**DETAILS OF THE INFORMATION TO BE PROVIDED TO ESMA IN RELATION TO NET SHORT POSITIONS**~~

~~**(ARTICLE 11 OF REGULATION (EU) No 236/2012)**~~

~~*Article 4*~~

~~**Periodic information**~~

~~Pursuant to Article 11(1) of Regulation (EU) No 236/2012, competent authorities shall provide ESMA with the following information on a quarterly basis:~~

~~(a) the daily aggregated net short position on each individual share in the main national equity index as identified by the relevant competent authority;~~

~~(b) the end of quarter aggregated net short position for each individual share which is not in the index referred to in point (a);~~

~~(c) the daily aggregated net short position on each individual sovereign issuer;~~

~~(d) where applicable, daily aggregated uncovered positions on credit default swaps of a sovereign issuer.~~

~~*Article 5*~~

~~**Information upon request**~~

~~Information to be provided by a relevant competent authority on an ad hoc basis pursuant to Article 11(2) of Regulation (EU) No 236/2012 shall include all requested information specified by ESMA that has not previously been submitted by the competent authority in accordance with Article 4 of this Regulation.~~

CHAPTER IV

METHOD OF CALCULATION OF TURNOVER TO DETERMINE THE PRINCIPAL TRADING VENUE FOR A SHARE

(ARTICLE 16 OF REGULATION (EU) No 236/2012)

Article 6

Turnover calculation to determine the principal venue for the trading of a share

1. When calculating turnover pursuant to Article 16 of Regulation (EU) No 236/2012, ~~a relevant competent authority~~ the FCA shall use the best available information, which may include:
   (a) publicly available information;
   (b) transaction data obtained under ~~Article 25(3) of Directive 2004/39/EC of the European Parliament and of the Council~~ Article 26(1) and (2) of Regulation 600/2014/EU;
   (c) information from trading venues where the relevant share is traded;
   (d) information provided by ~~another competent authority~~ a supervisory authority of a third country~~, including a competent authority of a third country~~;
   (e) information provided by the issuer of the relevant share;
   (f) information from other third parties, including data providers.
2. In determining what constitutes the best available information, ~~a relevant competent authority~~ the FCA shall ensure so far as reasonably possible that:
   (a) it uses publicly available information in preference to other sources of information;
   (b) the information covers all trading sessions during the relevant period, irrespective of whether the share traded during all of the sessions;
   (c) transactions received and included in the calculations are counted only once;
   (d) transactions reported through a trading venue but executed outside it are not counted.
3. The turnover of a share on a trading venue shall be deemed to be zero where the share is no longer admitted to trading on that trading venue even if the share was admitted to trading on the trading venue during the relevant calculation period.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States~~.

…

ANNEX B

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

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject Matter

This Regulation lays down implementing technical standards specifying the following:

(a) the means by which information on net short positions may be disclosed to the public by natural or legal persons ~~as well as the format of information to be provided to the European Securities and Markets Authority (hereinafter "ESMA") by competent authorities~~ pursuant to Article 9(6) ~~and Article 11(4)~~ of Regulation (EU) No 236/2012;

(b) the types of agreements, arrangements and measures that adequately ensure that the shares are available for settlement and the types of agreements or arrangements that adequately ensure that the sovereign debt is available for settlement pursuant to Article 12(2) and 13(5) of Regulation (EU) No 236/2012;

(c) the date and period for principal trading venue calculations, ~~notification to ESMA~~ and the effectiveness of the relevant list pursuant to 16(4) of Regulation (EU) No 236/2012.

