

Quarterly Consultation No.15

December 2016



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The Financial Conduct Authority invite comments on this Consultation Paper. Comments should reach us by 2 January 2017 for Chapter 6, 13 January 2017 for Chapter 2 and 2 February 2017 for Chapters 3, 4, 5, 7 and 8 (see the Overview section for further details).

Comments may be sent by electronic submission using the form on the FCA's website at www.fca.org.uk/cp16-39-response-form or by email to cp16-39@fca.org.uk.

Alternatively, please send comments in writing to:

Chapter 2:	Sandra Graham, Advice & Distribution	Tel: 020 7066 1208
Chapter 3:	Sara Williams, Law & Policy	Tel: 020 7066 0220
Chapter 4:	Sara Williams, Law & Policy	Tel: 020 7066 0220
Chapter 5:	Sandra Graham, Advice & Distribution	Tel: 020 7066 1208
Chapter 6:	Tom Soden, Markets Policy	Tel: 020 7066 3322
Chapter 7:	Steven McWhirter, Governance & Professionalism	Tel: 0131 301 2164
Chapter 8:	Christopher Bentley, Reporting Policy	Tel: 020 7066 6126

If you are responding in writing to several chapters then please send your comments to Emily How in Communications, who will pass your responses on as appropriate.

All responses should be sent to:

Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 2184

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Abbreviations used in this paper

CBA	cost benefit analysis
CCBS Act	Co-operative and Community Benefit Societies Act 2014
COBS	Conduct of Business sourcebook
CONC	Consumer Credit sourcebook
CP	Consultation Paper
DEPP	Decision Procedure and Penalties manual
DISP	Dispute Resolution: Complaints sourcebook
DTR	Disclosure Guidance and Transparency Rules sourcebook
DWP	Department for Work and Pensions
EEAP	European Electronic Access Point
EG	Enforcement Guide
ESMA	European Securities and Markets Authority
FAMR	Financial Advice Market Review
FCA	Financial Conduct Authority
FG	Finalised Guidance
FSMA	Financial Services and Markets Act 2000
FSA	Financial Services Authority
GAR	guaranteed annuity rate
LEI	legal entity identifier
MiFID	Markets in Financial Instruments Directive
MLR 07	Money Laundering Regulations 2007

OAM	official appointed mechanism
PIP	primary information provider
RAG	regulated activity group
RDR	Retail Distribution Review
RTS	regulatory technical standards
SMPI	statutory money purchase illustrations
SUP	Supervision manual
SYSC	Senior Management Arrangements, Systems and Controls sourcebook
TC	Training and Competence sourcebook
TD	Transparency Directive (2004/109/EC)
UK	United Kingdom
VAT	value added tax
VIF	vertically integrated firm

1. Overview

Chapter No.	Proposed changes to Handbook	Consultation Closing Period
2	Changes to the pension projection rules to remove conflicts with COBS 13 Annex 2 when providing risk warnings to scheme members with safeguarded-flexible benefits.	6 weeks
3	Changes to DEPP to set out the FCA's decision making process under the Money Laundering Regulations 2007.	2 months
4	Changes to EG and DEPP to set out the FCA's decision making process under the Co-operative and Community Benefit Societies Act 2014.	2 months
5	Changes to COBS on adviser charging for vertically integrated firms, arising out of the Financial Advice Market Review.	2 months
6	Changes to the DTR reflecting the Transparency Directive Regulatory Technical Standards on the European Electronic Access Point.	1 month
7	Changes to the Training and Competence sourcebook (TC) table of appropriate qualifications and appropriate qualification time limits, and the Glossary definition of accredited body.	2 months
8	Changes to regulatory reporting requirements.	2 months

- 1.1** We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. 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, including as a result of any negotiations following the UK's vote to leave the EU.

2. Pension projections for risk warnings

Introduction

- 2.1** In this chapter, we propose changes to the Conduct of Business sourcebook (COBS) rules on pension projections. The purpose of the changes is to remove certain conflicts that may arise when providing risk warnings under the Department for Work and Pensions (DWP) proposals in its September 2016 consultation on valuing pensions for the advice requirement and introducing new consumer protections¹.
- 2.2** DWP has proposed that members of pension schemes should be provided with a risk warning which takes the form of a personalised projection when seeking to transfer out of safeguarded-flexible benefits into flexible benefits (definitions as per DWP's consultation)². While we have worked closely with DWP on an appropriate form of consumer protection when consumers propose to give up safeguarded-flexible benefits, the format of the risk warnings will not follow the format of personalised projections under COBS. Therefore, changes to the rules will be required to allow firms to provide these risk warnings without breaching COBS.
- 2.3** This chapter will be of interest to providers of contract based pension schemes offering safeguarded-flexible benefits. Firms should note that the DWP risk warnings are different from and, where relevant, are in addition to the retirement risk warnings required in COBS 19.7 when a client is seeking to access their pension savings.
- 2.4** The consultation in this chapter will be open for six weeks to enable final rules to be made prior to DWP's first proposed implementation date of 6 April 2017.
- 2.5** The text of the proposed amendments, and the statutory powers they will be made under, are set out in Appendix 2 of this Consultation Paper (CP).

Proposed changes to COBS 13 Annex 2

Risk warnings undertaken on statutory money purchase illustrations assumptions

- 2.6** DWP has proposed that risk warnings should be provided to scheme members seeking to transfer safeguarded-flexible benefits to flexible benefits. The risk warnings would compare the projected benefit of the safeguarded-flexible benefit with the projected benefit that could be obtained by purchasing an annuity on the open market. The amount available to purchase

¹ DWP, Consultation on valuing pensions for the advice requirement and introducing new consumer protections, September 2016

² 'Safeguarded-flexible benefits', for the purpose of the draft DWP regulations, are benefits within paragraph (c) of the definition of flexible benefits in section 74 of the Pension Schemes Act 2015. The DWP consultation paper describes safeguarded-flexible benefits as 'a more precise legal term based on a legal definition that captures all benefits with the characteristics of both safeguarded and flexible benefits...' and states that 'this includes both GARs, and any other benefits which are calculated by reference to an amount available for their provision, but which offer some sort of guarantee regarding the pension income that they will, or may, provide'.

the annuity would be based on the same assumptions that firms use when providing statutory money purchase illustrations (SMPI). The projection prior to annuitisation would be undertaken on a single growth rate based on the SMPI growth rate. All other assumptions would be based on the SMPI assumptions.

- 2.7** The rules and guidance in COBS 13 Annex 2 do not apply to projections which are consistent with the SMPI requirements. We propose to extend the scope of this provision so that the rules in COBS 13 Annex 2 do not apply to risk warnings or statutory money purchase illustrations which are based on SMPI assumptions. The reason for extending the scope of the provision to risk warnings is because a risk warning itself will not be entirely consistent with the SMPI requirements as it will have its own requirements which reference the SMPI assumptions.

Q2.1: Do you agree with our proposed approach for disapplying the projection rules for risk warnings prepared using SMPI consistent assumptions?

Risk warnings undertaken on FCA assumptions

- 2.8** In its consultation, DWP has recognised that consumers may want to compare risk warnings with other projections of their pension scheme benefits, such as those prepared assuming annuitisation at different ages. DWP asked, in its consultation, whether pension schemes should be able to provide risk warnings on alternative assumptions, such as those contained in COBS 13 Annex 2. This approach would enable consumers to compare projections on a consistent basis.
- 2.9** In the event that DWP decides to proceed with this option, we will need to make rule changes to enable this approach. Therefore, we propose that where risk warnings are prepared using the FCA's assumptions that:
- the lower and upper projections will not be required, and
 - our rules on projecting a guaranteed annuity rate (GAR) will not apply (because the DWP regulations will require the provision of alternative information which we regard as sufficiently equivalent)

Q2.2: In the event that DWP permits use of the FCA's assumptions, do you agree with our proposed approach for varying the projection rules for risk warnings prepared using FCA assumptions?

Guidance on the guaranteed annuity rate

- 2.10** We also propose to remove the guidance in paragraph 3.4 of COBS 13 Annex 2 which, from 6 April 2017, requires firms to show a projected GAR at the earliest age at which it can be taken. This will enable better quality comparisons between projections of all different types and allow consumers to consider their options at different ages more easily. Note that changes to paragraph 3.3 of COBS 13 Annex 2, if implemented, will require firms to show an additional projection of income where a GAR provides higher rates of return than those otherwise shown.

Q2.3: Do you agree with our proposal to remove the guidance on showing a projected GAR at the first age at which it can be taken?

Cost benefit analysis

- 2.11** Section 138I(2)(a) of the Financial Services and Markets Act (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules.
- 2.12** The proposed amendments to COBS 13 Annex 2 are primarily to enable firms to meet proposed legislative requirements without breaching COBS rules. The format of the personalised projection required within a risk warning will be laid out in legislation and is incompatible with the required format in COBS. Our proposals lay out the changes required to ensure that risk warnings produced under legislation remain compatible with or are excluded from FCA rules, as appropriate. We propose to do this by disapplying the relevant rules in certain circumstances.
- 2.13** We have further proposed to remove the guidance on how firms should produce a projection involving a guaranteed annuity rate. The removal of the guidance should provide firms with more flexibility to meet their customers' needs and enhance comparisons of projections undertaken to different dates.
- 2.14** The requirement to provide risk warnings is imposed by legislation. It is the creation of the risk warning itself, irrespective of the assumptions which apply, which creates cost. Where risk warnings are provided on SMPI assumptions, they will be fully excluded from our rules. Consequently we consider that there is no cost imposed directly by the FCA as a result of the proposed exclusion. If DWP permits firms to provide the risk warnings on the FCA's assumptions, the proposed change enables firms to prepare the projection for the required risk warning without the additional projections which would normally be required alongside a projection. Again, we consider that the proposed change imposes no/minimal cost by us directly. Similarly, the removal of the existing guidance will enable more flexibility without imposing regulatory cost.

Q2.4: Do you have any comments on the CBA?

Impact on mutual societies

- 2.15** Section 138K of FSMA requires us to provide an opinion on whether the impact of proposed rules on mutual societies is significantly different to the impact on other authorised persons. We are satisfied that the impact of the proposed amendments on mutual societies is not significantly different to that on other authorised firms.

Compatibility statement

- 2.16** The proposals in this chapter are designed to advance our objective of securing an appropriate degree of consumer protection by enabling appropriate disclosures to consumers. Where relevant, disclosures will be made in a way which facilitates comparisons between options available to consumers.
- 2.17** We are satisfied that these proposals are compatible with our general duties under section 1B of FSMA, having regard to the matters set out in s1C(2) of FSMA and the regulatory principles in s3B.

Equality and diversity

- 2.18** We have considered the equality and diversity issues that may arise from the proposals in this chapter. Overall, we do not consider that the proposals adversely impact any of the groups with protected characteristics, i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 2.19** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 2.20** In the interim we welcome any input to this consultation on these matters.

3.

