



No.37

Handbook Notice

September 2016

Financial Conduct Authority



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This Handbook Notice introduces the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative powers on 22 September 2016, and rules and standard terms also made by the Financial Ombudsman Service on 21 September 2016. It also contains information about other publications relating to the Handbook.

Contact names for the individual modules are listed in the relevant Consultation Papers and Policy Statements referred to in this Notice.

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However, queries on specific requirements in the Handbook should be addressed first to your normal supervisory contact in the FCA. For most firms this will be the FCA's Contact Centre:

Tel: 0300 500 0597

Fax: 020 7066 0991

Email: firm.queries@fca.org.uk

Post: Contact Centre
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1. Overview

Legislative changes

- 1.1** On 21 September 2016, the Board of the Financial Ombudsman Service Ltd made the relevant changes to the Handbook in the instruments listed below, subject to the approval of the FCA. On 22 September 2016, the FCA Board made the relevant changes to the Handbook as set out in those instruments and also approved the changes made by the Board of the Financial Ombudsman Service.

CP	Title of instrument	Instrument No.	Changes effective
15/19	Small and Medium Sized Business (Finance Platforms) Instrument 2016	2016/63	1.10.16
15/19	Small and Medium Sized Business (Finance Platforms) (Fees) Instrument 2016	2016/64	1.10.16 (after 2016/63)

- 1.2** On 22 September 2016, the Financial Conduct Authority made changes to the Handbook in the instruments listed below.

CP	Title of instrument	Instrument No.	Changes effective
15/31	Individual Accountability (Regulatory References) Instrument 2016	2016/57	7.3.17
16/17	Training and Competence Sourcebook (Qualifications Amendments No 15) Instrument 2016	2016/58	23.9.16
15/32	Disclosure Documents (Amendment No 2) Instrument 2016	2016/59	22.11.16 and 27.3.17
16/17	Mortgages and Home Finance (Miscellaneous Amendments) Instrument 2016	2016/60	23.9.16
16/14	UCITS V Level 2 Regulation Instrument 2016	2016/61	13.10.16

16/17	Supervision Manual (Reporting No 3) Instrument 2016	2016/62	31.10.16 and 31.12.16
16/14	Investment Funds (Securities Financing Transactions) Instrument 2016	2016/65	23.9.16 and 13.1.17
15/27	Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016	2016/66	1.10.16

Summary of changes

- 1.4** The legislative changes referred to above are listed and briefly described in Chapter 2 of this Notice.

Feedback on responses to consultations

- 1.5** Consultation feedback relating to the above instrument is published in a separate Policy Statement.

FCA Board dates for 2016

- 1.6** The table below contains a list of forthcoming FCA board meetings. These dates are subject to change without prior notice.

November	2 and 3
December	8
January	25
February	23
March	30
April	27
May	25
June	22
July	20
September	21
October	19
November	8 & 9
December	14

2. Summary of changes

- 2.1** This chapter briefly describes FCA Handbook changes made by the Board on 22 September 2016. It also describes changes made by the Board of the Financial Ombudsman Service on 21 September 2016. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the Prudential Regulation Authority (PRA) please see <http://www.bankofengland.co.uk/pr/Pages/publications/default.aspx>

Individual Accountability (Regulatory References) Instrument 2016 (FCA 2016/57)

- 2.2** Following consultation in CP15/31¹, the FCA Board has made changes to the FCA Handbook sections listed below:

Glossary
SYSC 1, 4, 5, 22, TP 5, Schs 1 and 5
SUP 10A and 10C

- 2.3** In summary, this instrument makes changes that form part of the new accountability regimes introduced in March this year for deposit takers and investment firms regulated by the Prudential Regulation Authority. Some changes will also be of interest to other authorised firms. The changes to the rules provide firms with tools to share relevant information and better assess a new potential recruit's fitness and propriety.
- 2.4** This instrument comes into force on **7 March 2017**. Feedback to CP15/31 will be published in a separate Policy Statement.

Training and Competence Sourcebook (Qualifications Amendments No 15) Instrument 2016 (FCA 2016/58)

- 2.5** Following consultation in CP16/17², the FCA Board has made changes to the FCA Handbook section listed below:

TC App 4

- 2.6** In summary, this instrument makes changes to update the name of an existing qualification provider and add three new appropriate qualifications to the Training and Competence sourcebook.
- 2.7** This instrument comes into force on **23 September 2017**. Feedback to this consultation is published in Chapter 3 of this Notice.

¹ CP15/31 *Strengthening accountability in banking and insurance: regulatory references* (October 2015)

² CP16/17 *Quarterly Consultation No. 13* (July 2016)

Disclosure Documents (Amendment No 2) Instrument 2016 (FCA 2016/59)

- 2.8** Following consultation in CP15/32³, the FCA Board has made changes to the FCA Handbook sections listed below:

Glossary
GEN 5
COBS 6, 7, 9 and 20
ICOBS 4
MCOB 1 and 4
COLL 4 and 7

- 2.9** In summary, this instrument makes changes to remove ineffective disclosure requirements from the Handbook which are not required by consumers and may contribute to consumer disengagement.
- 2.10** Part of this instrument comes into force on **22 November 2016**, and the remainder on **27 March 2017**. Feedback to this consultation will be published in a separate Policy Statement.

Mortgages and Home Finance (Miscellaneous Amendments) Instrument 2016 (FCA 2016/60)

- 2.11** Following consultation in CP16/17⁴, the FCA Board has made changes to the FCA Handbook sections listed below:

Glossary
FEES 6
MCOB 4, 5A and TP 1
SUP 12 and 13A
COMP 5 and 6
CONC 1

- 2.12** The FCA Board also made the following changes to material outside the Handbook:
PERG 14
- 2.13** In summary, this instrument makes small changes to our rules to more closely align the Handbook with our policy intention in implementing the Mortgage Credit Directive (MCD) and make some minor consequential amendments.
- 2.14** This instrument comes into force on **23 September 2016**. Feedback to this consultation is published in Chapter 3 of this Notice.

UCITS V Level 2 Regulation Instrument 2016 (FCA 2016/61)

- 2.15** Following consultation in CP16/14⁵, the FCA Board has made changes to the FCA Handbook sections listed below:

Glossary
SYSC 19E
CASS 1, 6 and Sch 2

³ CP15/32 *Smarter Consumer Communications: Removing ineffective disclosure requirements in our Handbook* (October 2015)

⁴ CP16/17 *Quarterly Consultation Paper No. 13* (July 2016)

⁵ CP16/14 *UCITS V Level 2 Regulation, SFTR and consequential changes to the Handbook* (May 2016)

**SUP 16
COLL 6**

- 2.16** In summary, this instrument makes changes to secure an appropriate degree of protection for consumers who invest in UCITS and ensure the Handbook does not conflict with directly applicable EU regulations.
- 2.17** This instrument comes into force on **13 October 2016**. Feedback to this consultation is published in Chapter 3 of this Notice.

Supervision Manual (Reporting No 3) Instrument 2016 (FCA 2016/62)

- 2.18** Following consultation in CP16/17⁶, the FCA Board has made changes to the FCA Handbook section listed below:
SUP 16
- 2.19** In summary, this instrument makes changes to improve the clarity of the Handbook text, improve the quality of the data we collect and lower the burden of reporting on firms.
- 2.20** Part of this instrument comes into force on **31 October 2016**, and the remainder on **31 December 2016**. Feedback to this consultation is published in Chapter 3 of this Notice.

