

**EXITING THE EUROPEAN UNION: GLOSSARY (AMENDMENTS) INSTRUMENT  
2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018;
  - (2) the following provisions of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 59 (Approval for particular arrangements);
    - (b) section 59AB(1) (Specifying functions as controlled functions: transitional provision);
    - (c) section 60 (Applications for approval);
    - (d) section 60A (Vetting candidates by authorised persons);
    - (e) section 61 (Determination of applications);
    - (f) section 63E (Certification of employees by authorised persons);
    - (g) section 63F (Issuing of certificates);
    - (h) section 64A (Rules of conduct); and
    - (i) section 137A (the FCA’s general rules);
    - (j) section 137B (FCA General rules: clients’ money, right to rescind etc);
    - (k) section 137R (Financial promotion rules);
    - (l) section 137SA (Rules to recover expenses - single financial guidance body);
    - (m) section 137SB (Rules to recover debt advice expenses incurred by the devolved authorities);
    - (n) section 137T (General supplementary powers);
    - (o) section 139A (Power of the FCA to give guidance);
    - (p) section 213 (The compensation scheme);
    - (q) section 214 (General);
    - (r) section 226 (Compulsory jurisdiction);
    - (s) section 234 (Industry funding);
    - (t) paragraph 13 (FCA’s rules) of Schedule 17;
    - (u) section 266 (Disapplication of rules);
    - (v) section 333T (Funding of action against illegal money lending);
    - (w) section 395 (The [FCA’s and PRA’s] Procedures); and
    - (x) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority);
  - (3) the relevant powers and related provisions referred to in schedule 4 to the General Provisions of the FCA Handbook;
  - (4) regulation 120 (Guidance) of the Payment Services Regulations 2017;
  - (5) regulation 60 (Guidance) of the Electronic Money Regulations 2011;

- (6) [the following provisions of the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 (SI 2018/1201):
- (a) regulation 35 of part 3 of schedule 3 (Power to charge fees); and
  - (b) regulation 12K of part 1A of schedule 3 (Power to charge fees).]
- (7) [the following provisions of the [Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019:
- (a) regulation 206; and
  - (b) regulation 208.]
- (8) [the relevant powers of the Credit Ratings Agencies (Amendments etc.) (EU Exit) Regulations 2019 (SI 2019/XXXX):
- (a) regulation 5 (Guidance);
  - (b) regulation 8 (Statement of policy);
  - (c) regulation 18 (Information gathering and investigations)); and
  - (d) regulation 19 (Notices).]
- (9) [the relevant powers and related provisions of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendments etc. and Transitional Provision) (EU Exit) Regulations 2019 (SI 2019/XXXX):
- (a) regulation 69 (Statement of policy);
  - (b) regulation 71 (Powers to issue guidance);
  - (c) regulation 78 (Application of Part 11 of the Act (information gathering and investigations)); and
  - (d) regulation 79 (Application of Part 26 of the Act (notices)).]
- B. The rule-making provisions referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

### **Commencement**

- C. Part 1 of this instrument comes into force on [29 March 2019 at 11 p.m.].
- D. Part 2 of this instrument comes into force on [9 December 2019].

### **Amendments to the Handbook**

- E. The Glossary of definitions is amended in accordance with the Annex to this instrument.

- F. The Financial Conduct Authority confirms and remakes in the Glossary of definitions the defined expressions relating to any UK legislation which has been amended further to section 8 of the European Union (Withdrawal) Act 2018.

**Citation**

- G. This instrument may be cited as the Exiting the European Union: Glossary (Amendments) Instrument 2019.

By order of the Board

[*date*]

**Editor's notes**

- (1) The near-final instrument relates to the statutory instruments set out in Annex 4 of the accompanying Policy Statement and other matters arising from the UK's withdrawal from the EU.
- (2) We will set out our approach in due course for any additional amendments which are required as a result of further statutory instruments.
- (3) The powers in square brackets cited in paragraph (6) are contained in the Financial Service Contracts (Transitional and Saving Provision) (EU Exit)(No. 2) Regulations 2019 which has not yet been made, and which is an instrument that seeks to amend the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions)(EU Exit) Regulations 2018 (SI 2018/1201).
- (4) The amendments in this instrument are based on the text of the Handbook in force on 29 March 2019. This instrument also includes amendments to correct deficiencies implementing the new framework for Claims Management Companies, in force from 1 April 2019.

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

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

<i>AIFMD BTS</i>	means the <i>UK</i> version of Commission Delegated Regulation (EU) No. 694/2014 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>Annex 1 activities</i>	has the meaning in article 4(1)(26A) of the <i>UK CRR</i> .
<i>Capital Requirements Regulations 2013</i>	the Capital Requirements Regulations 2013 (SI 2013/3115).
<i>CASS large TP firm</i>	has the meaning in <i>CASS</i> 14.2.8R ( <i>CASS</i> firm types).
<i>CASS medium TP firm</i>	has the meaning in <i>CASS</i> 14.2.8R ( <i>CASS</i> firm types).
<i>CASS small TP firm</i>	has the meaning in <i>CASS</i> 14.2.8R ( <i>CASS</i> firm types).
<i>credit rating agency</i>	(as defined in Article 3(1)(b) of the <i>CRA Regulation</i> ) means a legal person whose occupation includes the issuing of credit ratings on a professional basis.
<i>CRA Regulation</i>	means the <i>UK</i> version of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (as amended by Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies and Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies) which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
	<b><i>Editor's note: the next new definition is dependent on the Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2019 being made and will only be made once the legislation has been made.</i></b>
<i>CRA (EU Exit) Regulations</i>	the Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2019 (SI 2019/XXXX).
<i>CRR ITS on supervisory reporting</i>	the <i>UK</i> version of Regulation (EU) 2015/1278 of 9 July 2015 amending Implementing Regulation (EU) No 680/2014 laying down implementing technical standards with regard to supervisory reporting

	of institutions as regards instructions, templates and definitions which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>CRD ITS on templates, definitions and IT-solutions</i>	the <i>UK</i> version of Regulation (EU) 2016/2070 of 14 September 2016 laying down implementing technical standards for templates, definitions and IT-solutions to be used by institutions when reporting in accordance with Article 78(2) of the <i>CRD</i> which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>CRD RTS on the identification of the geographical location of credit exposures for calculating institution-specific countercyclical capital buffer rates</i>	the <i>UK</i> version of Regulation (EU) No 1152/2014 of 4 June 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>CRO firm</i>	(in accordance with the <i>EU Exit Passport Regulations</i> and the <i>E-money and Payments Transitional Provisions Regulations</i> ) a person who is: <ul style="list-style-type: none"> <li>(a) exempt for the purposes of section 19(1)(b) of the <i>Act</i> under regulation 47 of the <i>EU Exit Passport Regulations</i>; or</li> <li>(b) exempt for the purposes of Regulation 12L of Part 1A of Schedule 3 of the <i>E-money and Payments Transitional Provisions Regulations</i>; or</li> <li>(c) an EEA authorised payment institution exempt for the purposes of Regulation 36 of Part 3 of Schedule 3 of the <i>E-money and Payments Transitional Provisions Regulations</i>; or</li> <li>(d) An EEA registered account information service provider exempt for the purposes of Regulation 36 of Part 3 of Schedule 3 of the <i>E-money and Payments Transitional Provisions Regulations</i></li> </ul>
<i>EU auction regulation</i>	the <i>EU</i> version of Regulation (EU) No. 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community).
<i>EU benchmarks regulation</i>	the <i>EU</i> version of Regulation (EU) No. 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014.

<i>EU CRR</i>	the <i>EU</i> version of Regulation (EU) No. 575/2013 of the European Parliament and the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.
<i>EU EMIR</i>	the <i>EU</i> version of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories.
<i>EU Exit Passport Regulations</i>	the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, SI 2018/1149.
<i>EEA State compensation scheme</i>	a compensation scheme, akin to the <i>FSCS</i> , in an <i>EEA State</i> .
<i>EU MiFIR</i>	the <i>EU</i> version of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.
<i>EU OTF</i>	(as defined in Article 2(1)(15B) of <i>MiFIR</i> ) means a multilateral system: <ul style="list-style-type: none"> <li>(a) which is not a regulated market or an MTF;</li> <li>(b) in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments directive of 15 May 2014.</li> </ul>
<i>EU regulated market</i>	(as defined in Article 2(1)(13B) of <i>MiFIR</i> ) means a regulated market which is authorised and functions regularly and in accordance with Title III of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments directive of 15 May 2014.
<i>EU Securities Financing Transactions Regulation</i>	the <i>EU</i> version of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.
<i>EUWA</i>	the European Union (Withdrawal) Act 2018.
<i>exit day</i>	as defined in section 20(1) of the <i>EUWA</i> , means 29 March 2019 at 11 p.m. or such date as is specified further to section 20(2) to (5).
<i>E-money and Payments Transitional</i>	the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SI 2018/1201.

*Provisions  
Regulations*

*General data  
protection  
regulation*

the *UK* version of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), which is part of *UK* law by virtue of the *EUWA*.

*Insolvency  
Proceedings  
Regulation*

the *UK* version of Regulation (EC) No.1346/2000 on 29 May 2000 on insolvency proceedings, which is part of *UK* law by virtue of the *EUWA*.

*LTIF*

a long-term investment fund (as defined in the *LTIF regulation*) authorised under the *LTIF Regulation*.

*LTIF Regulation*

the *UK* version of Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds which is part of *UK* law by virtue of the *EUWA*.

*MAR Level 2  
Regulations*

- (1) the *UK* version of Commission Delegated Regulation (EU) 2016/909 of 1 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications, which is part of *UK* law by virtue of the *EUWA*;
- (2) the *UK* version of Commission Implementing Regulation (EU) 2016/378 of 11 March 2016 laying down implementing technical standards with regard to the timing, format and template of the submission of notifications to competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council, which is part of *UK* law by virtue of the *EUWA*;
- (3) the *UK* version of Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures, which is part of *UK* law by virtue of the *EUWA*;
- (4) the *UK* version of Commission Delegated Regulation (EU) 2016/522 of 17 December 2015 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the

disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions, which is part of *UK* law by virtue of the *EUWA*;

- (5) the *UK* version of Commission Delegated Regulation (EU) 2016/960 of 17 May 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings, which is part of *UK* law by virtue of the *EUWA*;
- (6) the *UK* version of Commission Implementing Regulation (EU) 2016/959 of 17 May 2016 laying down implementing technical standards for market soundings with regard to the systems and notification templates to be used by disclosing market participants and the format of the records in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council, which is part of *UK* law by virtue of the *EUWA*;
- (7) the *UK* version of Commission Delegated Regulation (EU) 2016/908 of 26 February 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance, which is part of *UK* law by virtue of the *EUWA*;
- (8) the *UK* version of Commission Delegated Regulation (EU) 2016/957 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions, which is part of *UK* law by virtue of the *EUWA*;
- (9) the *UK* version of Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council, which is part of *UK* law by virtue of the *EUWA*;
- (10) the *UK* version of Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 laying down implementing technical standards with regard to the precise format of insider



lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council, which is part of *UK* law by virtue of the *EUWA*;

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

*Material Risk  
Takers Regulation*

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

*Money Market  
Funds Regulation*

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

*new sub-fund*

a *sub-fund* within the meaning of regulation 61(3)(a) of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations [2019]

*non-UK AIF*

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

*non-UK AIFM*

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

*onshored  
regulation*

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

*overseas SMCR  
banking firm*

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

*pre-exit incoming  
EEA firm*

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

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

<i>SEF</i>	a qualifying social entrepreneurship fund (as defined in the <i>SEF Regulation</i> ).
<i>SEF manager</i>	the manager of a qualifying social entrepreneurship fund (as defined in the <i>SEF Regulation</i> ) that is registered in accordance with article 15 of the <i>SEF Regulation</i> .
<i>SEF Regulation</i>	the <i>UK</i> version of Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>SSR Delegated Regulation 1</i>	the <i>UK</i> version of Commission Delegated Regulation (EU) No 826/2012 of 29 June 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>SSR Delegated Regulation 2</i>	the <i>UK</i> version of Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>SSR Implementing Regulation</i>	the <i>UK</i> version of Commission Implementing Regulation (EU) No 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>supervised run-off firm</i>	(in accordance with the <i>EU Exit Passport Regulations</i> and the <i>E-money and Payments Transitional Provisions Regulations</i> ) a person who is: <ul style="list-style-type: none"> <li>(1) treated as having Part 4A permission (or a variation to permission) under regulation 28 or 34 of the <i>EU Exit Passport Regulations</i>; or</li> </ul>

- (2) treated as an *authorised electronic money institution* under paragraph 12B of Part 1A of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations*; or
- (3) treated as an *authorised payment institution* under paragraph 26 of Part 3 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations*; or
- (4) treated as a *registered account information service provider* under paragraph 26 of Part 3 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations*.

<i>TA EMI firm</i>	a person who has <i>temporary EMI authorisation</i> .
<i>TA PI firm</i>	a person who has <i>temporary PI authorisation</i> .
<i>TA RAISP firm</i>	a person who has <i>temporary RAISP registration</i> .
<i>TD Major Holdings Regulation</i>	the UK version of Commission Delegated Regulation (EU) 2015/761 of 17 December 2014 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings, which is part of UK law by virtue of the <i>EUWA</i> .
<i>temporary EMI authorisation</i>	(in accordance with paragraph 2 of Part 1 of Schedule 3 and paragraph 12B of Part 1A of Schedule 3 to the <i>E-money and Payments Transitional Provisions Regulations</i> ), as the case may be, authorisation as an <i>authorised electronic money institution</i> under the <i>Electronic Money Regulations 2011</i> , that a person is to be taken as having under paragraph 2 of Part 1 of Schedule 3 to the <i>E-money and Payments Transitional Provisions Regulations</i> or under paragraph 12B of Part 1A of Schedule 3 to those Regulations.
<i>temporary permission</i>	(in accordance with regulation 8, 11, 28 or 34 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018), as the case may be, <i>Part 4A permission</i> (or variation to that <i>permission</i> ) that a person is treated as having under regulation 8, 11, 28 or 34 of those Regulations.
<i>temporary PI authorisation</i>	(in accordance with paragraph 14(2)(a)(i) of Part 2 of Schedule 3 or paragraph 26(4)(a)(i) of Part 3 of Schedule 3 to the <i>E-money and Payments Transitional Provisions Regulations</i> ), as the case may be, authorisation as an <i>authorised payment institution</i> under the <i>Payment Services Regulations 2017</i> , that a person is taken as having under paragraph 14(2)(a)(i) of Part 2 of Schedule 3 to the <i>E-money and Payments Transitional Provisions Regulations</i> , or under paragraph 26(4)(a)(i) of Part 3 of Schedule 3 to those Regulations.
<i>temporary RAISP registration</i>	(in accordance with paragraph 14(2)(a)(ii) of Part 2 of Schedule 3 and paragraph 26(4)(a)(ii) of Part 3 of Schedule 3 to the <i>E-money and Payments Transitional Provisions Regulations</i> ), as the case may be,

registration as a *registered account information service provider* under the *Payment Services Regulations 2017*, that a *person* is taken as having under paragraph 14(2)(a)(ii) of Part 2 of Schedule 3 to the *E-money and Payments Transitional Provisions Regulations*, or under paragraph 26(4)(a)(ii) of Part 3 of Schedule 3 to those Regulations.

- TPCAR* a Temporary Permissions Client Assets Return, containing the information specified in *CASS 14 Annex 1*.
- TP AIFM qualifier* an *EEA AIFM* which is *marketing*, or has *marketed*, an *AIF* in the *UK* by:
- (a) exercising its right to *market* in relation to funds referred to in paragraph (2) of regulation 78A of the *AIFMD UK regulation*; and
  - (b) is not exercising a right to manage a *UK AIF* under *temporary permission*.
- TP firm* (in accordance with regulation 8, 11, 28 or 34 of the *EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018*), as the case may be, a *person* who has *temporary permission* under regulation 8, 11, 28 or 34 of those Regulations.
- TP person* (in *FEES*) any of the following:
- (1) a *TP firm*;
  - (2) a *TA EMI firm*;
  - (3) a *TA PI firm*;
  - (4) a *TA RAISP firm*; and
  - (5) a *TPR fund*.
- TP UCITS qualifier* a *firm* (other than a *firm* which manages a *scheme* under a *temporary permission*) which:
- (a) for the time being is an *operator*, *trustee* or *depository* of a *scheme* or *sub-fund* which is temporarily recognised under Part 6 of the *Collective Investment Schemes (Amendment) (EU Exit) Regulations 2018*; and
  - (b) is an *authorised person* as a result of Part 7 of those Regulations;

a reference to a *firm* as a “*TP UCITS qualifier*” applies in relation to the carrying on by the *firm* of activities for which it has *permission* in that capacity.

<i>TPR DA levy</i>	the levy payable to the <i>FCA</i> in respect of the provision of debt advice by the <i>Devolved Authorities</i> under <i>FEES 7D</i> .
<i>TPR fund</i>	(in <i>FEES</i> ) any of the following: <ol style="list-style-type: none"> <li>(1) an <i>EEA UCITS scheme</i> recognised under Part 6 of The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2018; or</li> <li>(2) an <i>EEA AIF</i>, <i>EuVECA</i>, <i>EuSEF</i>, or <i>EEA ELTIF</i> which may be marketed in the <i>UK</i> under Part 9A of The Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018.</li> </ol>
<i>TPR IML levy</i>	the levy payable to the <i>FCA</i> under <i>FEES 13A</i> .
<i>TPR SFGB debt advice levy</i>	the amount payable to the <i>FCA</i> by a <i>firm</i> to which <i>FEES 7B.3</i> (The TPR SFGB money advice levy and debt advice levy) and <i>FEES 7B Annex 2R</i> apply.
<i>TPR SFGB levy</i>	the levy payable to the <i>FCA</i> under <i>FEES 7B</i> .
<i>TPR SFGB money advice levy</i>	the amount payable to the <i>FCA</i> by a <i>firm</i> to which <i>FEES 7B.3</i> (The TPR SFGB money advice levy and debt advice levy) and <i>FEES 7B Annex 1R</i> apply.
<i>TPR SFGB pensions guidance levy</i>	the amount payable to the <i>FCA</i> by a <i>firm</i> to which <i>FEES 7B.4</i> (The TPR SFGB pensions guidance levy) applies.
<i>Trade Repositories (EU Exit) Regulations</i>	the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendments etc. and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/XXXX).
<i>trade repository</i>	a legal person that centrally collects and maintains the records of derivatives.
<i>UK Account</i>	has the same meaning as in article 2(3) of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (2014 No. 1960).
<i>UK-adopted international accounting standards</i>	(in accordance with section 474(1) of the Companies Act 2006) international accounting standards which are adopted for use within the <i>United Kingdom</i> by virtue of Chapter 2 or 3 of Part 2 of the International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019.
<i>UK-adopted IFRS</i>	<i>UK-adopted international accounting standards</i> .

<i>UK AIFM regime</i>	<i>FUND</i> , other rules in the <i>FCA Handbook</i> which, when made, implemented <i>AIFMD</i> , the <i>AIFMD level 2 regulation</i> , and the <i>AIFMD UK regulation</i> .
<i>UK MTF</i>	<p>(as defined in article 2(1)(14A) of <i>MiFIR</i>) means a multilateral system, operated by a UK investment firm or market operator, which:</p> <ul style="list-style-type: none"> <li>(a) brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract; and</li> <li>(b) complies, as applicable, with: <ul style="list-style-type: none"> <li>(i) paragraph 9A of the <i>Recognition Requirements Regulations</i>;</li> <li>(ii) the EU regulations specified in Schedule 2 of <i>MiFIR</i>;</li> <li>(iii) rules made by the competent authority governing the operating conditions of investment firms so far as they apply to MTFs,</li> </ul> </li> </ul> <p>and for the purposes of this definition, an investment firm or market operator is a UK investment firm or market operator if it has its registered office (or if it does not have a registered office, its head office) in the United Kingdom.</p>
<i>UK OTF</i>	<p>(as defined in article 2(1)(15A) of <i>MiFIR</i>) means a multilateral system:</p> <ul style="list-style-type: none"> <li>(a) which is not a regulated market or an MTF;</li> <li>(b) in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract, and complies, as applicable, with: <ul style="list-style-type: none"> <li>(i) paragraph 9A of the <i>Recognition Requirements Regulations</i>;</li> <li>(ii) the EU regulations specified in Schedule 2 of <i>MiFIR</i>;</li> <li>(iii) rules made by the competent authority governing the operating conditions of investment firms so far as they apply to OTFs.</li> </ul> </li> </ul>
<i>UK parent financial holding company</i>	has the meaning in article 4(1)(30) of the <i>UK CRR</i> .
<i>UK parent institution</i>	has the meaning in article 4(1)(28) of the <i>UK CRR</i> .

- UK parent mixed financial holding company* has the meaning in article 4(1)(32) of the *UK CRR*.
- UK parent undertaking*
- (a) a *UK parent institution*;
  - (b) a *UK parent financial holding company*; or
  - (c) a *UK parent mixed financial holding company*.
- UK prudential sectoral legislation* (in relation to a *financial sector*) requirements applicable to *persons* in that *financial sector* in accordance with *UK* legislation and *rules* about prudential supervision of *regulated entities* in that *financial sector* and so that:
- (a) (in relation to the *banking sector* and the *investment services sector*) in particular this includes the requirements laid down in the *UK CRR* (in relation to a *CAD investment firm*), *GENPRU* and *BIPRU*; and
  - (b) (in relation to the *insurance sector*) in particular this includes requirements laid down in the *UK* provisions which implemented the *Solvency II Directive* and *Solvency II Regulations*.
- UK regulated entity* a *regulated entity* that is a *UK* firm.
- UK UCITS* means (in accordance with sections 236A and 237 of the *Act*) subject to (4) below, an undertaking which may consist of several *sub-funds* and:
- (1) is an *AUT*, an *ACS* or an *ICVC*:
    - (a) with the sole object of collective investment of capital raised from the public in *transferable securities* or other liquid financial assets specified in paragraph (2), and operating on the principle of risk-spreading;
    - (b) with *units* which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets (see also paragraph (3)); and
    - (c) which (in accordance with the *rules* in *COLL* 4.2) has identified itself as a *UCITS* in its *prospectus* and has been authorised accordingly by the *FCA*.
  - (2) The *transferable securities* or other liquid financial assets specified for the purposes of paragraph (1)(a) are those which are permitted by *COLL* 5.2.
  - (3) For the purposes of paragraph (1)(b), action taken by the undertaking to ensure that the price of its *units* on an investment



exchange do not significantly vary from their net asset value is to be regarded as equivalent to such repurchase or redemption.

- (4) The following undertakings are not a *UK UCITS*:
- (a) a collective investment undertaking of the closed-ended type;
  - (b) a collective investment undertaking which raises capital without promoting the sale of its *units* to the public in the *UK*;
  - (c) an open-ended investment company, or other collective investment undertaking, the *units* of which, under the fund rules or the instruments of incorporation of the investment company, may be sold only to the public in countries or territories outside the *UK*.

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

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

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

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

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

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

- alternative debenture* (1) the *investment* specified in article 77A of the *Regulated Activities Order* (Alternative finance investment bonds);
- (2) (in *COLL*) in addition and to the extent it does not fall within (1), an *investment* which would have been within the definition of “alternative debenture” in the *FCA Handbook* [immediately before *exit day*].

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

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

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

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

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

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

*ancillary service*

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

...

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

- (i) ~~commodities;~~
- (ii) ~~climatic variables;~~
- (iii) ~~freight rates;~~
- (iv) ~~emission allowances;~~
- (v) ~~inflation rates or other official economic statistics;~~
- (vi) ~~telecommunications bandwidth;~~
- (vii) ~~commodity storage capacity;~~
- (viii) ~~transmission or transportation capacity relating to commodities, where cable, pipeline or other means;~~
- (ix) ~~an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;~~
- (x) ~~a geological, environmental or other physical variable;~~

(xi) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;

(xii) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;

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

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

(2) ...

ancillary services  
undertaking

(1) ~~(in accordance with Article 4(21) of the Banking Consolidation Directive (Definitions)~~ for the purpose of *GENPRU* (except in *GENPRU* 3) and *BIPRU* (except in *BIPRU* 12) and subject to (2)) and in relation to an undertaking in a consolidation group, sub-group or another group of persons) an undertaking complying with the following conditions:

(a) its principal activity consists of:

(i) owning or managing property; or

(ii) managing data-processing services; or

(iii) any other similar activity;

(b) the activity in (a) is ancillary to the principal activity of one or more *credit institutions* or *investment firms*; and

(c) those *credit institutions* or *investment firms* are also members of that *consolidation group, sub-group or group*.

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

(2) ...

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

appropriate UK  
regulator

(1) ~~in relation to an EEA firm (in accordance with Schedule 3 paragraph 13(4) and 14(4) to the Act), whichever of the FCA or PRA is the competent authority for the purposes of the relevant Single Market Directive; [deleted]~~

- (2) in relation to a *UK firm* (~~in accordance with Schedule 3 paragraph 18A to the Act~~),
- (a) the *PRA*, where the *firm* is a *PRA-authorized person*; and
- (b) in any other case, the *FCA*.
- (3) ~~in relation to a *Treaty firm* (in accordance with section 35(2A) of the Act)~~, [deleted]
- (a) ~~in the case of a *PRA-authorized person*, the *PRA*; and~~
- (b) ~~in any other case, the *FCA*~~

*approved bank*

(except in *COLL*) (in relation to a *bank* account opened by a firm):

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

- (iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time) and has a surplus revenue over expenditure for the last two financial years; and
- (iv) has an annual audit report which is not materially qualified.

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

*approved credit institution*

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

*approved financial institution*

any of the following:

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

...

*approved security*

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

...

*article 3(1)(b) credit agreement*

a *credit agreement*:

- (a) under which the person to whom the credit is provided is a *consumer*,
- (b) the purpose of which is to acquire or retain property rights in land or in an existing or projected building; and
- (c) which is not an *MCD regulated mortgage contract*;

where the reference in (b) to land or a building is a reference:

(d) in relation to a contract entered into before *exit day*:

- (i) to land or a building in the *United Kingdom*; or
- (ii) if the contract was entered into on or after 21 March 2016, to land or a building in the *United Kingdom* or

within the territory of a State that was an *EEA State* at the time the contract was entered into; and

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

*article 18(5) relationship*

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

*article 18(6) relationship*

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

- (a) where an *institution* exercises a significant influence over one or more *institutions* or *financial institutions*, but without holding a *participation* or other capital ties in these *institutions*; or
- (b) where two or more *institutions* or *financial institutions* are placed under single management other than under a contract or clauses of their memoranda or articles of association.

*asset backed commercial paper programme*

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

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

*asset management company*

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

*Audit Regulation*

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



- (1) for private companies, sections 485A to 485C and 494ZA of the Companies Act 2006;
- (2) for public companies, sections 489A to 489C and 494ZA of the Companies Act 2006;
- (3) for *building societies*, paragraphs 3B to 3E of Schedule 11 to the Building Societies Act 1986;
- (4) for *friendly societies*, paragraphs 2 to 5 of Schedule 14A to the Friendly Societies Act 1992;
- (5) for limited liability partnerships, sections 485A to 485C and 494ZA of the Companies Act 2006 as applied by regulations 36 and 38A of the Limited Liability Partnerships (Accounts and Audit) (Application of the Companies Act 2006) Regulations 2008;
- (6) for insurance undertakings within the meaning given by regulation 2 of The Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 2008, sections 485A to 485C and 494ZA of the Companies Act 2006 as applied by regulation 6(1A) of those Regulations.

*authorised contractual scheme manager*

~~a firm, including, if relevant, an EEA UCITS management company or incoming EEA AIFM~~, which is the *authorised fund manager* of the ACS in accordance with the *contractual scheme deed*.

*authorised corporate director*

the director of an ICVC who is the *authorised corporate director* of the ICVC in accordance with COLL 6.5.3R (Appointment of an ACD) ~~including, if relevant, an EEA UCITS management company or incoming EEA AIFM~~.

*authorised person*

(in accordance with section 31 of the Act (Authorised persons)) one of the following:

- (a) a *person* who has a *Part 4A permission* to carry on one or more *regulated activities*;
- (b) ~~an incoming EEA firm~~; [deleted]
- (c) ~~an incoming Treaty firm~~; [deleted]
- (d) ~~a UCITS qualifier~~; [deleted]
- (e) an ICVC;
- (f) the *Society of Lloyd's*.

(see also GEN 2.2.18R for the position of an *authorised partnership* or unincorporated association which is dissolved.)

- bank*
- (a) a firm with a *Part 4A permission* which includes *accepting deposits*, and:
- (i) which is a *credit institution*; ~~or~~
- (ii) ~~whose *Part 4A permission* includes a requirement that it comply with the rules in *GENPRU* and *BIPRU* relating to banks; [deleted]~~
- but which is not a *building society*, a *friendly society* or a *credit union*;
- (b) ~~an *EEA bank* which is a *full credit institution*. [deleted]~~
- banking and investment group*
- a group of *persons* (at least one of which is ~~an *EEA regulated entity* a *UK regulated entity*~~ that is a *credit institution* or an *investment firm*) who:
- (a) form a group in respect of which the consolidated capital adequacy requirements for the *banking sector* or the *investment services sector* under:
- (i) the *appropriate regulator's sectoral rules*;
- (ii) ~~the *sectoral rules* of another competent authority apply; or [deleted]~~
- (b) would form such a group if the scope of those *sectoral rules* were amended as described in paragraph 3.1 of *GENPRU 3 Annex 2* (removing restrictions relating to place of incorporation or head office of members of those *financial sectors*).
- benchmarks regulation*
- the UK version of Regulation (EU) No. 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, which is part of UK law by virtue of the EUWA.
- ~~[Note: see <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1011>~~
- BIPRU firm*
- a *firm*, as defined in article 4(1)(2)(c) of the ~~*EU CRR*~~ *UK CRR* that satisfies the following conditions:
- (a) ...
- BMR benchmark administrator*
- a *person* who:
- (1) is an administrator as defined in article 3.1(6) of the *benchmarks regulation* (which in summary is

a *person* who has control over the provision of a *benchmark*);  
and

(2) has been authorised or registered ~~(whether in the UK or elsewhere)~~ in accordance with article 34 of the *benchmarks regulation*.

*branch*

(a) (in relation to a *credit institution*):

(i) a place of business which forms a legally dependent part of a *credit institution* and which carries out directly all or some of the transactions inherent in the business of *credit institutions*;

(ii) ~~for the purposes of the CRD and in accordance with article 38 of the CRD, any number of places of business set up in the same EEA State by a credit institution with headquarters in another EEA State are to be regarded as a single branch; [deleted]~~

(b) (in relation to an *investment firm*):

(i) a place of business other than the head office which is a part of an *investment firm*, which has no legal personality and which provides *investment services and/or activities* and which may also perform *ancillary services* for which the *firm* has been authorised;

(ii) ~~all the places of business set up in the same EEA State by an investment firm with headquarters in another EEA State are regarded as a single branch; [deleted]~~

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

(c) (in relation to an *insurance undertaking*) any permanent presence of the *insurance undertaking* ~~in an EEA State~~ other than ~~that~~ in the country in which it has its head office is to be regarded as a single *branch*, whether that presence consists of a single office which, or two or more offices each of which:

(i) is managed by the *insurance undertaking*'s own staff;  
or

(ii) is an agency of the *insurance undertaking*; or

(iii) is managed by a *person* who is independent of the *insurance undertaking*, but has permanent authority to act for the *insurance undertaking* as an agency would.

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

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

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

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

- (f) ~~(in relation to an *EEA UCITS management company*):~~  
~~[deleted]~~
- (i) ~~a place of business which is a part of an *EEA UCITS management company*, which has no separate legal personality and which provides the services for which~~

the *EEA UCITS management company* has been authorised;

- (ii) ~~for the purposes of the *UCITS Directive*, all the places of business set up in the same *EEA State* by an *EEA UCITS management company* with headquarters in another *EEA State* are to be regarded as a single branch.~~
- (g) (in accordance with regulation 2(1) of the *Payment Services Regulations*) (in relation to a *payment institution*, or a registered account information service provider ~~or an *EEA registered account information service provider*~~) a place of business of such a *payment service provider*, other than its head office, which forms a legally dependent part of such a provider and which carries out directly all or some of the services inherent in its business. ~~For the purposes of the *Payment Services Regulations*, all places of business set up in the same *EEA State* other than the *United Kingdom* by such a *payment service provider* are to be regarded as a single branch.~~

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

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

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

*Buy-back and  
Stabilisation  
Regulation*

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

*buy-to-let credit  
agreement*

a contract that:

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

where “land” for these purposes means:

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

...

...

*CAD article 22 group*

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

*CAD investment firm*

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

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

...

*capital conservation buffer*

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

*capital resources*

- (1) in relation to a *BIPRU firm*, the *firm*’s capital resources as calculated in accordance with the *capital resources table*; or

- (2) ~~(in relation to a CAD investment firm that is an EEA firm and not a BIPRU firm and which is required to meet the capital resources requirements of the CRD implementation measures for its EEA State on an individual basis) capital resources calculated under those CRD implementation measures; or [deleted]~~
- (3) (for the purposes of GENPRU and BIPRU (except in BIPRU 12), in relation to an undertaking not falling within (1) ~~or (2)~~ and subject to (4)), capital resources calculated in accordance with (1) on the assumption that:
  - (a) it is a BIPRU firm with a Part 4A permission; and
  - (b) it carries on all its business in the United Kingdom and has obtained whatever permissions for doing so are required under the Act; or
- (4) (for the purposes of GENPRU and BIPRU (except in BIPRU 12) and in relation to any undertaking not falling ~~within~~ in (1) ~~or (2)~~ for which the methodology in (3) does not give an answer whose capital resources a BIPRU firm (the “relevant firm”) is required to calculate under a Handbook rule) capital resources calculated under (1) on the assumption that it is a BIPRU firm of the same category as the relevant firm; or
- (5) (for a firm carrying on any home financing connected to regulated mortgage contracts or home financing and home financing administration connected to regulated mortgage contracts) capital resources calculated under MIPRU 4.2.23R.

cash assimilated instrument

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

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

CASS 7 asset management firm

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

...