Decision making changes relating to the MLR 07

Introduction

- 3.1** In 2007 our predecessor organisation, the FSA, published an approach document relating to the Money Laundering Regulations 2007 (MLR 07)³. Guidance about enforcement action taken under the MLR 07 is available in EG 19.15.
- 3.2** We are now consulting on changes to the Decision Procedure and Penalties manual (DEPP) in relation to the MLR 07.

Summary of proposals

Changes to DEPP 2 Annex 1

- 3.3** We are proposing to change DEPP 2 Annex 1 to set out the decision making procedure for persons registered under the MLR 07. We propose that:
- for proposals and decisions about cancelling a registration of a relevant person, the decision will be taken by the RDC, in accordance with DEPP 3.2 or 3.3, and
 - for proposals and decisions to impose a civil penalty on a relevant person failing to comply with conditions in the MLR 07, the decision will be taken by the RDC in accordance with DEPP 3.2 or 3.3

Q3.1 Do you have any comments on the proposed changes to DEPP 2 Annex 1?

Cost benefit analysis

- 3.4** Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA provides that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance.
- 3.5** We do not plan to issue a CBA as we believe the costs of compliance with the final rules will be of minimal significance.

³ FSA 'The FSA's new role under the Money Laundering Regulations 2007: Our Approach' (September 2007)

Impact on mutual societies

- 3.6** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. The proposed amendments do not have a negative impact on this.

Compatibility statement

- 3.7** Section 138I(2)(d) of FSMA requires us to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives and have regard to the regulatory principles in section 3B of FSMA.
- 3.8** We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles.

Equality and diversity

- 3.9** We have considered the equality and diversity issues that may arise from these proposals in this Consultation Paper (CP).
- 3.10** Overall, we do not consider that the proposals in this CP adversely impact any of the groups with protected characteristics, i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 3.11** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 3.12** In the interim we welcome any input to this consultation on these matters.

4. Changes to EG and DEPP following the CCBS Act

Introduction

- 4.1** In November 2015 we published Finalised Guidance (FG15/2)⁴ relating to the Co-operative and Community Benefit Societies Act 2014 (the CCBS Act) which set out our approach to the role of registering authority. The guidance also explained societies' obligations and certain legal processes. The FCA's role as registering authority is different and separate from our role as a financial services regulator. Companies House is the registering authority for companies and we are the registering authority for societies.
- 4.2** The CCBS Act sets out the conditions that all societies must satisfy to become registered. As part of our registration process, societies must demonstrate that they meet these conditions. Under the CCBS Act, we have powers to cancel or suspend societies' registration if we are satisfied that the conditions are no longer met.
- 4.3** We are now consulting on changes to the Enforcement Guide (EG) and the Decision Procedure and Penalties manual (DEPP) relating to the CCBS Act.

Summary of proposals

Changes to EG

- 4.4** The CCBS Act repealed the Industrial and Provident Societies Act 1965 and the Friendly and Industrial and Provident Societies Act 1968. To reflect these changes we are proposing to update EG 19.2 and EG 12.1.7.

Q4.1: Do you have any comments on the proposed changes to EG 19.2 and EG 12.1.7?

Changes to DEPP 2 Annex 1

- 4.5** We are proposing to amend DEPP 2 Annex 1 to set out the decision making procedure for societies registered under the CCBS Act. We propose that:
- the decision to give two months' notice of the FCA's proposal to cancel or suspend a registration of a registered society, will be taken by the FCA under its executive procedures in accordance with DEPP 4.1.
 - the decision to cancel the registration of a registered society under Condition C, D and E

⁴ FG15/2 'Guidance on the FCA's registration and function under the Co-operative and Community Benefit Societies Act 2014' (November 2015)

in section 5 of the CCBS Act or where representations are made in response to a notice of proposed cancellation or suspension, the decision will be taken by the RDC in accordance with DEPP 3.2 or 3.3

- for proposals to prosecute a registered society for failing to comply with conditions in the CCBS Act the decision will be taken by either the RDC, following DEPP 3.2 or 3.3, or by the FCA under its executive procedures in accordance with DEPP 4.1, and
- for proposals to petition for the winding up of a registered society the decision will be taken by the RDC in accordance with DEPP 3.2. or 3.3.

Q4.2: Do you have any comments on the proposed changes to DEPP 2 Annex 1?

Cost benefit analysis

- 4.6** Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA provides that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance.
- 4.7** We do not plan to issue a CBA as we believe the costs of compliance with the final rules will be of minimal significance.

Impact on mutual societies

- 4.8** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. The proposed amendments do not have a negative impact on this.

Equality and diversity

- 4.9** We have considered the equality and diversity issues that may arise from the proposals in this chapter of the Consultation Paper.
- 4.10** Overall, we do not consider that the proposals in this chapter of the Consultation Paper adversely impact any of the groups with protected characteristics, i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 4.11** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 4.12** In the interim we welcome any input to this consultation on these matters.

5. Adviser charging for vertically integrated firms

Introduction

- 5.1** In March 2016, the Financial Advice Market Review (FAMR) published its final report on the market for financial advice. The final report contained a number of recommendations, including that 'The FCA should consult on guidance about the cross-subsidisation rules in relation to the interpretation of 'long term' and the flexibility allowed'.
- 5.2** The Retail Distribution Review (RDR), which was implemented at the end of 2012, requires vertically integrated firms (VIFs) to ensure that the charges for their advice service cover the costs of providing that service, which could be achieved by not unreasonably cross-subsidising these costs from other areas of the value chain, such as their products, in the long term. These rules and guidance were intended to prevent VIFs from subsidising the costs of advice through their product charges and securing an unfair competitive advantage in the provision of advice. FAMR agreed that the basic principles set out by the RDR remain valid.
- 5.3** In this chapter, we propose some changes to the Conduct of Business sourcebook (COBS) on adviser charging for VIFs. The changes we propose are primarily driven by the FAMR recommendation that the guidance should be clearer about the meaning of the 'long term' when considering payback periods for investment in the advice business and provide a greater degree of clarity on the flexibility available to firms. We also propose some other changes to the guidance which should help firms better understand our expectations of how VIFs should determine their adviser charges.
- 5.4** This consultation will be of interest to vertically integrated firms and firms which compete with them in the advice market. It will also be of interest to consumers, as the clarification provided by the new guidance may encourage increased competition, as a result of more firms investing in advice services. The text of the proposed amendments, and the statutory powers they will be made under, are set out in Appendix 5 of this Consultation Paper.

Summary of proposals

Changes based on FAMR recommendation

- 5.5** Concerns raised by firms during FAMR's call for input particularly centred on the need for any high initial expenses required for developing advice services to the mass market to be recovered over a period of time to make adviser charges more affordable for those with lower levels of income and wealth. It was apparent from the feedback that many firms were unaware of the flexibility within the existing guidance and assumed that the cost recovery period was very limited.
- 5.6** The existing guidance on adviser charging for VIFs indicates that an adviser charge is likely to be reasonably representative of the service if the allocation of costs and profit to adviser charges

and product charges is such that any cross-subsidisation is not significant in the long term. We propose to replace the reference to 'the long term' with a clear timeframe of five years. We recognise that some firms will have return on capital measures across businesses which exceed five years and, in such cases, the guidance will indicate that a longer payback period is also acceptable when determining adviser charges.

- 5.7** The guidance proposed is consistent with the existing supervisory approach to overseeing adviser charging in VIFs. We also consider that it is not inconsistent with the terms that may be available to advisory firms who are not vertically integrated. This ensures that VIFs do not gain a competitive advantage in the market for advice and maintains the principle introduced by the RDR, and supported by FAMR, that advice firms should compete on an equal basis.
- 5.8** By removing uncertainty on the meaning of the long term, we expect to see more firms investing in advice services which will increase competition for consumers seeking advice. The increase in the flexibility (from a position that was perceived as very limited) should also have a positive impact on pricing as spreading costs over a longer period should result in firms being able to reduce adviser charges thus encouraging a larger take-up of advice (particularly from those with lower levels of income and wealth).

Q5.1: Do you agree with the proposed payback period in the guidance for adviser charges for VIFs?

Other proposed changes

- 5.9** In conjunction with the proposed FAMR-driven change, we propose to rewrite the guidance on cross-subsidisation to clarify that adviser charges in VIFs should be self-supporting over the relevant payback period. We consider that this is a clearer expression which should help firms set and review the level of their adviser charges in a way that meets our expectations.
- 5.10** Alongside this, we propose changes to the wording on incorporating the costs and profit associated with the advice business into adviser charges and not into charges for other services. The guidance references the 'total' advice related costs. Our supervisory work on adviser charges has indicated that there is a degree of uncertainty among some firms about which costs to include when determining adviser charges. The revised wording is intended to clarify that all costs should be included. This would include, for example, overhead costs which are shared between different services.
- 5.11** The general intent of the guidance remains unchanged: to ensure that VIFs determine adviser charges by incorporating all the advice costs and allowance for profit that would be incorporated if other services were not offered. This does not prevent firms from taking advantage of economies of scale which may exist as a result of offering a range of services. But the principle of allocating total costs between services so that adviser charges are representative of the underlying costs associated with the advice means that the economies of scale should be shared by the services offered and not allocated as a negative cost to just one service. We have proposed a minor change to the corresponding rule which clarifies the policy intent.
- 5.12** We are also taking the opportunity to clarify that the rule in COBS 6.1A.9R applies to platform service providers as well as product providers, when making a personal recommendation in respect of their own products. Together these changes should provide more clarity for firms on the policy intent, enabling them to meet our expectations more easily. Consequently, this should result in adviser charges for VIFs which are fair (relative to the price of other services in the value chain).
- 5.13** Similar guidance on VIFs is also used in other areas of COBS. For consistency, we have proposed equivalent changes to the VIF rules in relation to consultancy charges and pure protection.

Q5.2: Do you agree with the other proposed guidance changes for adviser charges for VIFs?

Cost benefit analysis

- 5.14** Section 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules.
- 5.15** The proposed amendments to COBS 6.1A should encourage innovation in the market by providing greater clarity and certainty about the FCA's expectations. Firms view the existing guidance as unclear, which appears to have reduced the incentives for firms to innovate and invest in new advice models. It should also provide firms with the flexibility to spread out their capital expenditure in developing new advice models. The benefits for consumers are likely to be consistent with those identified by FAMR, predominantly through the development of automated advice solutions:
- improved availability of advice to consumers with lower levels of wealth
 - more affordable advice services for the mass market

Q5.3: Do you have any comments on the CBA?

Impact on mutual societies

- 5.16** Section 138K of FSMA requires us to provide an opinion on whether the impact of proposed rules on mutual societies is significantly different to the impact on other authorised persons. We are satisfied that the proposed amendments do not impact on mutual societies more than on other authorised firms.