Small and Medium Sized Business (Finance Platforms) Instrument 2016 (FCA 2016/63) (FOS 2016/8)

- 2.21** Following consultation in CP15/19⁷, the FCA Board has made changes to the FCA Handbook sections listed below:
**Glossary
SUP 5
DEPP 2, Schs 3 and 4
DISP INTRO, 1 and 2**
- 2.22** The FCA Board also made the following changes to material outside the Handbook:
EG 19
- 2.23** In summary, this instrument makes changes to improve access to finance for SMEs.
- 2.24** This instrument comes into force on **1 October 2016**. Feedback to this consultation is published in Chapter 3 of this Notice.

Small and Medium Sized Business (Finance Platforms) (Fees) Instrument 2016 (FCA 2016/64) (FOS 2016/9)

- 2.25** Following consultation in CP15/19⁸, the FCA Board has made changes to the FCA Handbook sections listed below:
FEES 1, 2, 3 and 5

⁶ CP16/17 Quarterly Consultation Paper No. 13 (July 2016)

⁷ CP15/19 Quarterly Consultation Paper No. 9 (June 2016)

⁸ CP15/19 Quarterly Consultation Paper No. 9 (June 2016)

- 2.26** In summary, this instrument makes changes to improve access to finance for SMEs.
- 2.27** This instrument comes into force on **1 October 2016**, immediately after FCA 2016/64. Feedback to this consultation is published in Chapter 3 of this Notice.

Investment Funds (Securities Financing Transactions) Instrument 2016 (FCA 2016/65)

- 2.28** Following consultation in CP16/14⁹, the FCA Board has made changes to the FCA Handbook sections listed below:
- Glossary**
COLL 4, 8 and TP 1
FUND 3 and TP 1
- 2.29** In summary, this instrument makes changes to clarify the application of the Securities Financing Transactions Regulation and signpost readers towards relevant provisions to help their understanding.
- 2.30** Part of this instrument comes into force on **23 September 2016**, and the remainder on **13 January 2017**. Feedback to this consultation is published in Chapter 3 of this Notice.

Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016 (FCA 2016/66)

- 2.31** Following consultation in CP15/27¹⁰, the FCA Board has made changes to the FCA Handbook sections listed below:
- Glossary**
COLL 1, 3 to 8, 11, 13 and 14, TP 1, Schs 1 and 2
FUND 1 to 3, 5 to 9, 11, Schs 1 and 2
- 2.32** In summary, this instrument makes changes relating to authorised funds to introduce additional flexibility, clarify certain requirements, correct out-of-date references and delete obsolete provisions.
- 2.33** This instrument comes into force on **1 October 2016**. Feedback to this consultation is published in Chapter 3 of this Notice.

⁹ CP16/14 *UCITS V Level 2 Regulation, SFTR and consequential changes to the Handbook* (May 2016)

¹⁰ CP15/27 *UCITS V Level 2 Regulation and other changes to the Handbook affecting investment funds* (September 2015)

3. Consultation feedback

- 3.1** This chapter provides feedback on consultations that will not have a separate Policy Statement published by the FCA

CP16/17 Quarterly Consultation Paper No 13 - Changes to the Training and Competence sourcebook

Training and Competence Sourcebook (Qualifications Amendments No 15) Instrument 2016

Background

- 3.2** The Training and Competence sourcebook (TC) sets out the qualification requirements for individuals carrying out certain retail activities, for example, advising on retail investment products. We consult for one month each time a qualification is added or amended on the list of appropriate qualifications.

Summary of proposals

- 3.3** In CP16/17¹¹ we proposed updating the name of one existing qualification provider in Part 2 of TC App 4.1.1E:
- The listing for the Chartered Institute of Bankers in Ireland to reflect its current name: The Institute of Banking in Ireland.
- 3.4** We also proposed adding the following new qualification to the appropriate qualifications list in Part 2 of TC App 4.1.1E:
- Chartered Institute for Securities and Investment (CISI) (formerly the Securities and Investment Institute (SII); formerly The Securities Association) – we proposed to add the ‘Investment Advice Diploma (where candidate holds three modules including the Financial Planning and Advice module)’. We proposed to list this as being appropriate for TC activities 4 and 6 (key a¹²).
 - The Chartered Insurance Institute – we proposed adding ‘(LP1) Life and pensions customer operations, (LP2) Financial services products and solutions, and (LP3) Life and pensions principles and practices (where candidate holds all three modules)’. We proposed to list these as being appropriate for TC activities 15, 16, 17, 18 and 19 (key 4 and 5¹³).

¹¹ CP16/17 *Quarterly Consultation Paper No. 13* (July 2016)

¹² Meets the full qualification requirement on, and after, 31 December 2012.

¹³ Apex1 – UK Financial Services Regulation and Ethics examination standard met.

- The Institute of Banking in Ireland (formerly the Chartered Institute of Bankers in Ireland) - 'Professional Certificate in International Investment Fund Services'. We proposed to list this as appropriate for TC activities 15, 16 and 17 (key 6¹⁴).

Feedback

- 3.5** Since publication we have identified an error in the draft instrument. This affected the Chartered Insurance Institute - (LP1) Life and pensions customer operations, (LP2) Financial services products and solutions, and (LP3) Life and pensions principles and practices (where candidate holds all 3 modules). This was listed as appropriate for key 6, rather than keys 4 and 5. The CP16/17 consultation correctly reflected the position.

Our response

- 3.6** We have reviewed our proposals following the feedback and are making the changes we consulted on with one amendment to the consultation draft to accurately reflect the keys for the Chartered Insurance Institute qualifications, as described in the paragraph above.

Cost benefit analysis and compatibility statement

- 3.7** Both the cost benefit analysis and compatibility statement remain as published in CP16/17.

Equality and diversity issues

- 3.8** We continue to believe these changes do not give rise to any discrimination.

- 3.9** The changes made by this instrument are listed in Chapter 2 of this Notice.

CP16/17 Quarterly Consultation Paper No 13 - Mortgages and home finance activity

Mortgages and Home Finance (Miscellaneous Amendments) Instrument 2016

Background

- 3.10** In CP16/17 we proposed a number of minor changes to the FCA Handbook to address issues we identified while overseeing our rules and guidance relating to mortgages, home finance activity and consumer buy-to-let (CBTL).¹⁵

Summary of proposals

- 3.11** We consulted on amendments to:

- the Glossary, Compensation sourcebook (COMP), Supervision manual (SUP) and Fees manual (FEES) to clarify that CBTL activities carried on by unregistered EEA firms are outside the scope of the Financial Services Compensation Scheme (FSCS)
- the standard forms in SUP to allow firms to report on appointed representatives carrying out CBTL activities
- the Glossary definition of 'residential renovation agreement' to clarify the status of agreements secured on assets other than land

¹⁴ Technical module appropriate exam standard requirement met.