(b) ...

...

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

...

<i>CESR's UCITS eligible assets guidelines</i>	<p>the Committee of European Securities Regulators' guidelines concerning eligible assets for investment by undertakings for collective investment in transferable securities (CESR/07-044). <del>These are available at</del></p> <p><a href="https://www.esma.europa.eu/sites/default/files/library/2015/11/07_044.pdf">https://www.esma.europa.eu/sites/default/files/library/2015/11/07_044.pdf</a></p>
<i>CCR internal model method permission</i>	<p><del>an Article 129 implementing measure, Article 129 permission,</del> a requirement or a waiver that requires a <i>BIPRU</i> firm or a <i>CAD</i> investment firm to use the <i>CCR</i> internal model method</p>
<i>central bank</i>	<p>(1) <del>(in accordance with Article 4(23) of the <i>Banking Consolidation Directive</i> (Definitions) and</del> for the purposes of <i>GENPRU</i> (except <i>GENPRU</i> 3) and <i>BIPRU</i> (except <i>BIPRU</i> 12)) includes the European Central Bank unless otherwise indicated, <u>the Bank of England and the central banks of other countries.</u></p> <p>[<u>Note: article 4(23) of the <i>Banking Consolidation Directive</i> (Definitions)</u>]</p> <p>(2) (except in (1)) has the meaning in article 4(1)(46) of the <del><i>EU CRR</i></del> <u><i>UK CRR</i></u>.</p>
<i>central counterparty</i>	<p><del>(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) and</del> for the purpose of <i>BIPRU</i> 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) an entity that legally interposes itself between counterparties to contracts traded within one or more financial markets, becoming the buyer to every seller and the seller to every buyer.</p> <p>[<u>Note: Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions)</u>]</p>
<i>CIU</i>	<p>(1) (except in <i>IFPRU</i>) collective investment undertaking.</p> <p>(2) (in <i>IFPRU</i>) has the meaning in article 4(1)(7) of the <del><i>EU CRR</i></del> <u><i>UK CRR</i></u>.</p>
<i>class</i>	<p>(1) ...</p> <p>(2) (in <i>COLL</i>):</p> <p>(a) a particular class of <i>units</i> of an <i>authorised fund</i>; or</p> <p>(b) all of the <i>units</i> relating to a single <i>sub-fund</i>; or</p> <p>(c) a particular class of <i>units</i> relating to a single <i>sub-fund</i>.<del>;</del><del> or</del></p>



- (d) ~~in relation to an EEA UCITS scheme, any arrangement equivalent to (a), (b) or (c). [deleted]~~

...

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

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

...

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

- collective portfolio management firm* a firm which:

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

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

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

- commodity* (1) (except for (2)) a physical asset (other than a financial instrument or cash) which is capable of delivery.
- (2) (for the purpose of calculating *position risk requirements*) any of the following (but excluding gold):

- (a) a commodity within the meaning of paragraph (1); and
- (b) any:
  - (i) physical or energy product; or
  - (ii) of the items referred to in ~~paragraph 10 of Section C of Annex I of MiFID~~ paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order as an underlying with respect to the *derivatives* mentioned in that paragraph;

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

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

*commodity derivative*

~~those financial instruments defined in:~~

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

means financial instruments:

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

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

*common equity tier 1 capital*

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

*common equity tier 1 instrument*

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

*common platform firm*

...

- (c) a ~~UK~~ *MiFID investment firm* which falls within the definition of ‘local firm’ in article 4(1)(4) of the ~~EU CRR~~ UK CRR; or
- ...
- competent authority*
- (1) (in relation to the functions referred to in Part VI of the *Act*)
- (a) the ~~FCA~~, or the functions referred to in Part VI of the *Act* under the laws of
- (b) ~~an authority exercising functions corresponding to the functions referred to in Part VI of the Act under the laws of another EEA State.~~
- (2) (in relation to ~~the exercise of an EEA right and the exercise of the overseas financial stability information power~~) a competent authority for the purposes of the UK provisions which implemented the relevant Single Market Directive ~~or the auction regulation.~~
- (3) (in relation to a group, and for the purposes of SYSC 12 (Group risk systems and controls requirement), *GENPRU* and *BIPRU*, any national authority of ~~an EEA State~~ the UK which is empowered by law or regulation to supervise *regulated entities*, whether on an individual or group-wide basis.
- (4) the authority, designated by each ~~EEA State~~ in accordance with ~~Article 67 of MiFID, unless otherwise specified in MiFID,~~ regulation 3 of the MiFI Regulations, or by regulation 17 of the DRS Regulations.
- [Note: article 4(1)(26) 2(18) of ~~MiFID~~ MiFIR]
- (5) (in *REC*) in relation to an *investment firm* or *credit institution*, means the competent authority in relation to that firm or institution for the purposes of the UK provisions which implemented MiFID.
- (6) [deleted]
- (7) ~~the authority designated by each EEA State in accordance with article 32 of the short selling regulation.~~ [deleted]
- (8) ~~(for an AIF) the national authorities of an EEA State which are empowered by law or regulation to supervise AIFs.~~  
[deleted]
- (9) ~~(for an AIFM) a national authority in an EEA State which is empowered by law or regulation to supervise AIFMs.~~  
[deleted]

- (10) (for the purposes of *IFPRU*) has the meaning in article 4(1)(40) of the ~~*EU*~~ *UK CRR*.
- (11) in relation to an *EU State* the authority designated by each that *EU* (and where applicable, *EEA*) State in accordance with article 40 of the *EU benchmarks regulation*; and in relation to a *third country* which is not an *EU State*, the supervisory authority which exercises functions equivalent to those exercised by competent authorities in *EU States* under the *EU benchmarks regulation*.
- (12) (in *COLL* and *DISP*) an authority exercising functions corresponding to the functions referred to in Part VI of the Act under the laws of an *EEA State*.
- conglomerate capital resources* in relation to a *financial conglomerate* with respect to which *GENPRU* 3.1.29R (Application of method 1 or 2 ~~from Annex I of the *Financial Groups Directive*~~) applies) capital resources as defined in whichever of paragraphs 1.1 or 2.1 of *GENPRU* 3 Annex 1 (Capital adequacy calculations for financial conglomerates) applies with respect to that *financial conglomerate*.
- conglomerate capital resources requirement* (in relation to a *financial conglomerate* with respect to which *GENPRU* 3.1.29R (Application of method 1 or 2 ~~from Annex I of the *Financial Groups Directive*~~) applies) the capital resources requirement defined in whichever of paragraphs 1.3 or 2.4 of *GENPRU* 3 Annex 1 (Capital adequacy calculations for financial conglomerates) applies with respect to that *financial conglomerate*.
- consolidated basis* has the meaning in article 4(1)(48) of the ~~*EU-CRR*~~ *UK CRR*.
- consolidated capital resources* (in relation to a *UK consolidation group* or a ~~*non-EEA sub-group*~~ *non-UK sub-group* and in *GENPRU* and *BIPRU*) that group's capital resources calculated in accordance with *BIPRU* 8.6 (Consolidated capital resources).
- consolidated capital resources requirement* (in relation to a *UK consolidation group* or a ~~*non-EEA sub-group*~~ *non-UK sub-group* and in *GENPRU* and *BIPRU*) an amount of *consolidated capital resources* that that group must hold in accordance with *BIPRU* 8.7 (Consolidated capital resources requirement).
- consolidated indirectly issued capital* has the meaning in *BIPRU* 8.6.12R (Indirectly issued capital and group capital resources), which is in summary any *capital instrument* issued by a member of a *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* where the conditions in *BIPRU* 8.6.12R are met.
- consolidated situation* has the meaning in article 4(1)(47) of the ~~*EU-CRR*~~ *UK CRR*.

<i>consolidated tape provider</i>	<p>a person permitted under regulation 5 of the <i>DRS Regulations</i> to provide the service of:</p> <ul style="list-style-type: none"> <li>(a) collecting trade reports for <i>financial instruments</i> made in accordance with articles 6, 7, 10, 12, 13, 20 and 21 of <i>MiFIR</i> from <i>regulated markets</i>, <u>UK MTFs</u>, <u>UK OTFs</u> and <i>APAs</i>; and</li> <li>(b) consolidating them into a continuous electronic live data stream providing price and volume data per <i>financial instrument</i>.</li> </ul>
<i>consolidating supervisor</i>	has the meaning in article 4(1)(41) of the <del><i>EU CRR</i></del> <u><i>UK CRR</i></u> .
<i>consolidation Article 12(1) relationship</i>	<p>a relationship between <del>one <i>undertaking</i> (the first <i>undertaking</i>) and one an <i>undertaking</i> (“U1”) and one or more other <i>undertakings</i> (“U2”)</del> <u>which satisfies satisfying the following conditions set out in Article 12(1) of the <i>Seventh Company Law Directive</i>, which in summary are as follows:</u></p> <ul style="list-style-type: none"> <li>(a) <del>those <i>undertakings</i> U1 and U2 are not connected in the manner, as described in article 1(1) or (2) of that Directive section 1162; and</del></li> <li>(b) <del>one of the following conditions is satisfied either:</del> <ul style="list-style-type: none"> <li>(i) <del>they U1 and U2 are managed on a unified basis pursuant to a contract with U1 concluded with the first <i>undertaking</i>, or provisions in the U2’s memorandum or articles of association of those <i>undertakings</i>; or</del></li> <li>(ii) the administrative, management or supervisory bodies of <del>those <i>undertakings</i> U2</del> consist, for the major part, of the same <i>persons</i> in office <u>as U1</u> during the financial year <del>in respect of U1 for</del> which it is being decided whether such a relationship exists.</li> </ul> </li> </ul>
<i>consolidation group</i>	<ul style="list-style-type: none"> <li>(1) ...</li> <li>(2) (for the purposes of <i>SUP 16</i>) the <i>undertakings</i> included in the scope of prudential consolidation to the extent and in the manner prescribed in Part One, Title II, Chapter 2, Sections 2 and 3 of the <del><i>EU CRR</i></del> <u><i>UK CRR</i></u> and <i>IFPRU</i> 8.1.3R to <i>IFPRU</i> 8.1.4R (Prudential consolidation) for which the <i>FCA</i> is the <i>consolidating supervisor</i> under <del>article 111 of the <i>CRD</i></del> <u>article 4B of the <i>UK CRR</i></u>.</li> </ul>
<i>consumer</i>	...

(2A) (as further defined in section 425A of the *Act*) (in relation to the issue of statements or codes under section 64 of the *Act*); and general exemptions to consultation by the *FCA* (section 138L of the *Act*) in the publication of notices (section 391 of the *Act*) ~~and the exercise of *Treaty rights* (Schedule 4 to the *Act*)~~ a *person* who uses, has used, may have used, or has relevant rights or interests in relation to any services provided by:

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

for the purposes of this definition:

...

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

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

...

...

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

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

...

*contingent  
convertible  
instrument*

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

- (a) Additional Tier 1 instruments under article 52; or
- (b) Tier 2 instruments under article 63, provided:
  - (i) the provisions governing the instrument require that, upon the occurrence of a trigger event, the principal amount of the instrument be written down on a permanent or temporary basis or the instrument be converted to one or more common equity Tier 1 instruments; and
  - (ii) the trigger mechanism in (i) is different from, or additional to, any discretionary mechanism for converting or writing down the principal amount of the instrument which is activated following a determination by the relevant authority that the issuer of the *financial instrument* (or its *group*, or any member of its *group*) is no longer viable, or will no longer be viable unless the relevant instrument is converted or written down;

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

*contract for differences*

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

...

- (2) (in COLL) in addition and to the extent it does not fall within (1), an investment which would have been within the definition of “contract for differences” in the FCA Handbook [immediately before exit day].

*contract of insurance*

...

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

...

- (e) contracts of a kind referred to in the UK provisions which implemented article 2(3)(b)(v) of the *Solvency II Directive* (Collective insurance etc); and

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

...

*contracts of large risks*

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

...

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

*controller*

...

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

...

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

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

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

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

...

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



- (i) the *shares* are held as a result of performing the *investment services* and activities of:
  - (A) underwriting share issues; or
  - (B) placing shares on a firm commitment basis in accordance with ~~Annex I, section A.6 of MiFID~~ paragraph 6 of Part 3 of Schedule 2 to the Regulated Activities Order; and

...

...

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

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

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

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

of the ~~EU-CRR~~ UK CRR (Large exposures: exemptions), from the application of article 395(1) of the ~~EU-CRR~~ UK CRR (Limits to large exposures).

*core UK group permission*

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

*corporate governance rules*

(in accordance with sections 73A(1) and 89O(1) of the *Act*) ~~rules for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any EU law obligation~~ relating to the corporate governance of *issuers* who have requested or approved *admission to trading* of their securities ~~and about corporate governance in relation to such issuers for the purpose of implementing, or dealing with matters arising out of or related to, any EU law obligation~~. The *corporate governance rules* are located in chapters 1B, 4 and 7 of *DTR*.

*countercyclical buffer rate*

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

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

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

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

*countercyclical capital buffer*

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

*counterparty credit risk*

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

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

*covered bond*

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

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

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

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

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

- (3) ...

- (4) ~~for the purposes of *INSRU 2.1*) a *debenture* that is issued by a *credit institution* which: [deleted]~~

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

<i>CRD bank</i>	a <i>bank</i> which uses the <del>EU-CRR</del> <u>UK CRR</u> to measure the capital requirement on its trading book.
<i>CRD credit institution</i>	<p>(1) <del>(except in COLL and FUND)</del> a <i>credit institution</i> that has its registered office (or, if it has no registered office, its head office) in <del>an EEA State</del> <u>the UK</u>, excluding an <i>institution</i> to which the <i>CRD</i> does not apply <u>under the UK provisions which implemented</u> article 2 of the <i>CRD</i> (see also <i>full CRD credit institution</i>).</p> <p>(2) <del>(in COLL and FUND)</del> a <i>credit institution</i> that:</p> <p>(a) <u>has its registered office (or, if it has no registered office, its head office) in the UK, excluding an institution to which the CRD does not apply under the UK provisions which implemented article 2 of the CRD; or</u></p> <p>(b) <u>has its registered office (or, if it has no registered office, its head office) in an EEA State, excluding an institution to which the CRD does not apply under article 2 of the CRD.</u></p>
<i>CRD full-scope firm</i>	an investment firm as defined in article 4(1)(2) of the <del>EU-CRR</del> <u>UK CRR</u> that is subject to the requirements imposed by <u>the UK provisions that implemented MiFID</u> (or which would be subject to <del>that Directive</del> <u>those requirements</u> if its head office were in <del>an EEA State</del> <u>the UK</u> ) and that is not a <i>limited activity firm</i> or a <i>limited licence firm</i> .
<i>credit enhancement</i>	<p>(1) <del>(in accordance with Article 4(43) of the Banking Consolidation Directive (Definitions) and</del> for the purposes of <i>BIPRU</i>) a contractual arrangement whereby the credit quality of a <i>position</i> in a <i>securitisation</i> (within the meaning of paragraph (2) of the definition of <i>securitisation</i>) is improved in relation to what it would have been if the enhancement had not been provided, including the enhancement provided by more junior <i>tranches</i> in the <i>securitisation</i> and other types of credit protection.</p> <p>[Note: article 4(43) of the <i>Banking Consolidation Directive (Definitions)</i>]</p> <p>...</p>
<i>credit institution</i>	<p>(1) (except in <i>REC</i> and <i>SUP</i> 16):</p> <p>(a) has the meaning in article 4(1)(1) of the <del>EU-CRR</del> <u>UK CRR</u>; or</p> <p>(b) [deleted]</p>

(c) [deleted]

(d) [deleted]

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

(a) a credit institution ~~authorised under the *CRD*~~ which has permission under Part 4A of the Act to carry on the regulated activity of *accepting deposits*; or

(b) an institution which would satisfy the requirements for authorisation as a credit institution under ~~the *CRD* Part 4A of the Act~~ if it had its registered office (or if it does not have a registered office, its head office) in ~~an *EEA State*~~ the *UK*.

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

[Note: article 47 of the *CRD*]

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

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

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

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

...

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

categories within the same *netting set* pursuant to the *rules* about cross product netting set out in *BIPRU* 13.

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

<i>CRR firm</i>	(for the purposes of <i>SYSC</i> ) a <i>UK bank, building society</i> and an <i>investment firm</i> that is subject to the <del><i>EU-CRR</i></del> <u><i>UK CRR</i></u> .
<i>CSDR</i>	<u>the <i>UK version of</i> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the <i>EU</i> and on central securities depositories and amending the <i>Settlement Finality Directive</i> and <i>MiFID</i> and the <i>short selling regulation</i>, which is part of <i>UK law</i> by virtue of the <i>EUWA</i>.</u>
<i>current approved person approval</i>	...  (a) ...  (b) ...  <u>A person treated as approved under section 59ZZA of the <i>Act</i> (as treated as being inserted into the <i>Act</i> by the <i>EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018</i> (SI 2018/1149)) has a <i>current approved person approval</i>.</u>
<i>current exposure</i>	<del>(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) and for the purpose of <i>BIPRU</i> 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions))</del> the larger of zero, or the market value of a transaction or portfolio of transactions within a <i>netting set</i> with a counterparty that would be lost upon the default of the counterparty, assuming no recovery on the value of those transactions in bankruptcy.  <u>[Note: Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions)]</u>
<i>current market value</i>	<del>(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) and for the purpose of <i>BIPRU</i> 13.5 (CCR standardised method))</del> the net market value of the portfolio of transactions within the <i>netting set</i> with the counterparty; both positive and negative market values are used in computing <i>current market value</i> .  <u>[Note: Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions)]</u>
<i>custody asset</i>	(1) other than when <i>acting as trustee or depositary of an AIF</i> or <i>acting as trustee or depositary of a <u>UK UCITS</u></i> :  ...

- (3) in relation to *acting as trustee or depositary of a UK UCITS* in CASS 6:
- ...
- deal on own account* (1) (for the purposes of *GENPRU* and *BIPRU*) has the meaning in *BIPRU* 1.1.23R (Meaning of dealing on own account) which is in summary the service referred to in paragraph 3 of point 3 of Section A Annex I to *MiFID* Part 3 of Schedule 2 to the *Regulated Activities Order*, subject to the adjustments in *BIPRU* 1.1.23R(2) and *BIPRU* 1.1.23R(3) (~~Implementation of Article 5(2) of the *Capital Adequacy Directive*~~).
- (2) (other than in *GENPRU* and *BIPRU*) has the meaning in *IFPRU* 1.1.12R (Meaning of dealing on own account) which is, in summary, the service referred to in ~~point 3 of Section A of Annex I to *MiFID*~~ paragraph 3 of Part 3 of Schedule 2 to the *Regulated Activities Order*, subject to the adjustments in *IFPRU* 1.1.12R(2) and *IFPRU* 1.1.12R(3) (~~Implementation of article 29(2) of *CRD*~~).
- dealing on own account* trading against proprietary capital resulting in the conclusion of transactions in one or more *financial instruments*.
- [Note: article 4(1)(6) 2(1)(5) of ~~*MiFID*~~ *MiFIR*]
- debt security* ...
- (2) (in *DTR* 4, *DTR* 5 and *DTR* 6) (~~in accordance with article 2.1(b) of the *Transparency Directive*~~) bonds or other forms of transferable securitised debts, with the exception of securities which are equivalent to *shares* in companies or which, if converted or if the rights conferred by them are exercised, give rise to a right to acquire *shares* or securities equivalent to *shares*.
- [Note: article 2.1(b) of the *Transparency Directive*]
- ...
- deposit* (1) (except in *COMP*) the *investment*, specified in article 74 and defined in articles 5(2) and 5(3) of the *Regulated Activities Order*, which is in summary: a sum of money (other than one excluded by any of articles 6 to 9 AB of the *Regulated Activities Order*) paid on terms:
- ...
- depositary* (1) (except in *LR*):
- ...

- (ca) ~~(in relation to an *EEA UCITS scheme*) the person fulfilling the function of a depositary in accordance with article 2(1)(a) of the *UCITS Directive*; [deleted]~~
- ...
- ...
- (e) (for an *AIF managed by a full-scope UK AIFM* ~~or a full-scope *EEA AIFM*~~ (other than an *AIF* which is an *ICVC*, an *AUT* or an *ACS*)) the person fulfilling:
- (i) the function of a depositary in accordance with ~~article 21(1) of *AIFMD*~~ *FUND* 3.4.11R; or
- (ii) one or more of the functions of cash monitoring, safekeeping or oversight for a *non-EEA UK AIF*, in line with *FUND* 3.11.33R(1)(a) (*AIFM* of a *non-EEA UK AIF*).
- ...
- derivative*
- (1) (other than in *REC*, *MAR 5* and *MAR 5A*) a *contract for differences*, a *future* or an *option* (see also *securitised derivative*).
- [*Editor's note*: The current policy intention for COLL is to reflect the current scope of these definitions, which in turn are defined by reference to articles in the Regulated Activities Order. Please refer to the individual glossary terms for further information.]
- (2) (in *REC*, *MAR 5* and *MAR 5A*) ~~has the meaning in article 2(1)(29) of *MiFIR*~~ those financial instruments defined in article 2 (1)(24)(c) of *MiFIR* or referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the *Regulated Activities Order*.
- [Note: article 2(1)(29) of *MiFIR*]
- designated investment*
- (1) a *security* or a *contractually-based investment* (other than a *funeral plan contract* and a right to or *interest* in a *funeral plan contract*) specified in Part III of the *Regulated Activities Order* (Specified Investments):
- ...
- (hb) ~~*emissions auction product* (article 82A) where it is a *financial instrument*; [deleted]~~
- ...



	(2) <u>(in COLL) in addition and to the extent it does not fall within (1), a security or a contractually-based investment which would have been within the definition of “designated investment” in the FCA Handbook [immediately before exit day]</u>
<i>designated investment business</i>	any of the following activities, specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities), which is carried on by way of business:  ... (ba) <del>MiFID business bidding (part of bidding in emissions auctions) (article 24A); [deleted]</del>  ... (p) <i>managing a UK UCITS</i> ; (q) <i>acting as trustee or depositary of a UK UCITS</i> ;  ...
<i>designated money market fund</i>	(in BIPRU 12 and BSOCS) <del>a collective investment scheme authorised under the UCITS Directive or which is subject to supervision and, if applicable, authorised by an authority under the national law of an EEA State, and which an authorised fund which</del> satisfies the following conditions:  ...
<i>dilution risk</i>	<del>(in accordance with Article 4(24) of the Banking Consolidation Directive (Definitions))</del> the risk that an amount receivable is reduced through cash or non-cash credits to the obligor.  <u>[Note: article 4(24) of the Banking Consolidation Directive (Definitions)]</u>
<i>discretionary pension benefit</i>	(1) (in SYSC 19C) enhanced pension benefits granted on a discretionary basis by a firm to an employee as part of that employee’s variable remuneration package, but excluding accrued benefits granted to an employee under the terms of his company pension scheme. [Note: article 4(49) of the <i>Banking Consolidation Directive</i> ]  (2) (in IFPRU, SYSC 19A (IFPRU Remuneration Code) and SYSC 19D (Dual-regulated firms Remuneration Code)) has the meaning in article 4(1)(73) of the <del>EU-CRR</del> <u>UK CRR</u> .
<i>distribution in connection with</i>	<del>(in accordance with article 141(10) of CRD)</del> includes:

*common equity tier 1 capital*

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

[Note: article 141(10) of CRD]

*distribution of exposures*

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

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

*distribution of market values*

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

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

*DLG by default*

...

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

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

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

For these purposes:

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

...

*domestic UCITS merger*

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

*durable medium*

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

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

(i) ...

...

*early amortisation provision*

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

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

- (2) (except in (1)) has the meaning in article 242(16) of the ~~EU~~ CRR UK CRR.

*ECAI*

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

*EEA AIF*

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

- (a) is authorised or registered in an *EEA State* under the applicable national law; or
- (b) is not authorised or registered in an *EEA State* but has its registered office or head office in an *EEA State*.

*EEA AIFM*

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

*EEA firm*

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

...

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

...

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

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

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

*effective expected positive exposure*

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

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

*effective maturity*

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

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

*efficient portfolio management*

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

...

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

*electronic commerce activity*

an activity which:

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

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

<i>EMIR requirements</i>	requirements imposed under <i>EMIR</i> and any <i>onshored regulation</i> made under <del>it</del> <u>EU EMIR</u> .
<i>EMIR technical standards on OTC derivatives</i>	means <u>the UK version of</u> “Commission Delegated Regulation (EU) 149/2013 of 19 December 2012 supplementing <i>EMIR</i> with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a central counterparty <sup>22</sup> , <u>which is part of UK law by virtue of the EUWA</u> .”
<i>Emission allowances</i>	...  (3) (in <i>MAR 10</i> (Commodity derivative position limits and controls and position reporting)):  (a) an allowance consisting of any units recognised for compliance with Directive 2003/87/EC (Emission Trading Scheme), as specified in paragraph (11) of <del>Section C of Annex I of MiFID</del> <u>Part 1 of Schedule 2 to the Regulated Activities Order</u> ; or  (b) any derivative of such an allowance, whether falling under paragraph (4) or (10) of <del>Section C of Annex I of MiFID</del> <u>Part 1 of Schedule 2 to the Regulated Activities Order</u> .
<i>energy market activity</i>	(a) any <i>regulated activity</i> <del>other than bidding in emissions auctions</del> in relation to an <i>energy investment</i> or to <i>energy</i> , or in relation to a <i>biomass investment</i> or <i>biomass</i> that is ancillary to activities related to <i>energy investments</i> or <i>energy</i> , which:  (i) is the executing of own account transactions on any recognised investment exchange or designated investment exchange; or  (ii) if it is not the <i>executing of transactions</i> on such exchanges, is performed in connection with or for persons who are not <i>retail clients</i> ;
<i>energy market participant</i>	...  a <i>firm</i> :  ...  (b) which is not an <i>authorised professional firm</i> , <i>bank</i> , <i>BIPRU firm</i> (unless it is an <i>exempt BIPRU commodities firm</i> ), <i>IFPRU investment firm</i> (unless it is an <i>exempt IFPRU commodities</i>



*firm), building society, credit union, friendly society, ICVC, insurer, MiFID investment firm (unless it is an exempt BIPRU commodities firm or exempt IFPRU commodities firm), media firm, oil market participant, service company, insurance intermediary, home finance administrator, home finance provider, ~~incoming EEA firm (without a top-up permission), or incoming Treaty firm (without a top-up permission)~~ or regulated benchmark administrator.*

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

*established*

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

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

- (2) for a *depository* of a *UCITS scheme*, 'having its registered office ~~or branch~~ in'.

*EU*

the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7 February 1992 (as amended), taking into account the UK's withdrawal from the Union pursuant to article 50 of the Treaty.

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

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

~~EU~~ *UK CRR*

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

*excess spread*

(for the purposes of BIPRU 9 (Securitisation), in relation to a *securitisation* (within the meaning of paragraph (2) of the definition of securitisation) ~~and in accordance with Part 1 of Annex IX of the Banking Consolidation Directive (Securitisation definitions)~~ finance

charge collections and other fee income received in respect of the *securitised exposures* net of costs and expenses.

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

*exchange-traded fund*

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

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

*exchange traded product*

any of the following *investments*:

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

...

*excluded communication*

the following types of *financial promotion* (a *firm* may rely on more than one of the paragraphs in relation to the same *financial promotion*):

...

- (c) a *financial promotion* that is subject to, or exempted from, the *Takeover Code* ~~or to the requirements relating to takeovers or related operations in another EEA State~~;

...

*excluded custody activities*

any activities of a *firm* which:

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

*exempt CAD firm*

- (1) (except in *SYSC* and *IPRU(INV)*) a *firm* as defined in article 4(1)(2)(c) of the ~~EU CRR~~ UK CRR that is authorised to provide only one or more the following *investment services*:

- (a) investment advice;

- (b) receive and transmit orders from investors as referred to in ~~Section A of Annex I of MiFID~~ Part 3 of Schedule 2 to the *Regulated Activities Order*.
- (2) (in SYSC and IPRU(INV)) a *firm* in (1) whose head office (or, if it has a registered office, that office) is in the United Kingdom.
- exempt IFPRU commodities firm* an *IFPRU investment firm* which falls within the meaning in articles 493(1) and 498(1) of the ~~EU CRR~~ UK CRR.
- expected exposure* (~~in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions)~~ and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the average of the distribution of *exposures* at any particular future date before the longest maturity transaction in the *netting set* matures.  
[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]
- expected loss* (~~in accordance with Article 4(29) of the Banking Consolidation Directive (Definitions)~~ and for the purposes of the *IRB approach* and the *standardised approach* to credit risk) the ratio of the amount expected to be lost on an *exposure* from a potential *default* of a counterparty or dilution over a one year period to the amount outstanding at default.  
[Note: article 4(29) of the Banking Consolidation Directive (Definitions)]
- expected positive exposure* (~~in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions)~~ and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the weighted average over time of *expected exposures* where the weights are the proportion that an individual *expected exposures* represents of the entire time interval; when calculating the minimum capital requirement, the average is taken over the first year or, if all the contracts within the *netting set* mature before one year, over the time period of the longest-maturity contract in the *netting set*.  
[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]
- exposure* (1) (in relation to a *firm* but subject to (2) and (6)) the maximum loss which the firm might suffer if:
- (a) a counterparty or a group of connected counterparties fail to meet their obligations; or

(b) it realises assets or off-balance sheet positions.

- (2) ~~(in accordance with Article 77 of the *Banking Consolidation Directive* and for the purposes of the calculation of the *credit risk capital component* and the *counterparty risk capital component* (including *BIPRU 3* (Standardised credit risk), *BIPRU 4* (The IRB approach), *BIPRU 5* (Credit risk mitigation), *BIPRU 9* (Securitisation))~~ an asset or off-balance sheet item.

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

...

- (4) (in *IFPRU* and to calculate *own funds requirements* under Part Three Title II (credit risk and counterparty credit risk)) has the meaning in article 5(1) of the ~~*EU-CRR*~~ *UK CRR*.

- (5) (in *IFPRU* 8.2 (Large exposures) for the purpose of Part Four ((Large exposures) of the ~~*EU-CRR*~~ *UK CRR*) has the meaning in article 389 of the ~~*EU-CRR*~~ *UK CRR* (Large exposures: definitions).

...

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

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

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

*facilities* (in relation to a *recognised body*) the facilities and services which it provides in the course of carrying on *exempt activities*. References to the use of the facilities of an *RIE* ~~or *RAP*~~ are to be construed as follows:

(a) dealings or transactions on an *RIE* ~~or *RAP*~~ are references to dealings or transactions which are effected by means of the *RIE's* ~~or *RAP's*~~ facilities or which are governed by the rules of the *RIE* ~~or *RAP*~~;

(b) references to the use of the facilities of an *RIE* ~~or *RAP*~~ include use which consists of any such dealings or entering into any such transactions.

- FCA consolidation group* the *undertakings* included in the scope of prudential consolidation to the extent and in the manner prescribed in Part One, Title II, Chapter 2, Sections 2 and 3 of the ~~EU-CRR~~ UK CRR and IFPRU 8.1.3 R to IFPRU 8.1.4 R (Prudential consolidation) for which the *FCA* is the *consolidating supervisor* under ~~article 111 of the CRD~~ article 4B of the UK CRR.
- fee-paying electronic money issuer* any of the following when they issue *electronic money*:
- ...
- (c) ~~an EEA authorised electronic money institution;~~ [deleted];
- (d) a *full credit institution*, including a branch of the *full credit institution* within the meaning of article 4(17) of the ~~EU-CRR~~ UK CRR which is situated ~~within the EEA~~ in the United Kingdom and which has its head office in a territory outside the ~~EEA~~ United Kingdom in accordance with article 47 of the ~~EU-CRR~~ UK CRR;
- ...
- ~~A full credit institution that is an EEA firm is only a fee-paying electronic money issuer if it is exercising an EEA right in accordance with Part II of Schedule 3 to the Act (Exercise of passport rights by EEA firms) to issue electronic money in the United Kingdom. An EEA authorised electronic money institution is only a fee paying electronic money issuer if it is exercising a right under Article 3 of the Electronic Money Directive to issue electronic money in the United Kingdom. [deleted]~~
- fee-paying payment service provider* any of the following when they provide *payment services*:
- (a) a *payment institution*;
- (b) a *full credit institution*;
- (c) an *electronic money issuer* (except where it is an *electronic money issuer* whose only *payment service* activities are those relating to the issuance of *electronic money* by itself or if it is a *credit union*, a municipal bank or the National Savings Bank);
- (d) the Post Office Limited;
- (e) the Bank of England, other than when acting in its capacity as a monetary authority or carrying out functions of a public nature; and

- (f) government departments and local authorities, other than when carrying out functions of a public nature.

~~A full credit institution that is an EEA firm is only a fee-paying payment service provider if it is exercising an EEA right in accordance with Part 2 of Schedule 3 to the Act (exercise of passport rights) to provide payment services in the United Kingdom. An EEA authorised payment institution or an EEA authorised electronic money institution is only a fee-paying payment service provider if it is exercising a right under Article 25 of the Payment Services Directive or Article 3 of the Electronic Money Directive to provide payment services in the United Kingdom.~~

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

...

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

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

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

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

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

*final response* ...

- (3) (in DISP) either:
- (a) in relation to a MiFID complaint, a response in accordance with DISP 1.1A.29EUUK, DISP 1.1A.30EUUK and DISP 1.1A.31R; or
- (b) in relation to all other complaints, has the meaning given in DISP 1.6.2R(1).

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

*financial holding company* a financial institution that fulfils the following conditions:

- (1) (except in (2)) has the meaning in article 4(1)(20) of the ~~EU CRR~~ UK CRR.
- (2) (in *GENPRU* (except *GENPRU* 3) and *BIPRU* (except *BIPRU* 12)) a *financial institution* that fulfils the following conditions:
  - (a) its *subsidiary undertakings* are exclusively or mainly *CAD investment firms* or *financial institutions*;
  - (b) at least one of those *subsidiary undertakings* is a *CAD investment firm*; and
  - (c) it is not a *mixed financial holding company*.