Compatibility statement

- 5.17** We are satisfied that these proposals are compatible with our general duties under section 1B of FSMA, having regard to the matters set out in 1C(2) FSMA and the regulatory principles in section 3B.
- 5.18** In preparing the proposals as set out in this consultation, we have considered the FCA's duty to promote effective competition in the interests of consumers. We believe that the changes we propose will have a positive impact on competition, as they make it easier for VIFs to offer innovative advice services at a lower cost to consumers.

Equality and diversity

- 5.19** We have assessed the likely equality and diversity impacts of the proposals and do not think that the proposals give rise to any concerns. However, any comments from respondents would be welcome.

6.

Changes to the requirements in the Disclosure Guidance and Transparency Rules

Introduction

- 6.1** In this chapter we propose to add new rules to Chapter 6 of the Disclosure Guidance and Transparency Rules sourcebook (DTR) to enable us to comply with the requirements in Articles 7 and 9 of the regulatory technical standards (RTS) on the Transparency Directive (2004/109/EC) (TD) concerning the European electronic access point⁵ (EEAP).
- 6.2** This chapter will be of interest to:
- issuers who are subject to the requirements under DTR 6.2
 - listed companies who are required by LR 9.2.6BR, LR 14.3.23R or LR 18.4.3R to comply with DTR 4, DTR 5 and DTR 6 as if they were an issuer for the purposes of the DTRs
 - issuers of securitised derivatives who, pursuant to LR 19.4.11BR, the FCA considers should comply with DTR 4, DTR 5 and DTR 6 as if they were an issuer of debt securities as defined in the DTRs
 - firms advising issuers or listed companies
 - firms advising persons investing or dealing in listed securities or securities admitted to trading on a regulated market
 - firms or persons investing or dealing in listed securities or securities admitted to trading on a regulated market
 - primary information providers
- 6.3** The proposed changes and the statutory powers they will be made under are set out in Appendix 6 of this Consultation Paper.

Summary of proposals

Background

- 6.4** Article 21a of the TD requires the European Securities and Markets Authority (ESMA) to develop and operate a European electronic access point (EEAP) to provide fast access to, and

⁵ Commission Delegated Regulation (EU) 2016/1437 of 19 May 2016 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on access to regulated information at Union level.

make available to end users, all regulated information filed by issuers under the TD on a non-discriminatory basis. The EEAP will be a web portal accessible through ESMA's website. To facilitate the search for regulated information and to ensure fast access to that information, the EEAP will offer end users the ability to search by legal entity identifier (LEI), home Member State or type of regulated information. The EEAP must be established by 1 January 2018 and Member States must ensure access to their national central storage mechanisms – known as officially appointed mechanisms (OAMs) – through the EEAP, so that the EEAP can provide access to the regulated information which is stored by these mechanisms. In the UK, the FCA is the OAM.

- 6.5** In September 2015, ESMA published draft RTS setting out various elements required to implement the EEAP. The RTS were adopted by the European Commission on 19 May 2016 and published in the Official Journal on 31 August 2016. The intention of the RTS is that regulated information which has been filed in the year prior to the EEAP becoming operational will be fully searchable once the EEAP goes live on 1 January 2018. For this reason, certain requirements regarding data provision, covered in Articles 7 and 9 of the RTS, come into force on 1 January 2017.

Article 7 of the RTS

- 6.6** Article 7 of the RTS introduces the requirement for OAMs to use LEIs⁶ as the unique identifiers for all issuers. An LEI is a 20-character reference code to uniquely identify uniquely legally distinct entities that engage in financial transactions. While there is an obligation arising under the RTS for each OAM to use LEIs as unique identifiers for all issuers, there is no corresponding obligation in the RTS for an issuer to obtain an LEI (although some other regulations, such as the European Market Infrastructure Regulation, require the use of an LEI in certain situations, they do not oblige all issuers admitted to trading on a regulated market to have one). This raises a potential problem for OAMs in meeting the obligation under the RTS to use LEIs.

Article 9 of the RTS

- 6.7** Article 9 of the RTS requires OAMs to classify all regulated information in accordance with section B of the RTS Annex. Section B sets out the following classification:

Classification of regulated information	Legal basis
1. Periodic regulated information	
1.1 Annual financial and audit reports	all information disclosed under Article 4 of Directive 2004/109/EC
1.2 Half yearly financial reports and audit reports/limited reviews	all information disclosed under Article 5 of Directive 2004/109/EC
1.3 Payments to governments	all information disclosed under Article 6 of Directive 2004/109/EC
2. Ongoing regulated information	
2.1 Home Member State	all information disclosed under Article 2(1)(i) of Directive 2004/109/EC
2.2 Inside information	all information disclosed under Article 6 of Directive 2003/6/EC
2.3. Major shareholding notifications	all information disclosed under Article 12 of Directive 2004/109/EC
2.4. Acquisition or disposal of the issuer's own shares	all information disclosed under Article 14 of Directive 2004/109/EC

⁶ <https://www.lei.org/lei.htm>

2.5. Total number of voting rights and capital	all information disclosed under Article 15 of Directive 2004/109/EC
2.6. Changes in the rights attaching to the classes of shares or securities	all information disclosed under Article 16 of Directive 2004/109/EC
3. Additional regulated information required to be disclosed under the laws of a Member State	
3.1. Additional regulated information required to be disclosed under the laws of a Member State	all information not falling within the sub-classes set out in points 1.1, 1.2 and 1.3 and in points 2.1 to 2.6, but which the issuer, or any other person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, has disclosed in accordance with a requirement under the laws, regulations or administrative provisions of a Member State adopted under Article 3(1) of Directive 2004/109/EC

6.9 The obligation in the RTS is for the OAM to classify all regulated information. The OAM itself will not necessarily know, however, what type of regulated information the issuer is filing unless the issuer provides classification details to the OAM.

Proposal

6.10 We propose to add new rules in DTR 6.2 under the heading 'Filing of information with FCA' to require issuers to supply an LEI and classify regulated information according to the RTS Annex when they file regulated information with the FCA. This will enable us to fulfil our obligations as the OAM under Articles 7 and 9 of the RTS. For the following reasons, we do not see another viable way of achieving this:

- only the issuer in question can apply to obtain an LEI for itself (unless it has provided written permission to a third party to do so on its behalf), and
- only the issuer will be able to classify its regulatory information accurately

6.11 As a result, it is effectively necessary to 'upstream' the obligation the RTS places on OAMs to the underlying provider of the regulated information (i.e. the issuer).

Q6.1 Do you agree with the proposal to require issuers to supply their LEI when they file regulated information with the FCA (DTR 6.2.2AR)?

Q6.2 Do you agree with the proposal to require issuers to classify regulated information using the classes and sub-classes set out in Section B of the RTS Annex when they file regulated information with the FCA (DTR 6.2.2AR and DTR 6 Annex 1R)?

6.12 The consequence of proposing DTR 6.2.2AR is that issuers will have to provide us with their LEIs when they file regulated information. We encourage issuers to consider the arrangements they would need to have in place to comply with the rule when it comes into force, they are able to comply with it.

6.13 As both Articles 7 and 9 of the RTS apply to OAMs from 1 January 2017, we propose to enable issuers to provide LEIs and classify regulated information when they file it with us from that date. Even though the regulatory obligation on issuers to send LEIs or classify regulated information will not apply until the proposed rule comes into effect, we encourage issuers to do so from 1 January 2017 as it will ensure that regulated information which they file from that date will be searchable through the EEAP when it becomes operational.

6.14 We also propose in DTR 6.2.2BR that, when classifying regulated information in accordance with section B of the RTS Annex, if more than one of the classes or sub-classes in the table above (which we propose will be set out in a new annex to DTR 6) is applicable, then all

relevant classes and sub-classes must be notified. The reason for this is that some regulated information could potentially fall within more than one class or sub-class and requiring issuers to choose only one classification will not make regulated information fully searchable (e.g. an annual report containing inside information).

Q6.3: Do you agree with the proposal to require issuers to notify all relevant classes and sub-classes from the annex to DTR 6 when classifying regulated information (DTR 6.2.2BR and DTR 6 Annex 1R)?

6.15 We also propose that DTR 6.2.2AR and DTR 6.2.2BR will apply to:

- listed companies who are required by LR 9.2.6BR, LR 14.3.23R, or [LR18.4.3R] to comply with DTR 6 as if they were an issuer for the purposes of the transparency rules, and
- issuers of securitised derivatives who, pursuant to LR 19.4.11BR, the FCA considers should comply with DTR 6 as if they were an issuer of debt securities as defined in the transparency rules

6.16 This is consistent with the approach we have taken when implementing the TD and subsequently the Transparency Directive Amending Directive (2013/50/EU).

Q6.4 Do you agree with the proposal to apply DTR 6.2.2AR and DTR 6.2.2BR to those listed companies that are required by the listing rules to comply with DTR 6 and to those issuers of securitised derivatives who, pursuant to LR 19.4.11BR, we consider should comply with DTR 6?

6.17 Some issuers currently comply with the obligation in DTR 6.2.2R to file regulated information with the FCA by using a primary information provider (PIP) to disseminate such information in accordance with DTR 6.3 (i.e. they rely on the guidance in DTR 6.2.3G). As we are not proposing to amend DTR 6.2.3G, an issuer using a PIP to file regulated information with the FCA will need to ensure that the PIP is able to provide the FCA with the required information under the proposed new rules in DTR 6.2.2AR and DTR 6.2.2BR.

6.18 To enable us to meet our obligations in the RTS from early in 2017, we have reduced the consultation period from the normal two months to one month.

Cost benefit analysis

6.19 When proposing new rules, the FCA is obliged under section 138I of the Financial Services and Markets Act 2000 (FSMA) to publish a cost benefit analysis (CBA) unless we consider that the proposals will not give rise to any increase in costs or the increase in costs will be of minimal significance. The CBA is an analysis of the costs and benefits that will arise from the proposals. It is a statement of the differences between the baseline (current position) and the position that will arise if we implement the proposal.

6.20 The primary benefit of our proposed rules is that they will allow the FCA to comply with Articles 7 and 9 of the RTS. Without imposing a requirement on issuers to provide an LEI when they file regulated information, it would not be possible for the OAM to identify all issuers by LEI, which

will impede EEAP users being able to search regulated information by LEI. Furthermore, as the implication of the proposed new rules is that the OAM would be able to identify issuers by their LEIs, market participants should find it easier to search for regulated information when the EEAP becomes operational. This is because they would be able to search using the issuer's LEI instead of the issuer's name, which can sometimes be problematic due to inconsistent naming conventions (e.g. due to the use of abbreviations and acronyms such as Ltd, Intl, etc.).

- 6.21** We expect the cost of this proposal to be relatively small. There is an initial allocation cost to acquire an LEI in the UK (costs outside the UK may vary) of £115+VAT and an annual maintenance cost of £70+VAT that each issuer will potentially have to assume. The other cost we have identified relates to issuers' potential systems changes that will be required to provide the LEI when filing regulated information. Given the uncertainty about the systems that issuers have in place to file regulated information, and taking into account that each issuer potentially has a different system, we are not providing a quantified amount for the systems change, in line with section 138I(8) of FSMA.
- 6.22** A quantifiable assessment of costs versus benefits is difficult due to the lack of quantifiable data. However, we expect that the costs related to these proposed rules will not be disproportionate to the benefits for the industry and, as noted above, the proposed change is necessary for the FCA to meet its obligations under the RTS.