¹⁵ CP16/17 *Quarterly Consultation Paper No. 13* (July 2016)

- iv. a provision relating to sale and rent back agreements in the Perimeter Guidance manual (PERG) to confirm that it will remain in force, and
- v. our Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) and Consumer Credit sourcebook (CONC) to ensure that lenders conducting direct sales are not subject to Mortgage Credit Directive (MCD) requirements intended for intermediated sales

Feedback

- 3.12** Proposals (i) – (iv) were all welcomed by respondents.
- 3.13** Proposal (v) was welcomed by two respondents, who also argued that the changes didn't go far enough. They stated that under our proposed rules lenders are still required to give a customer a disclosure in a durable medium prior to the provision of advisory services, which is particularly challenging in the case of telephony sales. They requested that we remove this requirement.
- 3.14** A trade body challenged the principle of removing Mortgage Credit Directive (MCD) disclosure requirements for lenders carrying out direct sales, stating that this contradicts the principle of a level playing field for lenders and brokers when dealing with customers. They also argued that our changes would be detrimental to the market.
- 3.15** Another trade body pointed out that firms who meet current disclosure rules that would change under proposal (v) will incur costs if required to make changes outside their usual cycle for amending disclosure documents.
- 3.16** The same respondent also commented that our proposed amendment to MCOB 14.1.3R (requirements for lenders carrying out direct sales of article 3(1)(b) agreements) went beyond the parallel change being made for lenders selling mortgages.

Our response

- 3.17** As we have received no objections to proposals (i) – (iv) we will proceed with these changes as consulted on.
- 3.18** Proposal (v) is intended to align the scope of rules implementing the MCD more closely with the requirements of the Directive. We acknowledge that these changes result in different disclosure obligations for lenders and intermediaries and, consequently, a different consumer experience. However, our approach to implementing the MCD has always been not to extend the scope of the Directive, and the proposed changes reflect that approach.
- 3.19** In finalising these changes we have also made a minor modification to the drafting to clarify that a lender will only be subject to the relevant requirements for MCD intermediaries where it is intermediating in the sale of another lender's product. The affected rule changes can be found at MCOB 4.4A.9R, 4A.1.1R, 4A.1.5-7R, 4A.2.1R, MCOB 5A Annex 2R and CONC 1.2.8R.
- 3.20** We note the challenges of providing initial disclosure information in a durable medium during face-to-face and telephone sales. However, the Directive is clear that before providing advisory services firms must make an initial disclosure in a durable medium, and we are obliged to follow this approach. In addition, the definition of 'durable medium' is not limited to paper.

3.21 We acknowledge that some firms who comply with the disclosure rules that we propose to change under proposal (v) could incur costs if required to make changes outside their usual cycle for amending disclosure documents. Given this, we are including a transitional provision (in force until 21 March 2019) that allows lenders carrying out direct sales the discretion to make these changes as part of their normal systems update cycle.

3.22 We agree with the need for a consistent approach for MCD regulated mortgage contracts and article 3(1)(b) agreements where the underlying Directive requirement is identical. The changes discussed above (in paragraph 3.18) ensure this and remove the need to amend MCOB 14.1.3R.

Cost benefit analysis and compatibility statement

3.23 One respondent noted that the proposed change to MCOB 5A Annex 2R could lead to costs for firms who had already implemented our existing rules. We propose to amend our proposal to allow firms around 30 months to comply. This should mean firms can make amendments as part of routine changes to disclosure systems and should result in no, or minimal, increase in costs. The compatibility statement in CP16/17 remains unchanged.

Equality and diversity issues

3.24 The equality and diversity assessment in CP16/17 remains unchanged. We did not receive any responses challenging our view that the proposals do not give rise to discrimination.

3.25 The changes made by this instrument are listed in Chapter 2 of this Notice.

CP16/14 UCITS V Level 2 Regulation, SFTR and consequential changes to the Handbook

***UCITS V Level 2 Regulation Instrument 2016
Investment Funds (Securities Financing Transactions) Instrument 2016***

Background

3.26 Undertakings for Collective Investment in Transferable Securities (UCITS) are regulated open-ended investment funds that can be sold to retail consumers throughout the European Union (EU). The UCITS Directive sets out a harmonised regime for UCITS, their management companies and depositaries, with the aim of achieving a common standard of investor protection across the EU.

3.27 The UCITS V legislative package includes a 'Level 1 Directive', which amended the pre-existing UCITS Directive, and a 'Level 2 Regulation', which sets out additional, detailed requirements for UCITS management companies and depositaries. The Level 1 Directive was transposed into national law on 18 March 2016. We implemented the Level 1 Directive in PS16/2¹⁶, which set out the Handbook changes affecting managers and depositaries of UCITS.

3.28 The UCITS V Level 2 Regulation (the Regulation) was published in the Official Journal¹⁷ on 24 March 2016. It will apply to firms from 13 October 2016. The Regulation is directly applicable to firms and does not require transposition by Member States. Affected firms should ensure they comply with the requirements in the Regulation from 13 October 2016.

¹⁶ PS16/2 *Implementation of the UCITS V Directive* (February 2016)

¹⁷ Commission Delegated Regulation (EU) 2016/438 of 17 December 2015

3.29 In CP16/14¹⁸, we consulted on consequential changes to the Client Assets sourcebook (CASS) and the Collective Investment Schemes sourcebook (COLL) following the adoption of the Regulation. We also consulted on a minor change to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) to clarify the circumstances where a UCITS management company must appoint a remuneration committee. As the Regulation is directly effective, the changes we are making are to ensure consistency with the Regulation and to remove any overlapping requirements. In this chapter we summarise the feedback we received to CP16/14 and set out final rules.

3.30 The changes to CASS in this chapter mainly affect depositaries of UCITS and may be of interest to UCITS management companies and other authorised fund managers. The change to SYSC affects UCITS management companies. The change to COLL affects both authorised fund managers (AFMs) and depositaries of UK-authorised UCITS schemes.

Feedback

3.31 We received seven responses to CP16/14, including from firms, trade associations and an auditor. Five of these responses related to the proposed CASS amendments; four related to the proposed COLL amendment; and two related to the proposed SYSC amendment.

Feedback to our proposed CASS changes

3.32 All respondents were broadly supportive of the proposed CASS changes and our approach to implementing the Regulation. Several respondents noted our proposals provided clarity and consistency in the application of CASS regarding the Regulation.

3.33 A number of respondents requested greater clarification on certain record-keeping and reconciliation requirements in the Regulation that apply to UCITS depositaries. Some respondents also requested greater clarification on the scope of assets to be reported in the client money and asset return (CMAR)¹⁹ as a result of the proposed changes. One respondent raised a concern that the proposed changes would create an indirect obligation on CASS auditors to report on matters which are set out in the Regulation. Two respondents requested clarification on the scope of certain chapters in CASS as applicable to depositaries, including where a UCITS depositary was suggested to be 'arranging' the safeguarding of assets in custody. One respondent queried whether the FCA intended to further amend CASS to align the CASS regime for AIF depositaries with the CASS regime for UCITS depositaries.

Feedback to our proposed COLL and SYSC amendments

3.34 CP16/14 proposed to retain existing guidance in COLL 6.9 that relates to the independence provisions in FSMA and the OEIC Regulations, while adding brief additional guidance to signpost firms to the relevant independence requirements introduced by the Regulation. AFMs and depositaries of UCITS schemes need to read the Regulation in conjunction with the existing guidance in COLL 6.9 on links between management companies and depositaries that could result in a loss of independence.

3.35 Respondents to the proposed COLL amendment either supported or did not object to the approach of maintaining existing standards. The Financial Services Consumer Panel responded to this question with strong support for full separation of the manager and depositary as a governance mechanism to deliver investor protection. The Panel cited research it had previously commissioned which examined fund governance arrangements and found they can often be weak and conflicted, resulting in consumer harm such as inadequate or excessively risky investment strategies, or unnecessarily high costs.