*financial institution*

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

- (3) (except in ~~(1) and~~ (2) and subject to (4)) has the meaning in article 4(1)(26) of the ~~EU CRR~~ UK CRR.
- (4) (for the purposes of consolidated requirements in *IFPRU* ~~and in accordance with article 2(6) of CRD~~) the following:
- (a) financial institutions within the meaning in article 4(1)(26) of the ~~EU CRR~~ UK CRR; and
  - (b) those institutions permanently excluded by article 2(5) of *CRD* (Scope) with the exception of the ~~ESCB~~ *central banks* as defined in article 4(1)(~~45~~46) of the ~~EU CRR~~ UK CRR.

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

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



...

(2) ...

(3) (in *IFPRU*) has the meaning in article 4(50) of the ~~*EU-CRR*~~ *UK CRR*.(4) (~~for a *UCITS custodial asset*~~) an instrument specified in Section C of Annex I to *MiFID*: ~~[deleted]~~*financial promotion* ...(2) (in relation to *COBS* 3.2.1R(3) and *COBS* 4.3.1R) (in addition to (1)) a marketing communication within the meaning of the *UK provisions which implemented MiFID* made by a firm in connection with its *MiFID*, *equivalent third country* or *optional exemption business*.(3) (in *MCOB* 3A), in addition to (1), any advertising or marketing communications within the meaning of the *UK provisions which implemented* articles 10 or 11 of the *MCD* made by an *MCD firm* in relation to an *MCD credit agreement*.(4) (in *ICOBS* and in relation to a *life policy*, in *COBS* 3.2.1R(3) and *COBS* 4.3.1R), in addition to (1), any marketing communication within the meaning of the *UK provisions which implemented* article 17(2) of the *IDD*.[Note: articles 10 and 11 of the ~~*MCD*~~ and article 17(2) of the *IDD*]*financial sector entity*has the meaning in article 4(1)(27) of the ~~*EU-CRR*~~ *UK CRR*.*Financial Services Register*the public record, as required by section 347 of the *Act* (The public record), regulation 4 of the *Payment Services Regulations* (The register of certain payment service providers), regulation 4 of the *Electronic Money Regulations* and article 8 of the *MCD Order*, of every:

...

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

...

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

...

- FINREP firm*
- (a) a *credit institution* or *investment firm* subject to article 99(2) of the ~~EU CRR~~ UK CRR that is also subject to article 4 of Regulation (EC) No 1606/2002; or
  - (b) ~~a *credit institution* other than one referred to in article 4 of Regulation (EC) No 1606/2002 that prepares its consolidated accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in article 6(2) of that Regulation. [deleted]~~

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

*foreign currency loan*

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

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

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

*full CRD credit institution*

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

*full-scope UK AIFM*

a *UK AIFM* which:

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

*funded credit protection*

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

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

*future*

- (1) the *investment*, specified in article 84 of the *Regulated Activities Order* (Futures), which is in summary: rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made and futures and forwards to which article 84(1A), (1B), (1C), (1CA) or (1D) of the *Regulated Activities Order* applies.
- (2) (in *COLL*) in addition and to the extent it does not fall within (1), an *investment* which would have been within the definition of “future” in the *FCA Handbook* [immediately before *exit day*]

*general market risk*

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

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

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

*general wrong-way risk*

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

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

*government and public security*

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

...

- (2) (in *COLL*) in addition and to the extent it does not fall within (1), an *investment* which would have been within the

definition of “government and public security” in the *FCA Handbook* [immediately before *exit day*].

*group*

...

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

...

*group of connected clients*

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

*hedging set*

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

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

*Home State*

...

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

...

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

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

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

- (a) in the case of an *issuer* of *debt securities* the denomination per unit of which is less than EUR 1000 or an *issuer* of *shares*:
- (ii) where the *issuer* is incorporated in the *EEA*, the *EEA State* in which it has its registered office;
  - (ii) where the *issuer* is incorporated in a third country, the *EEA State* chosen by the *issuer* from among the *EEA States* where its securities are admitted to trading on a *regulated market*; the choice of *Home State* shall remain valid unless the *issuer* has chosen a new *Home State* under (c) and has disclosed the choice in accordance with *DTR 6.4.2R* and *DTR 6.4.3R*.

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

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

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

...

(11) ~~(in REC) in relation to an EEA market operator, the EEA State in which it has its registered office, or if it has no registered office, its head office. [deleted]~~

(12) (in relation to a person who has received authorisation under article 18 of the EU auction regulation) the *EEA state* in which the person is established and authorised under the EU auction regulation.

...

(17) (in relation to a TP firm) the EEA State that was indicated by the EU measure under which, immediately before exit day, the TP firm derived its authorisation to carry on a regulated activity in the UK.

*Home State  
regulator*

(1) ~~(in relation to an EEA firm) (as defined in paragraph 9 of Schedule 3 to the Act (EEA Passport Rights)) the competent authority (under the relevant Single Market Directive or the EU auction regulation) of an EEA State (other than the United Kingdom) in relation to the EEA firm concerned.~~

(2) ~~(in relation to a UK firm or UCITS scheme) the FCA or PRA as the case may be. [deleted]~~

(3) ~~(in relation to a Treaty firm) (as defined in paragraph 1 of Schedule 4 to the Act (Treaty Rights)) the competent authority of the firm's Home State for the purpose of its Home State authorisation. [deleted]~~

...

*Host State*

(1) ~~(in LR and PR) as defined in Article 2.1(n) of the Prospectus Directive) the EEA State where an offer to the public is made or admission to trading is sought, when different from the Home State. [deleted]~~

(1A) ~~(in DTR) an EEA State in which securities are admitted to trading on a regulated market, if different from the Home State. [deleted]~~

(2) ~~(except in LR, PR and DTR and except in relation to MiFID) the EEA State in which an EEA firm, a UK firm, or a Treaty firm is exercising an EEA right or Treaty right to establish a branch or provide cross border services. [deleted]~~

...

- (4) ~~(in relation to the *UCITS Directive*) the *EEA State*, other than the *UCITS Home State*, in which *units* of a *UCITS* are marketed in accordance with a notification made under article 93 of that directive. [deleted]~~
- ...
- Host State regulator*
- (1) ~~(in relation to an *EEA firm* or a *Treaty firm* exercising an *EEA right* or *Treaty right* in the *United Kingdom*) the *FCA* or *PRA* as the case may be. [deleted]~~
- (2) ~~(in relation to a *UK firm*) (as defined in paragraph 11 of Schedule 3 to the *Act* (*EEA Passport Rights*)) the *competent authority* (under the relevant *Single Market Directive* or the *auction regulation*) of an *EEA State* (other than the *United Kingdom*) in relation to a *UK firm's* exercise of *EEA rights* there. [deleted]~~
- (3) ...
- (4) ~~(in relation to an *EEA UCITS scheme* which is a *recognised scheme*) the *FCA*. [deleted]~~
- (5) ~~(in relation to a *UCITS* that is the subject of a notification in accordance with article 93 of the *UCITS Directive*) the *competent authority* of an *EEA State* (other than the *United Kingdom*) in which *units* of the *UCITS* may be marketed to the public. [deleted]~~
- ICD claim* a claim:
- (a) against a *MiFID investment firm* (including a *credit institution* which is a *MiFID investment firm*), ~~whether established in the *United Kingdom* or in another *EEA State*~~ (or, where applicable, a *successor* of such a *firm*); and
- ...
- IDD* Insurance Distribution Directive, Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast).  
[Note: See <http://eur-lex.europa.eu/eli/dir/2016/97/oj>]
- IDD IPID Regulation* the UK version of Commission Implementing Regulation (EU) 2017/1469 of 11 August laying down a standardised presentation format for the insurance product information document, which is part of UK law by virtue of the EUWA.  
[Note: See [http://eur-lex.europa.eu/eli/reg\\_impl/2017/1469/oj](http://eur-lex.europa.eu/eli/reg_impl/2017/1469/oj)]

<i>IDD POG Regulation</i>	<u>the UK version of</u> Commission Delegated Regulation (EU) No 2017/2358 of 21 September 2017, supplementing the <i>IDD</i> of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors, <u>which is part of UK law by virtue of the EUWA.</u>
<i>IDD Regulation</i>	<u>the UK version of</u> Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017, supplementing the <i>IDD</i> of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products, <u>which is part of UK law by virtue of the EUWA.</u>
<i>IFPRU investment firm</i>	an <i>investment firm</i> , as defined in article 4(1)(2) of the <del>EU-CRR</del> <u>UK CRR</u> (including a <i>collective portfolio management investment firm</i> ), that satisfies the following conditions: <ul style="list-style-type: none"> <li>(a) it is a <i>firm</i>;</li> <li>(b) its head office is in the <i>UK</i> and it is not otherwise excluded under <i>IFPRU</i> 1.1.5R; and</li> <li>(c) it is not a <i>designated investment firm</i>; that is not excluded under <i>IFPRU</i> 1.1.5R (Exclusion of certain types of firms).</li> </ul>
<i>IFR</i>	<u>the UK version of</u> Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, <u>which is part of UK law by virtue of the EUWA.</u>
<i>IFR transactions by acquirers operating in the United Kingdom</i>	all transactions subject to the <i>IFR</i> acquired by: <ul style="list-style-type: none"> <li>(a) <i>UK-based acquirers</i> (or an <i>operator</i> acting as such an <i>acquirer</i>) resulting in payments to merchants located in the <del>United Kingdom</del> <u>UK</u>, where the <i>card issuer</i> is located in the <del>EEA</del> <u>UK</u>;</li> <li>(b) <i>UK-based acquirers</i> (or an <i>operator</i> acting as such an <i>acquirer</i>) resulting in payments to merchants located outside the <del>United Kingdom</del> <u>UK</u>, where the <i>card issuer</i> is located in the <del>EEA</del> <u>UK</u>; and</li> <li>(c) non-<i>UK-based acquirers</i> (or an <i>operator</i> acting as such an <i>acquirer</i>) resulting in payments to merchants located in the <del>United Kingdom</del> <u>UK</u>, where the <i>card issuer</i> is located in the <del>EEA</del> <u>UK</u>.</li> </ul>



<i>IFR transactions by card issuers operating in the United Kingdom</i>	all transactions subject to the <i>IFR</i> on cards issued by <i>UK-based card issuers</i> (or an <i>operator</i> acting as such <del>an</del> <u>a card issuer</u> ), where the <i>acquirer</i> is located in the <del>EEA</del> <u>UK</u> .
<u>EU-adopted IFRS</u>	<u>EU-adopted International Financial Reporting Standards</u>
<i>injured party</i>	(in <i>ICOBS</i> ) a resident of the <u>United Kingdom</u> or the <i>EEA</i> entitled to compensation in respect of any loss or injury caused by <i>vehicles</i> .  [Note: article 1(2) of Directive 72/166/EC (First Motor Insurance Directive)]
<i>initial capital</i>	<p>(1) [deleted]</p> <p>(2) [deleted]</p> <p>(3) [deleted]</p> <p>(3A) (in <i>IPRU(INV)</i> 11 <del>and in accordance with article 28(1) of the CRD</del>) the amount of <i>own funds</i> referred to in article 26(1)(a) to (e) of the <del>EU-CRR</del> <u>UK CRR</u> and calculated in line with Part Two of those Regulations (<i>Own funds</i>).  [Note: article 28(1) of the <i>CRD</i>]</p> <p>(4) (in the case of a <i>BIPRU firm</i>) <i>capital resources</i> included in stage A (Core tier one capital) of the <i>capital resources table</i> plus <i>capital resources</i> included in stage B of the <i>capital resources table</i> (Perpetual non-cumulative preference shares);</p> <p>(5) <del>(in the case of an institution that is an EEA firm) capital resources calculated in accordance with the CRD implementation measures of its Home State for Article 4 of the Capital Adequacy Directive (Definition of initial capital) or Article 9 of the Banking Consolidation Directive (Initial capital requirements);</del> [deleted]</p> <p>(6) (for the purposes of the definition of <i>dealing on own account</i> in <i>BIPRU</i> and in the case of an <i>undertaking</i> not falling within (3) or (4)) <i>capital resources</i> calculated in accordance with (3) and paragraphs (3) and (4) of the definition of <i>capital resources</i>.</p> <p>(7) (in <i>IPRU(INV)</i> 13) the initial capital of a <i>firm</i> calculated in accordance with <i>IPRU(INV)</i> 13.1A.6R.</p> <p>(8) (for an <i>IFPRU investment firm</i> <del>and in accordance with article 28(1) of CRD</del>) the amount of <i>own funds</i> referred to in article</p>

26(1)(a) to (e) of the ~~EU CRR~~ UK CRR and calculated in accordance with Part Two of those Regulations (Own funds).

[Note: article 28(1) of *CRD*]

- (9) (for the purpose of the definition of dealing on own account in *IFPRU*) the amount of *own funds* referred to in article 26(1)(a) to (e) of the ~~EU CRR~~ UK CRR and calculated in accordance with Part Two of those Regulations (Own funds).
- institution*
- (1) has the meaning in article 4(1)(3) of the ~~EU CRR~~ UK CRR.
- (2) (for the purposes of *GENPRU* and *BIPRU*) includes a *CAD investment firm*.
- instrument constituting the fund*
- ...
- (ba) ~~(in relation to an EEA UCITS scheme) the fund rules or instrument of incorporation of such a scheme; [deleted]~~
- ...
- insurance-based investment product*
- a contract of insurance which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations, and does not include:
- ...
- (d) officially recognised occupational pension schemes falling under the scope of the UK provisions which implemented Directive 2003/41/EC or the UK provisions which implemented Directive 2009/138/EC;
- ...
- insurance holding company*
- (1) a *parent undertaking*, other than an *insurance undertaking*, the main business of which is to acquire and hold participations in *subsidiary undertakings* and which fulfils the following conditions:
- (a) its *subsidiary undertakings* are either exclusively or mainly *insurance undertakings*; and
- (b) at least one of those *subsidiary undertakings* is an *insurer* ~~or an EEA firm that is a regulated insurance entity~~ or a *reinsurance undertaking*; a *parent undertaking*, other than an *insurance undertaking*, that fulfils the conditions in paragraphs (1)(a) and (b) of this definition is not an *insurance holding company* if:

- (c) it is a *mixed financial holding company*; and
- (d) notice has been given in accordance with ~~Article 4(2) of the *Financial Groups Directive*~~ Regulation 2 of the *Financial Groups Directive Regulations* that the *financial conglomerate* of which it is a *mixed financial holding company* is a *financial conglomerate*.

*insurance sector*

a sector composed of one or more of the following entities:

- (a) ~~“Solvency II undertaking”~~ “UK Solvency II firm” as defined in the PRA Rulebook: Glossary;

...

*insurance special purpose vehicle*

an *undertaking* whether incorporated or not, which has received authorisation in accordance with the UK provisions which implemented article 211(1) or (3) of the *Solvency II Directive* and:

- (a) which assumes risks from an insurer or a *regulated insurance entity*; and

...

*interest-rate contract*

interest-rate contracts listed in paragraph 1 of Annex II to the ~~EU CRR~~ UK CRR.

*internal approaches*

one or more of the following, as referred to in the ~~EU CRR~~ UK CRR:

- (a) the Internal Ratings Based Approach in article 143(1);
- (b) the Internal Models Approach in article 221;
- (c) the own estimates approach in article 225;
- (d) the Advanced Measurement Approaches in article 312(2);
- (e) the Internal Model Method and internal models in articles 283 and 363; and
- (f) the internal assessment approach in article 259(3).

EU-adopted international accounting standards

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

EU-adopted International

international financial accounting standards within the meaning of EC Regulation No 1606/2002 of the European Parliament and of the

*Financial Reporting Standards* Council of 19 July 2002 as adopted from time to time by the European Commission in accordance with that Regulation.

*intra-group transactions* ~~(in accordance with Article 2(18) of the *Financial Groups Directive (Definitions)*)~~ all transactions by which *regulated entities* within a *financial conglomerate* rely either directly or indirectly upon other *undertakings* within the same *financial conglomerate* or upon any *person* linked to the *undertakings* within that *financial conglomerate* by *close links*, for the fulfilment of an obligation whether or not contractual, and whether or not for payment.

[Note: article 2(18) of the *Financial Groups Directive (Definitions)*]

*investment firm* (1) any person whose regular occupation or business is the provision of one or more *investment services* to third parties and/or the performance of one or more investment activities on a professional basis.

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

(2) (in *REC*) a *MiFID investment firm*, or a person who would be a *MiFID investment firm* if it had its head office in the ~~EEA~~ UK.

(3) (in the definition of *IDD* ancillary insurance intermediary, and *IFPRU* and *BIPRU* 12) has the meaning in article 4(1)(2) of the ~~EU CRR~~ UK CRR.

[Note: article 2(1)(4) of the *IDD*]

...

*investment management firm* a *firm* whose *permitted activities* include *designated investment business*, which is not an *authorised professional firm*, *bank*, *IFPRU investment firm*, *BIPRU firm*, *collective portfolio management firm*, *credit union*, *energy market participant*, *friendly society*, *ICVC*, *insurer*, *media firm*, *oil market participant*, or service company, ~~*incoming EEA firm* (without a *top-up permission*), *incoming Treaty firm* (without a *top-up permission*), or *UCITS-qualifier* (without a *top-up permission*)~~, whose *permission* does not include a *requirement* that it comply with *IPRU-INV* 3 or *IPRU-INV* 13 (*Personal investment firms*) and which is within (a), (b) or (c):

...

(c) a *firm*:

...

(ii) for which the most substantial part of its gross income (including *commissions*) from the *designated investment business* included in its *Part 4A permission* is derived from one or more of the following activities

(based, for a *firm* given a *Part 4A permission* after *commencement*, on the business plan submitted as part of the *firm's* application for *permission* or, for a *firm* authorised under section 25 of the Financial Services Act 1986, on the *firm's* financial year preceding its *authorisation* under the Act):

...

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

...

*investment service* ~~any of the following involving the provision of a service in relation to a *financial instrument*:~~ any of the services listed in Part 3 of Schedule 2 to the *Regulated Activities Order*, relating to any of the instruments listed in Part 1 of Schedule 2 to that order, that is:

...

[Note: article 4(1)(2) 2(2) of, and section A of Annex 1 to, ~~*MiFID*~~ and article 6(5) of the ~~*auction regulation*~~ *MiFIR*]

*investment services and/or activities* ~~any of the services and activities listed in Section A of Annex I to *MiFID* relating to any *financial instrument*~~ any of the services and activities listed in Part 3 of Schedule 2 to the *Regulated Activities Order*, relating to any of the instruments listed in Part 1 of Schedule 2 to that order, that is:

...

[Note: article 4(1)(2) 2(2) of, and section A of Annex 1 to, ~~*MiFID*~~ and article 6(5) of the ~~*auction regulation*~~ *MiFIR*]

*investment trust* a *company* which:

- (a) is approved by the Commissioners for HM Revenue and Customs under sections 1158 and 1159 of the Corporation Tax Act 2010 (or, in the case of a newly formed *company*, has declared its intention to conduct its affairs so as to obtain such approval); or
- (b) (for the purposes of the definitions of *non-mainstream pooled investment* and *packaged product* only) is resident in an *EEA State* ~~other than the *United Kingdom*~~ and would qualify for such approval if resident in the *United Kingdom*.

*IRB permission* ~~an *Article 129 implementing measure*~~, a requirement or a waiver that requires a *BIPRU firm* or a *CAD investment firm* to use the *IRB approach*.

<i>key investor information</i>	<p>(1) (for a <i>UCITS</i>) key information for investors on the essential elements of a <i>UCITS scheme</i> <del>or <i>EEA UCITS scheme</i></del>, as detailed <del>in article 78 of the <i>UCITS Directive</i></del> and in the <i>KII Regulation</i>.</p> <p>(2) ...</p>
<i>KII Regulation</i>	<u>the UK version of Commission Regulation (EU) No 583/2010, specifying the form and contents of <i>key investor information</i>, the text of which is reproduced in <i>COLL Appendix 1</i> <del>EU Appendix 1</del>UK, which is part of <i>UK law</i> by virtue of the <i>EUWA</i>.</u>
<i>KIRB</i>	<p>(for the purposes of <i>BIPRU 9</i> (Securitisation), in relation to a <i>securitisation</i> (within the meaning of paragraph (2) of the definition of securitisation) <del>and in accordance with Part 1 of Annex IX of the <i>Banking Consolidation Directive</i> (Securitisation definitions)</del>) 8% of the <i>risk weighted exposure amounts</i> that would be calculated under the <i>IRB approach</i> in respect of the <i>securitised exposures</i>, had they not been <i>securitised</i>, plus the amount of <i>expected losses</i> associated with those <i>exposures</i> calculated under the <i>IRB approach</i>.</p> <p><u>[Note: Part 1 of Annex IX of the <i>Banking Consolidation Directive</i> (Securitisation definitions)]</u></p>
<i>large exposure</i>	<p>(1) (in <i>BIPRU</i>) the <i>exposure</i> of a <i>firm</i> to a <i>counterparty</i>, or a <i>group of connected clients</i>, whether in the <i>firm's non-trading book</i> or <i>trading book</i> or both, which in aggregate equals or exceeds 10% of the <i>firm's capital resources</i>.</p> <p>(2) (except in (1)) has the meaning in article 392 of the <del><i>EU CRR</i></del> <u><i>UK CRR</i></u> (Definition of a large exposure).</p>
<i>lending firm</i>	<p><del>(in accordance with Article 90 of the <i>Banking Consolidation Directive</i> (Credit risk mitigation) and for the purposes of rules in <i>BIPRU</i> about <i>credit risk mitigation</i>)</del> a <i>firm</i> that has an <i>exposure</i>, whether or not deriving from a loan.</p> <p><u>[Note: article 90 of the <i>Banking Consolidation Directive</i> (Credit risk mitigation)]</u></p>
<i>leverage</i>	<p><del>(in accordance with article 4(1)(v) of <i>AIFMD</i>)</del> any method by which an <i>AIFM</i> increases the exposure of an <i>AIF</i> it manages whether through borrowing of cash or <i>securities</i>, or leverage embedded in <i>derivative</i> positions or by any other means.</p> <p><u>[Note: article 4(1)(v) of <i>AIFMD</i>]</u></p>
<i>limited activity firm</i>	has the meaning in article 96(1) of the <del><i>EU CRR</i></del> <u><i>UK CRR</i></u> .
<i>limited licence firm</i>	has the meaning in article 95(1) of the <del><i>EU CRR</i></del> <u><i>UK CRR</i></u> .
<i>liquidity facility</i>	(for the purposes of <i>BIPRU 9</i> (Securitisation), in relation to a <i>securitisation</i> (within the meaning of paragraph (2) of the definition

of securitisation) and in accordance with Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions) the *securitisation position* arising from a contractual agreement to provide funding to ensure timeliness of cash-flows to investors.

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

*liquidity risk*

(1) (in *COLL* and in accordance with article 3(8) of the *UCITS implementing Directive*) the risk that a position in a *UCITS*' portfolio cannot be sold, liquidated or closed out at limited cost in an adequately short timeframe and that the ability of the *scheme* to comply at any time with *COLL* 6.2.16R (Sale and redemption) or, in the case of an *EEA UCITS scheme*, article 84(1) of the *UCITS Directive* is thereby compromised.

[Note: article 3(8) of the *UCITS implementing Directive*]

...

*listed activity*

an activity listed in Annex 1 to the *CRD* the *Annex 1 Activities*.

*local firm*

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

*long settlement transaction*

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)) a transaction where a counterparty undertakes to deliver a security, a *commodity*, or a *foreign currency* amount against cash, other *CRD financial instruments*, or *commodities*, or vice versa, at a settlement or delivery date that is contractually specified as more than the lower of the market standard for this particular transaction and five *business days* after the date on which the *person* enters into the transaction.

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

*loss*

(in accordance with Article 4(26) of the *Banking Consolidation Directive* (Definitions) and for the purposes of the *IRB approach*, the *standardised approach* to credit risk and *BIPRU 5* (Credit risk mitigation)) economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument.

[Note: article 4(26) of the *Banking Consolidation Directive* (Definitions)]

(1) (in *BIPRU* and in accordance with Article 4(26) of the *Banking Consolidation Directive* (Definitions) and for the purposes of the *IRB approach*, the *standardised approach* to credit risk and *BIPRU 5* (Credit risk mitigation)) economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument.

[Note: article 4(26) of the *Banking Consolidation Directive (Definitions)*]

- (2) (except in (2)) has the meaning in article 5(1) of the *EU-CRR UK CRR*.

*loss given default*

(in accordance with ~~Article 4(27) of the *Banking Consolidation Directive (Definitions)*~~ and in relation to the *IRB approach*) the ratio of the *loss* on an *exposure* due to the *default* of a counterparty to the amount outstanding at *default*.

[Note: article 4(27) of the *Banking Consolidation Directive (Definitions)*]

*low frequency liquidity reporting firm*

...

- (c) a *standard ILAS BIPRU firm* that meets the following conditions:
- (i) it does not have any *annual report and accounts* and it has been too recently established to be required to have produced any;
  - (ii) it has submitted a projected balance sheet to the *FCA* or *PRA* (as the case may be) as part of an application for a *Part 4A permission* or a variation of one; and
  - (iii) the most recent such balance sheet shows that the *firm* will meet the size condition set out in (b) in all periods covered by those projections.

In respect of ~~an *incoming EEA firm* or a *third country BIPRU firm*~~ that is also a *standard ILAS BIPRU firm* and which reports on the basis of its branch operation in the *United Kingdom*, if the balance sheet assets attributable to the *UK branch* can be determined from the *firm's* most recent *annual report and accounts* (or, if applicable, the projected balance sheet) or any *data item* submitted by the *firm*, then paragraphs (b) and (c) apply at the level of the *branch* rather than of the *firm*.

*M2G*

the MiFID 2 Onshoring Guide.

*management body*

- (1) (other than in (2)) (in accordance with article ~~3(7) of *CRD*~~ and article 4(1)(36) of *MiFID* 4(1)(9) of the *UK CRR*) the *governing body* and *senior personnel* who are empowered to set the *person's* strategy, objectives and overall direction, and which oversee and monitor management decision-making in the following:
- (a) a *common platform firm* (in relation to the requirements imposed by or under the *UK provisions* which implemented *MiFID* or *MiFIR*); or



- (b) a recognised investment exchange; or
- (c) a data reporting services provider.

[Note: article 4(1)(36) of *MiFiD*]

- (2) (in *COLL* and in *SYSC* 19E ~~and in accordance with article 2(1)(s) of the *UCITS Directive*~~), the governing body of a management company or depositary of a *UCITS* scheme ~~or an *EEA UCITS* scheme~~, as applicable, with ultimate decision-making authority comprising the supervisory and the managerial function or only the managerial function, if the two functions are separated.

[Note: article 2(1)(s) of the *UCITS Directive*]

management  
company

~~(in accordance with article 2(1)(b) of the *UCITS Directive*)~~ a company, the regular business of which is the management of *UCITS* in the form of unit trusts, common funds (including *authorised contractual schemes*) or investment companies (*collective portfolio management*), including, where permitted by its *Home State regulator*, the additional services referred to in article 6(3) of that ~~directive~~. as defined in section 237(2) of the *Act*, that is:

- (1) a company, the regular business of which is:
  - (a) the management of *UK UCITS*; or
  - (b) the management of other collective investment undertakings which are not *UK UCITS* (and whose *units* cannot be marketed as such) and for which the *management company* is subject to prudential supervision, where undertaken in addition to the activity in sub-paragraph (a).
- (2) For the purposes of paragraph 1(a) above, the regular business of a *management company* may include the following services, where permitted by the *FCA* and where undertaken in addition to the activity in paragraph 1 (a) above:
  - (a) management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more *financial instruments*; and
  - (b) the following non-core services, where provided in addition to the services in paragraph 2(a) above:
    - (i) investment advice concerning one or more *financial instruments*;

	(ii) <u>safekeeping and administration in relation to units of collective investment undertakings.</u>
	(3) <u>For the purposes of paragraph 1(b) above, the management of other collective investment schemes includes the functions referred to in schedule 6 of the Regulated Activities Order.</u>
manager	(1) (in relation to an AUT) the <del>firm, including, if relevant, an EEA UCITS management company or incoming EEA AIFM</del> which is the manager of the AUT in accordance with the <i>trust deed</i> .
	(1A) (in relation to an OEIC which is <del>an undertaking for collective investment in transferable securities within the meaning of the UCITS Directive</del> a UK UCITS or which is an AIF, and which has appointed a <i>person</i> to manage the <i>scheme</i> ) the <i>person</i> appointed to manage the scheme.
	...
managing a <u>UK UCITS</u>	the <i>regulated activity</i> , specified in article 51ZA of the <i>Regulated Activities Order</i> of carrying on collective portfolio management within the meaning of the <i>UCITS Directive</i> , in relation to <del>an</del> a <u>UK UCITS</u> .
margin agreement	( <del>in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions)</del> and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) a contractual agreement or provisions to an agreement under which one counterparty must supply collateral to a second counterparty when an <i>exposure</i> of that second counterparty to the first counterparty exceeds a specified level.  <u>[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]</u>
margin lending transaction	( <del>in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions)</del> and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) transactions in which a <i>person</i> extends credit in connection with the purchase, sale, carrying or trading of securities; the definition does not include other loans that happen to be secured by securities collateral.  <u>[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]</u>
margin period of risk	( <del>in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions)</del> and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement

transactions)) the time period from the last exchange of collateral covering a *netting set* of transactions with a defaulting counterpart until that counterpart is closed out and the resulting market risk is re-hedged.

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

*margin threshold* (~~in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)~~ and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the largest amount of an *exposure* that remains outstanding until one party has the right to call for collateral.

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

*Market Abuse Regulation* the UK version of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, which is part of UK law by virtue of the EUWA.

*marketing* (1) ...

(2) (except in *COLL*) a direct or indirect offering or placement, at the initiative of the *AIFM* or on behalf of the *AIFM* of *units* or *shares* of an *AIF* it manages, to or with investors domiciled or with a registered office in the ~~EEA~~ UK.

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

*market maker* (1) ...

(2) (in ~~*COBS* and *DTR*~~) a *person* who holds himself or herself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling *financial instruments* against ~~his~~ that person's proprietary capital at prices defined by ~~him~~ that person.

[Note: article 4(1)(7) ~~2(1)(6)~~ of ~~*MiFID*~~ *MiFIR*]

(3) [deleted]

(4) (in *DTR*) a person who holds himself or herself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against that person's proprietary capital at prices defined by that person.

market making  
activities

(as defined in article 2(1)(k) of the *short selling regulation*) the activities of an *investment firm*, a *credit institution*, a third-country entity, or a firm as referred to in point (l) of article 2(1) of *MIFID*, which is a member of a *trading venue* or of a market in a third country, the legal and supervisory framework of which has been declared equivalent by the European Commission pursuant to article 17(2) of the *short selling regulation* where it deals as principal in a *financial instrument*, whether traded on or outside a *trading venue*, in any of the following capacities:

- (a) by posting firm, simultaneous two-way quotes of comparable size and at competitive prices, with the result of providing liquidity on a regular and ongoing basis to the market; or
- (b) as part of its usual business, by fulfilling orders initiated by clients or in response to clients' requests to trade; or
- (c) by hedging positions arising from the fulfilment of tasks under points (a) and (b).

(as defined in article 2(1)(k) of the *short selling regulation*) means the activities of an investment firm, a credit institution, a third-country entity, or a firm as referred to in point (ka), which is a member of a trading venue or of a market in a third country, the legal and supervisory framework of which has been declared equivalent by the Commission pursuant to article 17(2) as it had effect before exit day, or by the Treasury in accordance with that paragraph as amended, or with regulation 16 of the Short Selling (EU Exit) (Amendment) Regulations 2018, where it deals as principal in a financial instrument, whether traded on or outside a trading venue, in any of the following capacities:

- (i) by posting firm, simultaneous two-way quotes of comparable size and at competitive prices, with the result of providing liquidity on a regular and ongoing basis to the market;
- (ii) as part of its usual business, by fulfilling orders initiated by clients or in response to clients' requests to trade; or
- (iii) by hedging positions arising from the fulfilment of tasks under points (i) and (ii).

[Note: Point 2(1)(ka) of the *short selling regulation* provides: For the purposes of point (k), the firms referred to in this point are firms which provide investment services and/or perform investment activities consisting exclusively in dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the

performance of contracts entered into by such firms is assumed by clearing members of the same markets.]

*market operator*

a *person* or persons who manages and/or operates the business of a regulated market and who may be the regulated market itself.

[Note: article ~~(4)(1)(18) MiFID~~ 2(1)(10) of MiFIR]

*master AIF*

~~(in accordance with article 4(1)(y) of AIFMD)~~ an *AIF* in which another *AIF* (a *feeder AIF*) invests or has an exposure in accordance with the definition of ‘*feeder AIF*’.

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

*master UCITS*

~~(in accordance with article 58(3) of the UCITS Directive)~~ a *UCITS scheme*, an *EEA UCITS scheme* or a *sub-fund* of such a *scheme* where:

- (a) at least one of its *Unitholders* is a *feeder UCITS*;
- (b) it is not itself a *feeder UCITS*; and
- (c) it does not hold *units* of a *feeder UCITS*.

[Note: article 58(3) of the *UCITS Directive*]

*merging UCITS*

(in *COLL* and in accordance with regulations 7 and 8 of the *UCITS Regulations 2011*) in relation to a *UCITS merger*, the *UCITS scheme*, ~~*EEA UCITS scheme*~~ or *sub-fund* of such a *scheme*, that under the proposed arrangements will be transferring all its assets and liabilities to the *receiving UCITS*.

*MiFID complaint*

any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service or a *redress determination*:

- (a) which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and
- (b) either:
  - (i) to which article 26 of the *MiFID Org Regulation* applies; or
  - (ii) which concerns the *equivalent business of a third country investment firm*.