Impact on mutual societies

- 6.23** Section 138K of FSMA requires us to state whether our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared with other authorised persons. The relevant rules we propose to introduce in the DTRs will apply equally to issuers and listed companies regardless of whether they are a mutual society or another authorised person. Therefore we consider that the impact of our proposals would not significantly differ between mutual societies or other authorised persons.

Compatibility statement

- 6.24** Section 138I(2)(d) of FSMA requires us to explain why we consider our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B of FSMA.
- 6.25** We consider that the proposals in this chapter are compatible with our strategic objective, and advance our operational objectives, particularly our consumer protection and market integrity objectives, because they help ensure that appropriate information is more easily available to investors.
- 6.26** In preparing our proposals, we have considered the regulatory principles in section 3B of FSMA.

The principle that we should exercise our functions as transparently as possible

- 6.27** We believe that by consulting on our proposals we are acting in accordance with this principle.

- 6.28** **The need to use our resources in the most efficient and economic way**
The proposals in this chapter of the Consultation Paper will have minimal impact on our resources.
- 6.29** **The principle that a burden or restriction should be proportionate to the benefits**
We consider the proposals in this chapter of the Consultation Paper are proportionate to the benefits.
- 6.30** **The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons**
We do not think that our proposals discriminate against any particular business model or approach.

Equality and diversity

- 6.31** We have considered the equality and diversity issues that may arise from the proposals in this chapter. Overall, we do not consider that the proposals adversely impact any of the groups with protected characteristics, i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 6.32** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 6.33** In the interim we welcome any input to this consultation on these matters.

7.

Changes to the Training and Competence sourcebook

Introduction

- 7.1** In this chapter we propose the following changes to the Training and Competence¹ (TC) sourcebook and the Handbook Glossary:
- updates to the list of appropriate qualifications in TC Appendix 4
 - an amendment to the time limits for employees to attain an appropriate qualification in TC 2.2A following a recommendation in the Financial Advice Market Review² (FAMR)
 - an update to the Glossary definition for accredited bodies to reflect the change of name of ifs University College to 'The London Institute of Banking & Finance'.
- 7.2** This chapter will be of interest to:
- employees and firms whose employees are required to have appropriate qualifications that are listed in our TC sourcebook
 - prospective firms' employees, employees or students who may be required to have appropriate qualifications
 - those organisations, such as the accredited bodies³, who provide appropriate qualifications to the UK financial services industry
- 7.3** In this Consultation Paper (CP) we set out our detailed proposals, including our analysis of costs and benefits. The draft rules that we propose to include in our TC sourcebook are also included at Appendix 7.

Summary of proposals

- 7.4** Our training and competence regime supports consumers by making sure the financial services workforce is appropriately qualified and well regulated. The regime comprises:
- a high-level competence requirement (the 'competent employees rule') that applies to

¹ <https://www.handbook.fca.org.uk/handbook/TC>

² 'Financial Advice Market Review: Final Report' (March 2016)

³ <https://www.handbook.fca.org.uk/handbook/glossary/G2833.html?starts-with=A>

firms in relation to its personnel engaged in a regulated activity in all UK authorised firms (including wholesale firms) as set out in SYSC

- more detailed requirements for certain activities, including the need to attain an appropriate qualification where relevant, as set out in TC

New qualifications and amendments to TC Appendix 4 and the Glossary

7.5 We consult each time a new qualification is added, or when other minor changes are made, to the list of appropriate qualifications in TC. We propose adding two new qualifications to the appropriate qualifications list in TC and updating the name of one existing qualification provider.

- We propose to update the appropriate qualification listing and the Glossary definition for accredited bodies for the ifs University College (formerly the ifs School of Finance/Chartered Institute of Bankers) to reflect its current name: 'The London Institute of Banking & Finance'.
- We propose to add qualifications for the following qualification provider:
 - The Chartered Insurance Institute – we propose adding 'Certificate in Pension Transfer Advice' and 'Diploma in Financial Planning (subject to gap fill) + AF7 Pension Transfers'. We propose to list these as being appropriate for TC activity 11 (key 1⁴).

Q7.1: Do you know of any reason why these qualifications or changes should not be made and/or amended?

Amendment to the time limits for employees to attain an appropriate qualification

7.6 FAMR published its final report on 14 March 2016. The review builds on improvements made to the financial advice industry brought about by the Retail Distribution Review (RDR). The RDR raised the standards of professionalism across the financial advice market.

7.7 The recommendations outlined in FAMR aim to:

- provide affordable advice to consumers
- increase access to advice
- address industry concerns relating to future liabilities and redress, without watering down levels of consumer protection

7.8 The Government and the FCA Board welcomed the report on 16 March 2016 and accepted the recommendations directed at the Treasury and the FCA respectively.

7.9 One of the recommendations in the FAMR⁵ was that 'the FCA should consult on modifying the time limits for employees to attain an appropriate qualification in the FCA's existing Training and Competence sourcebook (TC). This will give firms more flexibility to train a new generation of advisers by allowing employees to work for up to four years under supervision to obtain an appropriate qualification and experience.' FAMR stated that 'Collectively, stakeholders suggest issues with the existing regime are restricting firms' ability to train a "pipeline" of

⁴ Meets the full qualification requirement on, and after, 31 December 2012.

⁵ 'Financial Advice Market Review: Final Report' (March 2016)

future advisers, as there is insufficient flexibility for individuals to develop and become qualified while working within a business.’

- 7.10** The FCA’s current rules on appropriate qualification time limits are contained in TC 2.2A⁶. These rules specify that if an employee carries on an activity in TC Appendix 1 that has an appropriate qualification requirement (other than an overseeing activity), the firm must ensure that the employee attains the appropriate qualification within 30 months of starting to carry on that activity. We propose to extend the current 30 month time limit to 48 months (4 years), as per the recommendation in FAMR. No other changes to TC are proposed to implement this recommendation.
- 7.11** We are presently also consulting on proposed changes to TC in CP16/29⁷ to implement the Markets in Financial Instruments Directive II (MiFID II). Article 25(1) of MiFID II broadly requires firms engaged in MiFID business to ensure, and be in a position to demonstrate to us, that individuals giving investment advice or information about financial instruments or investment or ancillary services to clients possess the necessary knowledge and competence to fulfil their investor protection obligations. Article 25(1) of MiFID II is supported by ESMA Guidelines on the assessment of knowledge and competence. We are consulting on certain changes to our rules to ensure that these do not conflict with the Guidelines. The proposed changes introduce some concepts which are new to the UK and include:
- a maximum time period of four years under which employees lacking an appropriate qualification or appropriate experience are allowed to work under supervision
 - a minimum of six months of appropriate experience (as well as an appropriate qualification) before employees can be considered eligible to work unsupervised
- 7.12** The original 30 month TC time limit rule, within which qualifications must be successfully passed, was implemented following consultation by the FSA in 2010. A range of qualification time limits existed at the time with 30 months being the upper time limit, so its introduction and impact on employees and firms subject to qualification requirements was considered to be negligible.
- 7.13** We continue to believe that the application of an overall qualification time limit will provide greater clarity in respect of regulatory expectations and better enables us to monitor firms’ activities to assess their compliance with the ‘competent employees rule’.
- 7.14** We are now considering the qualification time limit in light of the FAMR recommendation and believe that extending the time limit will:
- provide more flexibility for employees to study and attain an appropriate qualification, including while working for a firm
 - align with the time limits proposed in CP16/29
 - allow us to continue to monitor firms’ activities to assess their compliance with the ‘competent employees rule’
- 7.15** We do not believe that extending the time limit will:

⁶ <https://www.handbook.fca.org.uk/handbook/TC/>

⁷ CP16/29 ‘Markets in Financial Instruments Directive II Implementation – Consultation Paper III’ (September 2016)

- diminish the intent of the original time limit
- remove existing protections such as ensuring employees are appropriately supervised

7.16 Consistent with our current guidance on time limits for attaining an appropriate qualification in TC this proposal does not change a firm's ability to require that its employee attains the appropriate qualification earlier.

7.17 The extension of the time limit from 30 months to 48 months may also benefit those employees who are undertaking vocational work-based training. It may additionally help improve access to tertiary education where the time period to acquire an appropriate qualification may extend beyond the current 30 months, e.g. university degrees, membership of professional bodies and equivalent.

Q7.2: Do you agree with our proposal to extend the existing qualification requirement from 30 months to 48 months (four years)? If not, why not?

Cost benefit analysis

7.18 Section 138I of the Financial Services and Markets Act (FSMA) requires us to perform a cost benefit analysis (CBA) of our proposed requirements and to publish the results, unless we consider the proposals will not give rise to any cost or to an increase in costs of minimal significance. We consider that our proposed changes will not result in an increase in costs, or that where they do this will be of minimal significance. This is because our proposed changes update the list of appropriate qualifications available to employees and extends the existing time limit for employees to attain an appropriate qualification in TC. As the proposal is to extend the qualification time limit from 30 months to 48 months the impact should be negligible as firms will have been relying on the current 30 month time limit.

Compatibility statement

7.19 This statement records our compliance with a number of legal requirements applicable to the proposals we are consulting on, including an explanation of our reasons for concluding that our proposals are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).

7.20 When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why we believe making the proposed rules is compatible with our general duties under:

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

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

- 7.22** This statement also sets out our view of how the proposed rules are compatible with our duty to discharge our general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.
- 7.23** This statement also includes our assessment of the equality and diversity implications of our proposals.
- 7.24** Under the Legislative and Regulatory Reform Act 2006 (LRRRA) we are required to consider:
- a number of high-level ‘Principles’ in the exercise of some of our regulatory functions
 - a ‘Regulators’ Code’ when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules)
- 7.25** This statement sets out how we have complied with requirements under the LRRRA.
- 7.26** This statement must be read in conjunction with the rest of the chapter and CBA (see paragraph 7.18) to fully demonstrate that we meet our statutory duties and objectives.

The FCA’s objectives and regulatory principles: compatibility statement

- 7.27** The proposals set out in this chapter are mainly intended to advance the FCA’s operational objective of securing an appropriate degree of protection for consumers by ensuring that consumers are dealt with by competent individuals. These individuals must have the necessary skills, knowledge and expertise (including a good standard of ethical behaviour) to be able to carry out their role, which may involve passing an appropriate qualification. By making a greater choice of appropriate qualifications available to firms and their employees, as well as allowing greater flexibility to work for a longer period while obtaining their qualification, we can contribute to promoting effective competition in the interests of consumers. The proposals also allow us to continue to monitor firms’ activities to assess their compliance with the ‘competent employees rule’.
- 7.28** We consider these proposals to be compatible with our strategic objective of ensuring that the relevant markets function well because relevant individuals within firms will have a level of knowledge and competence based on our rules and guidance. For the purposes of the FCA’s strategic objective, ‘relevant markets’ are defined by s. 1F FSMA.
- 7.29** In preparing the proposals set out in this chapter, we have considered the regulatory principles set out in s. 3B FSMA, as detailed below.