¹⁸ CP16/14 *UCITS V Level 2 Regulation, SFTR and consequential changes to the Handbook* (May 2016)

¹⁹ SUP 16.14

- 3.36** Another respondent also strongly supported the approach of retaining strict structural independence between the management company and depositary, and suggested this should be applied between the depositary and other service providers such as fund accountants and custodians. The two other respondents asked for clarification of certain matters, such as the extent to which independence requirements apply to delegates of the depositary, including in situations when the delegate is in the same group as the management company. One respondent suggested that some aspects of the existing guidance in COLL 6.9 should be reconsidered given the UCITS V provisions, especially on the point concerning treatment of the depositary's delegates.
- 3.37** All respondents either supported, or did not comment on, the clarification in SYSC concerning the remuneration committee.

Our response

Response to feedback on our CASS changes

- 3.38** The custody rules (CASS 6) set out a specialist regime for when a firm is acting as a depositary or trustee of a UCITS.²⁰ In response to suggestions that a depositary is only 'arranging' the safeguarding of assets when it has appointed a third party to provide the safekeeping duties for the assets held in custody, we expect a person with a Part 4A permission to act as trustee or depositary of an AIF or act as trustee or depositary of an UCITS will not carry on the activity of safeguarding and administering investments in respect of their activities for an AIF or UCITS for which they are acting as trustee or depositary.²¹
- 3.39** Three respondents requested clarification on the record keeping obligations of a UCITS depositary. Where a UCITS depositary makes a delegation of its functions relating to the custody of UCITS assets to a third party delegate in accordance with COLL 6.6B.25R, the appointed delegate may keep these records and accounts on behalf of the UCITS depositary so that the UCITS depositary may meet its record-keeping obligations under CASS 6.6.2R and CASS 6.6.4R. The UCITS depositary does not need to maintain a duplicate set of custody records of the relevant assets as the appointed delegate (for the purposes of compliance with CASS 6). Similarly, the appointed delegate does not need to maintain two duplicate sets of custody records of the relevant assets on behalf of the UCITS depositary. This is the same as that for AIF depositaries that delegate their functions relating to the custody of the AIF assets to a third party delegate.
- 3.40** The depositary is still responsible for compliance with the applicable CASS rules even where it delegates custody functions to a third party delegate. Where a delegate keeps these records and accounts on behalf of a depositary, the depositary must ensure that it has the appropriate rights to access and verify the relevant records being maintained by the delegate without delay. Further, the depositary must ensure the delegate maintains these records in a way that ensures their accuracy and ensures appropriate oversight over the delegate's actions. Firms should also be aware of their obligations under SYSC, particularly SYSC 8.1 (General outsourcing requirements).
- 3.41** In response to a query on the scope of CMAR reporting for a firm acting as a depositary, we expect that firms should only report custody assets that are subject to CASS 6 in the CMAR. If the assets in question are not subject to CASS 6, then these assets need not be reported on the CMAR. We have made a minor amendment²² to clarify that UCITS depositaries are required to report all assets that are subject to CASS 6 in the CMAR.

²⁰ CASS 6.1.16IDR

²¹ PERG 2.8.8G(3A)

²² SUP 16.14.4R

3.42 We disagree that our proposed changes to CASS as a result of the Regulation create additional reporting obligations for a firm's CASS audit. We expect a firm's CASS audit to cover compliance with CASS rules and guidance.

3.43 The specialist regime in CASS 6 for UCITS depositaries²³ is broadly consistent with the separate CASS regime applicable to AIF depositaries²⁴, with minor differences as required from the respective regulations. We do not at this stage intend to further amend our rules to align the CASS regime for AIF depositaries with the CASS regime for UCITS depositaries.

Response to feedback on our proposed COLL and SYSC amendments

3.44 In view of the general support from respondents for our approach of retaining existing standards of depositary independence, we intend to add guidance to COLL broadly as consulted on (we have moved it to COLL 6.9.1AG and clarified that it applies only in relation to UCITS schemes). We have noted the requests for clarification on certain points from some respondents, and are considering the best way to answer them. We might be able to clarify how the UCITS V measures apply by working through ESMA to seek a harmonised EU-wide approach, by engaging bilaterally with relevant firms and trade associations, or by consulting on further general guidance on our own initiative.

3.45 We intend to make the changes to SYSC concerning the appointment of a remuneration committee as consulted on.

Proposed changes to the Handbook resulting from the SFTR

3.46 UCITS schemes and AIFs may use securities financing transactions (SFTs), such as securities lending and repurchase transactions, or total return swaps, if the investment objective and policy of the fund allow it. In CP16/14²⁵, we explained that the Securities Financing Transactions Regulation (SFTR)²⁶, a directly-applicable EU Regulation, introduces measures prescribing how managers of UCITS and AIFs that use SFTs and total return swaps should disclose information about them in the fund's pre-contractual documents and periodic reports to investors.

3.47 We proposed to copy out the relevant parts of the SFTR in COLL and FUND, and to introduce guidance explaining how these provisions apply. We also proposed transitional provisions until 12 July 2017 when the new disclosure requirements in the pre-contractual documents of existing funds come into force. We asked:

Q: Do you agree with our proposed amendments to the Handbook resulting from the SFTR? If not, please provide reasons.

Feedback

3.48 The Investment Association (IA) and the Depositaries and Trustees Association (DATA) were the only respondents to the Consultation Paper to provide substantive comments on this question. The IA welcomed the guidance and DATA did not object to it, although both asked for clarification on certain points. Both also suggested that where funds have reserved the power in their scheme documents to use SFTs but in practice are not doing so, they should not need to make the required disclosures until the fund begins using the power.

²³ CASS 6.1.16IDR

²⁴ CASS 6.1.16IAR

²⁵ CP16/14 *UCITS V Level 2 Regulation, SFTR and consequential changes to the Handbook* (May 2016)

²⁶ Regulation (EU) 2015/2365 of 25 November 2015 on transparency of securities financing transactions and on reuse and amending Regulation (EU) No 648/2012.

- 3.49** Further, the IA queried why the proposed transitional period for pre-contractual disclosure requirements does not apply to sub-funds of an umbrella that have been created since 12 January 2016. It also suggested that managers of NURS and QIS should not be unfairly penalised for choosing not to follow guidance on including the pre-contractual disclosures in the fund's prospectus, provided disclosure is made through other means.

Our response

- 3.50** We have slightly reworded the guidance on Article 14 of the SFTR concerning pre-contractual disclosures to make it clearer that the detailed requirements set out in COLL 4.2.5CEU need to be added only where SFTs and total return swaps are actually being used.²⁷ At present, the effect of the rules²⁸ is to require the prospectus (or other relevant pre-sale documents) to disclose that the fund manager has the powers to undertake SFTs or total return swaps, whether or not they are being used. The relevant documents will meet the requirements set out in COLL 4.2.5BEU provided they specify which SFTs and total return swaps the AFM is permitted to use and clearly state that the AFM is actually using them.
- 3.51** Similarly, our guidance²⁹ on disclosure in periodic reports has been modified to clarify that the details set out in COLL 4.5.8ACEU need not be disclosed in the report if the fund has made no use of SFTs or total return swaps during the relevant accounting period.
- 3.52** We have also modified the existing Glossary definition of 'securities financing transaction' and added a definition for 'total return swap', to make it easier for Handbook readers to understand the scope of these requirements.
- 3.53** Further, transitional provisions for pre-contractual disclosures have been slightly reworded but their effect does not change.³⁰ In the case of an umbrella with one or more sub-funds constituted before 12 January 2016, those sub-funds benefit from the transitional provision but any sub-funds launched after that date do not. If we were to apply the transitional provision to all sub-funds, an umbrella with at least one pre-existing sub-fund could launch any number of new sub-funds between 12 January 2016 and 12 July 2017 without having to make the required disclosures. New standalone funds, on the other hand, would not receive a similar exemption. We believe our approach reflects the intention of the SFTR.
- 3.54** We agree that firms are not required to follow Handbook guidance, provided they can demonstrate compliance with the relevant Handbook rule or requirement of the SFTR.
- 3.55** We also asked:

Q: Are there any other points we should address in relation to the SFTR?