CHAPTER II

MEANS FOR PUBLIC DISCLOSURE OF SIGNIFICANT NET SHORT POSITIONS IN SHARES

[ARTICLE 9 OF REGULATION (EU) No 236/2012]

Article 2

Means by which information may be disclosed to the public

Information on net short positions in shares shall be disclosed to the public by posting it on a central website operated or supervised by the ~~relevant competent authority~~ FCA pursuant to Article 9(4) of Regulation (EU) No 236/2012. The information shall be disclosed to the public through means which:

(a) publish it in the format specified in Annex I in such a way as to allow the public consulting the website to access one or more tables offering all the relevant information on positions per share issuer;

(b) allow users to identify and filter on whether the net short positions in a share issuer at the time of accessing the website has reached or exceeded the relevant publication threshold;

(c) provide for historical data on the published net short positions in a share issuer;

(d) include, whenever technically possible, downloadable files with the published and historical net short positions in a machine-readable format, meaning that the files are sufficiently structured for software applications to identify reliably individual statements of fact and their internal structure;

(e) show for one day, together with the information specified in point (b), the net short positions that are published because they have fallen below the publication threshold of 0,5 % of the issued share capital, before removing and transferring the information to a historical data section.

~~CHAPTER III~~

~~FORMAT OF THE INFORMATION TO BE PROVIDED TO ESMA BY COMPETENT AUTHORITIES IN RELATION TO NET SHORT POSITIONS~~

~~[ARTICLE 11 OF REGULATION (EU) No 236/2012]~~

~~Article 3~~

~~Format of the periodic information~~

~~1. The information to be provided on a quarterly basis to ESMA on net short positions in shares, sovereign debt and credit default swaps pursuant to Article 11(1) of Regulation (EU) No 236/2012 shall be provided by relevant competent authorities in the format specified in Annex II to this Regulation.~~

~~2. The information referred to in paragraph 1 shall be sent to ESMA electronically through a system established by ESMA that ensures that the completeness, integrity and confidentiality of the information are maintained during its transmission.~~

~~Article 4~~

~~Format of the information to be provided upon request~~

~~1. A relevant competent authority shall provide the information on net short positions in shares and sovereign debt or on uncovered positions relating to sovereign credit default swaps pursuant to Article 11(2) of Regulation (EU) No 236/2012 in the format specified by ESMA in its request.~~

~~2. Where information requested relates to information contained in the notification received by the competent authority pursuant to Articles 5, 7 and 8 of Regulation (EU) No 236/2012, that information shall be provided in accordance with the requirements established in Article 2 of Commission Delegated Regulation (EU) No 826/2012.~~

~~3. Information requested shall be sent by the competent authority in electronic format, using a system established by ESMA for exchanging information that ensures that the completeness, integrity and confidentiality of the information are maintained during its transmission.~~

CHAPTER IV

AGREEMENTS, ARRANGEMENTS AND MEASURES TO ADEQUATELY ENSURE AVAILABILITY FOR SETTLEMENT

[ARTICLES 12 AND 13 OF REGULATION (EU) No 236/2012]

…

Article 6

Arrangements and measures to be taken in relation to short sales of a share admitted to trading on a trading venue

[Article 12(1)(c) of Regulation (EU) No 236/2012]

1. Paragraphs 2, 3 and 4 shall determine the arrangements and measures to be taken in relation to short sales of a share admitted to trading on a trading venue pursuant to Article 12(1)(c) of Regulation (EU) No 236/2012.

2. Standard locate arrangements and measures shall mean arrangements, confirmations and measures that include each of the following elements:

   (a) for locate confirmations: a confirmation provided by the third party, prior to the short sale being entered into by a natural or legal person, that it considers that it can make the shares available for settlement in due time taking into account the amount of the possible sale and market conditions and which indicates the period for which the share is located;

   (b) for put on hold confirmations: a confirmation by the third party, provided prior to the short sale being entered into, that it has at least put on hold the requested number of shares for that person.