The need to use our resources in the most efficient and economical way

- 7.30** Knowledge can be assessed and demonstrated by various means, but one of the most common methods is through qualifications. Appropriate qualifications play a significant role in the current TC regime in assessing baseline competence – with compulsory qualification requirements for those activities where we consider specialist knowledge is essential. These requirements provide an objective and independently verified benchmark of the ‘entry level’ knowledge necessary for firms and employees to undertake specific activities. Having these requirements in place also makes our supervision of firms more effective as they can clearly see what we expect.

- The principle that an imposed burden or restriction should be proportionate to the benefits**
- 7.31** The proportionality of our approach is addressed in the CBA in paragraph 7.18.
- The desirability of sustainable growth in the economy of the United Kingdom (UK) in the medium or long term**
- 7.32** We do not expect the proposals to have a material impact on economic growth in the UK.
- The general principle that consumers should take responsibility for their decisions**
- 7.33** Our proposals do not alter the principle that consumers should take responsibility for their decisions.
- The responsibilities of the senior management of persons subject to requirements imposed by or under FSMA, including those affecting customers relating to compliance with those requirements**
- 7.34** A firm must take reasonable care to establish and maintain systems and controls appropriate to its business. A firm must ensure that it employs personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. We do not anticipate any impact on senior management responsibilities as a result of our proposals.
- The desirability, where appropriate, of the FCA exercising its functions in a way that recognises differences in the nature and objectives of the businesses it regulates**
- 7.35** We recognise that firms need a qualified competent work force and that greater flexibility in the time employees can take to acquire an appropriate qualification, as well as a greater range of appropriate qualifications they can study, can help with this. Our proposals recognise the differences in the nature and objectives of the businesses we regulate.
- The desirability of publishing information relating to persons**
- 7.36** We have the power to publish information relating to investigations into firms and individuals. However, as set out in the Enforcement Guide (EG), we will not normally make public our investigations, findings or conclusions except in exceptional circumstances.
- The principle that we should exercise our functions as transparently as possible**
- 7.37** In consulting on the proposal to extend qualification time limits and by seeking views on adding to or amending our list of appropriate qualifications in TC we can demonstrate that we are an open and transparent regulator.
- 7.38** In formulating our proposals we considered the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA). The intention of these proposals is not to address the risk of financial crime. However, we do not consider that the proposals create any greater risk of financial crime occurring.
- Expected effect on mutual societies**
- 7.39** We do not expect the proposals in this CP to have a significantly different impact on mutual societies than other authorised persons. Further, we do not consider that the proposals present them with any more or less of a burden than other authorised persons.
- 7.40** We welcome any comments or information you have on any issues relating to mutual societies that you believe would arise from our proposals.

Compatibility with the duty to promote effective competition in the interests of consumers

7.41 In preparing the proposals as set out in this CP we considered our duty to promote effective competition in the interests of consumers. We consider that a greater choice of appropriate qualifications, together with more flexibility in how employees of firms can acquire them, will help promote competition in the interest of consumers by continuing to developing the pool of appropriately qualified staff that consumers can access.

Equality and diversity

7.42 We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conducted an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.

7.43 The outcome of our assessment is given in paragraphs 7.46 to 7.49 of this chapter.

Legislative and Regulatory Reform Act 2006 (LRR)

7.44 We have considered the principles in the LRR for those parts of our proposals that consist of general policies, principles or guidance. We believe that our consultation proposals are proportionate, targeted and accountable. Specifically, the proposal to extend the time limit on qualifications is a recommendation made in FAMR published in March 2016 and is targeted at the area highlighted in the FAMR report.

7.45 Additionally, we considered the Regulators' Code for those parts of the proposals that consist of general policies, principles or guidance and consider that the proposals we are consulting on are consistent with it. For example, our proposals are intended to promote and encourage compliance through the provision of clear rules and guidance. Consulting on proposed changes also provides a simple and straightforward way for those we regulate to respond to our proposals.

Equality and diversity

7.46 We have considered the equality and diversity issues that may arise from these proposals.

7.47 Overall, we do not consider that the proposals adversely impact any of the groups with protected characteristics, i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

7.48 We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.

7.49 In the interim we welcome any feedback to this consultation on these matters.

8. Changes to reporting requirements in the Supervision manual

Introduction

- 8.1** We collect regulatory data to inform and support our firm supervision. Data requirements are set out in our Handbook, predominantly in the Supervision manual (SUP). We use firm feedback to clarify and improve these requirements. This chapter explains our proposed improvements to regulatory reporting returns and supporting guidance, proposing five changes.
- 8.2** This consultation will be of interest to RAG 1 firms, consumer credit firms, firms that complete the complaints form in DISP 1 Annex 1R, firms that expect to hold the permission of operating an OTF and firms that complete the products sales data stated in SUP 16.11.
- 8.3** The text of the proposed amendments, and the statutory powers they will be made under, are set out in Appendix 8 of this Consultation Paper (CP).

Summary of proposals

Deletion of outdated text in the Supervision manual and the Consumer Credit sourcebook

- 8.4** SUP and the Consumer Credit sourcebook (CONC) contain some outdated text about reporting requirements. We propose to delete this to make the Handbook more concise and accurate.
- 8.5** We propose to delete:
- **prudential reporting requirements of regulated activity group 1 (RAG 1):** RAG 1 firms are not prudentially regulated by the FCA so this text is no longer required. RAG 1 firms should instead refer to the prudential reporting requirements as set out in the PRA Rulebook, and
 - **references to CCR008 in CONC** as this reporting requirement has been removed making these two references redundant

Q8.1: Do you have any comments on removing outdated text on reporting requirements from SUP and CONC?

Clarifying the complaints form contained in DISP 1 Annex 1R

- 8.6** There is a lack of clarity on which units are reported in the redress paid columns (F, G and H) of tables 2 and 5 in DISP 1 Annex 1R. We propose to add text to clarify that the data should be reported in 'single units'.

Q8.2: Do you have any comments on our proposals to add the label 'single units' to headings in the complaints return in DISP 1 Annex 1R?

Introduction of the permission of operating an organised trading facility (OTF) into SUP 16.12

- 8.7** As part of implementing the Markets in Financial Instruments Directive II we proposed, in CP16/9, that prudential reporting should apply to the new investment service of operating an OTF in the same way as it does to those who operate a Multilateral Trading Facility (MTF).⁸ We propose to add the new permission of operating an OTF into RAG 8 in SUP 16.12 to ensure the policy in CP16/19 is fully enacted. If the proposed changes in CP16/19 are not introduced, or are modified, the proposed change to RAG 8 will be altered accordingly to align with them.

Q8.3: Do you have any comments on our proposals to include the investment service of operating an OTF into RAG 8 in SUP 16.12?

Change to notes for completing product sales data (PSD) reporting requirements

- 8.8** Having reviewed the PSD guidance notes in preparation for the introduction of International Financial Reporting Standard 9 we propose to make a minor change to the guidance notes for SUP 16.11. We propose to change the notes for the 'current balance outstanding' field in SUP 16 Annex 21R to clarify that the amount should be the customer balance after write-offs.

Q8.4: Do you have any comments on our proposal to alter the notes contained in SUP 16 Annex 21R?

Changes to guidance notes and website help text to clarify how to report form question 6 on fees in form CCR007

- 8.9** In our recent Consultation Paper on fees (CP16/33, Regulatory fees and levies: policy proposals for 2017/18)⁹ we said we would clarify some of our guidance on the reporting of income for regulatory purposes. We propose to update our definition of consumer credit income in FEES 4 Annex 11B and guidance in FEES 4 Annex 13 Table 2 in response to queries firms have raised with us.
- 8.10** We propose to:
- **Change the definition of income in FEES 4 Annex 11BR.** Lenders sometimes claw back the commission they have paid credit brokers if the customer repays the loan early or defaults. We currently define income in FEES 4 Annex 11BR as the gross inflow of economic benefits 'without netting off the operating costs or business expenses.' Our view is that clawback is a business expense so brokers should not net off from their annual income any commission subsequently clawed back. We therefore propose to change the definition to ensure firms report all income received during the reporting period, even if money is clawed back at a later date.

⁸ CP16/19 'Markets in Financial Instruments Directive II implementation proposals - Consultation Paper II' (July 2016)

⁹ CP16/33 'Regulatory fees and levies: policy proposals for 2017/18' (November 2016)

- **Change our guidance to clarify that vouchers should be included in reported income.** We understand that the salespeople of some retail firms which undertake credit broking receive gift vouchers and other rewards from the finance companies they refer customers to. These may be paid instead of or in addition to any commission the finance provider pays the retailer. We believe that the value of these vouchers should be included in the retailer's reported income so propose to change our guidance accordingly.
- **Reporting of income by debt purchasers:** Our guidance in FEES 4 Annex 13G Table 2 (9)(c) states that the income on debt purchase is the difference between the price paid for the book and the amount recovered. Some firms have commented that, since the total recovered will not be known until the end of the term, discussion of the practicalities of reporting yearly income on the basis of annual accounts might help to promote consistency. It has been suggested to us that under UK GAAP (Generally Accepted Accounting Principles), income might represent the total collection figure less an amortisation charge, while under IFRS (International Financial Reporting Standards), it might be derived from the expected interest return from investing the capital in each portfolio. We are not proposing an amendment to our existing guidance in this consultation but would welcome comments on the suggestions that have been put to us, and any other ideas for consistent reporting of the annual income from debt purchase. We will then consider whether to consult on further amendments.

Q8.5: Do you have any comments on our proposals to alter our rules and guidance on how to report annual income in form CCR007, and on how income should be reported by debt purchasers?

Cost benefit analysis

- 8.11** Sections 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis when proposing draft rules. Section 138L(3) of FSMA provides that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increases will be of minimal significance. Having assessed the changes proposed in this chapter and having considered previous estimates of similar reporting changes, we believe this exemption applies to the items proposed in this chapter, as set out in more detail below.
- 8.12** **Deletion of outdated text in SUP 16**
This change has no cost implications for firms as it removes redundant Handbook text and does not alter any reporting requirements.
- 8.13** **Clarification to the complaints form contained in DISP**
We expect this change to have no cost implications for firms as it does not change the data that needs reporting to the FCA, it simply clarifies the existing requirements.
- 8.14** **Introduction of the permission of operating an OTF into SUP 16.12**
We expect this change to have no cost implications for firms as it does not propose any changes to prudential reporting above what is set out in CP16/9. If the policy set out in CP16/9 is implemented in its current format then this change will need to be made to ensure the policy

can work as intended. If the proposed policy in CP16/9 changes the alteration made in the QCP will be modified to reflect this.