Feedback

- 3.56** The IA and DATA were the only substantive respondents. The IA suggested that EU regulators should take a consistent approach to the question of whether the periodic disclosure requirements will apply to accounting periods ending before 13 January 2017, where the relevant report is published after that date.
- 3.57** DATA asked for guidance on whether changes to the pre-contractual disclosures would be treated as changes to the scheme that are required to be approved by us before they can

²⁷ COLL 4.2.5AG (4), COLL 8.3.4AG (4) and FUND 3.2.4AG (3).

²⁸ COLL 4.2.5R (3)(a) – (d),(f),(l),(m) and (r), COLL 8.3.4R 3(1),(3) and (4) and FUND 3.2.2.R (1) and (16).

²⁹ COLL 4.5.8AAG(3), COLL 8.3.5AAG(3) and FUND 3.3.7BG(3).

³⁰ COLL TP 38 – 39 and FUND TP 7. These provisions align with Article 33(2)(c) of the SFTR.

take effect.³¹ They also queried how references in other parts of SFTR to obligations on the counterparty should be treated in the case of unit trusts, and suggested we confirm that the UCITS management company or AIFM should fulfil these obligations rather than the trustee.

Our response

- 3.58** The question of which accounting periods the SFTR applies to has been discussed among EU regulators and ESMA is considering whether to issue a Q&A on this point.
- 3.59** We do not intend to issue guidance relating to scheme changes requiring approval. The SFTR increases the amount of detail that needs to be disclosed about these types of transaction, but a significant change in how the AFM uses them would need to be disclosed in the prospectus in any case. This change would be subject to the existing processes of notification and FCA approval for changing the prospectus.
- 3.60** We do not think it is appropriate for FCA guidance to address questions about who should be treated as the counterparty under the SFTR. We believe the European Commission or ESMA may be better placed to offer clarification on this matter, to achieve a harmonised approach.

Cost benefit analysis and compatibility statement

- 3.61** As the amended rules that we are making do not differ significantly from the draft on which we consulted, we believe the cost benefit analysis and compatibility statement, as set out in Annex 2 and 3 of CP16/14, remain valid. In particular, we do not consider that firms will incur any additional cost due to the amendment clarifying the scope of assets to be reported in the CMAR.

Equality and diversity issues

- 3.62** We received no comments during the consultation period on any equality and diversity issues. As stated in CP16/14, we do not foresee any negative equality and diversity impacts resulting from these changes.
- 3.63** The changes made by these instruments are listed in Chapter 2 of this Notice.

CP16/17 Quarterly Consultation Paper No 13 - Changes to the reporting requirements in the Supervision manual (SUP)

Supervision Manual (Reporting No 3) Instrument 2016

Background

- 3.64** In July 2016 we proposed amendments to parts of Chapter 16 of the Supervision manual (SUP). These changes related to firms' reporting obligations and sought to improve the clarity of guidance notes, amend existing returns and remove redundant text and disproportionate reporting requirements.

Feedback

- 3.65** We did not receive any feedback to our consultation and therefore intend to go ahead with the changes as set out in the original Consultation Paper.

³¹ As provided for by FSMA and the OEIC Regulations (SI 2001/1228 as amended).

Cost benefit analysis and compatibility statement

- 3.66** The cost benefit analysis and compatibility statement from CP16/17 Chapter 9 remain unchanged because we did not alter the proposals following consultation.

Equality and diversity issues

- 3.67** We continue to believe these changes do not give rise to any equality and diversity issues nor do they give rise to unfair discrimination against protected groups as set out in CP16/17 Chapter 9.
- 3.68** The changes made by this instrument are listed in Chapter 2 of this Notice.

CP15/19 Quarterly Consultation Paper No 9

Small and Medium Sized Business (Finance Platforms) Instrument 2016 ***Small and Medium Sized Business Finance Platforms (Fees) Instrument 2016***

Background

- 3.69** The Small Business, Enterprise and Employment Act 2015 contains measures aimed at:
- improving access to credit information about small and medium-sized businesses (SMEs), and
 - helping to match SMEs rejected for finance with alternative lenders through designated finance platforms
- 3.70** Secondary legislation requires the FCA to maintain arrangements to monitor and enforce relevant requirements from the Act. Both sets of Regulations came into force on 1 January 2016 and the Treasury designated banks and CRAs on 1 April, bringing the SME credit information sharing measure into effect. We made related changes to the Handbook at that time. The Treasury now intends to designate finance platforms on 1 October 2016.
- 3.71** In CP15/19 we proposed amendments to the Handbook that would allow us to monitor and enforce the relevant requirements relating to finance platforms. We are now making these changes. In addition, we are updating our guidance³² on SMEs to include guidance on finance platforms.

Feedback

- 3.72** We received one response to our consultation which is relevant to our legal instruments. This response called for us to issue guidance on the FCA's approach to monitoring and enforcing requirements under the Regulations, particularly in relation to the categorisation of complaints.

Our response

- 3.73** We consider that our updates to the non-Handbook guidance following designation of finance platforms by the Treasury will provide clarity on a number of issues and aid a wider understanding of this regime.
- 3.74** We have not received any evidence justifying any changes to our proposed approach. In our consultation we proposed Handbook changes reflecting the designation of banks, CRAs and finance platforms. The changes we are now making relate only to the designation of finance

³² FG16/4 *Guidance on Small and Medium Sized Business (Credit Information) Regulations* (April 2016)

platforms, reflecting the timescale for their designation by the Treasury. As discussed above, the other amendments have already been made.

Cost benefit analysis and compatibility statement

- 3.75** We published a cost benefit analysis and compatibility statement in our consultation. These remain unchanged and valid. The instruments do not differ significantly from the draft versions on which we consulted.

Equality and diversity issues

- 3.76** We published an equality statement in our consultation and continue to believe that the changes do not give rise to any concerns for particular groups defined by any protected characteristic.
- 3.77** The changes made by the instruments are listed in Chapter 2 of this Notice.

UCITS V implementation and other changes to the Handbook affecting investment funds (Part III)

Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016

Background

- 3.78** In Part III (Chapter 7) of CP15/27 we consulted on a range of issues about how we regulate authorised funds. We proposed changes to clarify details of our requirements, introduce additional flexibility and remove or correct out-of-date measures.³³ In this paper we provide feedback on those proposals, where we have not already done so.³⁴
- 3.79** We received 13 responses to Part III of the CP, including submissions from the Investment Association and DATA. Another trade association, seven fund managers, a depositary, a law firm and a service provider also replied to various aspects of the proposals.
- 3.80** We consulted on rules and guidance in COLL to require authorised fund managers (AFMs) to publish the product reference number (PRN) of each authorised fund and sub-fund on relevant scheme documentation. We asked:

Q: Do you agree with the proposed rules and guidance to encourage the use of PRNs in the fund's documentation?