[Note: For the application of article 26 of the *MiFID Org Regulation*, see the UK provisions which implemented articles 1(1), 1(3), 1(4), 39 and 41 of *MiFID*, article 1 of the *MiFID Org Regulation*, *DISP* 1.1A.3G and *DISP* 1.1A.4G]

[Note: a *MiFID complaint* which falls within the jurisdiction of the *Financial Ombudsman Service* is a *complaint*]

*MiFID investment firm*

- (1) (in summary) ~~(except in SUP 13, SUP 13A and SUP 14 in relation to notification of *passport* activity)~~ a firm to which *MiFID* applies would apply if it had its head office or registered office in the *EEA* including, for some purposes only, a *credit institution* and *collective portfolio management investment firm*.
- (2) (in full) a firm ~~(except in SUP 13, SUP 13A and SUP 14 in relation to notification of *passport* activity)~~ which is:
- (a) an *investment firm* with its head office in the *EEA* UK (or, if it has a registered office, that office);
  - (b) a *CRD credit institution* (only when providing an *investment service or activity* or when selling, or advising *clients* in relation to, *structured deposits*, for the purposes of:
    - (i) the ~~rules implementing~~ corresponding to the articles referred to in article 1(3) and article 1(4) of *MiFID*;
    - (ii) the requirements imposed upon it by and under *MiFIR*; and
    - (iii) the requirements imposed upon it by onshored regulations which were previously EU regulations made under *MiFID*);
  - (ba) *CRD credit institution* (only when providing an *investment service or activity*) in relation to *COMP* or *FEES* 6);
  - (c) a *collective portfolio management investment firm* (only when providing the services referred to in article 6(4) *AIFMD* or article 6(3) of the *UCITS Directive* in relation to the ~~rules which implemented~~ implementing the articles of *MiFID* referred to in article 6(6) of *AIFMD* or Article 6(4) of the *UCITS Directive* and for a *full-scope UK AIFM*, where relevant, ~~or the rules implementing which implemented~~ article 12(2)(b) of *AIFMD*);

unless, and to the extent that, it is a person to which Part 1 of Schedule 3 to the Regulated Activities Order or regulation 8 of the MiFI Regulations applies.

- (3) ~~(in SUP 13, SUP 13A and SUP 14 in relation to notification of *passport* activity)~~ an *investment firm* with its head office in the *EEA* (or, if it has a registered office, that office) unless, and to the extent that, ~~*MiFID* does not apply to it as a result of~~

article 2 (Exemptions) or article 3 (Optional exemptions) of *MiFID*. [deleted]

<i>MiFID ITS 19</i>	<u>the UK version of</u> Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of MTFs and OTFs and the notification to ESMA according to MiFID, <u>which is part of UK law by virtue of the EUWA.</u>
<i>MiFID ITS 2</i>	<u>the UK version of</u> Commission Implementing Regulation (EU) No 2017/1005 of 15 June 2017 laying down implementing technical standards with regard to the format and timing of the communication and publication of the suspension and removal of financial instruments from trading on a regulated market, an MTF or an OTF according to MiFID, <u>which is part of UK law by virtue of the EUWA.</u>
<i>MiFID ITS 3</i>	<u>the UK version of</u> Commission Implementing Regulation (EU) No 2017/1110 of 22 June 2017 laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications according to MiFID, <u>which is part of UK law by virtue of the EUWA.</u>
<i>MiFID ITS 4</i>	<u>the UK version of</u> Commission Implementing Regulation (EU) No 2017/1093 of 20 June laying down implementing technical standards with regard to the format of position reports by investment firms and market operators, <u>which is part of UK law by virtue of the EUWA.</u>
<i>MiFID ITS 4A</i>	<u>the UK version of</u> Commission Implementing Regulation (EU) No [xxxx/xxx] laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with MiFID, <u>which is part of UK law by virtue of the EUWA.</u>
<i>MiFID ITS 5</i>	<u>the UK version of</u> Commission Implementing Regulation (EU) No 2017/953 of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues according to MiFID of the European Parliament and of the Council on markets in financial instruments, <u>which is part of UK law by virtue of the EUWA.</u>
<i>MiFID/MiFIR requirements</i>	any of the requirements applicable to an <i>RIE</i> or an applicant to become an <i>RIE</i> imposed by <i>MiFIR</i> and any <u>formerly</u> directly applicable regulation made under <i>MiFID</i> or <u>EU MiFIR</u> , <u>which is an onshored regulation.</u>
<i>MiFID Org Regulation</i>	<u>the UK version of</u> Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing <i>MiFID</i> of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the

purposes of that Directive, which is part of UK law by virtue of the EUWA.

- MiFID RTS 1*      the UK version of Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing *MiFIR* with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and the obligation for investment firms to execute transactions in certain shares on a trading venue or a systematic internaliser, which is part of UK law by virtue of the EUWA.
- MiFID RTS 2*      the UK version of Commission Delegated Regulation (EU) No 2017/583 of 14 July 2016 supplementing *MiFIR* with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives, which is part of UK law by virtue of the EUWA.
- MiFID RTS 3*      the UK version of Commission Delegated Regulation (EU) No 2017/577 of 13 June 2016 supplementing *MiFIR* with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations, which is part of UK law by virtue of the EUWA.
- MiFID RTS 3A*      the UK version of Commission Delegated Regulation (EU) No 2017/1018 of 29 June 2016 supplementing *MiFID* with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions, which is part of UK law by virtue of the EUWA.
- MiFID RTS 6*      the UK version of Commission Delegated Regulation (EU) No 2017/589 of 19 July 2016 supplementing *MiFID* with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading, providing direct electronic access and acting as general clearing members, which is part of UK law by virtue of the EUWA.
- MiFID RTS 7*      the UK version of Commission Delegated Regulation (EU) No 2017/584 of 14 July 2016 supplementing *MiFID* with regard to regulatory technical standards specifying organisational requirements of regulated markets, multilateral trading facilities and organised trading facilities enabling or allowing algorithmic trading through their systems, which is part of UK law by virtue of the EUWA.
- MiFID RTS 8*      the UK version of Commission Delegated Regulation (EU) 2017/578 of 13 June 2016 supplementing *MiFID* with regard to regulatory technical standards specifying the requirements on market making agreements and schemes, which is part of UK law by virtue of the EUWA.



- MiFID RTS 9*                    the UK version of Commission Delegated Regulation (EU) No 2017/566 of 18 May 2016 supplementing *MiFID* with regard to regulatory technical standards on the ratio of unexecuted orders to transactions, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 10*                   the UK version of Commission Delegated Regulation (EU) 2017/573 of 6 June 2016 supplementing *MiFID* with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location and fee structures, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 11*                   the UK version of Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing *MiFID* with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange traded funds, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 12*                   the UK version of Commission Delegated Regulation (EU) No 2017/570 of 26 May 2016 supplementing *MiFID* with regard to regulatory technical standards on the determination of a material market in terms of liquidity relating to notifications of a temporary halt in trading, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 13*                   the UK version of Commission Delegated Regulation (EU) No 2017/571 of 2 June 2016 supplementing *MiFID* with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 14*                   the UK version of Commission Delegated Regulation (EU) No 2017/572 of 2 June 2016 supplementing *MiFIR* with regard to regulatory technical standards on the specification of the offering of pre-trade and post-trade data and the level of disaggregation, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 17*                   the UK version of Commission Delegated Regulation (EU) No 2017/568 of 24 May 2016 supplementing *MiFID* with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 18*                   the UK version of Commission Delegated Regulation (EU) No 2017/569 of 24 May 2016 supplementing *MiFID* with regard to regulatory technical standards for the suspension and removal of financial instruments from trading, which is part of UK law by virtue of the *EUWA*.
- MiFID RTS 21*                   the UK version of Commission Delegated Regulation (EU) No 2017/591 of 1 December 2016 supplementing *MiFID* with regard to regulatory technical standards for the application of position limits to

- commodity derivatives, which is part of UK law by virtue of the EUWA.
- MiFID RTS 22*      the UK version of Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing *MiFIR* with regard to regulatory technical standards for the reporting of transactions to competent authorities, which is part of UK law by virtue of the EUWA.
- MiFID RTS 23*      the UK version of Commission Delegated Regulation (EU) No 2017/585 of 14 July 2016 supplementing *MiFIR* with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities, which is part of UK law by virtue of the EUWA.
- MiFID RTS 25*      the UK version of Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing *MiFID* with regard to regulatory technical standards for the level of accuracy of business clocks, which is part of UK law by virtue of the EUWA.
- MiFID RTS 26*      the UK version of Commission Delegated Regulation (EU) 2017/582 of 29 June 2016 supplementing *MiFIR* with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing, which is part of UK law by virtue of the EUWA.
- MiFID RTS 27*      the UK version of Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing *MiFID* with regard to regulatory technical standards for the data to be provided by execution venues on the quality of execution of transactions, which is part of UK law by virtue of the EUWA.
- MiFID RTS 28*      the UK version of Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing *MiFID* with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, which is part of UK law by virtue of the EUWA.
- MiFIR*                the UK version of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, which is part of UK law by virtue of the EUWA.
- MiFIR Delegated Regulation*      the UK version of Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions, which is part of UK law by virtue of the EUWA.

<i>MiFIR indirect clearing RTS</i>	<u>the UK version of Commission Delegated Regulation (EU) 2017/2154 of 22 September 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, which is part of UK law by virtue of the EUWA.</u>
<i>mixed-activity holding company</i>	has the meaning given to the definition of “mixed activity holding company” in article 4(1)(22) of the <del>EU CRR</del> <u>UK CRR</u> .
<i>mixed financial holding company</i>	<del>in accordance with Article 2(15) of the Financial Groups Directive (Definitions))</del> a parent undertaking, other than a regulated entity, which meets the following conditions: <ul style="list-style-type: none"> <li>(a) it, together with its <i>subsidiary undertakings</i>, at least one of which is an <del>EEA</del> <u>UK</u> regulated entity, and other entities, constitutes a <i>financial conglomerate</i>;</li> <li>(b) it has been notified by its <i>coordinator</i> that its group is a <i>financial conglomerate</i> in accordance with <del>Article 4(2) of the Financial Groups Directive</del> <u>Regulation 1(2) of the Financial Groups Directive Regulations</u>; and</li> <li>(c) it has not been notified that its <i>coordinator</i> <del>and other relevant competent authorities have</del> <u>has</u> agreed not to treat the group as a <i>financial conglomerate</i> <del>in accordance with Article 3(3) or Article 3(3a) of the Financial Groups Directive where such group, in terms of the tests in GENPRU 3 Annex 4:</del> <ul style="list-style-type: none"> <li>(i) <u>does not meet Threshold Test 2 but meets Threshold Test 3; or</u></li> <li>(ii) <u>meets Threshold Test 2 but not Threshold Test 3.</u></li> </ul> </li> </ul>
<i>Motor Insurers’ Information Centre</i>	the information centre appointed <del>to meet the United Kingdom’s obligations under</del> <u>the UK provisions which implemented</u> article 23 of the <i>Consolidated Motor Insurance Directive</i> (Information Centres).
<i>multilateral system</i>	any system or facility in which multiple third-party buying and selling trading interests in <i>financial instruments</i> are able to interact in the system. [Note: article 4(1)(19) <del>2(1)(11)</del> of <del>MiFID</del> <u>MiFIR</u> ]
<i>multilateral trading facility</i>	(in accordance with article 3(1) of the <i>Regulated Activities Order</i> ): <ul style="list-style-type: none"> <li>(a) a <u>UK</u> multilateral trading facility (within the meaning of article <del>4(1)(22) of MiFID</del> <u>2(1)(14A) of MiFIR</u>) operated by an <i>investment firm</i>, a <i>credit institution</i> or a <i>market operator</i>; or</li> <li>(b) a facility which:</li> </ul>

- (i) is operated by an ~~investment firm~~ investment firm, a ~~credit institution~~ qualifying credit institution or a ~~market operator~~ market operator which does not have a ~~whose Home State~~ home State is not the United Kingdom; and
- (ii) if its operator had a ~~operator's Home State~~ home State was the United Kingdom, would be a ~~multilateral trading facility~~ UK multilateral trading facility within the meaning of article 4(1)(22) of ~~MiFID~~ MiFID 2(1)(14A) of MiFIR.

[Note: article 4(1)(22) of ~~MiFID~~ MiFID 2(1)(14A) of MiFIR]

*mutual society share* a *share*, excluding a deferred share issued by a *credit union*, which:

- (a) meets the requirements for common equity Tier 1 capital instruments under article 28 or 29; and
- (b) is issued by an institution which is of a type listed in article 27;

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

*near cash* *money, deposits or investments* which, in each case, fall within any of the following:

- (a) *money* which is deposited with an *eligible institution* or an *approved bank* in:
  - (i) a current account; or
  - (ii) a *deposit* account, if the *money* can be withdrawn immediately and without payment of a penalty exceeding seven days' interest calculated at ordinary commercial rates;
- (b) certificates of *deposit* issued by an *eligible institution* or an *approved bank* if immediately redeemable at the option of the holder;
- (c) *government and public securities*, if redeemable at the option of the holder or bound to be redeemed within two years;
- (d) bills of exchange which are *government and public securities*;
- (e) *deposits* with a *local* authority of a kind which fall within paragraph 9 of Part II of the First Schedule to the Trustee

*Investments Act 1961, and equivalent deposits with any local authority in another an EEA State, if the money can be withdrawn immediately and without payment of a penalty as described in (a).*

*netting set*

~~(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purpose of *BIPRU 13* (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions))~~ a group of transactions with a single counterparty that are subject to a legally enforceable bilateral netting arrangement and for which netting is recognised under *BIPRU 13.7* (Contractual netting), *BIPRU 5* (Credit risk mitigation) and, if applicable, *BIPRU 4.10* (The IRB approach: Credit risk mitigation); each transaction that is not subject to a legally enforceable bilateral netting arrangement, which is recognised under *BIPRU 13.7* must be interpreted as its own *netting set* for the purpose of *BIPRU 13*. Under the method set out at *BIPRU 13.6*, all *netting sets* with a single counterparty may be treated as a single *netting set* if negative simulated market values of the individual sets are set to zero in the estimation of *expected exposure (EE)*.

[Note: ~~BCD~~, Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and Annex III, Part 1, point 5 of the *Banking Consolidation Directive*]

*non-core concentration risk group counterparty*

~~(in accordance with Article 113(4)(c) of the *Banking Consolidation Directive*)~~ has the meaning in *BIPRU 10.9A.4R* (Definition of non-core concentration risk group counterparty), which is in summary (in relation to a *firm*) each counterparty which is its *parent undertaking*, its *subsidiary undertaking* or a *subsidiary undertaking* of its *parent undertaking*, provided that (in each case) both the counterparty and the *firm* satisfy the conditions in *BIPRU 10.9A.4R* (Definition of non-core concentration risk group counterparty).

[Note: article 113(4)(c) of the *Banking Consolidation Directive*]

*non-core large exposures group*

(in relation to a *firm*) all counterparties which:

- (1) are listed in the *firm's non-core large exposures group permission*;
- (2) satisfy the conditions in *IFPRU 8.2.6R* (Intra-group exposures: non-core large exposures group); and
- (3) for which *exposures* are exempted, under article 400(2)(c) of the ~~*EU-CRR*~~ *UK CRR* (Exemptions), from the application of article 395(1) of the ~~*EU-CRR*~~ *UK CRR* (Limits to large exposures).

<i>non-core large exposures group permission</i>	a permission referred to in <i>IFPRU</i> 8.2.6R given by the <i>FCA</i> for the purpose of article 400(2)(c) of the <del><i>EU CRR</i></del> <i>UK CRR</i> (Large exposures: exemptions).
<i>non-directive firm</i>	<p>(1) (in <i>SUP</i> 11 (Controllers and close links) and <i>SUP</i> 16 (Reporting requirements)) (in accordance with the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774)) a <i>UK domestic firm</i> other than:</p> <p>(a) a <del>credit institution authorised under the <i>Banking Consolidation Directive</i></del> that has permission under Part 4A of the <i>Act</i> to carry on the regulated activity of <u>accepting deposits</u>;</p> <p>(b) an <del>investment firm authorised under <i>MIFID</i></del> that has permission under Part 4A of the <i>Act</i> to carry on <u>regulated activities relating to investment services and/or activities in the UK</u>;</p> <p>(c) a <del>management company as defined in article 2(1)(b) of the <i>UCITS Directive</i>, authorised under that directive section 237 of the <i>Act</i></del> which is authorised by the <i>FCA</i>;</p> <p>(d) a <i>Solvency II firm</i>.</p> <p>...</p>
<del><i>non-EEA non-UK bank</i></del>	a <i>bank</i> which is a <i>body corporate</i> or <i>partnership</i> formed under the law of any country or territory outside the <del><i>EEA</i></del> <i>UK</i> .
<del><i>non-EEA non-UK feeder AIF</i></del>	a <i>UK AIF</i> or an <del><i>EEA AIF</i></del> that is a <i>feeder AIF</i> , the <i>master AIF</i> of which is a <del><i>non-EEA UK AIF</i></del> or is managed by a <del><i>non-EEA UK AIFM</i></del> .
<del><i>non-EEA non-UK sub-group</i></del>	<p>(1) (in <i>GENPRU</i> (except <i>GENPRU</i> 3) and <i>BIPRU</i> (except <i>BIPRU</i> 12)) a group of <i>undertakings</i> identified as a <del><i>non-EEA non-UK sub-group</i></del> in <i>BIPRU</i> 8.3.1R (Main consolidation rule for <del><i>non-EEA sub-groups non-UK sub-groups</i></del>); however where the provision in question refers to a <del><i>non-EEA sub-group</i></del> in another <i>EEA State</i> it means a group of <i>undertakings</i> identified in Article 73(2) of the <del><i>Banking Consolidation Directive</i></del> (Non-<del><i>EEA subgroups</i></del>) required to be supervised on a consolidated basis under Article 73(2) of the <del><i>Banking Consolidation Directive</i></del> by a competent authority in that <del><i>EEA State</i></del>.</p> <p>(2) (except in (1)) a group of <i>undertakings</i> identified in article 22 of the <i>EU CRR</i> (Sub-consolidation in cases of entities in third countries).</p>
<i>non-financial entity</i>	(as defined in article 2(1) of <i>MiFID RTS 21</i> ) a natural or legal <del>person</del> <u>person</u> other than:

- (a) ~~an a *MiFID* investment firm authorised in accordance with *MIFID*~~ as such by means of a *Part 4A permission* or an *investment firm* authorised in accordance with *MIFID*;
  - (b) a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council or a *CRD credit institution*;
  - (c) an insurance undertaking authorised as such by means of a *Part 4A permission* or in accordance with Directive 73/239/EEC;
  - (d) an assurance undertaking authorised as such by means of a *Part 4A permission* or in accordance with Directive 2002/83/EC of the European Parliament and of the Council;
  - (e) a reinsurance undertaking authorised as such by means of a *Part 4A permission* or in accordance with Directive 2005/68/EC of the European Parliament and of the Council;
  - (f) a *UCITS* and, where relevant, its *management company*, authorised as such by means of a *Part 4A permission* or in accordance with the *UCITS Directive*;
  - (g) an institution for occupational retirement provision within the meaning of article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council or an *occupational pension scheme*;
  - (h) an *alternative investment fund* managed by *AIFMs* authorised or registered in accordance with the *AIFMD* or authorised as such by means of a *Part 4A permission* or registered as such pursuant to the *Alternative Fund Managers Regulations 2013*;
  - (i) a *CCP* authorised in accordance with *EMIR* Regulation (EU) No 909/2014 of the European Parliament and of the Council or recognised as such by means of a recognition order under Part XVIII of the Act;
  - (j) a central securities depository authorised in accordance with *CDSR* Regulation (EU) No 909/2014 of the European Parliament and of the Council or recognised as such by means of a recognition order under Part XVIII of the Act.
- A third-country entity is a non-financial entity if it would not require authorisation under any of the aforementioned legislation if it was based in the *United Kingdom* and subject to *UK* law.

[Note: article 2 of *MiFID RTS 21*]

*non-listed company* (~~in accordance with article 4(1)(ac) of AIFMD~~) a *company* which has its registered office in the ~~EEA~~ UK and the *shares* of which are not admitted to trading on a ~~regulated market~~ UK regulated market, as defined in article 2(1)(13A) of the MiFI Regulations.

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

*normally based* (in *ICOBS*) (in relation to a *vehicle*):

- (a) the territory of the ~~EEA State~~ State of which the *vehicle* bears a registration plate; or
- (b) in cases where no registration is required for the type of *vehicle*, but the *vehicle* bears an insurance plate or a distinguishing sign analogous to a registration plate, the territory of the ~~EEA State~~ State in which the insurance plate or the sign is issued; or
- (c) in cases where neither registration plate nor insurance plate nor distinguishing sign is required for the type of *vehicle*, the territory of the ~~EEA State~~ State in which the keeper of the vehicle is permanently resident.

*ODR Regulation* the UK version of Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, which is part of UK law by virtue of the EUWA.

*oil market participant* a *firm*:

- (a) whose permission:
  - (i) includes a *requirement* that the *firm* must not carry on any *designated investment business* other than oil market activity; and
  - (ii) does not include a requirement that it comply with *IPRU(INV) 5 (Investment management firms)* or *13 (Personal investment firms)*; and
- (b) which is not an *authorised professional firm, bank, BIPRU firm*, (unless it is an *exempt BIPRU commodities firm*), *IFPRU investment firm* (unless it is an *exempt IFPRU commodities firm*), *building society, credit union, friendly society, ICVC, insurer, MiFID investment firm* (unless it is an *exempt BIPRU commodities firm* or *exempt IFPRU commodities firm*), *media firm, service company, insurance intermediary, home finance administrator, mortgage intermediary, home finance provider, incoming EEA firm (without a top-up permission), or incoming Treaty firm*



	( <del>without a top-up permission</del> ) or regulated benchmark administrator.
<i>on-exchange</i>	(a) (in relation to a transaction in the <i>United Kingdom</i> ) effected by means of the <i>facilities</i> of, or governed by the <i>rules</i> of, <del>an RIE or</del> a regulated market.
	...
<i>one-sided credit valuation adjustment</i>	( <del>in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive (Definitions)</i></del> ) and for the purposes of <i>BIPRU</i> a <i>credit valuation adjustment</i> that reflects the market value of the credit risk of the counterparty to a <i>firm</i> , but does not reflect the market value of the credit risk of the <i>firm</i> to the counterparty.  [Note: Part 1 of Annex III of the <i>Banking Consolidation Directive (Definitions)</i> ]
<i>operational risk</i>	(1) (in <i>COLL</i> and <i>FUND</i> ) the risk of loss for a <i>UCITS</i> or <i>AIF</i> resulting from inadequate internal processes and failures in relation to the people and systems of the <i>management company</i> or <i>AIFM</i> or from external events, and it includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the <i>fund</i> .  (2) (in <i>GENPRU</i> (except <i>GENPRU</i> 3 (Cross sector groups) and <i>BIPRU</i> (except <i>BIPRU</i> 12 (Liquidity Standards))) <del>(in accordance with Article 4(22) of the <i>Banking Consolidation Directive</i>)</del> the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, including legal risk.  [Note: article 4(22) of the <i>Banking Consolidation Directive</i> ]  (3) (except in (1) and (2)) has the meaning in article 4(1)(52) of the <del><i>EU-CRR</i></del> <u><i>UK CRR</i></u> .
<i>option</i>	(1) the <i>investment</i> , specified in article 83 of the <i>Regulated Activities Order</i> (Options), which is in summary an option to acquire or dispose of:  ...  (2) <u>(in <i>COLL</i>) in addition and to the extent it does not fall within (1), an <i>investment</i> which would have been within the definition of “option” in the FCA Handbook [immediately before <i>exit day</i>]</u>
<i>organised trading facility</i>	(in accordance with article 3(1) of the <i>Regulated Activities Order</i> ):

- (a) ~~an~~ a UK organised trading facility (within the meaning of article 4(1)(23) of ~~MiFID 2~~MiFID 2(1)(15A) of ~~MiFIR~~) operated by an ~~investment firm~~ investment firm, a ~~credit institution~~ qualifying credit institution or a ~~market operator~~ market operator; or
- (b) a facility which:
- (i) is operated by an ~~investment firm~~ investment firm, a ~~credit institution~~ qualifying credit institution or a ~~market operator~~ market operator which does not have a ~~whose Home State~~ home State is not the United Kingdom; and
- (ii) if its ~~operator had a~~ operator's Home State ~~home State~~ was the United Kingdom, would be an ~~organised trading facility~~ a UK organised trading facility within the meaning of article 4(1)(23) of ~~MiFID 2~~MiFID 2(1)(15A) of ~~MiFIR~~MiFIR.

[Note: article 4(1)(23) of ~~MiFID 2~~MiFID 2(1)(15A) of ~~MiFIR~~MiFIR]

*originator*

- (1) (in ~~GENPRU~~ (except ~~GENPRU 3~~), ~~MIPRU~~ and ~~BIPRU~~ (except ~~BIPRU 12~~)) (~~in accordance with Article 4(41) of the Banking Consolidation Directive (Definitions)~~) and in relation to a ~~securitisation~~ within the meaning of paragraph (2) of the definition of ~~securitisation~~) either of the following:
- (a) an entity which, either itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the ~~exposures~~ being ~~securitised~~; or
- (b) an entity which purchases a third party's ~~exposures~~ onto its balance sheet and then ~~securitises~~ them.

[Note: article 4(41) of the Banking Consolidation Directive (Definitions)]

- (2) (except in (1)) has the meaning in article 4(1)(13) of the ~~EU CRR~~ UK CRR.

*OTC derivative transaction*

a derivative financial instrument of a type listed on Annex II to the UK CRR that is traded over the counter.

*overseas firm*

- (1) (in relation to ~~MAR 5~~ and ~~MAR 5A~~) a ~~firm~~ which has its registered office (or, if it has no registered office, its head office) outside the ~~United Kingdom~~ excluding an incoming EEA firm.

- (2) (in any other case) a *firm* which has its registered office (or, if it has no registered office, its head office) outside the *United Kingdom*.
- overseas long-term insurer* an *insurance undertaking* which is not an *authorised person* and which:
- (a) ~~has its head office in an *EEA State* other than the *United Kingdom*, and is entitled to carry on *long-term insurance business* in that *EEA State*; or~~
  - (b) ~~has a *branch* or agency in an *EEA State* other than the *United Kingdom* and is entitled to carry on *long-term insurance business* in that *EEA State*; or~~
  - (c) is authorised to effect or carry on *long-term insurance business* in the Bailiwick of Jersey, the Bailiwick of Guernsey, the Isle of Man, the Commonwealth of Pennsylvania or the State of Iowa;
- [~~for the purposes of (a) and (b), Gibraltar is to be regarded as if it were an *EEA State*.~~]
- overseas person* (in accordance with article 3(1) of the *Regulated Activities Order* (Interpretation)) a *person* who:
- (a) carries on any of the following *regulated activities*:
    - ...
    - (xa) *managing a UK UCITS*;
    - (xb) *acting as trustee or depositary of a UK UCITS*;
    - ...
  - ...
- own funds* ...
- (2A) (in *IPRU(INV)* 11) has the meaning in article 4(1)(118) of the ~~*EU CRR*~~ *UK CRR*.
  - ...
  - (5) (except in (1) to (4)) has the meaning in article 4(1)(118) of the *UK CRR*.
- own funds instruments* has the meaning in article 4(1)(119) of the ~~*EU CRR*~~ *UK CRR*.

<i>own funds requirements</i>	as defined in article 92 (Own funds requirements) of the <del>EU CRR</del> <u>UK CRR</u> .
<i>parent financial holding company in a Member State the UK</i>	<p>(1) (in <i>GENPRU</i> (except <i>GENPRU</i> 3 and <i>BIPRU</i> (except <i>BIPRU</i> 12)) <del>(in accordance with Article 4(15) of the <i>Banking Consolidation Directive</i> (Definitions) and Article 3 of the <i>Capital Adequacy Directive</i> (Definitions))</del> a financial holding company which is not itself a subsidiary undertaking of an institution authorised in the same <del>EEA State</del> <u>UK</u>, or of a financial holding company or mixed financial holding company established in the same <del>EEA State</del> <u>UK</u>.</p> <p>(2) <del>(except in (1)) has the meaning in article 4(1)(30) of the <i>EU CRR</i>. [deleted]</del></p>
<i>parent institution in a Member State the UK</i>	<p>(1) (in <i>GENPRU</i> (except <i>GENPRU</i> 3 and <i>BIPRU</i> (except <i>BIPRU</i> 12)) <del>(in accordance with Article 4(14) of the <i>Banking Consolidation Directive</i> and Article 3 of the <i>Capital Adequacy Directive</i> (Definitions))</del> an institution which has an institution or a financial institution as a subsidiary undertaking or which holds a participation in such an institution, and which is not itself a subsidiary undertaking of another institution authorised in the same <del>EEA State</del> <u>UK</u>, or of a financial holding company or mixed financial holding company established in the same <del>EEA State</del> <u>UK</u>.</p> <p>(2) <del>(except in (1)) has the meaning in article 4(1)(28) of the <i>EU CRR</i>. [deleted]</del></p>
<i>parent mixed financial holding company in a Member State the UK</i>	<p>(1) (in <i>GENPRU</i> (except <i>GENPRU</i> 3 and <i>BIPRU</i> (except <i>BIPRU</i> 12)) <del>in accordance with Article 4(15a) of the <i>Banking Consolidation Directive</i> (Definitions))</del> a mixed financial holding company which is not itself a subsidiary undertaking of an institution authorised in the same <del>EEA State</del> <u>UK</u>, or of a financial holding company or mixed financial holding company established in the same <del>EEA State</del> <u>UK</u>.</p> <p>(2) <del>(except in (1)) has the meaning in article 4(1)(32) of the <i>EU CRR</i>. [deleted]</del></p>
<i>parent undertaking</i>	<p>(1) (in accordance with section 420 of the <i>Act</i> (Parent and subsidiary undertaking) and section 1162 of the <i>Companies Act 2006</i> (Parent and subsidiary undertakings)):</p> <p>(a) ...</p> <p>...</p> <p>(viii) (except in <i>REC</i> or for the purposes of rules in <i>GENPRU</i> and <i>INSRU</i> as they apply to members of the <i>Society</i> of Lloyd's or to the</p>

*Society or managing agents in respect of members*) it is incorporated in or formed under the law of ~~another~~ an EEA State and is a parent undertaking within the meaning of any rule of law in that State for purposes connected with implementation of the Seventh Company Law Directive;

...

- (3) (for the purposes of *GENPRU 3*, *BIPRU 12*, *IFPRU*, *SYSC 19A* (*IFPRU Remuneration Code*) and *SYSC 19D* (*Dual-regulated firms Remuneration Code*)) has the meaning in article 4(1)(15) of the ~~*EU-CRR UK CRR*~~ but so that ~~(in accordance with article 2(9) of the *Financial Groups Directive*)~~ article 4(1)(15)(b) applies for the purpose of *GENPRU 3*.

[Note: article 2(9) of the *Financial Groups Directive*]

*participant firm*

- (1) a *firm* (including a *TP firm*) other than:
- (a) ~~an *incoming-EEA firm* to the extent prescribed for the purposes of section 213(10) of the *Act* (The compensation scheme) under regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons), unless it has *top up cover*; [deleted]~~

[Note: This covers certain *incoming-EEA firms*: see *COMP 14.1* and *14.2*.]

...

- (f) ~~a *UCITS qualifier*; [deleted]~~
- (g) ~~in respect of the carrying on of *bidding in emissions auctions*, a *firm* that is exempt from *MiFID* under article 2(1)(j); [deleted]~~
- (h) ~~an *AIFM qualifier*; [deleted]~~

...

- (l) a *TP AIFM qualifier*;
- (m) a *TP UCITS qualifier*;
- (n) a *TP firm* that under section 213(9A) or section 213(9A) [bis] of the *Act* is not to be regarded as a *relevant person*;

- (2) *a recognised investment exchange but only insofar as it is operating a multilateral trading facility or operating an organised trading facility;*
- (3) (except in FEES 6) a pre-exit incoming EEA firm but only:
  - (a) in relation to acts or omissions before exit day that give rise to a claim against it; and
  - (b) (where necessary for it to have obtained FSCS cover) that had, before exit day:
    - (i) notified the FSCS in writing that it had elected to participate in the compensation scheme under SI 2001/1783 (as in force and as from time to time amended before exit day); and
    - (ii) the FSCS had notified it that its election had been accepted.

*participation*

- (1) (for the purposes of *GENPRU* (except *GENPRU* 3) and for the purposes of *BIPRU* (except *BIPRU* 12) as they apply on a consolidated basis):
  - (a) a participating interest may be defined according to:
    - (i) section 421A of the *Act* where applicable; or
    - (ii) paragraph 11(1) of Schedule 10 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) where applicable; or
    - (iii) paragraph 8 of Schedule 7 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409) where applicable; or
    - (iv) paragraph 8 of Schedule 4 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1913) where applicable; or
    - (v) paragraph 8 of Schedule 5 to the Small Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1912) where applicable; or
  - (b) (otherwise) the direct or indirect ownership of 20% or more of the voting rights or capital of an *undertaking*; but excluding the interest of a *parent undertaking* in its *subsidiary undertaking*.

- (2) (except in (1) has the meaning in article 4(1)(35) of the ~~EU~~  
~~CRR UK CRR~~.

*payment institution* an *authorised payment institution*, ~~an EEA authorised payment institution~~ or a *small payment institution*.

[Note: articles 4(4) and 32(3) of the *Payment Services Directive*]

*payment service* ...

- (b) The following activities do not constitute *payment services*:

...

- (xi) services based on specific *payment instruments* that can be used only in a limited way and meet one of the following conditions:

- (A) allow the holder to acquire goods or services only in the issuer's premises; or
- (B) are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer; or
- (C) may be used only to acquire a very limited range of goods or services; or
- (D) are valid only in ~~a single EEA state~~ the UK, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer.

...

...

*payment service provider*

- (1) (except in *DISP*) (in accordance with regulation 2(1) of the *Payment Services Regulations*) any of the following *persons* when they carry out a *payment service*:

- (a) an *authorised payment institution*;
- (b) a *small payment institution*;
- (ba) a *registered account information service provider*;

- (c) ~~an EEA authorised payment institution; [deleted]~~
- (d) a credit institution;
- (e) an electronic money issuer;
- (f) the Post Office Limited;
- (g) the Bank of England, ~~the European Central Bank and the national central banks of EEA States other than the United Kingdom,~~ other than when acting in ~~their~~ its capacity as a monetary authority or carrying out other functions of a public nature; and
- (h) government departments and local authorities, other than when carrying out functions of a public nature.