Change to notes for 'current balance outstanding' in SUP

- 8.15** No reporting requirements are being amended therefore we expect this change to have no cost implications for firms. The change will provide clarification to the guidance notes for firms.

Changes to guidance notes and website help text for form CCR007 to clarify how to report annual income

- 8.16** No reporting requirements are being amended therefore we expect this change to have no cost implications for firms. The change will provide clarification to consumer credit firms' reporting requirements.

Q8.6: Do you have any comments about any of our cost assessments?

Impact on mutual societies

- 8.17** Section 138K of FSMA requires us to provide an opinion on whether the impact of proposed rules on mutual societies is significantly different to the impact on other authorised persons. We are satisfied that the proposed amendments do not impact on mutual societies more than on other authorised firms.

Compatibility statement

- 8.18** Section 1B of FSMA requires us, so far as is reasonably possible, to act in a way that is compatible with our strategic objective and advances one or more of our operational objectives. We also need to carry out our general functions in a way that promotes effective competition in the interests of consumers.
- 8.19** The proposed changes in this chapter will allow us to collect more accurate firm data and process it more efficiently. In turn, this will allow more effective supervision of firms and will help us to advance our consumer protection objective.
- 8.20** We do not believe that the proposed changes will have an impact on competition. The changes are expected to impose minimal costs on firms and do not affect firms' incentives or ability to compete in the market.

Equality and diversity

- 8.21** Overall, we do not believe that the proposals in this chapter adversely impact any of the groups with protected characteristics specified in legislation, i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

- 8.22** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and, if necessary, will revisit them when we publish the final rules.
- 8.23** We welcome any input to this consultation on these matters.

Appendix 1

List of questions

- Q2.1:** Do you agree with our proposed approach for disapplying the projection rules for risk warnings prepared using SMPI consistent assumptions?
- Q2.2:** In the event that DWP permits use of the FCA's assumptions, do you agree with our proposed approach for varying the projection rules for risk warnings prepared using FCA assumptions?
- Q2.3:** Do you agree with our proposal to remove the guidance on showing a projected GAR at the first age at which it can be taken?
- Q2.4:** Do you have any comments on the CBA?
- Q3.1:** Do you have any comments on the proposed changes to DEPP 2 Annex 1?
- Q4.1:** Do you have any comments on the proposed changes to EG 19.2 and EG 12.1.7?
- Q4.2:** Do you have any comments on the proposed changes to DEPP 2 Annex 1?
- Q5.1:** Do you agree with the proposed payback period in the guidance for adviser charges for VIFs?
- Q5.2:** Do you agree with the other proposed guidance changes for adviser charges for VIFs?
- Q5.3:** Do you have any comments on the CBA?
- Q6.1:** Do you agree with the proposal to require issuers to supply their LEI when they file regulated information with the FCA (DTR 6.2.2AR)?
- Q6.2:** Do you agree with the proposal to require issuers to classify regulated information using the classes and sub-classes set out in Section B of the RTS Annex when they file regulated information with the FCA (DTR 6.2.2AR and DTR 6 Annex 1R)?
- Q6.3:** Do you agree with the proposal to require issuers to notify all relevant classes and sub-classes from the annex to DTR 6 when classifying regulated

information (DTR 6.2.2BR and DTR 6 Annex 1R)?

- Q6.4:** Do you agree with the proposal to apply DTR 6.2.2AR and DTR 6.2.2BR to those listed companies that are required by the listing rules to comply with DTR 6 and to those issuers of securitised derivatives who, pursuant to LR 19.4.11BR, we consider should comply with DTR 6?
- Q7.1:** Do you know of any reason why these qualifications or changes should not be made and/or amended?
- Q7.2:** Do you agree with our proposal to extend the existing qualification requirement from 30 months to 48 months (four years)? If not, why not?
- Q8.1:** Do you have any comments on removing outdated text on reporting requirements from SUP and CONC?
- Q8.2:** Do you have any comments on our proposals to add the label 'single units' to headings in the complaints return in DISP 1 Annex 1R?
- Q8.3:** Do you have any comments on our proposals to include the investment service of operating an OTF into RAG 8 in SUP 16.12?
- Q8.4:** Do you have any comments on our proposal to alter the notes contained in SUP 16 Annex 21R?
- Q8.5:** Do you have any comments on our proposals to alter our rules and guidance on how to report annual income in form CCR007, and on how income should be reported by debt purchasers?
- Q8.6:** Do you have any comments about any of our cost assessments?

Appendix 2

Pension projections for risk warnings

**CONDUCT OF BUSINESS SOURCEBOOK (PENSION PROJECTIONS)
INSTRUMENT 2017**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in the Financial Services and Markets Act 2000 ('Act'):
- (1) the following sections of the Act:
 - (a) section 137A (The FCA's general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*].

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Conduct of Business Sourcebook (Pension Projections) Instrument 2017.

By order of the Board
[*date*]

Annex A**Amendments to the Glossary of definitions**

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

[*Editor's note:* The Department for Work and Pensions are planning to make the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations 2017. Once made and in force, Regulation 6 of the 2017 Regulations will insert a new Regulation 8A into the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 (SI 2015/742). The reference to Regulation 8A in the definition of safeguarded-flexible risk warning assumes that Regulation 8A has been inserted by the planned 2017 Regulations.]

<i>safeguarded-flexible risk warning</i>	a written communication to a member of a <i>personal pension scheme</i> or <i>stakeholder pension scheme</i> which is required by Regulation 8A of the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 (SI2015/742).
--	---

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

13 Preparing Product Information

...

13 Projections

Annex 2

This annex belongs to *COBS* 13.4.1R (Contents of a key features illustration), *COBS* 13.5.1R (Projections for in-force products) and *COBS* 13.5.2R (Projections: other situations).

...

1.9 R The *rules* in this Annex do not apply to a *projection or safeguarded flexible benefit risk warning* for an in force product ~~which is~~ where the assumptions are consistent with the assumptions for a statutory money purchase illustration requirements.

...

1.11 R If a projection is prepared in connection with a safeguarded-flexible benefit risk warning, it may omit the lower rate of return and the higher rate of return.

...

3.3 R A *projection* for an annuity with a *guaranteed annuity rate* which is not in connection with a safeguarded-flexible benefit risk warning must:

(1) ...

...

3.4 G When providing an additional projection for an annuity with a *guaranteed annuity rate* which is not in connection with a safeguarded-flexible benefit risk warning, a *firm* should:

(1) ~~show the projection at the earliest age at which it can be taken;~~
[deleted]

(2) take account of multiple *guaranteed annuity rates* on the fund or non-guaranteed elements of the fund on a proportionate basis; and

(3) provide an explanation of the key restrictions which may apply

when the *guaranteed annuity rate* is taken up, particularly where these differ from the other *projections* shown.

...

Appendix 3

Decision making changes relating to the MLR 07

ENFORCEMENT (MONEY LAUNDERING REGULATIONS 2007) INSTRUMENT 2017

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of section 139A (Power of the FCA to give guidance).

Commencement

- B. This instrument comes into force on [*date*].

Amendments to the Handbook

- C. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Enforcement (Money Laundering Regulations 2007) Instrument 2017.

By order of the Board
[*date*]

Annex

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Statutory notices and the allocation of decision making

...

2 Annex 1 Warning notices and decision notices under the Act and certain other enactments

...

Payment Services Regulations	Description	Handbook reference	Decision maker
...

<u>The Money Laundering Regulations 2007</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 34(7)</u>	<u>where the FCA is proposing or deciding to cancel the registration of a relevant person registered under the Money Laundering Regulations 2007</u>		<u>RDC</u>
<u>Regulation 42(6)</u>	<u>where the FCA is proposing or deciding to impose a civil penalty (Note 1)</u>		<u>RDC</u>
<u>Note:</u>			
<u>(1) The Money Laundering Regulations do not require third party rights and access to FCA material when the FCA exercises this power. However, the FCA generally intends to allow for third party rights and access to material when exercising this power.</u>			

...

Appendix 4

Changes to EG and DEPP following the CCBS Act

**ENFORCEMENT (CO-OPERATIVE AND COMMUNITY BENEFIT SOCIETIES ACT
2014) INSTRUMENT 2017**

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of:
the following powers:
- (1) section 139A (Power of the FCA to give guidance)

Commencement

- B. This instrument comes into force on [*date*].

Amendments to the Handbook

- D. The Glossary is amended in accordance with Annex A to this instrument.
- C. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex B to this instrument.

Material outside the Handbook

- D. The Enforcement Guide (EG) is amended in accordance with Annex C to this instrument.

Citation

- E. This instrument may be cited as the Enforcement (Co-operative and Community Benefit Societies Act 2014) Instrument 2017.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary

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

Insert the following new definition in the appropriate alphabetical position.

registered society a society registered or deemed to be registered under the Co-operative and Community Benefit Societies Act 2014.

Delete the following definition.

~~*industrial and provident society*~~ ~~a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969.~~

Annex B

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Statutory notices and the allocation of decision making

...

2 Annex 1 Warning notices and decision notices under the Act and certain other enactments

...

The Immigration Act 2014 (Bank Account) Regulations 2014	Description	Handbook reference	Decision maker
...

<u>The Co-operative and Community Benefit Societies Act 2014</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Section 6 and 8</u>	<u>where the FCA gives at least two months' notice of the proposed cancellation or suspension of the registration of a registered society</u>		<u>Executive procedures</u>
<u>Sections 6 to 8</u>	<u>where the FCA is proposing to cancel or suspend the registration of a registered society relying on condition C, D or E in section 5</u>		<u>Executive procedures where no representations are made in response to a notice of proposed cancellation, otherwise by the RDC</u>
<u>Section 123</u>	<u>where the FCA is proposing to petition for the winding up of</u>		<u>RDC</u>

	<u>a registered society</u>		
Section 132	where the <i>FCA</i> is proposing to prosecute a <i>registered society</i>		<u>Executive procedures</u> <u>or RDC</u>

Annex C

Amendments to the Enforcement Guide (EG)

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

12 Prosecution of Criminal Offences

...

12.1 The FCA's general approach

...

12.1.7 Decisions about whether to initiate criminal proceedings under the Building Societies Act 1986, the Friendly Societies Acts 1974 and 1992, the Credit Unions Act 1979, ~~the Industrial and Provident Societies Act 1965 and the Friendly and Industrial and Provident Societies Act 1968~~ and the Co-operative and Community Benefit Societies Act 2014 may either be taken by the procedure described in *paragraph 12.1.5* above or under *executive procedures*. The less serious the offence or its impact and the less complex the issues raised, the more likely that the *FCA* will take the decision to prosecute under *executive procedures*.

...

19 Non-FSMA powers

...