Feedback

- 3.81** We received seven responses to this question. The majority did not support our proposal that the AFM should disclose the PRN in the fund's key investor information (KII) document. They argued that this detail offered no benefit to investors over and above existing disclosures such as the FCA Register, and could cause confusion when other standard identification codes appear in the document. Neither did they support the proposal to disclose the PRN in the prospectus, especially if it was to be compulsory for the prospectus but optional for the KII document.

³³ Feedback on Part I of CP15/27 was published in PS16/2 *Implementation of the UCITS V Directive*. Feedback on Part II (ELTIFs) was published in *Handbook Notice 28* (December 2015) and the supplement to *Handbook Notice 32* (April 2016).

³⁴ Feedback on our proposals for reporting of derivatives use by UK UCITS management companies and for reporting by depositaries of authorised funds was published in *Handbook Notice 35* (July 2016).

Our response

We have considered the feedback received and agree that adding the PRN to the KII document could create confusion for investors, when other reference codes are used, so we have decided not to go ahead with the proposed guidance in COLL 4.7.3AG. We still think that stating the PRN in the prospectus will be beneficial for investors in the funds and sub-funds and for us, so we will retain the proposed changes to COLL 4.2.5R and COLL 8.3.4R. We will provide a twelve-month transitional period as proposed to minimise any potential impact on firms when revising the prospectus.

- 3.82** We explained the initiative, undertaken with the Government and the Charity Commission, to introduce charity authorised investment funds (CAIFs) as a vehicle for investment by registered charities. We consulted on a new section in our Handbook (COLL 14) setting out provisions specific to CAIFs, including the optional rights to appoint an advisory committee and to adopt special rules for the treatment of income. We asked:

Q: Do you agree with our proposed rules and guidance for CAIFs?

Feedback

- 3.83** Six respondents replied to this question – all were generally supportive of the initiative to set up a regime for CAIFs or raised no objections to it, though there were several comments on particular details:
- One respondent objected to advisory committees being given an unrestricted right to call unitholder meetings, suggesting this should be limited to certain subject matters and should require the AFM's or depositary's prior agreement.
 - In contrast, another respondent regretted that advisory committees would not have the right to take decisions and thought this would result in weaker governance than the existing charity fund model of a common investment fund (CIF) with an active board of charity trustees.
 - One respondent said that for the committee to be seen as independent, it should be allowed space in the fund's periodic report to express its own views of how the fund is being run.
 - One respondent welcomed the proposal for treatment of income in total return funds but said this should include the ability to transfer income to capital in years when the income greatly exceeds the distribution target. It also asked for CAIFs to be allowed to operate income smoothing and total return arrangements at class level alongside conventional distribution classes.
 - One respondent, while welcoming CAIFs, asked the FCA and the Charity Commission to confirm that the Commission's existing regime for CIFs will be allowed to continue alongside the new regime and not be altered to disadvantage CIFs that do not convert.
 - Another respondent said the FCA should introduce provisions to allow an existing CIF to become a CAIF without it having to be wound up and the assets transferred to a new authorised vehicle.

- Two respondents, in welcoming the ability of CAIFs to offer more flexible arrangements for paying income, suggested this ability should be extended beyond CAIFs to other tax-exempt investors or made more generally available to authorised funds.

Our response

We believe our rules and guidance are balanced and provide sufficient influence and independence for advisory committees without making them responsible for the operation of the fund. It would not be practical or desirable for us to define more precisely the circumstances in which the advisory committee would be able to call a general meeting. However, we have revised the wording of COLL 14.3.5R and added an extra provision at COLL 4.4.2R (4) to clarify the powers and responsibilities of the various parties if an advisory committee wishes to call a meeting of unitholders. The committee's right to do so must not be made subject to pre-approval by the AFM or the depositary.

We have revised the proposal for AFMs to report on the functioning of the advisory committee. COLL 14.3.3R makes it mandatory for the AFM to ensure the fund's annual long report includes any statement prepared and approved by the advisory committee. That rule also makes it clearer that the advisory committee has discretion (subject to any stricter requirements specified in the fund's constituting instrument and prospectus) on whether to prepare a statement and what to include in it (though we provide guidance in COLL 14.3.4G on areas the statement might cover).

We have modified COLL 14.4.5R to make it clear that income can be transferred either way between income and capital accounts when the fund is pursuing a total return approach. As for the possibility to have classes offering different income arrangements, our existing rules and guidance in COLL 3.3 on permissible classes of units will apply to CAIFs. We do not believe that further guidance specific to CAIFs is needed.

The continuation of the existing regime for charity funds is not a matter for the FCA to decide or influence. As far as we are aware, since a CIF is a collective investment scheme in the form of a trust there is nothing within our field of responsibility that prevents it from applying for authorisation as a CAIF. However, we cannot advise firms on the requirements of the Charity Commission or any other legal provisions in this regard.

We note the comments concerning wider availability of income smoothing and total return funds. Our rules reflect the Government's rules and policies for collecting and accounting for taxation. Stakeholders should address any requests for innovation in those areas to the relevant Government departments.

- 3.84** We consulted on aligning our rules in COLL 5.9 with a revision to EU guidelines on a common definition of money market funds. To achieve this alignment, we proposed to remove references to reliance on ratings issued by credit ratings agencies. We asked:

Q: Do you have any comments on our proposed treatment of the revised CESR guidelines on money market funds?

Feedback

- 3.85** Four respondents either supported the proposal or made no objection. They agreed that the draft rules are in line with the changes to the CESR guidelines.³⁵ One respondent stated that credit ratings can often be slow in responding to changes in credit quality so other methods are often more helpful in assessing the strength of counterparties.

Our response

We will make the changes to the rules and guidance that we consulted on.

- 3.86** Following an earlier consultation in CP12/27³⁶, we reconsulted on rule changes in COLL to align our rules on investing in Government and public securities with the requirements of the UCITS Directive. We asked:

Q: Do you agree with our revised proposal for defining the government and public securities available for investment by UCITS schemes and NURS?

Feedback

- 3.87** Five respondents commented on this question, four of whom supported the proposal. Three of these respondents queried why the wording in COLL did not reflect the UCITS Directive by referring to securities 'issued or guaranteed' by a Government or public authority. One respondent also stated that the change could result in some funds being in breach of the rules with no transitional period to restore compliance. It asked us to confirm such breaches could be treated as inadvertent under COLL 6.6.14R. Another respondent thought the change might place non-UCITS retail schemes (NURS) at a disadvantage in the EU single market if other member states do not follow suit.

Our response

We will proceed with the rule changes as consulted on to replace the term 'government and public securities' and to clarify the drafting of COLL 5.2.11R. We have decided not to delete COLL 5.2.12R (6) as, on further consideration, we think the proposed alternative drafting would not have improved the clarity of the rule.

We did not overlook the reference to securities backed by a guarantee – COLL 5.2.12R (5), which will be unchanged, already says that references to 'issue' and related words include 'guarantee'.