3. Standard same day locate arrangements and measures shall mean arrangements, confirmations and measures that include each of the following elements:

   (a) for requests for confirmation: a request for confirmation from the natural or legal person to the third party which states that the short sale will be covered by purchases during the day on which the short sale takes place;

   (b) for locate confirmations: a confirmation provided by the third party prior to the short sale being entered into that it considers that it can make the shares available for settlement in due time taking into account the amount of the possible sale and market conditions, and which indicates the period for which the shares are located;

   (c) for easy to borrow or purchase confirmations: a confirmation by the third party, provided prior to the short sale being entered into, that the share is easy to borrow or purchase in the relevant quantity taking into account the market

conditions and other information available to that third party on the supply of the shares or, in the absence of this confirmation by the third party, that it has at least put on hold the requested number of shares for the natural or legal person;

(d) for monitoring: an undertaking by the natural or legal person to monitor the amount of the short sale not covered by purchases;

(e) for instructions in the event of failure to cover: an undertaking from the natural or legal person that in the event that executed short sales are not covered by purchases in the same day, the natural or legal person will promptly send an instruction to the third party to procure the shares to cover the short sale to ensure settlement in due time.

4. Easy to borrow or purchase arrangements and measures shall mean arrangements, confirmations and measures when the natural or legal person enters into a short sale of shares that meet the liquidity requirements established in ~~Article 22 of Commission Regulation (EC) No 1287/2006~~ Article 1 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, or other shares that are included in the main national equity index as identified by the ~~relevant competent authority of each Member State~~ FCA and are the underlying financial instrument for a derivative contract admitted to trading on a trading venue, that include the following elements:

(a) for locate confirmations: a confirmation provided by the third party prior to the short sale being entered into that it considers that it can make the shares available for settlement in due time taking into account the amount of the possible sale and market conditions and indicating the period for which the share is located;

(b) for easy to borrow or purchase confirmations: a confirmation by the third party, provided prior to the short sale being entered into, that the share is easy to borrow or purchase in the relevant quantity taking into account the market conditions and other information available to that third party on the supply of the shares, or in the absence of this confirmation by the third party, that it has at least put on hold the requested number of shares for the natural or legal person; and

(c) for instructions to cover: when executed short sales will not be covered by purchases or borrowing, a undertaking that a prompt instruction will be sent by the natural or legal person instructing the third party to procure the shares to cover the short sale to ensure settlement in due time.

5. The arrangements, confirmations and instructions referred to in paragraphs 2, 3 and 4 shall be provided in a durable medium by the third party to the natural or legal person as evidence of the existence of the arrangements, confirmations and instructions.

…

Article 8

Third parties with whom arrangements are made

1. Where an arrangement referred to in Articles 6 and 7 is made with a third party, the third party shall be one of the following types:

   (a) in the case of an investment firm: an investment firm which meets the requirements set out in paragraph 2;

   (b) in the case of a central counterparty: a central counterparty which clears the relevant shares or sovereign debt;

   (c) in the case of a securities settlement system: a securities settlement system as defined under Directive 98/26/EC of the European Parliament and of the Council which settles payments in respect of the relevant shares or sovereign debt;

   (d) in the case of a central bank: a central bank that accepts the relevant shares or sovereign debt as collateral or conducts open market or repo transactions in relation to the relevant shares or sovereign debt;

   (e) in the case of a national debt management entity: the national debt management entity of the relevant sovereign debt issuer;

   (f) any other person who is subject to authorisation or registration requirements in accordance with ~~Union law by a member of the European System of Financial Supervision~~ the Financial Services and Markets Act 2000 and meets the requirements set out in paragraph 2;

   (g) a person established in a third country who is authorised or registered, and is subject to supervision by an authority in that third country and who meets the requirements set out in paragraph 2, provided that the third country authority is a party to an appropriate cooperation arrangement concerning exchange of information with the ~~relevant competent authority~~ FCA.

2. For the purposes of points (a), (f) and (g) of paragraph 1, the third party shall meet the following requirements:

   (a) participate in the management of borrowing or purchasing of relevant shares or sovereign debt;

   (b) provide evidence of such participation;

   (c) be able, on request, to provide evidence of its ability to deliver or process the delivery of shares or sovereign debt on the dates it commits to do so to its counterparties including statistical evidence.