...

*PD Regulation*

the UK version of the Prospectus Directive Regulation (No 2004/809/EC), which is part of UK law by virtue of the EUWA.

*peak exposure*

~~(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive (Definitions)* and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions))~~ a high percentile of the distribution of exposures at any particular future date before the maturity date of the longest transaction in the *netting set*.

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

*periodic statement*

a report which a *firm* is required to provide to a *client* pursuant to:

- (a) COBS 16.3 (Periodic reporting) where the *firm* is carrying on *designated investment business* other than *MiFID, equivalent third country or optional exemption business*;
- (b) article 60(1) of the *MiFID Org Regulation* where the *firm* is carrying on *MiFID business*;
- (c) *GEN 2.2.22AR* and *COBS 16A.4.1* ~~EU~~ UK where the *firm* is carrying on the *equivalent business of a third country investment firm*;
- (d) *COBS 16A.1.2R* and *COBS 16A.4.1* ~~EU~~ UK where the *firm* is carrying on *optional exemption business*.

[Note: see *COBS 16A.4.1* ~~EU~~ UK where article 60(1) of the *MiFID Org Regulation* is reproduced]-



<i>permanent interest bearing shares</i>	any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 which are issued as permanent interest-bearing shares and on terms which qualify them as own funds for the purposes of the <del>EU CRR</del> <u>UK CRR</u> .
<i>permission</i>	<p>(1) permission to carry on <i>regulated activities</i>; that is, any of the following:</p> <ul style="list-style-type: none"> <li>(a) a <i>Part 4A permission</i>;</li> <li>(b) <del>the permission that an <i>incoming EEA firm</i> has, under paragraph 15(1) or paragraph 15A(1), (3) or (4) of Schedule 3 to the Act (EEA Passport Rights), on qualifying for <i>authorisation</i> under paragraph 12 of that Schedule [deleted];</del></li> <li>(c) <del>the permission that an <i>incoming Treaty firm</i> has, under paragraph 4(1) of Schedule 4 to the Act (Treaty Rights), on qualifying for <i>authorisation</i> under paragraph 2 of that Schedule [deleted];</del></li> <li>(d) <del>the permission that a <i>UCITS qualifier</i> has, under paragraph 2(1) of Schedule 5 to the Act (Persons concerned in Collective Investment Schemes) [deleted];</del></li> <li>(e) the permission that an <i>ICVC</i> has, under paragraph 2(2) of Schedule 5 to the <i>Act</i> (Persons concerned in Collective Investment Schemes);</li> <li>(f) the permission that the Society of Lloyd's has, under section 315(2) of the <i>Act</i> (The Society: authorisation and permission), which is to be treated as a <i>Part IV permission</i> for the purposes of <i>Part 4A</i> of the <i>Act</i> (Permission to carry on regulated activities) in accordance with section 315(3) of the <i>Act</i>.</li> </ul> <p>(2) <u>the authorisation that a <i>TP AIFM qualifier</i> has under regulation 78B of the <i>AIFMD UK regulation</i>.</u></p>
<i>personal investment firm</i>	a firm whose <i>permitted activities</i> include <i>designated investment business</i> , which is not an <i>authorised professional firm</i> , bank, <i>IFPRU investment firm</i> , <i>BIPRU firm</i> , <i>building society</i> , <i>collective portfolio management firm</i> , <i>credit union</i> , <i>energy market participant</i> , <i>ICVC</i> , <i>insurer</i> , <i>media firm</i> , <i>oil market participant</i> , <del>or service company, <i>incoming EEA firm</i> (without a <i>top-up permission</i>), <i>incoming Treaty firm</i> (without a <i>top-up permission</i>) or <i>UCITS qualifier</i> (without a <i>top-up permission</i>),</del> whose <i>permission</i> does not include a <i>requirement</i> that it comply with <i>IPRU(INV) 3</i> (Securities and futures firms) or 5 (Investment management firms), and which is within (a), (b) or (c):

	...
<i>PII capital requirement</i>	(1) (in <i>IPRU(INV)</i> 11) an amount of <i>own funds</i> that a <i>collective portfolio management firm</i> must hold in relation to its professional indemnity insurance policy to cover any defined excess (as set out in article 15 of the <i>AIFMD level 2 regulation</i> (professional indemnity insurance) (as replicated in <i>IPRU(INV)</i> 11.3.15 <del>EU</del> <u>UK</u> ) and exclusions to that policy (see <i>IPRU(INV)</i> 11.3.16R (Professional negligence)).  [deleted]
<i>position</i>	(1) (in accordance <i>BIPRU</i> 1.2.4R (Definition of the trading book: Positions)) includes proprietary positions and positions arising from client servicing and market making.  (2) (in <i>IFPRU</i> ) has the meaning which it has, or is used, in the <del>EU</del> <u>UK CRR</u> .
<i>PRIIPs Regulation</i>	<u>the UK version of Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), which is part of UK law by virtue of the EUWA.</u> <a href="http://data.europa.eu/eli/reg/2014/1286/oj">http://data.europa.eu/eli/reg/2014/1286/oj</a>
<i>probability of default</i>	<del>(in accordance with Article 4(25) of the <i>Banking Consolidation Directive (Definitions)</i> and for the purpose of <i>BIPRU</i>)</del> the probability of default of a counterparty over a one year period; for the purposes of the <i>IRB approach</i> , default has the meaning in the definition of <i>default</i> .  [Note: article 4(25) of the <i>Banking Consolidation Directive (Definitions)</i> ]
<i>professional negligence capital requirement</i>	(1) (in <i>IPRU(INV)</i> 11) an amount of <i>own funds</i> that a <i>collective portfolio management firm</i> must hold professional liability risks as set out in article 14 of the <i>AIFMD level 2 regulation</i> (additional own funds) (as replicated in <i>IPRU(INV)</i> 11.3.14 <del>EU</del> <u>UK</u> ) (Professional negligence).  [deleted]
<i>prospectus</i>	(1) (in <i>LR</i> and <i>PR</i> , <i>FEES</i> and <i>FUND</i> 3 (Requirements for managers of alternative investment funds)) a <i>prospectus</i> required under the <del><i>prospectus directive</i></del> <u>the Act</u> .  (2) ...
<i>Prospectus Regulation</i>	<u>the UK version of Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to</u>

trading on a regulated market, and repealing Directive 2033/71/EC, which is part of *UK* law by virtue of the *EUWA*.

*Prospectus RTS Regulations*

- (1) the *UK* version of Commission Delegated Regulation (EU) No 382/2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus, which is part of *UK* law by virtue of the *EUWA*; and
- (2) the *UK* version of Commission Delegated Regulation (EU) 2016/301 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004, which is part of *UK* law by virtue of the *EUWA*.

*protection buyer*

(in *BIPRU*) (in relation to a credit derivative ~~and in accordance with paragraph 8 of Annex I of the *Capital Adequacy Directive* (Calculating capital requirements for position risk))~~ the *person* who transfers credit risk.

[Note: paragraph 8 of Annex I of the *Capital Adequacy Directive* (Calculating capital requirements for position risk)]

*protection seller*

(in *BIPRU*) (in relation to a credit derivative ~~and in accordance with paragraph 8 of Annex I of the *Capital Adequacy Directive* (Calculating capital requirements for position risk))~~ the *person* who assumes the credit risk.

[Note: paragraph 8 of Annex I of the *Capital Adequacy Directive* (Calculating capital requirements for position risk)]

*public international body*

(1) (in *PR*) (as defined in the *PD Regulation*) a legal entity of public nature established by an international treaty between sovereign States and of which one or more ~~Member~~ sovereign States are members.

(2) ...

*public sector entity*

~~(in accordance with Article 4(18) of the *Banking Consolidation Directive* (Definitions) and~~ for the purposes of *BIPRU*) any of the following:

- (a) non-commercial administrative bodies responsible to central governments, regional governments or local authorities; or
- (b) authorities that exercise the same responsibilities as regional and local authorities; or

- (c) non commercial *undertakings* owned by central governments that have explicit guarantee arrangements; or
- (d) self administered bodies governed by law that are under public supervision.

[Note: article 4(18) of the *Banking Consolidation Directive* (Definitions)]

*qualified investor*

(in PR) (a defined in section 86(7) of the Act) in relation to an *offer* of *transferable securities*:

- (a) a *person* or entity described in ~~points (1) to (4) of Section I of Annex II to MiFID~~ paragraph 3 of Schedule 1 to *MiFIR*, other than a *person* who, before the making of the *offer*, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-*professional client* in accordance with MiFID paragraph 4 of that Schedule; or
- (b) a *person* who has made a request to one or more relevant firms to be treated as a *professional client* in accordance with ~~Section II of Annex II to MiFID~~ paragraphs 5 and 6 of that Schedule and has not subsequently, but before the making of the *offer*, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-*professional client* in accordance with ~~the final paragraph of Section I of Annex II to MiFID~~ paragraph 4 of that Schedule; or
- (c) ~~a *person* who is an *eligible counterparty* in accordance with article 30 of MiFID and has not, before the making of the *offer*, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-*professional client* in accordance with the final paragraph of Section I of Annex II of MiFID; or~~  
a *person* who:
  - (i) is an *eligible counterparty* for the purposes of COBS 3.6; and
  - (ii) has not, before the making of the *offer*, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-*professional client* in accordance with paragraph 4 of Schedule 1 to MiFIR;  
or
- (d) a *person* whom:
  - ...
  - (ii) the firm may continue to treat as a *professional client* from 3 January 2018 was entitled immediately before

exit day to continue to treat as a professional client by virtue of Section II.2 of Annex II to MiFID.

qualifying money  
market fund

- (1) (in ~~COLL, CASS 7 and BSOCS~~) a collective investment undertaking authorised under the *UCITS Directive* or which is subject to supervision and, if applicable, authorised by an authority under the national law of the authorising *Member State*, and which satisfies the following conditions:
- (a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;
  - (b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;
  - (c) it must provide liquidity through same day or next day settlement.
- (2) For the purposes of (1)(b), a money market instrument may be considered to be of high quality if the *AIFM* or *UCITS management company* of the collective investment undertaking performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality subject to the conditions below:
- (a) where one or more credit rating agencies registered and supervised by *ESMA* have provided a rating of the instrument, the *AIFM's* or *UCITS management company's* internal assessment must have regard to, inter alia, those credit ratings; and
  - (b) while there can be no mechanistic reliance on such external ratings, a downgrade below the two highest short-term credit ratings by any agency registered and supervised by *ESMA* that has rated the instrument will lead the *AIFM* or *UCITS management company* to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of high quality.
- (3) [deleted]

- (4) (in COLL) a collective investment undertaking which is a UCITS scheme or authorised under the UCITS Directive or which is subject to supervision and, if applicable, authorised by either the FCA or an authority under the national law of the authorising Member State, and which satisfies the following conditions:
- (a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;
  - (b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;
  - (c) it must provide liquidity through same day or next day settlement.

For the purposes of (b), a money market instrument may be considered to be of high quality if the AIFM or management company of the collective investment undertaking performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality subject to the conditions below:

- (i) where one or more credit rating agencies registered and supervised by the FCA or ESMA have provided a rating of the instrument, the AIFM's or management company's internal assessment must have regard to, inter alia, those credit ratings; and
  - (ii) while there can be no mechanistic reliance on such external ratings, a downgrade below the two highest short-term credit ratings by any agency registered and supervised by the FCA or ESMA that has rated the instrument will lead the AIFM or UCITS management company to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of high quality.
- (5) (in CASS 7) a collective investment undertaking which is a UCITS scheme and, if applicable, authorised by the FCA, and which satisfies the following conditions:

- (a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings;
- (b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;
- (c) it must provide liquidity through same day or next day settlement.

For the purposes of (b), a money market instrument may be considered to be of high quality if the AIFM or management company of the collective investment undertaking performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality subject to the conditions below:

- (i) For the purposes of (b), a money market instrument may be considered to be of high quality if the AIFM or management company of the collective investment undertaking performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality subject to the conditions below; and
- (ii) while there can be no mechanistic reliance on such external ratings, a downgrade below the two highest short-term credit ratings by any agency registered and supervised by the FCA that has rated the instrument will lead the AIFM or management company to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of high quality.

[Note: article 1(4) of, and recital 4 to, the *MiFID Delegated Directive*]

*rated position*

(for the purposes of *MIPRU* and *BIPRU* 9 (Securitisation), ~~in accordance with Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)~~ and in relation to a *securitisation position*) describes a *securitisation position* which has an eligible credit assessment by an *eligible ECAI*.

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

*ratings based method* (for the purposes of *BIPRU* 9 (Securitisation) ~~and in accordance with Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)~~) the method of calculating *risk weighted exposure amounts* for *securitisation positions* set out in *BIPRU* 9.12.10R– *BIPRU* 9.12.19R and *BIPRU* 9.14.2R.

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

*readily realisable security* (except in *COLL* and for the purposes of the definition of *non-readily realisable security*):

- (a) a *government or public security* denominated in the currency of the country of its *issuer*;
- (b) any other *security* which is:
  - (i) admitted to official listing on an exchange in ~~an EEA State~~ the UK; or
  - (ii) regularly traded on or under the rules of such an exchange; or
  - (iii) regularly traded on or under the rules of a *recognised investment exchange* or (except in relation to *unsolicited real time financial promotions*) *designated investment exchange*;
- (c) a newly issued *security* which can reasonably be expected to fall within (b) when it begins to be traded.

(in *COLL* and for the purposes of the definition of *non-readily realisable security*):

- (a) a *government or public security* denominated in the currency of the country of its *issuer*;
- (b) any other *security* which is:
  - (i) admitted to official listing on an exchange in the *UK* or an *EEA State*; or
  - (ii) regularly traded on or under the rules of such an exchange; or
  - (iii) regularly traded on or under the rules of a *recognised investment exchange* or (except in relation to *unsolicited real time financial promotions*) *designated investment exchange*;
- (c) a newly issued *security* which can reasonably be expected to fall within (b) when it begins to be traded.



<i>rebalancing of the portfolio</i>	(in <i>COLL</i> and <del>in accordance with article 2(1) of the <i>UCITS implementing Directive No 2</i></del> ) means a significant modification of the composition of the <i>scheme property</i> of a <i>UCITS scheme</i> <del>or the portfolio of an <i>EEA UCITS scheme</i>.</del>  [Note: article 2(1) of the <i>UCITS implementing Directive No 2</i> ]
<i>receiving UCITS</i>	(in <i>COLL</i> and in accordance with regulations 7 and 8 of the <i>UCITS Regulations 2011</i> ) in relation to a <i>UCITS merger</i> , the <i>UCITS scheme</i> <del>or <i>EEA UCITS scheme</i></del> or <i>sub-fund</i> of that <i>scheme</i> , whether it is an existing <i>scheme</i> (or a <i>sub-fund</i> of it) or one that is being formed for the purpose of that merger, which under the proposed arrangements will be receiving the assets and liabilities of one or more <i>merging UCITS</i> .
<i>recognised body</i>	an <i>RIE</i> <del>or <i>RAP</i></del>
<i>recognised body requirements</i>	...  (2) (in relation to a <i>UK RIE</i> ) the <i>MiFID/MiFIR requirements</i> ; and (3) <del>(in relation to an <i>RAP</i>) the <i>RAP recognition requirements</i>; and</del> <u>[deleted]</u> (4) (in relation to any of the bodies specified in (1) <del>to (3)</del> and (2)) any other obligations imposed by or under the <i>Act</i> .
<i>recognised scheme</i>	(1) <u>(other than in <i>LR</i>) a scheme recognised under:</u> (a) <del>section 264 of the Act (Schemes constituted in other <i>EEA States</i>); or</del> <u>[deleted]</u> (b) <u>[deleted]</u> (c) section 272 of the Act (Individually recognised overseas schemes); or (d) <u>(in <i>COBS 14</i> and for the purposes of the definitions of <i>non-mainstream pooled investment</i> and <i>packaged product</i>) an <i>EEA UCITS scheme</i> recognised under Part 6 of The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2018.</u>  (2) <u>(in <i>LR</i>) a scheme recognised for the purpose of part XVII of the Act.</u>
<i>recognised third country credit institution</i>	a <i>full CRD credit institution</i> that satisfies the following conditions:  (a) its head office is outside the <i>EEA UK</i> ;

- recognised third country investment firm*
- (b) it is authorised by a *third country competent authority* in the state or territory in which the credit institution's head office is located; and
  - (c) that *third country competent authority* applies prudential and supervisory requirements to that credit institution that are at least equivalent to those applied in the ~~EEA~~ UK.
- (1) (in BIPRU and GENPRU 3.2 (Third-country groups) as it applies to a *BIPRU firm* in relation to a *third-country banking and investment group* and a *banking and investment group*) a *CAD investment firm* that satisfies the following conditions:
- (a) its head office is outside the ~~EEA~~ UK;
  - (b) it is authorised by a *third country competent authority* in the state or territory in which the *CAD investment firm's* head office is located;
  - (c) that *third country competent authority* is named in Part 2 of BIPRU 8 Annex 6 (Non-~~EEA~~ UK investment firm regulators' requirements deemed *CRD*-equivalent for individual risks); and
  - (d) that *investment firm* is subject to and complies with prudential rules of or administered by that *third country competent authority* that are at least as stringent as those laid down in the ~~*Banking Consolidation Directive* and the *Capital Adequacy Directive*~~ as applied under the third paragraph of article 95(2) of the ~~*EU CRR*~~ for *BIPRU firms* in *GENPRU* and *BIPRU*.
- (2) (except for the purpose in (1)) (in GENPRU 3.2 (Third country groups) in relation to a *third-country banking and investment group* and a *banking and investment group*) an *investment firm* that falls within the meaning of "investment firm" in article 4(1)(2) of the ~~*EU CRR*~~ *UK CRR* and which satisfies the following conditions:
- (a) its head office is outside the ~~EEA~~ UK;
  - (b) it is authorised by a *third country competent authority* in the state or territory in which the *investment firm's* head office is located; and
  - (c) that *investment firm* is subject to and complies with prudential rules of or administered by that *third country competent authority* that are at least as stringent as those laid down in the ~~*EU CRR*~~ *UK CRR*.

- (3) (in *GENPRU* 3.1) a *firm* in either (1) or (2), or both.
- recognition order* (in accordance with section 313 of the *Act* (Interpretation of Part XVIII)) an order made under section 290 or 292 of the *Act* which declares an investment exchange to be an *RIE* ~~or (for *RAPs*) an order made under regulation 2 of the *RAP regulations* which declares a *UK RIE* to be an *RAP*.~~
- regular user* (1) ...
- (2) ~~(in accordance with section 130A(3) of the *Act* (Market abuse) as modified by the *RAP Regulations*) a person who is, in relation to a particular auction platform, a reasonable person who regularly makes bids on that market for investments of the kind in question. [deleted]~~
- regulated activity* (A) ...
- (B) in the *FCA Handbook*:(in accordance with section 22 of the *Act* (Regulated activities) the activities specified in Part II of the *Regulated Activities Order* (Specified Activities) which are, in summary:
- ...
- (ea) ~~*bidding in emissions auctions* (article 24A) [deleted];~~
- ...
- (na) *managing a UK UCITS* (article 51ZA);
- (nb) *acting as trustee or depositary of a UK UCITS* (article 51ZB);
- ...
- regulated entity* one of the following:
- (a) a *credit institution*; or
- (b) a ~~“*Solvency II undertaking*”~~ *“UK Solvency II firm”*, *“third country insurance undertaking”* or *“third country reinsurance undertaking”*, each as defined in the *PRA Rulebook: Glossary*; or
- (c) an *investment firm*;
- whether or not it is incorporated in, or has its head office in, ~~an *EEA State*~~ the *UK*.

An *asset management company* is treated as a regulated entity for the purposes described in GENPRU 3.1.39R (The financial sectors: asset management companies).

An *alternative investment fund manager* is treated as a regulated entity for the purposes described in GENPRU 3.1.39R (The financial sectors: alternative investment fund managers). GENPRU 3.1.39R (The financial sectors: asset management companies).

*regulated information*

all information which an *issuer*, or any other *person* who has applied for the admission of *financial instruments* to trading on a *regulated market* without the *issuer's* consent, is required to disclose under:

- (a) ~~the *Transparency Directive DTR*~~; or
- (b) articles 17 to 19 of the *Market Abuse Regulation*; or
- (c) ~~*LR*, and *DTR*~~.

*regulated market*

- (1) ~~a multilateral system operated and/or managed by a *market operator*, which brings together or facilitates the bringing together of multiple third party buying and selling interests in *financial instruments*— in the system and in accordance with its non-discretionary rules— in a way that results in a contract, in respect of the *financial instruments* admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the Title III of *MiFID* a regulated market which is a *UK RIE*.~~

[Note: article 4(1)(21) 2(1)(13A) of ~~*MiFID*~~ *MiFIR*]

- (2) (in addition, in *INSPRU* and *IPRU(INS)* only) a market situated outside the ~~*EEA States*~~ *United Kingdom* which is characterised by the fact that:
  - (a) it meets comparable requirements to those set out in (1); and
  - (b) the *financial instruments* dealt in are of a quality comparable to those in a regulated market in the *United Kingdom*.
- (3) (in *MAR 1, FUND, COLL* and *COBS 21*) as in (1) above or an *EU regulated market*.

*regulated mortgage contract*

- (a) (in relation to a contract) a contract which:
  - (i) (in accordance with article 61(3) of the *Regulated Activities Order*) at the time it is entered into, meets the following conditions:

- (A) a lender provides credit to an individual or to trustees (the ‘borrower’); and
- (B) the obligation of the borrower to repay is secured by a mortgage on land ~~in the EEA~~, at least 40% of which is used, or is intended to be used, in the case of credit provided to an individual, as or in connection with a dwelling; or (in the case of credit provided to a trustee who is not an individual), as or in connection with a dwelling by an individual who is a beneficiary of the trust, or by a *related person*;

where “land” for this purpose means:

- (C) in relation to a contract entered into before *exit day*:
  - (I) land in the *United Kingdom*; or
  - (II) if the contract was entered into on or after 21 March 2016, land in the *United Kingdom* or within the territory of a State that was an *EEA State* at the time the contract was entered into; and
- (D) in relation to a contract entered into on or after *exit day*, land in the *United Kingdom*.

...

*regulatory function*

(as defined in section 291 of the *Act* (Liability in relation to *recognised body’s* regulatory functions)) any function of a *recognised body* so far as relating to, or to matters arising out of, the obligations to which the body is subject under or by virtue of the *Act* and ~~(for an *RAP*) under the *RAP recognition requirements*.~~

*regulatory information service or RIS*

- ~~(a) a *primary information provider*; or~~
- (b) ~~an *incoming information society service* that has its establishment in an *EEA State* other than the *United Kingdom* and that disseminates *regulated information* in accordance with the minimum standards set out in article 12 of the *TD implementing Directive*. [deleted]~~

*regulatory system*

the arrangements for regulating a *firm* or other *person* in or under the *Act*, including the *threshold conditions*, the *Principles* and other *rules*, the *Statements of Principle*, codes and *guidance*, or in or under the

CCA, and including any relevant ~~directly applicable~~ provisions of a ~~Directive or Regulation~~ an onshored regulation such as those contained in the *MiFID Org Regulation* and the ~~EU CRR~~ UK CRR.

*relevant credit exposures*

~~(in accordance with article 140(4) of CRD)~~ exposures, other than those referred to in article 112(a) to (f) of the ~~EU CRR~~ UK CRR (Exposure classes), that are subject to:

- (a) the *own funds requirements* for credit risk under Part Three, Title II of the ~~EU CRR~~ UK CRR;
- (b) where the *exposure* is held in the *trading book*, *own funds requirements* for specific risk under Part Three, Title IV, Chapter 2 of the ~~EU CRR~~ UK CRR or incremental default and migration risk under Part Three, Title IV, Chapter 5 of the ~~EU CRR~~ UK CRR; or
- (c) where the *exposure* is a *securitisation*, the *own funds requirements* under Part Three, Title II, Chapter 5 of the ~~EU CRR~~ UK CRR.

[Note: article 140(4) of *CRD*]

*relevant information*

- (1) ...
- (2) (in *REC*) (in relation to an *investment*) information which is relevant to determining the current value of that *investment* ~~or (in relation to RAPs) information on the terms of emissions auction products and the terms on which they will be auctioned on an RAP.~~

*Remuneration Code staff*

(for an *IFPRU investment firm* and an overseas firm in *SYSC* 19A1.1.1R(1)(d) that would have been an *IFPRU investment firm* if it had been a *UK domestic firm*) has the meaning given in *SYSC* 19A.3.4R which is, in summary, an *employee* whose professional activities have a material impact on the *firm's* risk profile, including any *employee* who is deemed to have a material impact on the *firm's* risk profile in accordance with ~~Regulation (EU) 604/2014 of 4 March 2014 (Regulatory technical standards to identify staff who are material risk takers)~~ the *Material Risk Takers Regulation*.

*repurchase transaction*

~~(in accordance with Article 3(1)(m) of the *Capital Adequacy Directive* and Article 4(33) of the *Banking Consolidation Directive (Definitions)* and for the purposes of *BIPRU*)~~ any agreement in which an *undertaking* or its counterparty transfers securities or *commodities* or guaranteed rights relating to title to securities or *commodities* where that guarantee is issued by a *designated investment exchange* or *recognised investment exchange* which holds the rights to the securities or *commodities* and the agreement does not allow an *undertaking* to transfer or pledge a particular security or *commodity* to more than one counterparty at one time, subject to a commitment to repurchase them

or substituted securities or *commodities* of the same description at a specified price on a future date specified, or to be specified, by the transferor, being a *repurchase agreement* for the *undertaking* selling the securities or *commodities* and a *reverse repurchase agreement* for the *undertaking* buying them.

[Note: article 3(1)(m) of the *Capital Adequacy Directive* and Article 4(33) of the *Banking Consolidation Directive (Definitions)*]

*respondent*

(1) (in *DISP*, *FEES* 5, *CREDS* 9 and *GEN* 7) a *firm* (except an *AIFM* *qualifier* or a *UCITS* *qualifier*), *payment service provider*, *electronic money issuer*, *CBTL* *firm*, *designated credit reference agency*, *designated finance platform*, or *VJ participant* covered by the *Compulsory Jurisdiction* or *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

...

*retail customer*

~~(in accordance with the meaning of ‘consumer’ in article 2(d) of the *Distance Marketing Directive*)~~ an individual who is acting for purposes which are outside his trade, business or profession.

[Note: article 2(d) of the *Distance Marketing Directive*]

*revolving exposure*

(for the purpose of *BIPRU* 9.13 (Securitisations of revolving exposures with early amortisation provisions) ~~and in accordance with Article 100 of the *Banking Consolidation Directive* (Securitisations of revolving exposures)~~) an *exposure* whereby customers’ outstanding balances are permitted to fluctuate based on their decisions to borrow and repay, up to an agreed limit.

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

*risk concentration*

~~(in accordance with Article 2(19) of the *Financial Groups Directive* (Definitions))~~ all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position in general of the *regulated entities* in the *financial conglomerate*, whether such exposures are caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of these risks.

[Note: article 2(19) of the *Financial Groups Directive* (Definitions)]

*risk limit system*

(in *COLL* ~~and in accordance with article 40(2)(d) of the *UCITS implementing Directive*~~) a documented system of internal limits concerning the measures used by a *management company* to manage and control the relevant risks for each *UCITS* it manages, taking into account all the risks which may be material to the *UCITS*, ~~as referred to in the second paragraph of article 38(1) of the *UCITS implementing Directive* and including, but not limited to, *liquidity risk*, *counterparty risk*, *market risk* and *operational risk*,~~ and ensuring consistency with the *UCITS*’ risk profile.

	[Note: article 38(1) and 40(2)(d) of the <i>UCITS implementing Directive</i> ]
<i>risk of excessive leverage</i>	has the meaning in article 4(1)(94) of <del>EU-CRR</del> <u>UK CRR</u> .
<i>risk position</i>	( <del>in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions)</del> ) and for the purpose of <i>BIPRU 13</i> (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) a risk number that is assigned to a transaction under the <i>CCR standardised method</i> following a predetermined algorithm.  [Note: Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions)]
<i>rollover risk</i>	( <del>in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions)</del> ) and for the purpose of <i>BIPRU 13</i> (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the amount by which <i>expected positive exposure</i> is understated when future transactions with a counterparty are expected to be conducted on an ongoing basis; the additional <i>exposure</i> generated by those future transactions is not included in calculation of <i>expected positive exposure</i> .  [Note: Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions)]
<i>RRD early intervention condition</i>	the requirements of: <ul style="list-style-type: none"> <li>(a) the <del>EU-CRR</del> <u>UK CRR</u>; or</li> <li>(b) the laws, regulations and administrative provisions necessary to comply with <u>the UK provisions which implemented the CRD</u>; or</li> <li>(c) the laws, regulations and administrative provisions necessary to comply with <u>the UK provisions which implemented title II of MiFID II</u>; or</li> <li>(d) articles 3 to 7, 14 to 17, 24, 25 and 26 of <i>MiFIR</i>.</li> </ul> [Note: article 27(1) of <i>RRD</i> ]
<i>RRD institution</i>	(a) a <i>credit institution</i> ; or  (b) <del>an investment firm that is subject to the initial capital requirement in article 28(2) of the CRD (a €730k investment firm)</del> <u>an IFPRU 730K firm</u> .  [Note: article 2(1)(23) of <i>RRD</i> ]



<i>RRD group</i>	<p>a <i>group</i> that:</p> <p>(a) includes an <i>RRD institution</i>; and</p> <p>(b) is headed by an <del>EEA parent undertaking</del> <u>a UK parent undertaking</u>.</p>
<i>scheme of arrangement</i>	<p>(in <i>COLL</i>) an arrangement relating to an <i>authorised fund</i> (“transferor fund”) or to a <i>sub-fund</i> of a <i>scheme</i> that is an <i>umbrella</i> (“transferor <i>sub-fund</i>”) under which:</p> <p>...</p> <p>This arrangement includes an arrangement that constitutes a <i>domestic UCITS merger</i> <del>or a cross-border UCITS merger</del>.</p>
<i>sectoral rules</i>	<p>(in relation to a <i>financial sector</i>) rules and requirements relating to the prudential supervision of <i>regulated entities</i> applicable to <i>regulated entities</i> in that <i>financial sector</i> as follows:</p> <p>(a) (for the purposes of <i>GENPRU</i> 3.1.12R (Definition of financial conglomerate: Solvency requirement)) <del>EEA UK prudential sectoral legislation</del> <u>regulation</u> for that <i>financial sector</i> together with as appropriate the rules and requirements in (c); or</p> <p>...</p> <p>(h) references to the appropriate regulator’s <i>sectoral rules</i> are to <i>sectoral rules</i> in the form of <i>rules</i> and, as applicable, the <del>EU CRR</del> <u>UK CRR</u>.</p>
<i>secured lending transaction</i>	<p><del>(in accordance with point 2 of Part 1 of Annex VIII of the <i>Banking Consolidation Directive</i> (Eligibility of credit risk mitigation) and</del> for the purposes of <i>BIPRU</i>) any transaction giving rise to an <i>exposure</i> secured by collateral which does not include a provision conferring upon the <i>person</i> with the <i>exposure</i> the right to receive margin frequently.</p> <p><u>[Note: point 2 of Part 1 of Annex VIII of the <i>Banking Consolidation Directive</i> (Eligibility of credit risk mitigation)]</u></p>
<i>securities and futures firm</i>	<p>a <i>firm</i> whose <i>permitted activities</i> include <i>designated investment business</i> <del>or bidding in emissions auctions</del>, which is not an <i>authorised professional firm</i>, <i>bank</i>, <i>BIPRU firm</i> (unless it is an <i>exempt BIPRU commodities firm</i>), <i>IFPRU investment firm</i> (unless it is an <i>exempt IFPRU investment firm</i>), <i>building society</i>, <i>collective portfolio management firm</i>, <i>credit union</i>, <i>friendly society</i>, <i>ICVC</i>, <i>insurer</i>, <i>media firm</i>; <u>or</u> <i>service company</i>, <del><i>incoming EEA firm</i> (without a <i>top-up permission</i>), <i>incoming Treaty firm</i> (without a <i>top-up permission</i>) or <i>UCITS qualifier</i> (without a <i>top-up permission</i>)</del>, whose permission does not include a <i>requirement</i> that it comply with <i>IPRU(INV)</i> 5</p>

(Investment management firms) or 13 (Personal investment firms), and which is within (a), (b), (c), (d), (e), (f), (g), or (ga) ~~or (h)~~:

...

- (h) ~~a firm that is exempt from MiFID under article 2(1)(j) whose permitted activities include bidding in emissions auctions.~~  
[deleted]
- securities financing transaction*
- (1) (in *COBS*) an instance of stock lending or stock borrowing or the lending or borrowing of other *financial instruments*, a repurchase or reverse repurchase transaction, or a buy-sell back or sell-buy back transaction.
- (1A) (in *COLL* and *FUND*) a transaction defined in article 3(11) of the *Securities Financing Transactions Regulation*, as follows:
- (a) a repurchase transaction, as defined in article 3(9) of ~~the SFTR~~ that regulation;
- (b) securities or commodities lending and securities or commodities borrowing as defined in article 3(7) of ~~the SFTR~~ that regulation;
- (c) a buy-sell back transaction or sell-buy back transaction as defined in article 3(8) of ~~the SFTR~~ that regulation; and
- (d) a margin lending transaction as defined in article 3(10) of ~~the SFTR~~ that regulation.
- (1B) (in *CASS*) a securities financing transaction as defined in article 3(11) of the *SFTR*.  
[Note: article 1(3) of the *MiFID Delegated Directive*]
- (2) (in any other case) any of the following:
- (a) a *repurchase transaction*; or
- (b) a *securities or commodities lending or borrowing transaction*; or
- (c) a *margin lending transaction*.
- securities or commodities lending or borrowing transaction*
- ~~(in accordance with Article 4(34) of the *Banking Consolidation Directive* and Article 3(1)(n) of the *Capital Adequacy Directive (Definitions)* and for the purposes of *BIPRU*) any transaction in which an *undertaking* or its counterparty transfers securities or *commodities* against appropriate collateral subject to a commitment that the borrower will return equivalent securities or *commodities* at some future date or when requested to do so by the transferor, that~~

transaction being *securities or commodities lending* for the *undertaking* transferring the securities or *commodities* and being *securities or commodities borrowing* for the *undertaking* to which they are transferred.