We explained in CP15/27 that our rules do not implement the Directive correctly so we cannot provide a transitional period for UCITS schemes. This applies to the actual management of the fund's portfolio, although we have allowed transitional periods (TP 1.1 (40) and (42)) to make any related changes to the fund's constituting instrument and prospectus where the AFM is already using the derogation in COLL 5.2.12R(3) and making the necessary disclosures under the current rules. AFMs have been aware of this situation since we first consulted on it in 2012, and should have managed their UCITS

³⁵ https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-esma-1103_esma_opinion_on_cesr_guidelines_on_mfms.pdf

³⁶ CP12/27 *Quarterly Consultation No. 34* (October 2012)

scheme portfolios in anticipation of the rule change. Consequently we do not agree that any breach of the rule relating to a UCITS scheme can be considered inadvertent. COLL TP 1.1 (43), which allows the AFM of a NURS a six-month transitional period for compliance with the amended rules, overrides TP 1.1 (42). Thus, if the prospectus of a NURS is being changed for another reason before 31 March 2017 the AFM does not have to change it to reflect these amended rules too, if it has not yet begun to manage the fund's portfolio in line with the amended rule.

There are no harmonised fund rules for AIFs so the single market argument is not relevant to any consideration of which investment powers are appropriate for a NURS.

- 3.88** We also reconsulted on changes to rules and additional guidance in COLL 6.7 for calculating the preliminary charge of a UCITS scheme or a NURS, following earlier consultation in CP12/27. We asked:

Q: Do you agree with our revised proposal for calculating the preliminary charge?

Feedback

- 3.89** We received five responses to this question. Three supported the proposal, although one of these suggested that using the word 'invested' in the revised rule COLL 6.7.7R could cause confusion with its meaning in the KII Regulation, so it should be replaced by something less ambiguous. One response was neutral, noting that the greater operational flexibility afforded to the AFM could either be beneficial or detrimental to investors. The Investment Association disagreed with the proposal, saying the method of calculating the entry charge in the KII Regulation is clearer.

Our response

We will proceed with the change to COLL 6.7.7R and additional guidance at COLL 6.7.8G, although we agree 'invested' might be ambiguous and now use 'subscribed' instead. Although we do not suggest that the alternative method allowed here is preferable to the KII Regulation methodology, we think it is reasonable to continue to allow AFMs a choice. We note that the PRIIPs Regulation requires entry charges to be expressed as a percentage but does not spell out how the figure should be derived from the amount subscribed.

- 3.90** We proposed to change the Glossary definition of 'feeder fund' to 'pension feeder fund' to avoid confusion with other types of feeder fund. We also proposed guidance in COLL 1.2 on the requirements applying to pension feeder funds and consequential changes to reflect the amended Glossary definition. We asked:

Q: Do you agree with our proposals for pension feeder funds?

Feedback

- 3.91** The three respondents that replied to this question all supported the proposal.

Our response

We will make the change to the Glossary definition and the other consequential changes as consulted on.

- 3.92** Currently, a NURS (unless it is a fund of alternative investment funds) is not allowed to invest in a feeder fund. We proposed a new rule and guidance³⁷ to allow NURS the flexibility to invest in some types of feeder fund, as long as certain conditions are met to ensure the layered structure does not cause detriment to investors already in the NURS. We asked:

Q: Do you agree with our proposal to allow all NURS some flexibility to invest in feeder funds?

Feedback

- 3.93** We received eight responses to this question. All of them supported the principle of extending the ability of a NURS to invest in feeder funds and generally welcomed the specific proposals. One respondent suggested that the guidance, by focusing solely on the risks and costs to investors of holding units through a feeder fund, might limit an AFM's ability to make use of the rule.
- 3.94** Two respondents suggested that the proposal should go further by allowing a NURS to invest into feeders linked to any master fund that would itself qualify as a second scheme under COLL 5.6.10R. They argued that this change would help NURS, especially funds of funds, to diversify their portfolio by investing in high-quality funds currently closed to them, such as certain US hedge funds. Another respondent explained the difficulties it had experienced in marketing a UCITS-compliant master-feeder structure because funds of funds are not allowed to invest in these structures.

Our response

We have redrafted COLL 5.6.10BG to make it clear that the AFM may take a balanced view of the risks, costs and benefits of investing in a feeder fund. However, as we explained in the CP, there should be valid reasons for the NURS to invest in a master-feeder structure rather than investing directly in the master fund. We have added a provision in COLL 5.6.10AR (4) that a NURS may not simultaneously invest directly in a master fund and indirectly via its dedicated feeder. This supports our policy objective and also prevents any possible avoidance of the investment limits.

We have redrafted COLL 5.6.10AR (2) to clarify which conditions apply to a UCITS master-feeder structure when a NURS invests in the feeder UCITS.

We note the suggestions from respondents that this rule could have a broader scope but revising the proposal in this way would require further consultation. In our view it is preferable to proceed with the new rule as consulted on and gain experience of how firms use it, before considering whether there is a case for extending it. Further, the rules in COLL 5.7 already allow a NURS operating as a fund of alternative investment funds to invest extensively in hedge funds under certain conditions. The provisions of the UCITS Directive are, of course, not something we can change at our own discretion; this would require a re-negotiation of the relevant parts of the Directive.

³⁷ COLL 5.6.10AR – 5.6.10CG

- 3.95** We proposed to extend COLL 5.2.26R to prevent a feeder NURS from investing in another feeder NURS or a fund that invests in a feeder NURS, to avoid excessive layering of funds that could disadvantage investors. We asked:

Q: Do you have any comments on the proposed anti-layering rule?

Feedback

- 3.96** Four respondents commented on this question. All of them supported rules to prevent unnecessary layering of investments and two specifically mentioned the risk that these arrangements could lead to unnecessary or unfair charges being incurred, especially in a low-yield market environment and taking account of the growth of investment solutions that rely on multi-fund structures. One respondent was, however, concerned that difficulties might arise if a master fund wanted to change its strategy in a way that forced investing funds to sell their holdings. Another respondent suggested the drafting of the additional provision in COLL 5.2.26R could be improved so it does not duplicate the existing requirements of the rule.

Our response

We will proceed with the changes as consulted on. The suggested drafting change would have worked for authorised funds and recognised EEA UCITS schemes, but not for individually recognised schemes under s.272 FSMA, so we consider the rule clearer as it stands. We note the feedback about possible constraints on a master fund's change of strategy, but consider this is no different to any situation where a fund manager has to assess whether changing a fund's strategy might result in it losing the support of some investors.

- 3.97** We proposed new rules at COLL 6.2.25R and 6.3.9R(1A) to allow a feeder fund investing in a property authorised investment fund (PAIF) greater flexibility in its arrangements for dealing in units of the PAIF. The aim of these new rules is to align the dealing arrangements of the feeder and master funds so that the feeder can replicate the performance of the master more closely. We asked:

Q: Do you agree with the proposed flexible dealing arrangements for a feeder fund investing in a PAIF?

Feedback

- 3.98** Four respondents commented on this question, all of them agreeing with the aim of the proposals. The Investment Association noted that master-feeder structures are administrative arrangements which investors use to gain exposure to the master's investment strategy, so the proposal would ensure inflows to the feeder are invested in a timely way. However, the Investment Association and another respondent suggested the proposal should not be limited to investment in PAIFs and that the synchronised dealing arrangements should apply to any feeder fund. The Investment Association and another respondent noted that direct investment in PAIFs is not prevented and could be beneficial for some investors, for administrative and tax-efficiency reasons.

Our response

The feedback received is helpful in indicating the desire for a streamlining of the operation of master-feeder structures. It also indicates that the scope of

the proposed rule, which related only to PAIFs, might not achieve its purpose as drafted. We think it is necessary to look again at this issue with the aim of reconsulting on a more wide-ranging rule change in due course, if we can be satisfied that the interests of direct investors in a master fund and investors in its dedicated feeder can be fairly managed.