CHAPTER V

DETERMINATION OF THE PRINCIPAL TRADING VENUE FOR THE EXEMPTION

[ARTICLE 16 OF REGULATION (EU) No 236/2012]

Article 9

Date and period for principal trading venue calculations

1. ~~Relevant competent authorities~~ The FCA shall make any calculations determining the principal trading venue for a share by at least 35 calendar days before the date of application of Regulation (EU) No 236/2012 in respect of the period between 1 January 2010 and 31 December 2011.
2. Subsequent calculations shall be made before 22 February 2014 in respect of the period between 1 January 2012 and 31 December 2013, and every two years thereafter in respect of the subsequent two year period.
3. Where the share concerned was not admitted to trading during the whole two-year period on the trading venue in the ~~Union~~ UK and the third country trading venue, the period for calculation shall be the period during which the share was admitted to trading on both venues concurrently.

~~Article 10~~

~~**Date of notification to ESMA**~~

~~Relevant competent authorities shall notify ESMA of those shares for which the principal trading venue is outside the Union at least 35 calendar days before the date of application of the Regulation (EU) No 236/2012 and thereafter on the day before the first trading day in March every second year commencing from March 2014.~~

Article 11

Effectiveness of the list of exempted shares

The list of shares for which the principal trading venue is located outside the ~~Union~~ UK shall be effective as of 1 April following its publication by ~~ESMA~~ the FCA, except that the first list published by ~~ESMA~~ the FCA shall be effective from the date of entry into application of Regulation (EU) No 236/2012.

Article 12

Specific cases of review of exempted shares

1. ~~A relevant competent authority which determines~~ The FCA, in determining whether the principal trading venue for a share is located outside ~~the Union~~ the UK following one of the circumstances set out in paragraph 2 shall ensure that~~:~~
   (a) any calculations determining the principal trading venue are made as soon as possible after the relevant circumstances arise and in respect of the two year period preceding the date of calculation~~;~~.

~~(b) it notifies ESMA of its determination as soon as possible and, where relevant, before the date of admission to trading on a trading venue in the Union.~~

~~Any revised list shall be effective from the day following that of its publication by ESMA.~~

2. The provisions of paragraph 1 apply when:

(a) the shares of a company are removed from trading on a permanent basis on the principal venue located outside the ~~Union~~ UK;

(b) the shares of a company are removed from trading on a permanent basis on a trading venue in the ~~Union~~ UK;

(c) the shares of a company that was previously admitted to trading in a trading venue outside the ~~Union~~ UK are admitted to trading on a trading venue in the ~~Union~~ UK.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

~~ANNEX II~~

~~Format of the information to be provided to ESMA on quarterly basis (Article 3)~~

~~Information~~	~~Format~~
~~1. Issuer identification~~	~~- For shares: full name of the company that has shares admitted to trading on a trading venue~~ ~~- For sovereign debt: full name of the issuer~~ ~~- For uncovered sovereign credit default swaps: full name of the underlying sovereign issuer~~
~~2. ISIN~~	~~For shares only: ISIN of the main class of ordinary shares of the issuer. If there are no ordinary shares admitted to trading, the ISIN of the class of preference shares (or of the main class of preference shares admitted to trading if there are several classes of such shares)~~
~~3. Country code~~	~~Two letter code for the sovereign issuer country in accordance with ISO standard 3166-1~~
~~4. Position date~~	~~Date for which the position is reported. Format in accordance with ISO standard 8601:2004 (yyyy-mm-dd)~~
~~5.Daily aggregated net short position on main national index shares~~	~~Percentage figure rounded to 2 decimal places~~

~~6.End of quarter aggregated net short position on other shares~~	~~Percentage figure rounded to 2 decimal places~~
~~7.Daily aggregated net short positions in sovereign debt~~	~~Figure of equivalent nominal amount in Euros~~
~~8.Daily aggregated uncovered positions on credit default swaps of a sovereign issuer~~	~~Figure of equivalent nominal amount in Euros~~

ANNEX C

COMMISSION DELEGATED REGULATION (EU) No 919/2012 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 regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments

…

Article 1

Subject matter

1. This Regulation specifies the method of calculation of the 10 % fall in value for liquid shares traded on a trading venue as set out in Article 23(5) of Regulation (EU) No 236/2012.
2. That method of calculation shall exclude any downward movement of a price resulting exclusively from a split or any corporate action or similar measures adopted by the issuer on its issued share capital which can result in an adjustment of the price by the relevant trading venue.