[Note: article 4(34) of the *Banking Consolidation Directive* and Article 3(1)(n) of the *Capital Adequacy Directive (Definitions)*]

*Securities Financing Transactions Regulation*

the UK version of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R2365>), which is part of UK law by virtue of the EUWA.

*securitisation*

- (1) (subject to (2) and (3)) a process by which assets are sold to a bankruptcy-remote special purpose vehicle in return for immediate cash payment and that vehicle raises the immediate cash payment through the issue of debt securities in the form of tradable notes or commercial paper.
- (2) ~~(in accordance with Article 4(36) of the Banking Consolidation Directive (Definitions) and in BIPRU and MIPRU 4)~~ a transaction or scheme whereby the credit risk associated with an *exposure* or pool of *exposures* is tranching having the following characteristics:
  - (a) payments in the transaction or scheme are dependent upon the performance of the *exposure* or pool of *exposures*; and
  - (b) the subordination of *tranches* determines the distribution of *losses* during the ongoing life of the transaction or scheme.

[Note: article 4(36) of the *Banking Consolidation Directive (Definitions)*]

- (3) (in *IFPRU*) has the meaning in article 4(1)(61) of the *EU CRR UK CRR*.
- (4) (in FEES 4 Annex 16R Part 3, item J.3) has the same meaning as in article 2(1) of the *Securitisation Regulation*.

*securitisation position*

- (1) (in *GENPRU*, *MIPRU* and *BIPRU*) ~~(in accordance with Article 4(40) (Definitions) and Article 96 (Securitisation) of the *Banking Consolidation Directive*)~~ an *exposure* to a *securitisation* within the meaning of paragraph (2) of the definition of *securitisation*; and so that:

- (a) where there is an *exposure* to different *tranches* in a *securitisation*, the *exposure* to each *tranche* must be considered as a separate *securitisation position*;
- (b) the providers of credit protection to *securitisation positions* must be considered to hold positions in the *securitisation*; and
- (c) *securitisation positions* include *exposures* to a *securitisation* arising from interest rate or currency derivative contracts.

[Note: article 4(1)(62) and 245(3) of the *UK CRR*]

- (2) (in *IFPRU*) has the meaning in article 4(1)(62) of the ~~*EU CRR*~~ *UK CRR*.

*Securitisation Regulation*

The UK version of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

[Note: see <https://eur-lex.europa.eu/eli/reg/2017/2402/oj>]

*securitisation special purpose entity*

- (1) ~~(in accordance with Article 4(44) of the *Banking Consolidation Directive (Definitions)*~~ and for the purposes of *BIPRU* a corporation, trust or other entity, other than a *credit institution*, organised for carrying on a *securitisation* or *securitisations* (within the meaning of paragraph (2) of the definition of *securitisation*), the activities of which are limited to those appropriate to accomplishing that objective, the structure of which is intended to isolate the obligations of the *SSPE* from those of the *originator*, and the holders of the beneficial interests in which have the right to pledge or exchange those interests without restriction.

[Note: article 4(44) of the *Banking Consolidation Directive (Definitions)*]

...

*security*

- (1) (except in *LR* and *CONC*) (in accordance with article 3(1) of the *Regulated Activities Order* (Interpretation)) any of the following *investments* specified in that Order:

...

- (3) (in *COLL*) in addition and to the extent it does not fall within (1), an *investment* which would have been within the definition

of “security” in the *FCA Handbook* [immediately before *exit day*]

- senior management*
- (1) (in *BIPRU* 7.10 (Use of a value at risk model) and in relation to a *firm*) the *firm’s governing body* and those of the *firm’s senior managers* and other senior management who have responsibilities relating to the measurement and control of the risks which the *firm’s VaR model* is designed to measure or whose responsibilities require them to take into account those risks.
  - (2) (in *SYSC* (except *SYSC* 4.3A) and *IFPRU* and in accordance with article 3(9) of ~~*CRD*~~ *4(1)(10) of the UK CRR*) those *persons* who are a natural person and who exercise executive functions in an *institution* and who are responsible and accountable to the *management body* for the day-to-day management of the *institution*.
  - (3) (in *SYSC* 4.3A and *COBS* 2.3B ~~and in accordance with article 4.1(37) of *MiFID*~~) those *persons* who are a natural person, who exercise executive functions in *common platform firms* and who are responsible and accountable to the *management body* for the day-to-day management of the *firm*, including for the implementation of the policies concerning the distribution of services and products to *clients* by it and its personnel.

[Note: article 4.1(37) of *MiFID*]

- senior personnel*
- (1) ...
  - (2) (in relation to a *management company* ~~and in accordance with article 3(4) of the *UCITS implementing Directive*~~) the *person* or *persons* who effectively conduct the business of the *management company*.

[Note: article 3(4) of the *UCITS implementing Directive*]

*short selling regulation*

the UK version of regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps, which is part of UK law by virtue of the EUWA.

- Single Market Directives*
- (a) the *Banking Consolidation Directive* (to the extent it ~~applies~~ applied to *CAD investment firms*);
  - (aa) the *CRD*;
  - (b) the *Solvency II Directive*;
  - (ba) [deleted]

	(c) <i>MiFID</i> ;
	(d) the <i>IDD</i> ;
	(da) <i>MCD</i> ;
	(e) the <i>UCITS Directive</i> ; and
	(f) <i>AIFMD</i> .
<i>small authorised UK AIFM</i>	a <i>UK AIFM</i> which: <ul style="list-style-type: none"> <li>(a) is a <i>small AIFM</i>; and</li> <li>(b) <del>has not opted in to <i>AIFMD</i> in accordance with article 3(4) of <i>AIFMD</i> to become a <i>full scope UK AIFM</i></del> <u>exercised the option to meet the full requirements applying to a full-scope <i>AIFM</i>.</u></li> </ul>
<i>small non-EEA UK AIFM</i>	a <i>non-EEA UK AIFM</i> that is a <i>small AIFM</i> .
<i>small and medium-sized enterprise or SME</i>	... <ul style="list-style-type: none"> <li>(3) <u>(in <i>IFPRU</i>) has the meaning in article 4(1)(128D) of the <i>UK CRR</i>.</u></li> </ul>
<i>SMCR banking firm</i>	any of the following: <ul style="list-style-type: none"> <li>...</li> <li>(c) <del>a <i>third-country</i></del> <u>an <i>overseas SMCR banking firm</i>.</u></li> </ul>
<i>SMCR financial activities</i>	any of the following: <ul style="list-style-type: none"> <li>...</li> <li>(e) activities listed in points 2 to 15 of <del>Annex I to the <i>CRD</i> (List of activities subject to mutual recognition)</del> <u>the list of <i>Annex I activities</i>.</u></li> </ul>
<i>SME growth market</i>	a <i>multilateral trading facility</i> that is registered as an <i>SME growth market</i> in accordance with <del>article 33 of <i>MiFID</i></del> <u><i>MAR</i> 5.10.</u> [ <del>Note: article 4(1)(12) of <i>MiFID</i></del> ]
<i>SMF manager</i>	(in relation to an <i>SMCR firm</i> ) a <i>person</i> who has approval under section 59 of the <i>Act</i> (Approval for particular arrangements) to perform a

*designated senior management function* in relation to the carrying on by that *SMCR firm* of a *regulated activity*.

A person treated as approved under section 59ZZA of the Act (as treated as being inserted into the Act by the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (SI 2018/[XXXX]) to perform a *designated senior manager function* is an *SMF manager* in that capacity.

*Solvency II firm*

a *firm* which is any of:

- (a) a “UK Solvency II firm” as defined in chapter 2 of the PRA Rulebook: Solvency II Firms: Insurance General Application;
- (b) a third-country insurance or reinsurance undertaking, namely an undertaking that would require ~~authorisation~~ Part 4A permission as an insurance or reinsurance undertaking ~~in accordance with article 14 of the Solvency II Directive~~ if its head office was situated in the ~~EEA~~ United Kingdom;
- (c) ~~an undertaking authorised in accordance with a non-UK EEA State’s measures which implement article 14 of the Solvency II Directive; [deleted]~~
- (d) the *Society* and, separately, a *managing agent*; and
- (e) an *insurance special purpose vehicle*;
- (f) in *SUP TP 7* and *SUP TP 8*, *SYSC*, *COCON*, *SUP 10C* and *DEPP* only, a *large non-directive insurer*;

but excluding any *firm* to the extent that rule 2 of PRA Rulebook: Solvency II Firms: Transitional Measures disappplies relevant rules ~~implementing which implemented~~ the *Solvency II Directive*.

*Solvency II Regulations*

~~directly applicable EU Commission Delegated Regulations adopted in accordance with~~ onshored regulations which were previously EU regulations made under the Solvency II Directive.

*sovereign issuer*

(as defined in ~~article 2(1)(d) of the short-selling regulation~~ article 2(1)(46A) *MiFIR*) ~~any of the following that issues debt instruments: means~~ any of the following which issue debt instruments

- (a) ~~the EU; or~~
- (b) ~~a Member State including a government department, an agency, or a special purpose vehicle of the Member State; or~~
- (c) ~~in the case of a federal Member State, a member of the federation; or~~
- (d) ~~a special purpose vehicle for several Member States; or~~

- (e) ~~an international financial institution established by two or more Member States which has the purpose of mobilising funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems; or~~
- (f) ~~the European Investment Bank.~~
- (a) the *United Kingdom*, including a government department, an agency, or a special purpose vehicle of the United Kingdom;
- (b) a State other than the *United Kingdom*, including a government department, an agency or a special purpose vehicle of the State;
- (c) in the case of a federal State, a member of the federation;
- (d) a special purpose vehicle for several States;
- (e) an international financial institution established by two or more States which has the purpose of mobilising funding and providing financial assistance for the benefit of those of its members that are experiencing or threatened by severe financing problems;
- (f) the *EU*;
- (g) the European Investment Bank;
- (h) the International Finance Corporation;
- (i) the International Monetary Fund.
- specific risk*
- (1) (in *SYSC*) unique risk that is due to the individual nature of an asset and can potentially be diversified.
- (2) (in *GENPRU* and *BIPRU* ~~and in accordance with paragraph 12 of Annex I of the *Capital Adequacy Directive*~~) the risk of a price change in an *investment* due to factors related to its issuer or, in the case of a *derivative*, the issuer of the underlying *investment*.

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

*specific wrong-way risk*

~~(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purpose of *BIPRU* 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions))~~ the risk that arises when the exposure to a particular counterparty is positively correlated with the *probability of default* of the counterparty due to the nature of the transactions with the counterparty; a *firm* is exposed to *specific wrong-way risk* if the future



exposure to a specific counterparty is expected to be high when the counterparty's *probability of default* is also high.

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

*specified investment* (1) any of the following *investments* specified in Part III of the *Regulated Activities Order* (Specified Investments):

...

(oe) ~~*emissions auction products* (article 82A); [deleted]~~

...

(2) (in COLL) in addition and to the extent it does not fall within (1), an investment which would have been within the definition of “specified investment” in the FCA Handbook [immediately before exit day].

*sponsor* (1) ...

(2) ~~(in BIPRU), in accordance with Article 4(42) of the *Banking Consolidation Directive* (Definitions) and in MIPRU 4 and in relation to a *securitisation* within the meaning of paragraph (2) of the definition of *securitisation*, an *undertaking* other than an *originator* that establishes and manages an *asset backed commercial paper programme* or other *securitisation* scheme that purchases *exposures* from third party entities.~~

[Note: article 4(42) of the *Banking Consolidation Directive* (Definitions)]

(3) ~~in IFPRU and FUND) has the meaning in article 4(1)(14) of the *EU-CRR UK CRR*.~~

*standardised approach* (for the purposes of *BIPRU*) one of the following:

...

(e) (where the one of the approaches in (a) to (d) (c) is being applied on a consolidated basis) that approach as applied on a consolidated basis in accordance with BIPRU 8 (Group risk - consolidation); ~~or~~

(f) ~~when the reference is to the rules of or administered by a *regulatory body* other than the *appropriate regulator*, whatever corresponds to the approach in (a) to (e), as the case may be, under those rules. [deleted]~~

*state finance  
organisation*

a legal person other than a *company*:

- (a) which is a national of ~~an EEA State~~ a state;
- ...
- (d) which is financed by means of the resources they have raised and resources provided by the ~~EEA State~~ state; and
- (e) the *debt securities* issued by it are considered by the law of the relevant ~~EEA State~~ state as securities issued or guaranteed by that state.

*state monopoly*

a *company* or other legal person which is a national of ~~an EEA state~~ a state and which:

- (a) in carrying on its business benefits from a monopoly right granted by ~~an EEA state~~ a state; and
- (b) is set up by or pursuant to a special law or whose borrowings are unconditionally and irrevocably guaranteed by ~~an EEA state~~ a state or one of the ~~federated states of an EEA state~~ a state's federated states.

*State of the  
commitment*

~~(in accordance with paragraph 6(1) of Schedule 12 to the Act (Transfer schemes: certificates)) (in relation to a commitment entered into at any date):~~

- (a) if the *policyholder* is an individual, the State in which he had his habitual residence at that date;
- (b) if the *policyholder* is not an individual, the State in which the establishment of the *policyholder* to which the commitment relates was established at that date;

in this definition, “commitment” means (in accordance with article 2 of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625)) any contract of insurance of a kind referred to in UK provisions which implemented article 2(3) of the *Solvency II Directive*.

*State of the risk*

~~(in accordance with paragraph 6(3) of Schedule 12 to the Act (Transfer schemes: certificates)) (in relation to the EEA State in which a risk is situated):~~

- (a) if the insurance relates to a building or to a building and its contents (so far as the contents are covered by the same policy), the ~~EEA State~~ state in which the building is situated;

- (b) if the insurance relates to a vehicle of any type, the ~~EEA State~~ state of registration;
- (ba) if the insurance relates to a *vehicle* dispatched from one ~~EEA State~~ state to another, in respect of the period of 30 days beginning with the day on which the purchaser accepts delivery, the ~~EEA State~~ state of destination (and not, as provided by sub-paragraph (b), the ~~EEA State~~ state of registration);  
[Note: article 15(1) of the *Consolidated Motor Insurance Directive*]
- (c) in the case of *policies* of a duration of four months or less covering travel or holiday risks (whatever the class concerned), the ~~EEA State~~ state in which the *policyholder* took out the *policy*;
- (d) in a case not covered by (a) to (c):
  - (i) if the *policyholder* is an individual, the ~~EEA State~~ state in which he has his habitual residence at the date when the contract is entered into; and
  - (ii) otherwise, the ~~EEA State~~ state in which the establishment of the *policyholder* to which the *policy* relates is situated at that date.

*sub-consolidated basis*

has the meaning in article 4(1)(49) of the ~~EU CRR~~ UK CRR.

*subsidiary*

- (1) (except in relation to *MiFID business*) (as defined in section 1159(1) of the Companies Act 2006 (Meaning of “subsidiary”, etc)) (in relation to another *body corporate* (“H”)) a *body corporate* of which H is a *holding company*.
- (2) (in relation to *MiFID business*) a subsidiary undertaking within the meaning of article 2(10) and article 22 of the *Accounting Directive*, including any subsidiary of a subsidiary undertaking of an ultimate *parent undertaking*.
- (3) (for the purpose of *IFPRU*) has the meaning in article 4(1)(16) of the ~~EU CRR~~ UK CRR.

[Note: article 4 (1)(33) of *MiFID*]

*suitability report*

a report which a *firm* must provide to its *client* which, among other things, explains why the *firm* has concluded that a recommended transaction is suitable for the *client* and which is provided pursuant to:

...

- (c) *GEN 2.2.22AR* and *COBS 9A.3.3EUUK* where the *firm* is carrying on the *equivalent business of a third country investment firm*;
- (d) *COBS 9A.1.2R* and *COBS 9A.3.3EUUK* where the *firm* is carrying on *MiFID optional exemption business*; or
- ...
- summary resolution communication* either:
- (1) in relation to a *MiFID complaint*, a response in accordance with *DISP 1.1A.24EUUK*, *DISP 1.1A.25EUUK* and *DISP 1.1A.26R*; or
- (2) in relation to all other *complaints*, has the meaning given in *DISP 1.5.4R*.
- supervisory authority* (1) ~~(in accordance with article 4(1)(al) of AIFMD)~~ (for a *non-EEA UK AIF*) the national authority or authorities of the ~~non-EEA~~ *State* empowered by law or regulation to supervise *AIFs* in that ~~non-EEA~~ *State*.
- [Note: article 4(1)(al) of *AIFMD*]
- (2) ~~(in accordance with article 4(1)(am) of AIFMD)~~ (for a *non-EEA UK AIFM*) the national authority or authorities of the ~~non-EEA~~ *State* empowered by law or regulation to supervise *AIFMs* in that ~~non-EEA~~ *State*.
- [Note: article 4(1)(am) of *AIFMD*]
- supervisory formula method* (for the purposes of *BIPRU 9* (Securitisation), in relation to a *securitisation* within the meaning of paragraph (2) of the definition of *securitisation* and in accordance with Part 1 of Annex IX of the ~~*Banking Consolidation Directive*~~ (~~Securitisation definitions~~)) the method of calculating *risk weighted exposure amounts* for *securitisation positions* set out in *BIPRU 9.12.21R – BIPRU 9.12.23R* and *BIPRU 9.14.3R*.
- [Note: Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)]
- supervisory function* (1) any function within a *common platform firm* that is responsible for the supervision of its *senior personnel*.
- (2) (in relation to a *management company* and in accordance with ~~article 3(6) of the UCITS implementing Directive~~) the *relevant persons* or body or bodies responsible for the supervision of its *senior personnel* and for the assessment and periodic review of the adequacy and effectiveness of the risk management

process and of the policies, arrangements and procedures ~~put in place to comply with its obligations under the UCITS Directive~~ of the firm.

[Note: article 3(6) of the *UCITS implementing Directive*]

*Swiss general insurance company*

(in accordance with article 1(2) of the Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001 (SI 201/2507)) a *person*:

- (a) whose head office is in Switzerland;
- (b) who is authorised by the supervisory authority in Switzerland as mentioned in article 7.1 of the *Swiss Treaty Agreement*; and
- (c) who is seeking to carry on, or is carrying on, from a branch in the *United Kingdom*, a *regulated activity* consisting of the *effecting or carrying out of contracts of insurance* of a kind which is subject to that agreement.

[*Editor's note*: In due course, this definition will be updated to reflect any amendments made to the Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001 (SI 201/2507).]

*Swiss Treaty agreement*

the agreement of 10 October 1989 between the European Economic Community and the Swiss Confederation on direct insurance other than life insurance, approved on behalf of the European Economic Community by the Council Decision of 20 June 1999 (No 91/370/EEC).

[*Editor's note*: In due course, this definition will be updated to reflect any agreement entered into between the United Kingdom and Switzerland.]

*synthetic risk and reward indicator*

(in *COLL* and ~~in accordance with article 2(2) of the UCITS implementing Directive No 2~~) a synthetic indicator within the meaning of article 8 of the *KII Regulation*.

[Note: article 2(2) of the *UCITS implementing Directive No 2*]

*synthetic securitisation*

(~~in accordance with Article 4(38) of the Banking Consolidation Directive (Definitions)~~ and for the purpose of *BIPRU*) a *securitisation* (within the meaning of paragraph (2) of the definition of securitisation) where the *tranching* is achieved by the use of credit derivatives or guarantees, and the pool of *exposures* is not removed from the balance sheet of the *originator*.

[Note: article 4(38) of the *Banking Consolidation Directive (Definitions)*]

*systematic internaliser*

(~~has the meaning in article 4(1)(20) of MiFID~~) (in summary) an *investment firm* which, on an organised, frequent systematic and substantial basis, *deals on own account* by executing client orders

~~outside a regulated market, an MTF or an OTF without operating a multilateral system.~~

[~~Note: article 4(1)(20) of MiFID~~]

an investment firm which:

- (a) on an organised, frequent, systemic and substantial basis, deals on own account when executing client orders outside a regulated market, UK MTF or UK OTF without operating a multilateral system; and
- (b) either:
  - (i) satisfies the criteria set out in Article 12, 13, 14, 15 or 16 of the MiFID Org Regulation assessed, in accordance with Article 17 of that Regulation; or
  - (ii) has chosen to opt-in to the systemic internaliser regime.

For these purposes:

- (A) the frequent and systemic basis is to be measured either by the number of OTC trades in the financial instrument carried out by the investment firm on own account when executing client orders; and
- (B) the substantial basis is to be measured either by the size of the OTC trading carried out by the investment firm in relation to the total trading of the investment firm in a specific financial instrument or by the size of the OTC trading carried out by the investment firm in relation to the total trading in the relevant area (within the meaning of article 14(5A) of MiFIR) in a specific financial instrument.

[~~Note: article 2(1)(12) and (12A) of MiFIR~~]

*systemically important institution*

~~(in accordance with article 3(30) of CRD) an EEA parent institution an EEA parent financial holding company, an EEA parent mixed financial holding company or an institution the failure or malfunction of which could lead to systemic risk (in IFPRU) has the meaning in article 4(1)(128D) of the UK CRR.~~

[~~Note: article 3(30) of CRD~~]

*third country*

a territory or country which is not ~~an EEA State~~ the United Kingdom.

*third-country banking and investment group*

a banking and investment group that meets the following conditions:

- (a) it is headed by:
  - (i) a credit institution; or

- (ii) an *asset management company*; or
- (iii) an *investment firm*; or
- (iv) a *financial holding company*;

that has its head office outside the ~~EEA~~ United Kingdom; and

- (b) it is not part of a wider ~~EEA banking and investment group consolidation group~~ that is required by UK prudential sectoral regulation for the banking sector or the investment services sector to be subject to consolidated supervision.

*third country benchmark contributor*

a *firm* which:

- (1) contributes input data to a *BMR benchmark administrator*;
- (2) is located in a non-EU state outside the United Kingdom; and
- (3) either
  - (a) is a *supervised entity*; or
  - (b) would be a *supervised entity* if it were located in the EU United Kingdom.

*third country BIPRU firm*

- (1) (in *BIPRU* (except in *BIPRU* 12) and *SYSC* 19C) an *overseas firm* that:

- (a) ~~is not an EEA firm~~; [deleted]
- (b) ~~has its head office outside the EEA~~; and [deleted]
- (c) would be a *BIPRU firm* if it had been a *UK domestic firm*, it had carried on all its business in the *United Kingdom* and had obtained whatever authorisations for doing so are required under the *Act*.

- (2) ~~(in BIPRU 12) an overseas firm that:~~

- (a) is a *bank*;
- (b) ~~is not an EEA firm~~; and
- (c) ~~has its head office outside the EEA~~. [deleted]

*third country competent authority*

a *regulatory body* of a state or territory ~~that is not an EEA State~~ other than the United Kingdom.

*third-country competent authority*

the authority of a country or territory which is not ~~an EEA State~~ the United Kingdom that is empowered by law or regulation to supervise (whether on an individual or group-wide basis) *regulated entities*.

<i>third-country countercyclical buffer authority</i>	<p>(1) the authority of a <i>third country</i> empowered by law or regulation with responsibility for setting the <i>countercyclical buffer rate</i> for that <i>third country</i>; <u>or</u></p> <p>(2) <u>the European Central Bank when it carries out the task of setting a countercyclical buffer rate for an <i>EEA State</i> conferred on it by article 5(2) of Council Regulation (EU) No 1024/2013, conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.</u></p>
<i>third-country financial conglomerate</i>	a <del>financial conglomerate that is of a type that falls under Article 5(3) of the <i>Financial Groups Directive</i>, which in summary is a <i>financial conglomerate</i></del> headed by a <i>regulated entity</i> or a <i>mixed financial holding company</i> that has its head office outside the <del><i>EEA</i></del> <u><i>United Kingdom</i></u> .
<i>third country firm</i>	(in SYSC) either: <p>(a) a <i>third country investment firm</i>; or</p> <p>(b) the <i>UK</i> branch of a <del><i>non-EEA bank</i></del> <u><i>non-UK bank</i></u>.</p>
<i>third country IFPRU 730k firm</i>	an <del>overseas firm</del> that: <p>(a) <del>is not an <i>EEA firm</i></del>;</p> <p>(b) <del>has its head office outside the <i>EEA</i></del>; and</p> <p>(c) would be an <i>IFPRU 730k firm</i> if it had been a <i>UK domestic firm</i>, had carried on all of its business in the <i>United Kingdom</i> and had obtained whatever authorisations for doing so as are required under the <i>Act</i>.</p>
<i>third country investment firm</i>	a <i>firm</i> which would be a <i>MiFID investment firm</i> if it had its head office in the <del><i>EEA</i></del> <u><i>UK</i></u> .
<i>third country investment services undertaking</i>	(in BIPRU) a <i>CAD investment firm</i> , a <i>financial institution</i> or an <i>asset management company</i> in a <del><i>non-EEA state</i></del> <u>country other than the <i>UK</i></u> .
<i>third party prospectus</i>	a communication made by a <i>firm</i> if the communication is a prospectus that: <del>has been drawn up and published in accordance with [the <i>Prospectus Directive</i>]</del> <p>(a) <u>has been approved by the <i>FCA</i> in accordance with Part 6 of the <i>Act</i> and the <i>firm</i> is not responsible under the <i>Prospectus Rules</i> for the information given in the prospectus; or</u></p> <p>(b) <u>is to be treated under regulation 73 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.)</u></p>



(EU Exit) Regulations 2019 as if it had been approved by the FCA and the firm is not responsible under that directive the Prospectus Directive for the information given in the prospectus.

[Note: recital 73 to the *MiFID Org Regulation*]

<i>tier 2 capital</i>	as defined in article 71 of the <del>EU-CRR</del> <u>UK CRR</u> .
<i>tier 2 instruments</i>	a capital instrument that qualify as tier 2 instruments under article 62 of the <del>EU-CRR</del> <u>UK CRR</u> .
<i>total return swap</i>	(in <i>COLL</i> and <i>FUND</i> ) a derivative contract defined in article 3(18) of the <u>EU Securities Financing Transactions Regulation as it had effect immediately before exit day</u> .
<i>total risk exposure amount</i>	the total risk exposure amount of a <i>firm</i> calculated in accordance with article 92(3) of the <del>EU-CRR</del> <u>UK CRR</u> (Own funds requirements).
<i>trading book</i>	<p>(1) [deleted]</p> <p>(2) (in <i>BIPRU</i> and <i>GENPRU</i> in relation to a <i>BIPRU firm</i>) has the meaning in <i>BIPRU</i> 1.2 (Definition of the trading book) which is in summary, all that <i>firm's positions</i> in <i>CRD financial instruments</i> and <i>commodities</i> held either with trading intent or in order to hedge other elements of the <i>trading book</i>, and which are either free of any restrictive covenants on their tradability or able to be hedged.</p> <p>(3) (in <i>BIPRU</i> and <i>GENPRU</i> and in relation to a <i>person</i> other than a <i>BIPRU firm</i>) has the meaning in (2) with references to a <i>firm</i> replaced by ones to a <i>person</i>.</p> <p>(4) (in <i>IFPRU</i> and in relation to an <i>IFPRU investment firm</i>) has the meaning in article 4(1)(86) of the <del>EU-CRR</del> <u>UK CRR</u>.</p> <p>(5) (in <i>DTR</i>) has the meaning in article 4.1(86) of <del>EU-CRR</del> <u>UK CRR</u>.</p>
<i>trading day</i>	<p>...</p> <p>(3) (in <i>FINMAR</i>) as defined in article 2(1)(p) of the <i>short selling regulation</i>, <del>a trading day as referred to in article 4 of Regulation (EC) No 1287/2006 in relation to a trading venue,</del> <u>means a day during which the trading venue concerned is open for trading.</u></p>
<i>trading venue</i>	<p>(1) (except in <i>FINMAR</i>) a <i>regulated market</i>, an <u>EU regulated market</u>, an <i>MTF</i> or an <i>OTF</i>.</p> <p>[Note: <del>article 4(1)(24) of MiFID</del>]</p>

- (2) (in *FINMAR*) (as defined in article 2(1)(1) of the *short selling regulation*) ~~a regulated market or an MTF~~;
- (i) a UK regulated market within the meaning of point (13A) of article 2(1) of Regulation 2014/600/EU;
- (ii) a UK multilateral trading facility within the meaning of point (14A) of article 2(1) of Regulation 2014/600/EU.
- ~~[Note: article 4(1)(24) of *MiFID*]~~
- (4) (in *MAR 1*) a regulated market, an EU regulated market or an MTF.

*traditional securitisation*

~~(in accordance with Article 4(37) of the *Banking Consolidation Directive* (Definitions) and for the purpose of *BIPRU* and *MIPRU*) a securitisation (within the meaning of paragraph (2) of the definition of securitisation) involving the economic transfer of the *exposures* being securitised to a *securitisation special purpose entity* which issues securities; and so that:~~

- (a) this must be accomplished by the transfer of ownership of the *securitised exposures* from the *originator* or through sub-participation; and
- (b) the securities issued do not represent payment obligations of the *originator*.

~~[Note: article 4(37) of the *Banking Consolidation Directive* (Definitions)]~~

*tranche*

~~(in accordance with Article 4(39) of the *Banking Consolidation Directive* (Definitions) and in relation to a *securitisation* within the meaning of paragraph (2) of the definition of securitisation and for the purposes of *BIPRU* and *MIPRU*) a contractually established segment of the credit risk associated with an *exposure* or number of *exposures*, where a position in the segment entails a risk of credit loss greater than or less than a position of the same amount in each other such segment, without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments.~~

~~[Note: article 4(39) of the *Banking Consolidation Directive* (Definitions)]~~

*transferable security*

- (1) (in *PR* and *LR*) (as defined in section 102A of the *Act*) anything which is a transferable security for the purposes of ~~*MiFID*~~ *MiFIR*, other than money market instruments for the purposes of ~~that directive~~ *MiFIR* which have a maturity of less than 12 months.

- (2) (in *COLL*) an *investment* within *COLL* 5.2.7R (Transferable securities) in relation to *schemes* falling under *COLL* 5.
- (3) those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:
  - (a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
  - (b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities; and
  - (c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, *commodities* or other indices or measures.

[Note: article 4(1)(44) 2(24) of ~~MiFID~~ MiFIR]

*UCITS* ~~undertakings for collective investment in transferable securities that are established in accordance with the *UCITS Directive*~~ a *UCITS scheme* or an *EEA UCITS scheme*.

*UCITS firm* a *firm* which:

- (a) is a *management company* (whether or not it is also the *manager* of *AIFs* or the *operator* of other *collective investment schemes*); and
- (b) does not have a *Part 4A permission* ~~(or an equivalent permission from its *Home State regulator*)~~ to carry on any *regulated activities* other than those which are in connection with, or for the purpose of, managing collective investment undertakings.

*UCITS investment firm* a *firm* which:

- (a) is a *management company* (whether or not it is also the *manager* of *AIFs* or the *operator* of other *collective investment schemes*); and
- (b) has a *Part 4A permission* ~~(or an equivalent permission from its *Home State regulator*)~~ to manage investments where:
  - (i) the *investments* managed include one or more of the ~~instruments listed in Section C of Annex 1 to *MiFID*~~ *financial instruments*; and

- (ii) the permission extends to activities ~~permitted by~~ referred to in article 6(3) of the *UCITS Directive* as well as those ~~permitted by~~ referred to in article 6(2).
- UCITS level 2 regulation*      the UK version of Commission delegated regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to the obligations of depositaries, which is part of UK law by virtue of the EUWA, as amended by section 8 of the EUWA. (<http://eurlex.europa.eu/legal-content/EN/TXT/?qid=1459519567928&uri=CELEX:32016R0438>)
- UCITS management company*      (1) (except in relation to *MiFID business*) a *firm* which is either:
- (a) a *UCITS firm*; or
- (b) a *UCITS investment firm*.
- (2) (in relation to *MiFID business*) a *management company* ~~as defined in the *UCITS Directive*.~~
- ...
- UCITS marketing notification*      (in *COLL*) a notification made before *exit day* in respect of a *UCITS scheme*, for the purpose of marketing units in another *EEA State*, pursuant to:
- (a) paragraph 20B(5) (Notice of intention to market) of Schedule 3 (EEA Passport Rights) to the *Act*; ~~or~~
- (b) ~~article 46 of the Council Directive of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (No 85/611/EEC).~~
- UCITS merger*      (in *COLL* and in accordance with ~~article 2(1)(p) of the *UCITS Directive*~~ regulations 7 and 8 of the *UCITS Regulations 2011*) a merger between one or more *UCITS schemes* ~~or between one or more *UCITS schemes* and *EEA UCITS schemes* being an operation~~ whereby:
- (a) ~~one or more *merging UCITS*, on being dissolved without going into liquidation, transfers all of its assets and liabilities to an existing *receiving UCITS*, in exchange for the issue to its *Unitholders of units* of the *receiving UCITS* and, if applicable, a cash payment not exceeding 10% of the net asset value of those *units* (a “merger by absorption”); or [deleted]~~
- (b) ~~two or more *merging UCITS*, on being dissolved without going into liquidation, transfer all of its assets and liabilities to a *receiving UCITS* which they form, in exchange for the issue to their *Unitholders of units* of the *receiving UCITS* and, if~~

applicable, a cash payment not exceeding 10% of the net asset value of those *units* (a “merger by formation of a new *UCITS*”); or ~~[deleted]~~

- (c) one or more *merging UCITS*, which continue to exist until the liabilities have been discharged, transfer its net assets to another *receiving UCITS*, and for this purpose the *merging UCITS* and the *receiving UCITS* may be *sub-funds* of the same *UCITS* (a “merger by *scheme of arrangement*”);

but at least one of which is established in the *United Kingdom*.