- 3.99** We proposed a number of pieces of additional guidance and consequential amendments to explain better the links between the FUND sourcebook, which implements much of the Alternative Investment Fund Managers Directive (AIFMD), and the rules in COLL applicable to AFMs of NURS and qualified investor schemes (QIS). We asked:

Q: Do you have any comments regarding the rules and guidance on the application of COLL to AIFMs? Are there any other matters of this kind we should address?

Feedback

- 3.100** Four respondents commented on this question, all supporting the principle of ensuring clarity of the application of rules and guidance. One respondent stated that the application of the requirements of FUND to depositaries of a NURS or QIS managed by a small authorised UK AIFM is not clear and more guidance would be welcome. Two respondents challenged the deletion of the words ‘in this sourcebook’ from rules specifying the relationship between the fund’s instrument and prospectus and the Handbook.³⁸ These respondents believed it substantially widens the requirements beyond what is necessary for compliance with AIFMD. One respondent disagreed that AIFMs should be required to include the mandatory disclosures under AIFMD in the fund prospectus, if they would prefer to disclose the information in a different way.

Other responses

We think the proposed changes make the application of Handbook rules to small authorised UK AIFMs and the depositaries of their funds sufficiently clear and we do not intend to add further guidance.

We do not agree that deleting the words ‘in this sourcebook’ will alter the scope of a firm’s responsibilities. The fund’s instrument and prospectus cannot contain statements or provisions that are in breach of applicable rules, wherever they may appear in the Handbook. We recognise that a firm might be carrying on other regulated activities that have no bearing on its activity as an AFM or a depositary, in which case some Handbook provisions relevant to other activities might differ from those applicable to authorised funds. We have altered the proposed changes to refer to ‘applicable rules’, which should dispel any concerns on this point.

We also think that the overlap between the information to be disclosed under AIFMD and COLL’s prospectus rules for NURS and QIS is sufficiently great to justify requiring them to all be in the same document. This is particularly the case for retail investors, who should not have to access multiple documents to obtain important information about the fund.

³⁸ See COLL 3.2.2R, 4.2.2R and 8.5.2R.

We will make the rules and guidance as consulted on. However, to minimise any burden on firms needing to revise the prospectus, a transitional period of twelve months will be allowed for all these changes (see COLL TP 1.1 (44) and (45)).

- 3.101** We proposed new guidance in COLL 5.5 clarifying how the net amount of a fund's borrowing should be calculated when the fund holds long and short positions in different currencies. We asked:

Q: Do you agree with the proposed guidance on the calculation of the borrowing limits for the purposes of COLL 5.5.5R?

Feedback

- 3.102** Five respondents answered this question, all agreeing with the proposal. One asked if long and short balances in the same currency can be netted between the fund's income and capital accounts (if both are held at the same custodian bank).

Our response

We will add the guidance as consulted on. We agree that the rules allow balances in the same currency to be netted between a fund's income and capital accounts held in the same names at the same bank.

- 3.103** We proposed to delete several obsolete provisions concerning the application of stamp duty reserve tax (SDRT), the availability of historic pricing, the issue of bearer certificates for units of authorised unit trusts and the periodic closure of unit registers. We asked:

Q: Do you have any comments on the proposed deletion of out-of-date provisions?

Feedback

- 3.104** Three respondents commented on this question. All made no objection to the deletion of the obsolete provisions, although the Investment Association queried the drafting of changes to the required contents of the prospectus. The respondents suggested paragraph 19 of the table in COLL 4.2.5R could be entirely deleted, as other sections of the table already specify what should be disclosed for large deals.

Our response

We did not receive any feedback to contradict our view that these provisions are obsolete, so will proceed with the deletions as consulted on. We have, however, taken account of the comment on the requirement to explain what is meant by a large deal by moving it to paragraphs 16 and 18 of the table under COLL 4.2.5R, for dual-priced funds and single-priced funds respectively.

We have slightly modified the requirements to disclose the pricing basis of the fund in the prospectus (COLL 4.2.5R (20) and COLL 8.3.4R (14)), subject to a transitional period for updating the prospectus. For UCITS schemes and

NURS, we make it explicit that the prospectus should explain what is meant by a forward price (rather than just stating that this price will be used). In practice, we believe most prospectuses already contain an adequate explanation of this point.

- 3.105** We also set out various minor errors to be corrected and references to be brought up to date. We asked:

Q: Do you have any comments on any of these changes? Are you aware of any other similar errors or out-of-date references we should correct?

Feedback

- 3.106** Four respondents stated they had no comments regarding the proposed changes. Two others did not comment on the particular matters mentioned in the Consultation Paper, but noted a number of other areas where they considered rules and guidance are inconsistent or ambiguous.

Our response

We will proceed with the changes as consulted on. The other matters raised by respondents are substantive queries needing detailed consideration, so we cannot treat them as editorial points to be corrected without further consultation. We will answer the respondents directly where appropriate, or otherwise record their points and keep them under review as we assess what future changes should be consulted on to keep the Handbook effective and up to date.

Cost benefit analysis and compatibility statement

- 3.107** We did not receive any specific comments on the CBA or compatibility statement relating to the proposals covered in this feedback. We believe that the changes we have made to our Handbook rules and guidance, in the light of the feedback received, do not differ significantly from the version we consulted on and do not alter the costs and benefits of the proposals in any material way. We are therefore satisfied that, for the rules and guidance we intend to proceed with, the CBA, compatibility statement and statement of purpose we published in CP15/27 continue to apply.

Equality and diversity issues

- 3.108** 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 conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.
- 3.109** Our equality impact assessment as set out in CP15/27 remains valid. We continue to believe that the changes do not result in direct discrimination for any of the groups with protected characteristics, i.e. sex, disability, gender, pregnancy and maternity, race, religion and belief, marriage/civil partnership, sexual orientation and gender reassignment, nor do we believe that our proposals should give rise to indirect discrimination against any of these groups.
- 3.110** The changes made by this instrument are listed in Chapter 2 of this Notice.

4. Additional information

Making corrections

- 4.1** The FCA reserves the right to make amendments to the instruments made at the Board meeting without further consultation should this prove necessary or desirable.

Publication of Handbook material

- 4.2** This Notice is published on the FCA's website.
- 4.3** The formal legal instruments (which contain details of the changes) can be found on the FCA's website listed by date, reference number or module at <https://www.handbook.fca.org.uk/>. The definitive version of the Handbook at any time is the version contained in the legal instruments.
- 4.4** The changes to the Handbook are incorporated in the consolidated Handbook text on the website as soon as practicable after the legal instruments are published.
- 4.5** The consolidated text of the Handbook can be found on the FCA's website at <https://www.handbook.fca.org.uk>.
- 4.6** Copies of the FCA's consultation papers are available on the FCA's website.

Obligation to publish feedback

- 4.7** This Notice, and the feedback to which paragraph 1.4 refers, fulfil the FCA Board's obligations under sections 138I(4) and (5) and similar sections of the Financial Services and Markets Act 2000 ('the Act'). These obligations are to publish an account of representations received in response to consultation and the FCA's response to them, and to publish details of any significant differences between the provisions consulted on and the provisions made by the Board, with a cost benefit analysis and a statement under section 138K(4) of the Act if a proposed rule applies to authorised persons, including mutual societies.

Comments

- 4.8** We always welcome feedback on the way we present information in the Handbook Notice. If you have any suggestions, please use the contact details at the front of this Notice.



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