…

Article 3

Method of calculation of a significant fall in value for other non-derivative financial instruments

1. A significant fall in value for financial instruments other than shares and not falling into the categories of derivatives listed in ~~points (4) to (10) of Section C of Annex I to Directive 2004/39/EC~~ Part 1 of Schedule 2 to the Regulated Activities Order 2001 shall be calculated according to the method in paragraphs 2, 3 and 4.
2. For a financial instrument for which the significant fall in value referred to in Article 23(7) of Regulation (EU) No 236/2012 is measured in relation to a price on the relevant trading venue, that fall shall be calculated from the official closing price at the relevant trading venue defined according to the applicable rules of that trading venue.
3. For a financial debt instrument issued by a sovereign issuer for which the significant fall in value referred to in Article 23(7) of Regulation (EU) No 236/2012 is measured in relation to a yield curve, that fall shall be calculated as an increase across the yield curve in comparison with the yield curve of the sovereign issuer at the close of trading of the previous trading day, as calculated based on data available for the issuer on that trading venue.

4. For a financial instrument for which the significant fall in value referred to in Article 23(7) of Regulation (EU) No 236/2012 is measured in relation to a variation of the yield, that fall shall be calculated as an increase of the current yield as compared to the yield of that instrument at the close of trading of the previous trading day, as calculated based on data available for that instrument on that trading venue.

Article 4

Method of calculation of a significant fall in value for derivatives

A significant fall in value for financial instruments falling under the categories of derivatives listed in ~~points (4) to (10) of Section C of Annex I to Directive 2004/39/EC~~ Part 1 of Schedule 2 to the Regulated Activities Order 2001 and which have a sole underlying financial instrument that is traded on a trading venue and for which a significant fall in value has been specified in accordance with Article 2 or Article 3, shall be calculated by reference to the significant fall in value of the underlying financial instrument.

…

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

…

Appendix 3
Draft Guidance – our approach to EU non-legislative materials

The purpose of this guidance

1. This guidance sets out the FCA's approach to non-legislative material produced by the EU and, in particular, the European Supervisory Authorities (ESAs).

2. This guidance is relevant to firms, financial institutions and other market participants operating, or intending to operate, in the United Kingdom.

What are non-legislative materials?

3. The European Supervisory Authorities (ESAs) were established in 2011 to strengthen the coordination between national regulators of financial markets within the European Union (EU) and ensure the consistent application of EU financial legislation. They have the power to produce non-legislative-material, either individually or through their Joint Committee. This includes Guidelines and Recommendations on the application of EU law, 'Questions & Answers' documents and Opinions. Similar material was also produced by other EU bodies in the past, including the ESAs' predecessors[30] and, in some instances, adopted by the ESAs.

ESA Guidelines and Recommendations

4. Each of the three ESAs – the European Securities & Markets Authority (ESMA), the European Insurance & Occupational Pensions Authority (EIOPA) and the European Banking Authority (EBA) – has the power to issue non-legally binding 'Guidelines and Recommendations' ('Guidelines') under their respective ESA Regulations[31], as tools to promote the consistent application of EU law across jurisdictions.

5. These Guidelines are directed to competent authorities, financial market participants and financial institutions[32]. Competent authorities, and in some circumstances other market participants, notify the relevant ESA(s) of their intention to comply, or explain why they do not propose to comply. This is commonly called the 'comply or explain' process, under which the addressees are expected to 'make every effort to comply' with the Guidelines.