19.2 ~~Industrial and Provident Societies Act 1965 (IPSA65), Friendly and Industrial and Provident Societies Act 1968 (FIPSA68), Friendly Societies Act 1974 (FSA74), Friendly Societies Act 1992 (FSA92),~~ Co-operative and Community Benefit Societies Act 2014 (CCBSA14)

19.2.1 The *FCA* has certain functions in relation to what are described as “registrant-only” mutual societies including *registered societies* or *registered friendly societies*. These societies are not regulated or supervised under the *Act*. Instead, they are subject to the provisions of ~~IPSA65, FIPSA68~~ CCBSA14, FSA74 and FSA92, which require them to register with the *FCA* and fulfil certain other obligations, such as the requirement to submit annual returns.

19.2.2 ~~IPSA65, FIPSA68, FSA74 and FSA92 provide the *FCA* with certain powers to ensure that registrant-only societies meet the requirements imposed on them. These include the power to:~~

- ~~• cancel or suspend the society's registration (ss.16 and 17 IPSA65, s.91 FSA74);~~
- ~~• dissolve the society (ss.95 and 95A FSA74);~~

- ~~appoint an accountant or actuary to inspect the society's books (s.47 IPSA65);~~
- ~~require the production of documents and provision of information for certain purposes (s.48 IPSA65, s.90 FSA74);~~
- ~~appoint inspectors and call special meetings (s.49 IPSA65, s.90 FSA74);~~
- ~~present petitions for winding up (s.56 IPSA65; ss.22 and 52 FSA92); and~~
- ~~prosecute failures to comply with requirements (s.61 IPSA65, s.18 FIPSA68 s.98 FSA74).~~

The FCA's enforcement activities in respect of registrant-only societies focus on prosecuting societies that fail to submit annual returns. As registrant-only societies are not subject to the rules imposed by the Act and by the FCA Handbook, the requirement that they submit annual returns provides an important check that the interests and investments of members, potential members, creditors and other interested parties are being safeguarded. The power to prosecute registrant-only societies who fail to meet this requirement is therefore an important tool and one which the FCA is committed to using in appropriate cases.

- 19.2.3 ~~The FCA's enforcement activities in respect of registrant-only societies focus on prosecuting societies that fail to submit annual returns. As registrant-only societies are not subject to the rules imposed by the Act and by the FCA Handbook, the requirement that they submit annual returns provides an important check that the interests and investments of members, potential members, creditors and other interested parties are being safeguarded. The power to prosecute registrant-only societies who fail to meet this requirement is therefore an important tool and one which the FCA is committed to using in appropriate cases.~~

The FCA may also use its power to petition for the society's winding up where it has prosecuted a society but the society continues to fail to submit the outstanding annual returns or defaults on submitting further returns.

- 19.2.4 ~~The FCA considers a variety of factors when deciding whether to prosecute a society for failing to submit its annual return. The FCA is more likely to prosecute a society which has previously failed to submit returns, or which poses a greater risk to the FCA's statutory objectives, for example, because of the size of its financial resources or its number of members.~~

The decision whether to initiate criminal and/or other proceedings under these Acts will be taken in accordance with the procedure described in EG 12.1.7. Under section 9 CCBSA14, a society may appeal certain decisions of the FCA relating to the refusal, cancellation or suspension of a society's registration to the High Court or, in Scotland, the Court of Session. Refusals to register a branch or to register the amendment of a society's rules and cancellations or suspensions of a society's listing under the Friendly Societies Act 1974 are also appealable in certain circumstances to the High Court or the Court in Sessions. Distinguishing features of the procedure for giving statutory notices under the FSA92, including

available rights of reference to the *Tribunal*, are set out in *DEPP 2.5.18G*.

- 19.2.5 ~~The *FCA* may also use its power to petition for the society's winding up where it has prosecuted a society but the society continues to fail to submit the outstanding annual returns or defaults on submitting further returns.~~

Further information about the *FCA's* powers under CCBSA14 and FSA74 can be found on the *FCA's* website.¹⁶

- 19.2.6 ~~The decision whether to initiate criminal and other proceedings under these *Acts* will be taken in accordance with the procedure described in *EG 12.1.7*. Under section 18 *IPSA65*, a society may appeal certain decisions of the *FCA* relating to the refusal, cancellation or suspension of a society's registration to the High Court or, in Scotland, the Court of Session. Refusals to register a branch or to register the amendment of a society's rules and cancellations or suspensions of a society's listing under the Friendly Societies Act 1974 are also appealable in certain circumstance to the High Court or the Court in Sessions. Distinguishing features of the procedure for giving statutory notices under the *FSA92*, including available rights of reference to the *Tribunal*, are set out in *DEPP 2.5.18G*. [deleted]~~

- 19.2.7 ~~Further information about the *FCA's* powers under *IPSA65* and *FSA74* can be found on the *FCA's* website.¹⁶ [deleted]~~

¹⁶ ~~<http://www.fca.org.uk/firms/being-regulated/enforcement/how-we-enforce-the-law/courts/friendly-societies>~~

Appendix 5

Adviser charging for vertically integrated firms

**CONDUCT OF BUSINESS SOURCEBOOK (ADVISER CHARGING FOR
VERTICALLY INTEGRATED FIRMS) INSTRUMENT 2017**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ('the Act'):
- (1) section 137A (FCA's general rule-making power);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*].

Amendments to the Handbook

- D. The Conduct of Business sourcebook (COBS) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Conduct of Business Sourcebook (Adviser Charging for Vertically Integrated Firms) Instrument 2017.

By order of the Board
[*date*]

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

6 Information about the firm, its services and remuneration

...

6.1A Adviser charging and remuneration

...

Requirements on a retail investment product provider, platform service provider or operator of an electronic system in relation to lending making a personal recommendation in respect of its own retail investment products or P2P agreements

- 6.1A.9 R If the *firm* or its *associate* is the *retail investment product* provider, *platform service provider* or operator of an electronic system in relation to lending, the *firm* must ensure that the level of its *adviser charges* is at least reasonably representative of the cost of the services associated with making the *personal recommendation* (and related services).
- 6.1A.10 G An *adviser charge* is likely to be reasonably representative of the cost of the services associated with making the *personal recommendation* if:
- (1) the total expected ~~long-term~~ costs and profits associated with making a *personal recommendation* and distributing the *retail investment product* ~~do not include the costs associated with~~ will:
 - (a) be recovered through *adviser charges*; and
 - (b) not be recovered by charges for, or profits from, other services (such as manufacturing and administering the *retail investment product*);
 - (2) the ~~allocation of costs and profit to *adviser charges* and *product charges*~~ is such that any cross-subsidisation is not significant in the long term are reasonably capable of being self-supporting over a period of 5 years, or longer where this can be shown to be consistent with the *firm's* established timeframe for measuring return on capital; and
 - (3) were the *personal recommendation* and any related services to be provided by an unconnected *firm*, the level of *adviser charges* would be

appropriate in the context of the service being provided by the *firm*.

...

6.1C Consultancy charging and remuneration

...

6.1C.10 G A *consultancy charge* is likely to be reasonably representative of the cost of the services associated with giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* if:

- (1) the total expected ~~long term~~ costs and profits associated with advising the employer in relation to the *group personal pension scheme* or *group stakeholder pension scheme* ~~do not include the costs~~ will:
 - (a) be recovered through *consultancy charges*; and
 - (b) not be recovered by charges for, or profits from, other services (such as those associated with establishing and operating that scheme);
- (2) ~~the allocation of costs and profits to *consultancy charges* and product charges is such that any cross-subsidisation between the different activities is not significant in the long term~~ are reasonably capable of being self-supporting over a period of 5 years, or longer where this can be shown to be consistent with the *firm's* established timeframe for measuring return on capital; and
- (3) (were the services to be provided by an unconnected *firm*), the level of *consultancy charges* would be appropriate in the context of the service being provided by the *firm*.

...

6.4 Disclosure of charges, remuneration and commission

...

6.4.4B R The *indicative adviser charge* must be at least reasonably representative of the cost of the services associated with making the *personal recommendation* in relation to the *pure protection contract*.

6.4.4C G An *indicative adviser charge* is likely to be reasonably representative of the cost of the services associated with making the *personal recommendation* if:

- (1) the total expected long term costs and profits associated with making a *personal recommendation* and distributing the *pure protection contract* ~~do not include the costs associated with~~ will:
 - (a) be recovered through *indicative adviser charges*; and
 - (b) not be recovered by charges for, or profits from, other services (such as manufacturing and administering the *pure protection contract*);
- (2) ~~the allocation of costs and profit to the *indicative adviser charge*~~ *indicative adviser charges* and *product charges* is such that any cross-subsidisation is not significant in the long term are reasonably capable of being self-supporting over a period of 5 years, or longer where this can be shown to be consistent with the *firm's* established timeframe for measuring return on capital; and
- (3) the *personal recommendation* and any related services were to be provided by an unconnected *firm*, the level of the *indicative adviser charge* would be appropriate in the context of the service being provided by an unconnected *firm*.

...

Appendix 6

Changes to the requirements in the Disclosure Guidance and Transparency Rules

**DISCLOSURE GUIDANCE AND TRANSPARENCY RULES SOURCEBOOK
(MISCELLANEOUS AMENDMENTS NO 2) INSTRUMENT 2017**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 73A (Part 6 Rules);
 - (2) section 89A (Transparency rules);
 - (3) section 137A (The FCA’s general rules);
 - (4) section 137T (General supplementary powers); and
 - (5) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*].

Amendments to the Handbook

- D. The Disclosure Guidance and Transparency Rules sourcebook (DTR) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Disclosure Guidance and Transparency Rules Sourcebook (Miscellaneous Amendments No 2) Instrument 2017.

By order of the Board
[*date*]

Annex

Amendments to the Disclosure Guidance and Transparency Rules sourcebook (DTR)

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

6 Continuing obligations and access to information

...

6.2 Filing information and use of language

...

Filing of information with the FCA

...

6.2.2A **R** Where an issuer or person is required to file regulated information under DTR 6.2.2R, the issuer or person must, at the same time, notify the following to the FCA:

(1) the legal entity identifier (LEI) of the issuer concerned; and

(2) the classifications relevant to the regulated information using the classes and sub-classes in DTR 6 Annex 1R.

6.2.2B **R** If more than one classification is relevant to the regulated information, the issuer or person must notify all relevant classes and sub-classes to the FCA.

Insert the following new Annex after DTR 6.4 (Disclosure of Home State). The text is not underlined.