*UCITS scheme*

- (a) ~~an *authorised fund* authorised by the *FCA* in accordance with the *UCITS Directive*: means a *UK UCITS*.~~
- (i) ~~with the sole object of collective investment in *transferable securities* or in other liquid financial instruments permitted by *COLL 5.2* (General investment powers and limits for *UCITS* schemes) of capital raised from the public and which operates on the principle of risk spreading; and~~
- (ii) ~~with *units* which are, at the request of *Unitholders*, repurchased or *redeemed*, directly or indirectly, out of the *scheme's* assets; and for this purpose action taken by or on behalf of a *scheme* to ensure that the stock exchange value of its *units* does not significantly vary from their net asset value is to be regarded as equivalent to that repurchase or *redemption*; or~~
- (b) ~~an *umbrella*, each of whose *sub-funds* would be a *UCITS scheme* if it had a separate *authorisation order*;~~

unless:

- (c) ~~[deleted]~~
- (d) ~~the *scheme's units* under its *instrument constituting the fund*, may be sold only to the public in *non-EEA States*; or~~
- (e) ~~the *scheme* (other than a *master UCITS* which has at least two *feeder UCITS* as *Unitholders*) raises capital without promoting the *sale* of its *units* to the public within the *EEA* or any part of it.~~

~~[Note: article 1 of the *UCITS Directive*]~~

*UK consolidation group*

- (1) (for the purposes of *SYSC* as it applies to a *CRR firm*) the *group of undertakings* which are included in the *consolidated situation* of a *UK parent institution in a Member State, an EEA parent institution, an EEA a UK parent financial holding company* or ~~an EEA a UK parent mixed financial holding~~

*company* (including any *undertaking* which is included in that consolidation because of a *consolidation article 12(1) relationship*, *article 18(5) relationship* or *article 18(6) relationship*).

- (2) (for the purposes of *BIPRU* and *SYSC* as it applies to a *BIPRU firm*) has the meaning in *BIPRU* 8.2.4R (Definition of UK consolidation group), which is in summary the group that is identified as a *UK consolidation group* in accordance with the decision tree in *BIPRU* 8 Annex 1R (Decision tree identifying a UK consolidation group); in each case only *persons* included under *BIPRU* 8.5 (Basis of consolidation) are included in the *UK consolidation group*.

*UK countercyclical buffer authority*

(for the purposes of *IFPRU* 10.3 (Countercyclical capital buffer) and in accordance with article 7 of The Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014) the Bank of England, designated for the purpose of article 136(1) of the *CRD* in article 7 of The Capital Requirements (Capital Buffers and Macroprudential Measures) Regulations 2014.

*UK firm*

- (1) (except in *REC*) (as defined in paragraph 10 of Schedule 3 to the *Act* (EEA Passport Rights)) either a *an authorised person*:
- (a) whose head office is in the *United Kingdom* ~~and who has an *EEA right* to carry on activity in an *EEA State* other than the *United Kingdom*~~; or
- (b) whose registered office is in the *United Kingdom* ~~and who has an *EEA right* which derives from the *IDD* to carry on an activity in an *EEA State* other than the *United Kingdom*~~.
- (2) ~~(in *REC*) means an *investment firm* or *credit institution* which has a *Part 4A permission* to carry on one or more *regulated activities*. [deleted]~~

*UK lead regulated firm*

a *UK firm* that:

- (a) is not part of a group that is subject to consolidated supervision by the *FCA* or the *PRA* or any other *regulatory body*; or
- (b) is part of a group that is subject to consolidated supervision by the *FCA* or the *PRA* and that group is not part of a wider group that is subject to consolidated supervision by a *regulatory body* other than the *FCA* or the *PRA*.

For the purposes of this definition:

- (c) Consolidated supervision of a group of persons means supervision of the adequacy of financial and other resources of that group on a *consolidated basis*.
- (d) It is not relevant whether or not any supervision by another *regulatory body* has been assessed as equivalent under the *CRD* and ~~*EU-CRR*~~ *UK CRR* or the *Financial Groups Directive*.
- (e) If the group is a *consolidation group* or *financial conglomerate* of which the *FCA* or the *PRA* is lead regulator that is headed by an *undertaking* that is not itself the *subsidiary undertaking* of another *undertaking* the *firm* is a ‘UK lead regulated firm’.

This definition is not related to the defined term *lead regulated firm*.

*UK recognised body* a *UK RIE* ~~or *RAP*~~.

*unauthorised AIFM* a *person* who is not an *authorised person* but who is:

- (a) a *small registered UK AIFM*; or
- (b) ~~a small registered EEA AIFM, i.e. an EEA AIFM that is a small AIFM that has not opted in to become a full-scope EEA AIFM; or [deleted]~~
- (c) ~~a full-scope EEA AIFM that is entitled to market an AIF in the United Kingdom following a notification under regulation 57 of the AIFMD UK regulation; or [deleted]~~
- (d) ~~an a small non-EEA UK AIFM that is entitled to market an AIF in the United Kingdom following a notification under regulation 58 of the AIFMD UK regulation; or~~
- (e) ~~an above-threshold non-EEA UK AIFM to which the requirement at regulation 59(3) of the AIFMD UK regulation applies; or~~
- (f) ~~a full-scope EEA AIFM that is exercising a right to market an AIF in the United Kingdom arising out of the EuSEF regulation or the EuVECA regulation. [deleted]~~

*unfunded credit protection*

- (1) ~~(in BIPRU and in accordance with Article 4(32) of the Banking Consolidation Directive (Definitions))~~ a technique of *credit risk mitigation* where the reduction of the credit risk on the *exposure* of an *undertaking* derives from the *undertaking* of a third party to pay an amount in the event of the default of the borrower or on the occurrence of other specified events.

[Note: article 4(32) of the *Banking Consolidation Directive* (Definitions)]

- (2) (in *IFPRU*) has the meaning in article 4(1)(59) of the *EU-CRR UK CRR*.
- (3) (in *MIPRU*) a way of mitigating credit risk where the reduction of credit risk on the *exposure* of an *undertaking* (the borrower) derives from the enforceable obligation of a third party to pay an amount in the event of the default of the borrower or on the occurrence of other specified events.

*unrated position*

(for the purposes of *BIPRU* 9 (Securitisation), ~~in accordance with Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)~~) and in relation to a *securitisation position*) describes a *securitisation position* which does not have an eligible credit assessment by an *eligible ECAI*.

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

*VaR model permission*

~~an Article 129 implementing measure~~, a requirement or a waiver that requires a *BIPRU* firm or a *CAD* investment firm to use the *VaR model approach* on a solo basis or, if the context requires, a consolidated basis.

*Zone A country*

- (a) ~~any EEA State~~ [deleted];
- (b) ~~all other~~ countries which are full members of the *OECD*; and
- (c) those countries which have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the Fund's general arrangements to borrow (GAB),

save that any country falling with (a), (b) or (c) which reschedules its external sovereign debt is precluded from Zone A for a period of five years.

Delete the following definitions. The text is not shown struck through.

*AIFM qualifier*

an *EEA AIFM* which is *marketing*, or has *marketed*, an *AIF* in the *UK* by:

- (a) exercising its *EEA right to market* under Schedule 3 of the *Act* (EEA Passport Rights); and
- (b) is not exercising a right to *manage* a *UK AIF* under Schedule 3 of the *Act*.



<i>AIFMD host state requirements</i>	<p>Handbook rules transposing articles 12 and 14 of AIFMD and which fall under the responsibility of the <i>Host State</i> to supervise where an <i>AIFM</i> manages or markets an <i>AIF</i> through a branch in that <i>EEA State</i>, namely:</p> <ul style="list-style-type: none"> <li>(a) <i>FUND</i> 3.8;</li> <li>(b) <i>SYSC</i> 4.1.2CR;</li> <li>(c) <i>SYSC</i> 10.1.22 R to <i>SYSC</i> 10.1.26R; and</li> <li>(d) <i>COBS</i> 2.1.4R.</li> </ul>
<i>applicable provisions</i>	<p>the <i>Host State</i> rules with which:</p> <ul style="list-style-type: none"> <li>(a) an <i>incoming EEA firm</i> is required to comply when carrying on a <i>permitted activity</i> through a <i>branch</i> or by providing services (as applicable) in the <i>United Kingdom</i>, as defined in paragraphs 13(4) and 14(4) of Part II of Schedule 3 to the <i>Act</i> (Exercise of passport rights by EEA firms); or</li> <li>(b) a <i>UK firm</i> is required to comply when conducting business through a <i>branch</i> (in accordance with paragraph 19(13) of Part III of Schedule 3 to the <i>Act</i> (Exercise of passport rights by UK firms)) or by providing services (as applicable) in another <i>EEA State</i>.</li> </ul>
<i>Article 129 implementing measure</i>	<p>any:</p> <ul style="list-style-type: none"> <li>(a) measure taken by the <i>appropriate regulator</i> under regulations 7-9 of the <i>Capital Requirements Regulations 2006</i>; or</li> <li>(b) corresponding measure taken by another <i>competent authority</i> to apply an <i>Article 129 permission</i> as referred to in the last paragraph of Article 129(2) of the <i>Banking Consolidation Directive</i>.</li> </ul>
<i>Article 129 permission</i>	<p>a permission of the type referred to in Article 129(2) of the <i>Banking Consolidation Directive</i> (permission to apply the <i>IRB approach</i>, the <i>AMA approach</i> or the <i>CCR internal model method</i> on a consolidated basis) or Article 37(2) of the <i>Capital Adequacy Directive</i> (permission to apply the <i>VaR model approach</i> on a consolidated basis) excluding an <i>Article 129 implementing measure</i>.</p>
<i>Article 129 procedure</i>	<p>the procedure described in Article 129(2) of the <i>Banking Consolidation Directive</i> (permission to apply the <i>IRB approach</i>, the <i>AMA approach</i> or the <i>CCR internal model method</i> on a consolidated basis) or that applies under Article 37(2) of the <i>Capital Adequacy Directive</i> (permission to apply the <i>VaR model approach</i> on a consolidated basis) for the purpose of applying for and granting or refusing an <i>Article 129 permission</i> or the procedure for varying or revoking an <i>Article 129 permission</i> in accordance with the <i>Banking Consolidation Directive</i> or the <i>Capital Adequacy Directive</i>.</p>

<i>auction platform</i>	a platform on which auctions of <i>emissions allowances</i> are held in accordance with the <i>auction regulation</i> .
<i>auction regulation</i>	Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community).
<i>auction regulation bidding</i>	the <i>regulated activity</i> of <i>bidding in emissions auctions</i> where it is carried on by a <i>firm</i> that is exempt from <i>MiFID</i> under article 2(1)(j).
<i>bidding in emissions auctions</i>	the <i>regulated activity</i> , specified in article 24A of the <i>Regulated Activities Order</i> (Bidding in emissions auctions), which is in summary the reception, transmission or submission of a bid at an auction of an <i>emissions auction product</i> conducted on an <i>auction platform</i> .
<i>branch passport notification</i>	a notification made in accordance article 35(2) of <i>MiFID</i> and <i>MiFID ITS 4A</i> Annex VI.
<i>central competent authority</i>	(in <i>MAR 10</i> ) in respect of a particular <i>commodity derivative</i> traded in significant volumes on <i>trading venues</i> in more than one <i>EEA</i> jurisdiction, the <i>competent authority</i> of the <i>trading venue</i> where the largest volume of trading in the <i>commodity derivative</i> takes place in the <i>EEA</i> .
<i>Complaints investigator</i>	...  (3) <del>in relation to an <i>RAP</i>) the independent <i>person</i> appointed under arrangements referred to in regulations 22 and 23 of the <i>RAP regulations</i> to investigate a complaint and to report on the result of his investigation to that <i>RAP</i> and to the complainant. [deleted]</del>
<i>consent notice</i>	a notice given by the <i>FCA</i> or <i>PRA</i> as the case may be to a <i>Host State regulator</i> under:  (a) paragraph 19(4) (Establishment) of Part III of Schedule 3 to the <i>Act</i> (Exercise of Passport Rights by UK firms); or  (b) paragraph 20(3A) (Services) of Part III of Schedule 3 to the <i>Act</i> (Exercise of Passport Rights by UK firms).
<i>country of origin</i>	in relation to an <i>electronic commerce activity</i> , the <i>EEA State</i> in which the <i>establishment</i> from which the service in question is provided is situated.
<i>cross-border dispute</i>	(as defined in regulation 5 of the <i>ADR Regulations</i> ) a dispute concerning contractual obligations arising from a <i>sales contract</i> or a <i>service contract</i> where, at the time the <i>consumer</i> orders the goods or services, the <i>trader</i> is established in the <i>United Kingdom</i> and the <i>consumer</i> is resident in another Member State.

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

- cross border services*
- (1) (in relation to a *UK firm*) services provided within an *EEA State* other than the *United Kingdom* under the freedom to provide services.
  - (2) (in relation to an *incoming EEA firm* or an *incoming Treaty firm*) services provided within the *United Kingdom* under the freedom to provide services.

*cross-border dispute*

(as defined in regulation 5 of the *ADR Regulations*) a dispute concerning contractual obligations arising from a *sales contract* or a *service contract* where, at the time the *consumer* orders the goods or services, the *trader* is established in the *United Kingdom* and the *consumer* is resident in another Member State.

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

*Cross-Border Payments in Euro Regulations*

the Cross-Border Payments in Euro Regulations 2010 (SI 2010/89).

*cross-border UCITS merger*

(in *COLL* and in accordance with article 2(1)(q) of the *UCITS Directive*) a *UCITS merger* of two or more *UCITS*:

- (a) at least two of which are established in different *EEA States*; or
- (b) established in the same *EEA State* into a newly constituted *UCITS* established in another *EEA State*;

but at least one of which is established in the *United Kingdom*.

*EEA approved incoming information society service*

an incoming *information society service* that has its *establishment* in an *EEA State* other than the *United Kingdom* which has been approved in that state as meeting the standards set out in article 21 of the *TD* and article 12 of the *TD implementing Directive*.

*EEA authorisation*

(in accordance with paragraph 6 of Schedule 3 to the *Act* (EEA Passport Rights)):

- (a) in relation to an *IDD insurance intermediary* or an *IDD reinsurance intermediary*, registration with its *Home State regulator* under article 3 of the *Insurance Distribution Directive*;
- (b) in relation to any other *EEA firm*, authorisation granted to an *EEA firm* by its *Home State regulator* for the purpose of the relevant *Single Market Directive* or the *auction regulation*.

*EEA authorised electronic money institution*

(in accordance with regulation 2(1) of the *Electronic Money Regulations*) a *person* authorised in an *EEA State* other than the *United Kingdom* to

issue *electronic money* and provide *payment services* in accordance with the *Electronic Money Directive*.

<i>EEA authorised payment institution</i>	<p>(a) (in accordance with regulation 2(1) of the <i>Payment Services Regulations</i>) a <i>person</i> authorised in an <i>EEA State</i> other than the <i>United Kingdom</i> to provide <i>payment services</i> in accordance with the <i>Payment Services Directive</i> or a <i>person</i> entitled to provide <i>payment services</i> of the type described in paragraph 1(g) of Schedule 1 to the <i>Payment Services Regulations 2009</i> under regulation 152(5) of the <i>Payment Services Regulations</i>; and</p> <p>(b) (in accordance with paragraph 1 of Schedule 7 to the <i>Payment Services Regulations</i>) a firm which has its head office in Gibraltar, is authorised in Gibraltar to provide <i>payment services</i>, and has an entitlement corresponding to its passport right deriving from the <i>Payment Services Directive</i>, to establish a <i>branch</i> or provide services in the <i>United Kingdom</i>.</p>
<i>EEA bank</i>	an <i>incoming EEA firm</i> which is a <i>CRD credit institution</i> .
<i>EEA branch of an authorised electronic money institution</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i> ) a branch established by an <i>authorised electronic money institution</i> , in the exercise of its <i>passport rights</i> , to issue <i>electronic money</i> , provide <i>payment services</i> , distribute or redeem <i>electronic money</i> or carry out other activities in accordance with the <i>Electronic Money Regulations</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> .
<i>EEA countercyclical buffer authority</i>	<p>(1) the authority or body of a <i>EEA State</i>, other than the <i>UK</i>, designated for the purpose of article 136 of <i>CRD</i> with responsibility for setting the <i>countercyclical buffer rate</i> for that <i>EEA State</i>; or</p> <p>(2) the European Central Bank when it carries out the task of setting a countercyclical buffer rate for an <i>EEA State</i> conferred on it by article 5(2) of Council Regulation (EU) No. 1024/2013, conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.</p>
<i>EEA-deposit insurer</i>	a <i>Solvency II firm</i> that is a third-country insurance undertaking and that has made a deposit in an <i>EEA State</i> (other than the <i>United Kingdom</i> ) under article 162(2)(e) of the <i>Solvency II Directive</i> in accordance with article 167 of that Directive.
<i>EEA ELTIF</i>	an <i>ELTIF</i> authorised by a <i>competent authority</i> other than the <i>FCA</i> under the <i>ELTIF regulation</i> .
<i>EEA financial conglomerate</i>	a <i>financial conglomerate</i> that is of a type that falls under Article 5(2) of the <i>Financial Groups Directive</i> (Scope of supplementary supervision of <i>regulated entities</i> referred to in Article 1 of that Directive) which in summary means a <i>financial conglomerate</i> :

- (a) that is headed by an *EEA regulated entity*; or
- (b) in which the *parent undertaking* of an *EEA regulated entity* is a *mixed financial holding company* which has its head office in the *EEA*; or
- (c) in which an *EEA regulated entity* is linked with a member of the *financial conglomerate* in the *overall financial sector* by a *consolidation Article 12(1) relationship*.

*EEA insurer*

an *insurer*, other than a *pure reinsurer*, whose head office is in any *EEA State* except the *United Kingdom* and which has received *authorisation* under article 14 of the *Solvency II Directive* from its *Home State Regulator*.

*EEA market operator*

(in *REC*) a *person* who is a *market operator* whose *home state* is an *EEA State* other than the *United Kingdom*.

*EEA parent financial holding company*

- (1) (in accordance with Article 4(17) of the *Banking Consolidation Directive* (Definitions) and Article 3 of the *Capital Adequacy Directive* (Definitions)) for the purpose of *GENPRU* (except *GENPRU 3*) and *BIPRU* (except in *BIPRU 12*) a *parent financial holding company* in a *Member State* which is not a *subsidiary undertaking* of an *institution* authorised in any *EEA State* or of another *financial holding company* or *mixed financial holding company* established in any *EEA State*.
- (2) (except in (1)) has the meaning as given to EU parent financial holding company in article 4(1)(31) of the *EU CRR*.

*EEA parent institution*

- (1) (in accordance with Article 4(16) of the *Banking Consolidation Directive* and Article 2 of the *Capital Adequacy Directive* (Definitions)) for the purpose of *BIPRU* (except *BIPRU 12*) a *parent institution* in a *Member State* which is not a *subsidiary undertaking* of another *institution* authorised in any *EEA State*, or of a *financial holding company* or *mixed financial holding company* established in any *EEA State*.
- (2) (except in (1)) has the meaning as given to EU parent institution in article 4(1)(29) of the *EU CRR*.

*EEA parent mixed financial holding company*

- (1) (in accordance with Article 4(17a) of the *Banking Consolidation Directive* (Definitions)) for the purpose of *GENPRU* (except *GENPRU 3*) and *BIPRU* (except in *BIPRU 12*) a *parent mixed financial holding company* in a *Member State* which is not a *subsidiary undertaking* of an *institution* authorised in any *EEA State* or of another *financial holding company* or *mixed financial holding company* established in any *EEA State*.
- (2) (except in (1)) has the meaning as given to EU parent mixed financial holding company in article 4(1)(33) of the *EU CRR*.

<i>EEA parent undertaking</i>	<p>(a) an <i>EEA parent institution</i>; or</p> <p>(b) an <i>EEA parent financial holding company</i>; or</p> <p>(c) an <i>EEA parent mixed financial holding company</i>.</p> <p>[Note: article 2(1)(85) of <i>RRD</i>]</p>
<i>EEA Passport Rights Regulations</i>	the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (SI 2001/2511).
<i>EEA prudential sectoral legislation</i>	<p>(in relation to a <i>financial sector</i>) requirements applicable to <i>persons</i> in that <i>financial sector</i> in accordance with EEA legislation about prudential supervision of <i>regulated entities</i> in that <i>financial sector</i> and so that:</p> <p>(a) (in relation to the <i>banking sector</i> and the <i>investment services sector</i>) in particular this includes the requirements laid down in the <i>EU CRR</i> and (in relation to a <i>CAD investment firm</i>) the <i>Banking Consolidation Directive</i> and the <i>Capital Adequacy Directive</i>; and</p> <p>(b) (in relation to the <i>insurance sector</i>) in particular this includes requirements laid down in the <i>Solvency II Directive</i> and <i>Solvency II Regulations</i>.</p>
<i>EEA pure reinsurer</i>	a <i>pure reinsurer</i> whose head office is in any <i>EEA State</i> except the <i>United Kingdom</i> and which has received (or is deemed to have received) authorisation under article 14 of the <i>Solvency II Directive</i> from its <i>Home State Regulator</i> .
<i>EEA registered account information service provider</i>	(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i> ) a <i>person</i> that is registered as an <i>account information services provider</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> under the <i>Payment Services Directive</i> .
<i>EEA registered tied agent</i>	a <i>tied agent</i> of a <i>UK MiFID investment firm</i> that is not an <i>appointed representative</i> and is not an <i>FCA registered tied agent</i> because it is established in an <i>EEA State</i> other than the <i>United Kingdom</i> .
<i>EEA regulated entity</i>	a <i>regulated entity</i> that is an <i>EEA firm</i> or a <i>UK firm</i> .
<i>EEA right</i>	<p>(in accordance with paragraph 7 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) the entitlement of a <i>person</i> to establish a <i>branch</i> or provide services in an <i>EEA State</i> other than that in which he has his relevant office:</p> <p>(a) in accordance with the <i>Treaty</i> as applied in the <i>European Economic Area</i>; and</p>

- (b) subject to the conditions of the relevant *Single Market Directive* or the *auction regulation*.

In this definition, relevant office means:

- (i) in relation to a *person* who has a registered office and whose entitlement is subject to the conditions of the *Insurance Distribution Directive*, his registered office; and
- (ii) in relation to any other *person*, his head office.

<i>EEA territorial scope rule</i>	<i>COBS</i> 1 Annex 1, Part 2 paragraph 1(1) (which provides that the territorial scope of <i>COBS</i> is modified to the extent necessary to be compatible with European law).
<i>EEA tied agent</i>	a <i>tied agent</i> who is an <i>FCA registered tied agent</i> or an <i>EEA registered tied agent</i> .
<i>ELTIF</i>	a European long-term investment fund (as defined in the <i>ELTIF regulation</i> ) authorised under the <i>ELTIF regulation</i> .
<i>ELTIF regulation</i>	Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds ( <a href="http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_123_R_0010&amp;from=EN">http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_123_R_0010&amp;from=EN</a> ).
<i>emissions auction product</i>	the <i>investment</i> specified in article 82A of the <i>Regulated Activities Order</i> (Greenhouse gas <i>emissions allowances</i> ), which is in summary an <i>emissions allowance</i> offered for sale on an <i>auction platform</i> as a <i>financial instrument</i> or a <i>two-day emissions spot</i> .
<i>establishment conditions</i>	(in relation to the establishment of a <i>branch</i> in the <i>United Kingdom</i> ) the conditions specified in paragraph 13 of Schedule 3 to the <i>Act</i> (EEA Passport Rights), which are that: <ul style="list-style-type: none"> <li>(a) if the <i>firm</i> falls within paragraph (a), (b), (c), (d) or (f) in the definition of “<i>EEA firm</i>”.</li> <li>(b) if the <i>firm</i> falls within paragraph (e) in the definition of “<i>EEA firm</i>”: <ul style="list-style-type: none"> <li>(i) the <i>appropriate regulator</i> has received notice (“a consent notice”) from the firm’s <i>Home State regulator</i> that the firm intends to establish a <i>branch</i> in the <i>United Kingdom</i>;</li> <li>(ii) (A) given in accordance with the <i>IDD</i>;</li> <li>(B) identifies the activities to which the consent relates; and</li> </ul> </li> </ul>

	(C) includes such other information as may be prescribed; and
	(iii) the <i>EEA firm</i> has been informed of the <i>applicable provisions</i> or one <i>month</i> has elapsed, beginning with the date on which the <i>appropriate UK regulator</i> received the consent notice.
	(c) the <i>EEA firm</i> has been informed of the <i>applicable provisions</i> or two <i>months</i> have elapsed beginning with the date when the <i>FCA</i> or <i>PRA</i> (as the case may be) received the consent notice.
<i>EU Cross-Border Regulation</i>	Regulation (EC) No 924/2009 of the European Parliament and of the Council on cross-border payments in the European Community.
<i>EuSEF</i>	a qualifying social entrepreneurship fund (as defined in the <i>EuSEF regulation</i> ).
<i>EuSEF manager</i>	the manager of a qualifying social entrepreneurship fund (as defined in the <i>EuSEF Regulation</i> ) that is registered in accordance with article 15 of the <i>EuSEF Regulation</i> .
<i>EuSEF regulation</i>	Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds as amended by Regulation (EU) No 2017/1991 of the European Parliament and the Council of 25 October 2017 amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds.
<i>EuVECA</i>	a qualifying venture capital fund (as defined in the <i>EuVECA regulation</i> ).
<i>EuVECA manager</i>	the manager of a qualifying venture capital fund (as defined in the <i>EuVECA Regulation</i> ) that is registered in accordance with article 14 of the <i>EuVECA Regulation</i> .
<i>EuVECA regulation</i>	Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds as amended by Regulation (EU) No 2017/1991 of the European Parliament and the Council of 25 October 2017 amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds.
<i>fund application rules</i>	(in <i>COLL</i> and <i>SUP</i> ) the <i>rules</i> set out in <i>COLL</i> 12.3.5R ( <i>COLL</i> fund rules under the management company passport: the fund application rules) that relate to the constitution and functioning of a <i>UCITS scheme</i> and that an <i>EEA UCITS management company</i> must comply with when acting as the <i>operator</i> of the <i>UCITS scheme</i> , whether from a <i>branch</i> in the <i>United Kingdom</i> or under the freedom to provide <i>cross border services</i> , as required by article 19(3) of the <i>UCITS Directive</i> .



<i>Home State authorisation</i>	(as defined in paragraph 3(1)(a) of Schedule 4 to the <i>Act</i> (Treaty Rights)) authorisation of a <i>firm</i> under the law of its <i>Home State</i> to carry on a <i>regulated activity</i> .
<i>IAS</i>	(in <i>LR</i> ) <i>International Accounting Standards</i>
<i>incoming ECA provider</i>	a <i>person</i> , other than an <i>exempt person</i> , who: <ul style="list-style-type: none"> <li>(a) provides an <i>electronic commerce activity</i>, from an <i>establishment</i> in an <i>EEA State</i> other than the <i>United Kingdom</i>, with or for an <i>ECA recipient</i> present in the <i>United Kingdom</i>; and</li> <li>(b) is a national of an <i>EEA State</i> or a company or firm mentioned in article 54 of the <i>Treaty</i>.</li> </ul>
<i>incoming EEA AIFM</i>	an <i>incoming EEA firm</i> which is an <i>AIFM</i> and exercising its rights under <i>AIFMD</i> .
<i>incoming EEA AIFM branch</i>	an <i>incoming EEA firm</i> which is an <i>AIFM</i> and exercising its right to establish a <i>branch</i> under <i>AIFMD</i> .
<i>incoming EEA firm</i>	(in accordance with section 193(1)(a) of the <i>Act</i> (Interpretation of this Part)) an <i>EEA firm</i> which is exercising, or has exercised, its right to carry on a <i>regulated activity</i> in the <i>United Kingdom</i> in accordance with Schedule 3 to the <i>Act</i> (EEA Passport Rights).
<i>incoming firm</i>	(in accordance with section 193(1) of the <i>Act</i> (Interpretation of this Part)) an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i> .
<i>incoming Treaty firm</i>	(in accordance with section 193(1)(b) of the <i>Act</i> (Interpretation of this Part)) a <i>Treaty firm</i> which is exercising, or has exercised, its right to carry on a <i>regulated activity</i> in the <i>United Kingdom</i> in accordance with Schedule 4 to the <i>Act</i> (Treaty rights).
<i>information centre</i>	a centre established by an <i>EEA State</i> to meet its obligations under article 23 of the <i>Consolidated Motor Insurance Directive</i> (Information Centres).
<i>investment services and activities passport notification</i>	a notification made in accordance with article 34(2) of <i>MiFID</i> and <i>MiFID ITS 4 Annex I</i> .
<i>MiFID business bidding</i>	the <i>regulated activity</i> of <i>bidding in emissions auctions</i> where it is carried on by a <i>MiFID investment firm</i> (other than a <i>UCITS investment firm</i> ) in relation to a <i>financial instrument</i> .
<i>non-EEA firm</i>	a firm that has its registered office (or, if it has no registered office, its head office) in a <i>non-EEA state</i> .
<i>non-EEA insurer</i>	an <i>insurer</i> whose head office is not in an <i>EEA State</i> .

<i>non-EEA state</i>	a country or state that is not an <i>EEA State</i> .
<i>notice of intention</i>	a notice of intention (as described in <i>SUP 13.5</i> ) given by a <i>UK firm</i> to: <ul style="list-style-type: none"> <li>(a) establish a <i>branch</i> in an <i>EEA State</i> under paragraph 19(2) of Part III of Schedule 3 to the <i>Act</i> (Exercise of passport rights by UK firms); or</li> <li>(b) provide services in an <i>EEA State</i> under paragraph 20(1) of Part III of Schedule 3 to the <i>Act</i> (Exercise of passport rights by UK firms); or</li> <li>(c) establish a <i>branch</i> or provide services in an <i>EEA state</i> in the exercise of its <i>EEA right</i> under the <i>auction regulation</i>.</li> </ul>
<i>outgoing ECA provider</i>	a <i>firm</i> which: <ul style="list-style-type: none"> <li>(a) provides an <i>electronic commerce activity</i>, from an <i>establishment</i> in the <i>United Kingdom</i>, with or for an <i>ECA recipient</i> present in an <i>EEA State</i> other than the <i>United Kingdom</i>; and</li> <li>(b) is a national of an <i>EEA State</i> or a firm or company mentioned in article 54 of the <i>Treaty</i>.</li> </ul>
<i>passport activity</i>	an activity carried on by an <i>EEA firm</i> , or by a <i>UK firm</i> , under an <i>EEA right</i> .
<i>passport right</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i> ) the entitlement of a <i>person</i> to establish a branch or provide services in an <i>EEA State</i> other than that in which they are authorised to provide <i>electronic money</i> issuance services: <ul style="list-style-type: none"> <li>(a) in accordance with the Treaty on the Functioning of the European Union as applied in the <i>EEA</i>; and</li> <li>(b) subject to the conditions of the <i>Electronic Money Directive</i>.</li> </ul>
<i>RAP</i>	a <i>recognised auction platform</i> .
<i>RAP recognition requirements</i>	<ul style="list-style-type: none"> <li>(1) (in relation to an <i>RAP</i>) any of the requirements applicable to an <i>RAP</i> under the <i>RAP regulations</i>, the <i>auction regulation</i> or <i>MiFIR</i> and any <i>EU regulation</i> adopted under <i>MiFID</i> or <i>MiFIR</i>.</li> <li>(2) (in relation to a <i>UK RIE</i> applying for recognition as an <i>RAP</i>) any of the requirements under the <i>RAP regulations</i>, the <i>auction regulation</i> or <i>MiFIR</i> and any <i>EU regulation</i> adopted under <i>MiFID</i> or <i>MiFIR</i> which, if its application were successful, would apply to it.</li> </ul>
<i>RAP regulations</i>	the Recognised Auction Platforms Regulations 2011 (SI 2011/2699).

<i>recognised auction platform</i>	a <i>recognised investment exchange</i> which is declared by a <i>recognition order</i> for the time being in force to be a <i>recognised auction platform</i> .
<i>relevant competent authorities</i>	(in relation to a <i>financial conglomerate</i> ) those <i>competent authorities</i> which are, or which have been appointed as, relevant <i>competent authorities</i> in relation to that <i>financial conglomerate</i> under Article 2(17) of the <i>Financial Groups Directive</i> (Definitions).
<i>relevant EEA details</i>	the details listed in regulation 14 of the <i>EEA Passport Rights Regulations</i> and set out in SUP 13 Annex 1 (Requisite details or relevant details: branches).
<i>resolution authority</i>	<p>(a) (in the <i>UK</i>) the Bank of England; or</p> <p>(b) (in another <i>EEA State</i>) an authority designated as a resolution authority by that <i>EEA State</i> under article 3 of <i>RRD</i>.</p> <p>[Note: article 2(1)(18) of <i>RRD</i>]</p>
<i>service conditions</i>	<p>in accordance with paragraph 14 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) the conditions that:</p> <p>(a) the <i>firm</i> has given its <i>Home State regulator</i> notice of its intent to provide services in the <i>United Kingdom</i>;</p> <p>(b) if the <i>firm</i> falls within paragraph (a), (d), (e) or (f) in the definition of “<i>EEA firm</i>”, the <i>FCA</i> or the <i>PRA</i> (as the case may be) has received notice from the <i>firm’s Home State regulator</i> containing such information as may be prescribed;</p> <p>(c) if the <i>firm</i> falls within paragraph (d), (e), (h) or (i) of that definition, its <i>Home State regulator</i> has informed it that the regulator’s notice has been sent to the <i>FCA</i> or the <i>PRA</i> (as the case may be); and</p> <p>(d) if the <i>firm</i> falls within paragraph (i) of that definition, one <i>month</i> has elapsed beginning with the date on which the <i>firm’s Home State regulator</i> informed the <i>firm</i> that it had sent the regulator’s notice to the <i>FCA</i> or the <i>PRA</i> (as the case may be).</p>
<i>significant branch</i>	<p>a <i>branch</i> that would be considered significant in a <i>Host State</i> under article 51(1) of <i>CRD</i>.</p> <p>[Note: article 2(1)(340) of <i>RRD</i>]</p>
<i>third-country SMCR banking firm</i>	a <i>firm</i> identified as a third-country SMCR banking firm in the decision tree in SYSC 23 Annex 1 (Definition of SMCR firm and different types of SMCR firms) and Part Four of that Annex.