6. The ESAs maintain a record of Guidelines published and corresponding 'comply and explain' responses by the competent authorities, including those of the FCA.

Other EU non-legislative material

7. The ESAs also publish other non-legislative material which includes, by way of example:

- Opinions
- 'Questions & Answers' documents

30 The Committee of European Securities Regulators, the Committee of European Banking Supervisors, and the Committee of European Insurance and Occupational Pensions Supervisors.

31 For example, Regulation (EU) No 1095/2010 created ESMA.

32 For ease of reference the rest of this guidance refers simply to "financial market participants" or "market participants".

- supervisory briefings
- peer review analyses
- best practices and statements to help build a common supervisory culture and consistent supervisory practices within the EU
- warnings (e.g. around the risks associated with particular complex products).

What is happening to non-legislative EU material in the UK post-exit?

8. Under the EUWA, the broad range of non-legislative material produced by the European Supervisory Authorities (ESAs) or their predecessor bodies (for example, CESR) has not been incorporated into UK law. However, the EU derived law to which the non-legislative material relates has largely been retained. We therefore consider that the EU non-legislative material will remain relevant post-exit day to the FCA and market participants in their compliance with regulatory requirements including provisions in our Handbook.

What is the FCA's expectation in relation to the application of pre-exit EU non-binding material?

ESA Guidelines and Recommendations

9. The FCA's supervisory expectation in respect of Guidelines and Recommendations remains the same. Persons requiring authorisation or recognition to continue to provide services in the UK post-exit day will become subject to these expectations.

10. In particular:

i. we expect firms and market participants to continue to apply the Guidelines to the extent that they remain relevant, as they did before exit-day, interpreting them in light of the UK's withdrawal from the EU and the associated legislative changes that are being made to ensure the regulatory framework operates appropriately

ii. the FCA shall continue to apply such Guidelines and Recommendations in respect of its own functions in the same manner as before, interpreting them in light of the UK's withdrawal from the EU and the associated legislative changes.

Other EU non-legislative material

11. We will continue to have regard to other EU non-legislative material where and if they are relevant, taking account of Brexit and ongoing domestic legislation. Firms, market participants and stakeholders should also continue to do so.

Are there any exceptions to our expectations to non-legislative EU material?

12. Exceptions to the above approach are set out below.

13. Where the FCA has informed the relevant ESA that it would not comply with part of or all of a pre-exit Guideline we will continue this approach. For example, the FCA has notified that it would not comply with parts of the Guidelines in the cases listed below. In those circumstances, we explained our reasons for why it would not be appropriate to comply with all or part of the guidelines and the legal consequences of the refusal to comply. For example:

i. ESMA's short-selling guidelines: We notified ESMA that we would comply with all the Guidelines with the exception of the provisions concerning the requirement to be a member of a trading venue (i.e. that a market maker be a member of a venue on

which the instrument trades that it wishes to make markets in) and the scope of the products eligible for the exemption (i.e. that the market making exemption should not be limited to equities, sovereign debt and equity/sovereign debt derivatives)[33]. We expect stakeholders to continue applying the Guidelines, with the exception of those provisions.

ii. EBA's sound remuneration policies: We notified the EBA that we would comply with all aspects of these Guidelines, except for the requirement that the limit on awarding variable remuneration to 100% of fixed remuneration, or 200% with shareholder approval ('the bonus cap'), must be applied in any case to all firms subject to the Capital Requirements Directive[34].

iii. EBA's internet payment security guidelines: We notified the EBA that, while fully supportive of the objectives behind the Guidelines, we did not have the power, without legislative change, to make binding rules requiring all payment service providers (credit institutions, payment institutions, and e-money institutions) to comply with the Guidelines. Implementation of the Guidelines would require some providers to make significant changes to their systems and controls, and significant additional changes would likely be necessary following implementation of the Payment Services Directive II. We noted that we indicated to participants that compliance with the Secure Pay Recommendations would be needed, in line with PSD2 transposition requirements[35].

iv. The Acquisitions Directive Guidelines: We notified the ESAs that we would comply with the Guidelines except for provisions relating to the identification of acquirers of indirect holdings. We noted firms should continue to use the existing methodology as laid out in Part II. We will continue to comply with the Guidelines in this way and expect firms to do so as well[36].