6 Classes and sub-classes of regulated information

Annex
1R

	Classification of regulated information	Description
1.	Periodic regulated information	
1.1	Annual financial and audit reports	all information disclosed under article 4 of the <i>Transparency Directive</i>

1.2	Half yearly financial reports and audit reports/limited reviews	all information disclosed under article 5 of the <i>Transparency Directive</i>
1.3	Payments to governments	all information disclosed under article 6 of the <i>Transparency Directive</i>
2.	Ongoing regulated information	
2.1	Home Member State	all information disclosed under article 2(1)(i) of the <i>Transparency Directive</i>
2.2	Inside information	all information disclosed under article 17 of the <i>Market Abuse Regulation</i>
2.3	Major shareholding notifications	all information disclosed under article 12 of the <i>Transparency Directive</i>
2.4	Acquisition or disposal of the issuer's own shares	all information disclosed under article 14 of the <i>Transparency Directive</i>
2.5	Total number of voting rights and capital	all information disclosed under article 15 of the <i>Transparency Directive</i>
2.6	Changes in the rights attaching to the classes of shares or securities	all information disclosed under article 16 of the <i>Transparency Directive</i>
3.	Additional regulated information required to be disclosed under the laws of a Member State	
3.1	Additional regulated information required to be disclosed under the laws of a Member State	all information not falling within the sub-classes set out in points 1.1 to 1.3 and in points 2.1 to 2.6, but which the <i>issuer</i> , or any other <i>person</i> who has applied for the admission of securities to trading on a <i>regulated market</i> without the <i>issuer's</i> consent, has disclosed under article 19 of the <i>Market Abuse Regulation</i> or under <i>LR</i> or <i>DTR</i>

Appendix 7

Changes to the Training and Competence sourcebook

TRAINING AND COMPETENCE SOURCEBOOK (QUALIFICATION TIME LIMITS AND QUALIFICATIONS AMENDMENTS NO 16) INSTRUMENT 2017

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 138C (Evidential provisions).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*] 2017.

Amendments to the Handbook

- D. The Training and Competence sourcebook (TC) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Training and Competence Sourcebook (Qualification Time Limits and Qualifications Amendments No 16) Instrument 2017.

By order of the Board
[*date*] 2017

Annex A**Amendments to the Glossary of definitions**

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

- accredited body* any of the following bodies recognised by the *FCA* the purpose of providing the independent verification required under *TC 2.1.27R*
- (a) CFA Society of the UK;
 - (b) The Chartered Insurance Institute;
 - (c) The Institute of Financial Planning;
 - (d) The Chartered Institute for Securities and Investment;
 - (e) The Chartered Institute of Bankers in Scotland;
 - (f) ~~The ifs University College~~ The London Institute of Banking & Finance; [Note: ~~The ifs University College~~ London Institute of Banking & Finance acts through its Institute of Financial Services]
 - (g) The Institute of Chartered Accountants in England and Wales;
 - (h) The Pensions Management Institute.

Annex B

Amendments to the Training and Competence sourcebook (TC)

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

2.2A Time limits

Calculation of time limits for attaining an appropriate qualification

- 2.2A.1 R (1) For the purposes of *TC* 2.1.1R, if an *employee* carries on an activity in *TC* Appendix 1 (other than an overseeing activity), a *firm* must ensure that the *employee* attains an appropriate qualification within ~~30~~ 48 months of starting to carry on that activity.
- (2) ...
- 2.2.A.2 R For the purposes of calculating the ~~30~~ 48 months referred to in *TC* 2.2A.1R, a *firm* must:
- ...
- ...
- 2.2A.5 G *Firms* may wish *employees* who carry on an overseeing activity specified in *TC* Appendix 1 to attain an appropriate qualification within ~~30~~ 48 months of starting the activity.
- ...

[*Editor's Note:* In Part 2 of the Appropriate Qualifications Tables below, ifs University College (Formerly the ifs School of Finance/Chartered Institute of Bankers) is renamed The London Institute of Banking & Finance. This entry in the table and its associated qualification information should be moved to its new appropriate alphabetical position directly after The Institute of Banking in Ireland (Formerly the Chartered Institute of Bankers in Ireland). This transposition is not shown.]

Appendix 4 Appropriate Qualification tables

4.1 Appropriate Qualification tables

4.1.1E Part 1: Activities

...

Part 2: Appropriate Qualifications Tables

...

Qualification provider	Qualification	Activity Number(s)	Key
...			
Chartered Insurance Institute	Certificate in Advanced Mortgage Advice	20	1
	<u>Certificate in Pension Transfer Advice</u>	<u>11</u>	<u>1</u>
	...		
	Diploma in Financial Planning (with appropriate gap fill) plus the Award in Long Term Care Insurance	7	1
	<u>Diploma in Financial Planning (subject to gap fill) + AF7 Pension Transfers</u>	<u>11</u>	<u>1</u>
	...		
...			
ICMA Centre/ University of Reading (Formerly ISMA Centre/ University of Reading)	...		
ifs University College (formerly the ifs School of Finance/Chartered Institute of Bankers) <u>The London Institute of Banking & Finance (formerly the ifs University College and the ifs School of Finance/Chartered Institute of Bankers)</u>	Diploma for Financial Advisers (post 2010 examination standards)	4 and 6	a
	...		
...			

Appendix 8

Changes to reporting requirements in the Supervision manual

**SUPERVISION MANUAL (REPORTING No [x])
INSTRUMENT 2016**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers); and
 - (c) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 31 March 2017 except as provided below:
- (1) Annex C on 30 June 2017; and
 - (2) Part 2 of Annex B on 3 January 2018.

Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below.

(1)	(2)
Fees manual (FEES)	Annex A
Supervision manual (SUP)	Annex B
Dispute Resolution: Complaints (DISP)	Annex C
Consumer Credit sourcebook (CONC)	Annex D

Citation

- E. This instrument may be cited as the Supervision Manual (Reporting No [x]) Instrument 2016.

By order of the Board
[date] 2017

Annex A

Amendments to the Fees manual (FEES)

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

Comes into force on 31 March 2017

4 Periodic fees

...

4 Annex 11BR Definition of annual income for the purposes of calculating fees in fee blocks CC1 and CC2

...

(1) Annual income definition for *credit related regulated activities*

...

Plus:

(b) any ongoing *commission* from previous business received by the *firm* during the reporting year.

(ba) any vouchers, reward cards or other benefits staff have received from other *firms* as recompense for making introductions as a *credit broker*.

...

4 Annex 13G Guidance on the calculation of tariffs set out in FEES 4 Annex 1AR Part 3

...

Table 2

...

Calculating and apportioning annual income - FEES 4 Annex 11BR

Calculating annual income

...

Prohibited deductions

(8) Deductions should not be made for:

...

(f) the difference (if positive) between the fee payable by a *firm* to another party for arranging a transaction and the amount payable to the *firm* by the end *client* in

respect of that transaction (here, the firm must net any excess payable by the end of client to zero); ~~and~~

(g) payments to *clients* made by way of redress; and

(h) commission or fees clawed back by a third party firm in subsequent years, for example because a client introduced by a credit broker to a lender repays a loan early or defaults.

Annex B

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force on 31 March 2017

SUP 16.12.5R, SUP 16.12.6R and SUP 16.12.7R are deleted in their entirety. The deleted text is not shown.

16 Reporting requirements

...

16.12 Integrated Regulatory Reporting

...

16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		Applicable data items	Reporting frequency/period	Due date
RAG 1	<ul style="list-style-type: none"> accepting deposits <i>meeting of repayment claims</i> <i>managing dormant account funds (including the investment of such funds)</i> 	SUP 16.12.5R, except FSA001 and FSA002 on consolidated basis for FINREP firms SUP 16.12.6R SUP 16.12.7R <u>RAG 1 firms should complete their prudential reporting requirements as set out in the PRA Rulebook.</u>		
...				

...

16.12.5 R [deleted]

16.12.6 R [deleted]

16.12.7 R [deleted]

...

16 **Reporting Fields**
Annex
21R

...

Data reporting field	Code (where applicable)	Notes
Performance Data (report for all <i>regulated mortgage contracts</i>)		
...
Current balance outstanding	Numeric £	This is the interest bearing balance of the mortgage that is outstanding <u>after write-offs</u> at the end of the reporting period, represented as a sterling equivalent amount. This amount should include <i>arrears</i> , and fees and charges added to the loan. ...

Part 2: Comes into force on 3 January 2018

16 **Reporting requirements**

...

16.12 **Integrated Regulatory Reporting**

...

16.12.4 R

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		Applicable	Reporting	Due date

		data items	frequency/period	
...
RAG 8	<ul style="list-style-type: none"> • Making arrangements with a view to transactions in investments • Operating a <i>multilateral trading facility</i> • <u>Operating an organised trading facility</u>¹

...

¹ 'Organised trading facility' will become a defined term prior to the commencement of Part 2 of Annex B to this instrument by virtue of CP15/43 'Markets in Financial Instruments Directive II Implementation – Consultation Paper I'.

Annex C

Amendments to Dispute Resolution: Complaints (DISP)

In this Annex underlining indicates new text.

Comes into force on 30 June 2017

1 Treating complainants fairly

...

1 Annex Complaints Return Form 1R

Complaints Return (Disp 1 Ann 1R)

...

Table 2
Complaints closed, upheld and redress when fewer than 500 opened complaints

	A	B	C	D	E	F	G	H
Product/service grouping	Complaints closed within 3 days	Complaints closed > 3 days but within 8 weeks	Complaints closed > 8 weeks	Total complaints closed	Total complaints upheld	Total redress paid for upheld complaints (single units)	Total redress paid for complaints not upheld (single units)	Total redress paid (single units)
111 Total banking and credit cards								
117 Total home finance								
132 Total insurance & pure protection								
143 Total decumulation & pensions								
159 Total investments								

...

Table 5
Complaints closed, upheld and redress when greater than or equal to 500 opened complaints

		A	B	C	D	E	F	G	H
Product /service grouping	Product/service	Complaints closed within 3 days	Complaints closed > 3 days but within 8 weeks	Complaints closed > 8 weeks	Total complaints closed	Total complaints upheld	Total redress paid for upheld complaints (single units)	redress paid for complaints not upheld (single units)	Total redress paid (single units)
105	Current accounts								
106	Credit cards								
107	Overdrafts								
108	Packaged accounts								
109	Savings (including ISAs)								
110	Other banking								
111	Total banking and credit cards								

Annex D

Amendments to Consumer Credit sourcebook (CONC)

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

Comes into force on 31 March 2017

12.1 Application and purpose

...

12.1.4 R Table: Disapplied or modified modules or provisions of the Handbook

Module	Disapplication or modification
...	...
Supervision manual (<i>SUP</i>)	...
	<p><i>SUP</i> 16 (Reporting requirements) does not apply to a <i>firm</i> with only an <i>interim permission</i> except:</p> <p>(1) for <i>SUP</i> 16.14; and</p> <p>(2) in relation to data item CCR008</p>
	<p><i>SUP</i> 16.11 and <i>SUP</i> 16.12 apply to a <i>firm</i>, which was an <i>authorised person</i> immediately before 1 April 2014, with an <i>interim permission</i> that is treated as a variation of <i>permission</i> with respect to <i>credit-related regulated activity</i> or <i>operating an electronic system in relation to lending</i> as if the changes to <i>SUP</i> 16.11 and <i>SUP</i> 16.12 effected by the Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 had not been made, except in so far as those changes relate to data item CCR008</p>

...

Financial Conduct Authority



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25 The North Colonnade Canary Wharf London E14 5HS
Telephone: +44 (0)20 7066 1000
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