14. We have also made changes to the application of EBA Guidelines relating to the applicable notional discount rate for variable remuneration, compared to the position prior to exit-day. Pre-exit, SYSC 19A/19D required firms applying the discount rate to apply the approach prescribed in the Guidelines. This creates deficiencies as the formula is dependent on figures published by Eurostat which may cease to be produced for the UK following EU withdrawal. Therefore, post-exit we expect firms to make every effort to comply with the Guidelines.

15. Post-exit day the FCA may determine that market participants are no longer expected to apply a particular pre-exit Guideline, for example, due to changes made to the relevant legislation. In those circumstances, this guidance will be updated accordingly.

16. Finally, we maintain our approach to the ESMA MIFID Q&A 'Appropriateness/Complex Financial Instruments'. The ESMA Q&A states that shares in non-UCITS collective investment undertakings explicitly excluded under point (i) of Article 25(4) of the MIFID II cannot be deemed non-complex financial instruments for the purposes of the appropriateness test. We stated in our MIFID 17/14 Policy Statement[37] that, *'in our view,*

33 https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-74.pdf
34 https://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22+Guidelines+on+Sound+Remuneration+Policies_EN.pdf
35 https://www.eba.europa.eu/documents/10180/934179/EBA-GL-2014-12+%28Guidelines+on+the+security+of+internet+payments%29_Rev1
36 https://esas-joint-committee.europa.eu/Publications/Guidelines/JC%20GL%202016%2001%20(Joint%20Guidelines%20on%20prudential%20assessment%20of%20acquisitions%20and%20increases%20of%20qualifying%20holdings%20-%20Final).pdf
37 https://www.fca.org.uk/publication/policy/ps17-14.pdf

investment trusts and non-UCITS retail schemes (NURS) are neither automatically non-complex nor automatically complex, but must be assessed against the criteria set out in the MiFID II delegated regulation'. We also said that *'when firms apply these criteria, they should adopt a cautious approach if there is any doubt as to whether a financial instrument is non-complex. This remains our view of how this part of MiFID II should be interpreted, and how firms should apply these rules.'*

Post-exit non-legislative EU material

17. The FCA may consider materials produced by the ESAs post-exit, including where pre-exit material is updated. Where we consider it appropriate to do so, we will set out our expectations as to how it should be treated.

How to interpret non-legislative EU material

18. As a result of the UK's withdrawal from the EU, EU non-binding materials may include references which no longer have their intended effect (for example, references to legislation that may have been amended during the withdrawal process and may therefore no longer be correct). In these situations, we expect firms and other market participants to sensibly and purposively interpret EU non-binding material, taking into account the UK's withdrawal from the EU, the provisions of the Act and amendments made to relevant legislation in the withdrawal process, including the FCA Handbook.

19. Examples of where non-legislative EU material needs to be interpreted in line with the UK's withdrawal from the EU include:

a. References to passporting across the EU. References to passporting or associated processes have been deleted from UK legislation and are no longer relevant. References in non-legislative EU material to passporting and associated processes that have been deleted from legislation can be ignored.

b. References to reporting to the ESAs are redundant, as there are no longer requirements in UK legislation to report to the ESAs. References in non-legislative EU material to ESA reporting and associated processes that can be interpreted in light of the amendments made to the relevant legislation.

c. References to any roles or responsibilities currently carried out by EU authorities. Those have, to the extent that they remain relevant, been reallocated to the most appropriate UK authority. Firms should interpret references to EU functions with reference to the new UK authority taking on that function. This may be the case, for example, for equivalence assessments and recognition of third-country jurisdictions for market access.

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