<i>tiered agent passport notification</i>	a notification made in accordance with article 35(2) of <i>MiFID</i> and <i>MiFID ITS 4 Annex VII</i> .
<i>top-up cover</i>	cover provided by the <i>compensation scheme</i> for <i>claims</i> against an <i>incoming EEA firm</i> which has elected to participate in accordance with section 214(5) of the <i>Act</i> , regulation 3 of the <i>Electing Participants Regulations</i> (Persons who may elect to participate) and <i>COMP 14</i> (Participation by EEA firms).
<i>top-up permission</i>	a <i>Part 4A permission</i> given to an <i>incoming EEA firm</i> , an <i>incoming Treaty firm</i> or a <i>UCITS qualifier</i> .
<i>Treaty activity</i>	(as defined in section 417(1) of the <i>Act</i> (Definitions)) an activity carried on under a <i>permission</i> obtained in accordance with Schedule 4 to the <i>Act</i> (Treaty Rights).
<i>Treaty firm</i>	(as defined in paragraph 1 of Schedule 4 to the <i>Act</i> (Treaty Rights)) a <i>person</i> : <ul style="list-style-type: none"> <li>(a) whose head office is situated in an <i>EEA State</i> (its “<i>Home State</i>”) other than the <i>United Kingdom</i>; and</li> <li>(b) which is recognised under the law of that State as its national.</li> </ul>
<i>Treaty right</i>	the entitlement of a <i>Treaty firm</i> to qualify for <i>authorisation</i> under Schedule 4 to the <i>Act</i> (Treaty Rights).2001/7
<i>Treaty</i>	the Treaty on the Functioning of the European Union.
<i>two-day emissions spot</i>	the <i>investment</i> specified in article 82A of the <i>Regulated Activities Order</i> (Greenhouse gas <i>emissions allowances</i> ), which is in summary an <i>emissions allowance</i> offered for sale on an <i>auction platform</i> as a <i>financial instrument</i> or a <i>two-day emissions spot</i> .
<i>UCITS Home State</i>	the <i>Home State</i> of a <i>UCITS scheme</i> or <i>EEA UCITS scheme</i> .
<i>UCITS qualifier</i>	a <i>firm</i> (other than an <i>EEA UCITS management company</i> ) which: <ul style="list-style-type: none"> <li>(a) for the time being is an <i>operator</i>, <i>trustee</i> or <i>depository</i> of a <i>scheme</i> which is a <i>recognised scheme</i> under section 264 of the <i>Act</i>; and</li> <li>(b) is an <i>authorised person</i> as a result of paragraph 1(1) of Schedule 5 to the <i>Act</i> (Persons Concerned in Collective Investment Schemes);</li> </ul> <p>a reference to a <i>firm</i> as a <i>UCITS qualifier</i> applies in relation to the carrying on by the <i>firm</i> of activities for which it has <i>permission</i> in that capacity.</p>

<i>UK-deposit insurer</i>	a <i>non-EEA insurer</i> that has made a deposit in the <i>United Kingdom</i> under article 162(2)(e) of the <i>Solvency II Directive</i> in accordance with article 167 of that Directive.
<i>UK ELTIF</i>	an <i>ELTIF</i> authorised by the <i>FCA</i> under the <i>ELTIF regulation</i> .
<i>UK MiFID investment firm</i>	a <i>MiFID investment firm</i> whose <i>Home State</i> is the <i>United Kingdom</i> (this may include a natural <i>person</i> provided the conditions set out in Article 4(1)(1) of <i>MiFID</i> are satisfied).
<i>UK parent mixed financial holding company in a member state</i>	a <i>parent mixed financial holding company</i> in a <i>Member State</i> where the <i>EEA State</i> in question is the <i>UK</i> .
<i>UK regulated EEA financial conglomerate</i>	a <i>financial conglomerate</i> (other than a <i>third-country financial conglomerate</i> ) that satisfies one of the following conditions: <ul style="list-style-type: none"> <li>(a) <i>GENPRU</i> 3.1.29R (Capital adequacy calculations for <i>financial conglomerates</i>) applies with respect to it; or</li> <li>(b) a <i>firm</i> that is a member of that <i>financial conglomerate</i> is subject to obligations imposed through its <i>Part 4A permission</i> to ensure that <i>financial conglomerate</i> meets levels of capital adequacy based or stated to be based on Annex I of the <i>Financial Groups Directive</i>.</li> </ul>

## Part 2: Comes into force on 9 December 2019

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

<i>head of overseas branch function</i>	<i>FCA controlled function</i> SMF19 in the table of <i>FCA-designated senior management functions</i> , described more fully in <i>SUP</i> 10C.5.24R.
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Amend the following definitions as shown.

<i>EEA core SMCR firm</i>	a <i>core SMCR firm</i> that is <del>an incoming EEA firm or incoming Treaty firm</del> a <i>TP firm</i> .
<i>non-SMF board director subject to competence requirements</i>	(in relation to an <i>SMCR firm</i> ) a <i>board director</i> of the <i>firm</i> who meets the following conditions: <ul style="list-style-type: none"> <li>(a) ...</li> <li>(b) the <i>firm</i> is required to assess their fitness and propriety under the <i>competent employee rule</i>, <i>SYSC</i> 28 (Insurance distribution: specific knowledge, ability and good repute</li> </ul>

requirements) any ~~directly applicable EU legislation~~  
onshored regulation or any other requirement of the  
*regulatory system.*

Delete the following definition. The text is not shown struck through.

*head of third country*      *FCA controlled function SMF19 in the table of FCA-designated*  
*branch function*            *senior management functions, described more fully in SUP*  
  10C.5.24R.

**EXITING THE EUROPEAN UNION: HIGH LEVEL STANDARDS  
(AMENDMENTS) INSTRUMENT 2019**

**Powers exercised**

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

**Commencement**

- B. Part 2 of Annex G comes into force on 1 April 2019.
- C. The remainder of this instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to the Handbook**

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

(1)	(2)
Principles for Businesses (PRIN)	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Threshold Conditions (COND)	Annex C
Financial Stability and Market Confidence sourcebook (FINMAR)	Annex D
Training and Competence sourcebook (TC)	Annex E
General Provisions (GEN)	Annex F
Fees manual (FEES)	Annex G

**Citation**

- F. This instrument may be cited as the Exiting the European Union: High Level Standards (Amendments) Instrument 2019.

By order of the Board  
[date]

**Editor's notes**

- (1) The near-final instrument relates to the statutory instruments set out in Annex 4 of the accompanying Policy Statement and other matters arising from the UK's withdrawal from the EU.
- (2) We will set out our approach in due course for any additional amendments which are required as a result of further statutory instruments.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 29 March 2019.



**Annex A**

**Principles for Businesses (PRIN)**

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

**1 Introduction**

**1.1 Application and purpose**

Application

1.1.1 G The *Principles* (see *PRIN 2*) apply in whole or in part to every *firm*. The application of the *Principles* is modified for *firms* conducting *MiFID business*, ~~*incoming EEA firms*~~, ~~*incoming Treaty firms*~~, ~~*UCITS qualifiers*~~ ~~*AIFM qualifiers*~~, and *Annex II benchmark administrators*. *PRIN 3* (Rules about application) specifies to whom, to what and where the *Principles* apply.

Purpose

1.1.2 G The *Principles* are a general statement of the fundamental obligations of *firms* under the *regulatory system*. ~~This includes provisions which implement the *Single Market Directives*~~. They derive their authority from the *FCA*'s rule-making powers as set out in the *Act* and reflect the *statutory objectives*.

...

1.1.9 G Some of the other *rules* and *guidance* in the *Handbook* deal with the bearing of the *Principles* upon particular circumstances. However, since the *Principles* are also designed as a general statement of regulatory requirements applicable in new or unforeseen situations, and in situations in which there is no need for *guidance*, the *FCA*'s other *rules* and *guidance* or ~~*EU onshored regulations*~~ should not be viewed as exhausting the implications of the *Principles* themselves.

...

**1 Annex 1R Non-designated investment business - clients that a firm may treat as an eligible counterparty for the purposes of PRIN**

1.1	A <i>firm</i> may categorise the following types of <i>client</i> as an <i>eligible counterparty</i> for the purposes of <i>PRIN</i> :	
	...	
	(8)	a <i>recognised investment exchange</i> , <del><i>regulated market</i></del> <u><i>EU regulated market</i></u> or <i>clearing house</i> .

...				
-----	--	--	--	--

...

### 3 Rules about application

#### 3.1 Who?

3.1.1 R *PRIN* applies to every firm, ~~except that:~~

- (1) ~~for an incoming EEA firm or an incoming Treaty firm, the Principles apply only in so far as responsibility for the matter in question is not reserved by an EU instrument to the firm's Home State regulator;~~
- (2) ~~for an incoming EEA firm which is a CRD credit institution without a top-up permission, Principle 4 does not apply;~~
- (3) ~~for an incoming EEA firm which has permission only for cross border services and which does not carry on regulated activities in the United Kingdom, the Principles do not apply;~~
- (4) ~~for a UCITS qualifier and AIFM qualifier, only Principles 1, 2, 3, 7 and 9 apply, and only with respect to the activities in PRIN 3.2.2R (Communication and approval of financial promotions);~~
- (5) ~~PRIN does not apply to an incoming ECA provider acting as such; and~~
- (6) ~~PRIN does not apply to a firm in relation to its carrying on of auction regulation bidding.~~

3.1.2 G ~~COBS 1 Annex 1 contains guidance that is relevant to the reservation of responsibility to a Home State regulator referred to in PRIN 3.1.1R(1). [deleted]~~

...

3.1.4 G ~~PRIN 3.1.1R(3) puts incoming EEA firms on an equal footing with unauthorised overseas persons who utilise the overseas persons exclusions in article 72 of the Regulated Activities Order. [deleted]~~

3.1.5 G ~~PRIN 3.1.1R(4) reflects section 266 of the Act (Disapplication of rules). [deleted]~~

3.1.6 R A firm will not be subject to a Principle to the extent that it would be contrary to the UK's obligations under requirements of an EU instrument measure passed or made before exit day, to the extent that those requirements continue to have effect after exit day under the EUWA.

...

3.1.8 G The *Principles* will not apply to the extent that they purport to impose an obligation which is inconsistent with requirements which implemented the *Payment Services Directive*, the *Consumer Credit Directive* or the *Electronic Money Directive*. For example, there may be circumstances in which *Principle 6* may be limited by the ~~harmonised~~ conduct of business obligations ~~applied by~~ derived from the *Payment Services Directive* and the *Electronic Money Directive* and applicable to credit institutions (see Parts 6 and 7 of the *Payment Services Regulations* and Part 5 of the *Electronic Money Regulations*) or ~~applied by~~ derived from the *Consumer Credit Directive* (see, for example, the information requirements in the *Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013)*).

...

3.3 Where?

3.3.1 R Territorial application of the Principles

Principle	Territorial application
<i>Principles 1, 2 and 3</i>	in a <i>prudential context</i> , apply with respect to activities wherever they are carried on; otherwise, apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i> ) in the <i>United Kingdom</i> unless another applicable <i>rule</i> or <del><i>EU regulation</i></del> <u><i>onshored regulation</i></u> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i> or <del><i>EU regulation</i></del> <u><i>onshored regulation</i></u> .
...	
<i>Principles 6, 7, 8, 9 and 10</i>	<i>Principle 8</i> , in a <i>prudential context</i> , applies with respect to activities wherever they are carried on; otherwise apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i> ) in the <i>United Kingdom</i> unless another applicable <i>rule</i> or <del><i>EU regulation</i></del> <u><i>onshored regulation</i></u> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i> or <del><i>EU regulation</i></del> <u><i>onshored regulation</i></u> .
...	

...

## 4 Principles: MiFID business

### 4.1 Principles: MiFID business

- 4.1.1 G *PRIN 3.1.6R* gives effect to the provisions of the *EUWA* concerning the continuing application of the principle of the supremacy of *EU* law. It ensures that the *Principles* do not impose obligations upon firms which are inconsistent with an a relevant *EU* instrument measure. If a *Principle* does purport to impose such an obligation *PRIN 3.1.6R* disapplies that *Principle* but only to the extent necessary to ensure ~~compliance with European law~~ compatibility with the relevant *EU* measure. This disapplication has practical effect only for certain matters covered by *MiFID*, which are explained in this section.

Where?

- 4.1.2 G Under *PRIN 3.3.1R*, the territorial application of a number of *Principles* to a *UK MiFID investment firm* is extended to the extent that another applicable rule or ~~*EU regulation*~~ *onshored regulation* which is relevant to an activity has a wider territorial scope. Under ~~*PRIN 3.1.1R*~~, the territorial application of a number of *Principles* to an *EEA MiFID investment firm* is narrowed to the extent that responsibility for the matter in question is reserved to the *firm's Home State regulator*. These modifications are relevant to *Principles* 1, 2, 3, 6, 7, 8, 9 and 10. We have added further *guidance* in *PERG* on the ability of a *Host State* to impose conduct of business requirements (see Q67).

...

What?

- 4.1.4 G (1) Certain requirements ~~under~~ derived from *MiFID* are disapplied for:
- ...
- (2) Under *PRIN 3.1.6R*, these disapplications may affect *Principles* 1, 2, 6 and 9. *PRIN 3.1.6R* applies only to the extent that the application of a *Principle* would be contrary to the *UK's* obligations under a *Single Market Directive* relevant *EU* measure in respect of a particular transaction or matter. In line with *MiFID*, these limitations relating to *eligible counterparty business* and transactions under the rules of a *multilateral trading facility* or on a *regulated market* only apply in relation to a *firm's* conduct of business obligations to its clients ~~under~~ derived from *MiFID*. They do not limit the application of those *Principles* in relation to other matters, such as *client* asset protections, systems and controls, prudential requirements and market integrity. Further information about these limitations is contained in *COBS 1 Annex 1*.

...

## Annex B

### Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

~~[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering:~~

~~– various topics relating to automated trading and direct electronic access. See [http://www.esma.europa.eu/sites/default/files/library/2015/11/esma\\_2012\\_122\\_en.pdf](http://www.esma.europa.eu/sites/default/files/library/2015/11/esma_2012_122_en.pdf); and~~  
~~– certain aspects of the MiFID suitability requirements which also deal with the system and control aspects of suitability. See [http://www.esma.europa.eu/sites/default/files/library/2015/11/2012-387\\_en.pdf](http://www.esma.europa.eu/sites/default/files/library/2015/11/2012-387_en.pdf).]~~

#### 1 Application and purpose

##### 1.1A Application

...

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

- (1) [deleted]
- (2) Provisions made by the *FCA*, and by the *PRA* in the *PRA* Rulebook, may be applied by both regulators to *PRA-authorised persons*. Such provisions are applied by each regulator to the extent of its powers and regulatory responsibilities.
- (3) For *Solvency II firms*, the *FCA* considers that the requirements and guidance in Chapters 2, 3, 12 to 18, 19F.2, 21, 22 and 28 of *SYSC* are not inconsistent with:
  - (a) the parts of the *PRA* Rulebook ~~implementing which~~ implemented the governance provisions in the *Solvency II Directive* (articles 40 to 49);
  - (b) the *Solvency II Regulation* (EU) 2015/35 of 10 October 2014 ~~(articles 258 to 275)~~, or
  - (c) *EIOPA* guidelines on systems of governance dated 28 January 2015 (EIOPA-BoS-14/253 EN).

In most cases, there is no direct overlap with those provisions because the *SYSC* requirements are directed at *FCA* conduct requirements not expressly covered by or under provisions which implemented or supplemented the *Solvency II Directive*. Where there

is a direct overlap with *SYSC rules* and guidance, the *FCA* will take requirements and guidelines which implemented or supplemented the *Solvency II Directive* derived requirements and guidelines into account and will interpret the *SYSC rules* and guidance in a way that avoids inconsistency. The definition of *Solvency II firm* includes (for *SYSC*) *large non-directive insurers* because the *PRA* have applied certain *Solvency II* derived requirements to those *firms*. Where *SYSC* refers to the *PRA* Rulebook applicable to *Solvency II firms*, *large non-directive insurers* should read those references as if they were references to the corresponding part of the *PRA* Rulebook applicable to *large non-directive insurers*.

...

**1 Annex Detailed application of SYSC 1**  
**1**

<b>Part 1</b>	<b>Application of SYSC 2 and SYSC 3 to an insurer, a UK ISPV, a managing agent and the Society</b>		
	Who?		
1.1	R	<i>SYSC 2</i> and <i>SYSC 3</i> only apply to an <i>insurer</i> , a <i>UK ISPV</i> , a <i>managing agent</i> and the <i>Society</i> except that:	
		(1)	<del>for an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i>:</del>
		(a)	<del><i>SYSC 2.1.1R</i> and <i>SYSC 2.1.2G</i> do not apply;</del>
		(b)	<del><i>SYSC 2.1.3R</i> to <i>SYSC 2.2.3G</i> apply, but only in relation to allocation of the function in <i>SYSC 2.1.3R(2)</i> and only in so far as responsibility for the matter in question is not reserved by an <i>EU</i> instrument to the <i>firm's Home State regulator</i>; and</del>
		(e)	<del><i>SYSC 3</i> applies, but only in so far as responsibility for the matter in question is not reserved by an <i>EU</i> instrument to the <i>firm's Home State regulator</i>; [deleted]</del>
		(2)	<del>for an <i>incoming EEA firm</i> which has <i>permission</i> only for <i>cross border services</i> and which does not carry on <i>regulated activities</i> in the <i>United Kingdom</i>, <i>SYSC 2</i> and <i>SYSC 3</i> do not apply; [deleted]</del>
		(3)	<del>for an <i>incoming Treaty firm</i> which has <i>permission</i> only for <i>cross border services</i> and which does not carry on <i>regulated activities</i> in the <i>United Kingdom</i>, <i>SYSC 3.2.6AR</i> to <i>SYSC 3.2.6JG</i> do not apply; [deleted]</del>
		(4)	...
		(5)	<del><i>SYSC 2</i> and <i>SYSC 3</i> do not apply to an <i>incoming ECA provider</i> acting as such. [deleted]</del>

		...	...
...			
1.2	G	(1)	Question 12 in SYSC 2.1.6G contains guidance on SYSC 1 Annex 1.1.1R(1)(b) and SYSC 1 Annex 1.1.1R(1)(c).
		(2)	SYSC 1 Annex 1.1.8R further restricts the territorial application of SYSC 2 and SYSC 3 for an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i> .
		(3)	SYSC 1 Annex 1.1.1R(3) puts an <i>incoming EEA firm</i> on an equal footing with unauthorised overseas persons who utilise the overseas persons exclusions in article 72 of the <i>Regulated Activities Order</i> .
		(4)	Further guidance on which matters are reserved to a firm's Home State regulator can be found at SUP 13A Annex 2. <del>[deleted]</del>
	What?		
...			
1.4	R	SYSC 3.2.6AR to SYSC 3.2.6JG do not apply:	
		(1)	...
		(2)	in relation to the following <i>regulated activities</i> :
			...
		(c)	<i>long-term insurance business</i> which is outside the <u>scope of the Solvency II Directive</u> (unless it is otherwise one of the <i>regulated activities</i> specified in this rule);
...			
1.10	R	SYSC 3, except SYSC 3.2.6AR to SYSC 3.2.6JG, also applies in a <i>prudential context</i> to an <i>overseas firm</i> ( <del>other than an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i></del> ) with respect to activities wherever they are carried on.	
...			

...

<b>Part 2</b>	<b>Application of the common platform requirements</b>
	Who?
...	

2.2	R	For an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i> :	
		(1)	the <i>rule</i> on responsibility of senior personnel (SYSC 4.3) does not apply;
		(2)	the <i>common platform requirements</i> apply only in so far as responsibility for the matter in question is not reserved by an <i>EU instrument</i> to the <i>firm's Home State regulator</i> ;
		(3)	for an <i>incoming EEA firm</i> which has <i>permission only for cross-border services</i> and which does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> , the <i>common platform requirements</i> do not apply;
		(4)	for an <i>incoming Treaty firm</i> which has <i>permission only for cross-border services</i> and which does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> , the <i>common platform requirements on financial crime</i> do not apply. [deleted]
...			
2.6	R	The <i>common platform requirements</i> do not apply to an <i>incoming ECA provider</i> acting as such. [deleted]	
...			
2.6A	R	The <i>common platform requirements</i> do not apply to a <i>firm</i> (including an <i>incoming EEA firm</i> ) in relation to its carrying on of <i>auction regulation bidding</i> , except for:	
		(1)	SYSC 6.1.1R which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the <i>firm</i> (including its managers, employees and <i>appointed representatives</i> ) might be used to further <i>financial crime</i> ; and
		(2)	SYSC 6.3 (Financial crime).
...			
2.6F	R	The <i>common platform requirements</i> do not apply to an <i>incoming EEA AIFM branch</i> in respect of its management of a <i>UK AIF</i> , except for:	
		(1)	those <i>common platform requirements</i> which are <i>AIFMD host state requirements</i> ;
		(2)	SYSC 6.1.1R which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the <i>firm</i> (including its



			managers and <i>employees</i> ) might be used to further <i>financial crime</i> ; and
		(3)	<del>SYSC 6.3. [deleted]</del>
...			
2.7	G		<del>EEA MiFID investment firms are reminded in particular that they must comply with the common platform record keeping requirements in relation to a branch in the United Kingdom. [deleted]</del>
2.7A	G		<del>EEA UCITS management companies are also reminded that they must comply with:</del>
		(1)	<del>the common platform requirements indicated in Column A+ (Application to a management company) in Table A in Part 3 of this Annex;</del>
		(2)	<del>the common platform record keeping requirements; and</del>
		(3)	<del>the common platform requirements on financial crime;</del>
			<del>in relation to activities carried on from a branch in the United Kingdom. Where the common platform requirement addresses matters within the scope of article 12 of the UCITS Directive, an EEA UCITS management company should note that those matters may also be subject to the rules of its Home State regulator. [deleted]</del>
			<del>[Note: articles 12(1)(b), 14(1)(e), 14(1)(d), 17(4), 18(3) and 19(1) of the UCITS Directive and articles 4(1)(e), 10(1), 10(2) and 10(3) of the UCITS implementing Directive]</del>
			What?
...			
2.8A	R	(1)	Subject to (2), (3) and (5), in SYSC 1 Annex 1 2.8R, articles 1(2), 21 to 25, 30 to 32 and 72 of the <i>MiFID Org Regulation</i> (including any relevant definitions in <i>MiFID the Glossary</i> , <i>MiFIR</i> and the <i>MiFID Org Regulation</i> ) apply as if they were <i>rules or guidance</i> in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm) to a <i>firm's</i> carrying on of the business set out in SYSC 1 Annex 1 2.8R which is not <i>MiFID business</i> or a <i>structured deposits regulated activity</i> .
		(1A)	Subject to (2), (3) and (6), articles 33 to 35 of the <i>MiFID Org Regulation</i> <del>of the <i>MiFID Org Regulation</i></del> (including any relevant definitions in <i>MiFID the Glossary</i> , <i>MiFIR</i> and the <i>MiFID Org Regulation</i> ) apply as if they were <i>rules or guidance</i> in accordance with Part 3 (Tables summarising the application of the common

		platform requirements to different types of firm) to a <i>firm's</i> carrying on of the business set out in SYSC 10.1.1R which is not <i>MiFID business</i> or a <i>structured deposits regulated activity</i> .	
	(2)	References in Column (1) to a word or phrase used in the <i>MiFID Org Regulation</i> for the purpose of (1) have the meaning indicated in Column (2) of the table below:	
		(1)	(2)
		“ancillary services”	<i>ancillary services</i> or <i>ancillary activities</i> associated with the <i>firm's regulated activities</i>
		“client” and “potential client”	<i>client</i>
		“competent authority”	<i>FCA</i>
		“investment firm” and “firm”	<i>firm</i>
		“investment service” and “investment services and activities”	<i>designated investment business</i>
		“portfolio management” and “portfolio management service”	<i>managing investments</i>
		“Directive 2014/65/EU”; “Regulation (EU) No 600/2014”; “Directive 2014/57/EU” and “Regulation (EU) No 596/2014” and their implementing measures	<i>regulatory system</i> , except where the reference is to a specific provision of a Directive or Regulation in Column (1) in which case the reference must be read as referring to such specific provision
		“shall”	must
	(3)	Any references within the <i>MiFID Org Regulation</i> for the purpose of (1) to other provisions of <i>EU law</i> must be interpreted in light of <del>this rule</del> . [deleted]	
	(4)	This <i>rule</i> does not apply to a <i>collective portfolio management investment firm</i> in relation to the <i>firm's</i> business other than its <i>MiFID business</i> .	

		...	
		(6)	<i>SYSC 1 Annex 1 2.8R(1A) does not apply to a firm to the extent that articles 3 – 7 of the IDD Regulation are directly applicable apply to the firm (see SYSC 1 Annex 1 3.1AG).</i>
			[ <b>Note:</b> The <i>MiFID Org Regulation</i> can be found at: <a href="http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0565&amp;from=EN">http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0565&amp;from=EN</a> .]
...			
2.16	R		<del>The common platform requirements, except the common platform requirements on financial crime and the common platform record-keeping requirements, apply to a firm that is not a UK UCITS management company in relation to passported activities carried on by it from a branch in another EEA State. [deleted]</del>
2.16A	R	(1)	<del>The common platform requirements referred to in Column A+ in Table A of Part 3 (below) apply to a UK UCITS management company in relation to passported activities carried on by it from a branch in another EEA State.</del>
		(2)	<del>Any other common platform requirement applies to a UK UCITS management company in relation to passported activities carried on by it from a branch in another EEA State to the extent that the requirement addresses matters within the scope of article 12 of the UCITS Directive. [deleted]</del>
2.16B	G		<del>The matters referred to in paragraph 2.16AR of this Annex may also be subject to the rules of the UK UCITS management company's Host State regulator. [deleted]</del>
...			
2.16D	R		<del>The common platform requirements, except those which are AIFMD host state requirements, apply to a full scope UK AIFM in respect of its management of an EEA AIF from a branch in another EEA State. [deleted]</del>
...			
2.16F	R		<del>The common platform requirements, except the common platform requirements on financial crime and the common platform record-keeping requirements, apply to an AIFM investment firm in respect of its MiFID business where carried on from a branch in another EEA State. [deleted]</del>
...			
2.17A	G		...

		The <i>common platform organisational requirements</i> , except the <i>common platform requirements on financial crime</i> , also apply in a <i>prudential context</i> to a <i>UK domestic firm</i> and to an <i>overseas firm</i> ( <del>other than an incoming EEA firm or an Incoming Treaty firm</del> ) with respect to activities wherever they are carried on.
...		

Part 3		Tables summarising the application of the common platform requirements to different types of firm
...		
3.1A	G	The <i>IDD Regulation</i> <del>is directly applicable</del> <u>applies</u> to a <i>firm</i> when carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i> . Articles 3 to 7 of the <i>IDD Regulation</i> are reproduced in SYSC 10.1A for information for these <i>firms</i> .
...		

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

...

Provision SYSC 4	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				
SYSC 4.3.1R	Not applicable	Rule	Not applicable	Rule <del>(but not applicable to</del>

				<i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers)</i>
SYSC 4.3.2R	Not applicable	Rule	Not applicable	Guidance ( <del>but not applicable to incoming EEA firms, incoming Treaty firms or UCITS qualifiers)</del> )
SYSC 4.3.2AG	Not applicable	Not applicable	Not applicable	Guidance ( <del>but not applicable to incoming EEA firms, incoming Treaty firms or UCITS qualifiers)</del> )
SYSC 4.3.3G	Guidance	Guidance	Not applicable	Guidance ( <del>but not applicable to incoming EEA firms, incoming Treaty firms or UCITS qualifiers)</del> )
...				
Provision SYSC 5	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				

SYSC 5.1.5AAR	Rule	Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i>	Not applicable	Rule applicable to the <i>branch</i> of an <i>incoming EEA firm</i> in relation to its <i>MiFID business</i>  Other firms: Not applicable
SYSC 5.1.5ABR	Rule	Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i>	Not applicable	Rule applicable to the <i>branch</i> of an <i>incoming EEA firm</i> in relation to its <i>MiFID business</i>  Other firms: Not applicable
SYSC 5.1.5ACG	Guidance	Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i>	Not applicable	Guidance applicable to the <i>branch</i> of an <i>incoming EEA firm</i> in relation to its <i>MiFID business</i>  Other firms: Not applicable
SYSC 5.1.5ADG	Guidance	Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i>	Not applicable	Guidance applicable to the <i>branch</i> of an <i>incoming EEA firm</i> in relation to its <i>MiFID business</i>  Other firms: Not applicable [deleted]
SYSC 5.1.5AEG	Guidance	Not applicable save in relation to a	Not applicable	Guidance applicable to the <i>branch</i> of an <i>incoming EEA</i>

		<i>UCITS investment firm and its MiFID business</i>		<i>firm in relation to its MiFID business</i> Other firms: Not applicable [deleted]
...				

...

Provision SYSC 9	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				
SYSC 9.1.2CEU <u>UK</u>	<u>EU UK</u> Directly applicable Applicable to a firm carrying on insurance distribution in relation to insurance-based investment products	<u>EU UK</u> Directly applicable Applicable to a firm carrying on insurance distribution in relation to insurance-based investment products	<u>EU UK</u> Directly applicable Applicable to a firm carrying on insurance distribution in relation to insurance-based investment products	<u>EU UK</u> Directly applicable Applicable to a firm carrying on insurance distribution in relation to insurance-based investment products
...				

SYSC 9.2 G	Not applicable	Not applicable	Not applicable	Applicable to <i>credit institutions</i> only, <del>not including incoming EEA firms which have permission for cross border services only and which do not carry on regulated activities in the United Kingdom.</del>
Provision SYSC 10	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				
SYSC 10.1A	<u>EU UK</u> Directly applicable <u>Applicable</u> to a firm carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>	<u>EU UK</u> Directly applicable <u>Applicable</u> to a firm carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>	<u>EU UK</u> Directly applicable <u>Applicable</u> to a firm carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>	<u>EU UK</u> Directly applicable <u>Applicable</u> to a firm carrying on <i>insurance distribution</i> in relation to <i>insurance-based investment products</i>
...				



**Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms**

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
...		
SYSC 9		
...		
SYSC 9.1.2C <del>EU</del> <u>UK</u>	<del>EU</del> <u>UK</u> <del>Directly</del> applicable <u>Applicable</u> to a <i>firm</i> carrying on <i>insurance</i> <i>distribution</i> in relation to <i>insurance-</i> <i>based</i> <i>investment</i> <i>products</i>	<del>EU</del> <u>UK</u> <del>Directly applicable</del> <u>Applicable</u> to a <i>firm</i> carrying on <i>insurance distribution</i> in relation to <i>insurance-</i> <i>based investment products</i>
...		
SYSC 10		
...		
SYSC 10.1A	<del>EU</del> <u>UK</u> <del>Directly</del> applicable <u>Applicable</u> to a <i>firm</i> carrying on <i>insurance</i> <i>distribution</i> in relation to <i>insurance-</i> <i>based</i>	<del>EU</del> <u>UK</u> <del>Directly applicable</del> <u>Applicable</u> to a <i>firm</i> carrying on <i>insurance distribution</i> in relation to <i>insurance-</i> <i>based investment products</i>

	<i>investment products</i>	
...		

**Table C:**

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

Provision MiFID Org Regulation		Text of the MiFID Org Regulation as of:	MiFID optional exemption firm	Third country firm
Article 1 – Subject-matter and scope	(2)	31/3/2017	Not applicable	Not applicable
Article 21 – General organisational requirements	(1)	31/3/2017	Rule	(a), (b) and (g): Guidance; (c), (d), (e), (f) and final paragraph: Rule
	(2)		Rule	Rule
	(3)		Rule	Guidance
	(4)		Rule	Guidance
	(5)		Rule	Guidance
Article 22 – Compliance	(1)	31/3/2017	Guidance	Guidance
	(2)		Guidance	Guidance
	(3)		Guidance	(a), (c), (d) and (e): Guidance; (b): Rule
	(4)		Guidance	Guidance
Article 23 – Risk management		31/3/2017	Guidance	Guidance
Article 24 – Internal audit		31/3/2017	Guidance	Guidance
Article 25 – Responsibility of senior management		31/3/2017	Guidance	(1): Rule;

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

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

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

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

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

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

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

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



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

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

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

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

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

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

**3 Systems and controls**

...

**3.2 Areas covered by systems and controls**

...

Remuneration policies

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

...

**3.3 Additional requirements for insurance distribution**

...

Effect of provisions marked “EU”

3.3.2 G The *IDD Regulation* ~~is applies~~ directly ~~applicable~~ to an *insurer* when carrying on *insurance distribution* in relation to *insurance-based investment products*. Some of the articles of the *IDD Regulation* (see the provisions marked with the status letters “~~EU~~” “~~UK~~”) are reproduced in this section for those *insurers* for information only.

3.3.3 R (1) To the extent that the *IDD Regulation* does not ~~directly~~ apply, provisions in this section marked with the status letters “~~EU~~” “~~UK~~” apply to the *insurer* as if they were *rules*.

(2) References in Column (1) to a word or phrase used in the *IDD Regulation* have, for the purpose of SYSC 3.3.3R(1) above, the meaning indicated in Column (2) of the table below:

(1)	(2)
“ <del>article 27</del> ”	<del>SYSC 3.3.8R and SYSC 3.3.9R</del>
“ <del>article 28</del> ”	<del>SYSC 3.3.5R and SYSC 3.3.13R</del>

“competent authority”	<i>FCA</i>
“customer”	<i>Client</i>
“Directive (EU) 2016/97”	<i>IDD</i>
...	

3.3.4 G The effect of SYSC 3.3.3R is that:

- (1) the provisions marked “~~EU~~” “UK” apply as *rules* to an *insurer* when carrying on *insurance distribution activities* other than *insurance distribution* in relation to *insurance-based investment products*;
- (2) where SYSC 3.3.3R applies, an *insurer* is required to read the provisions marked “~~EU~~” “UK” as though the application of those provisions (~~and articles 27 and 28 of the *IDD*~~) is not limited to the distribution of *insurance-based investment products*; and
- (3) the scope of the application of the *IDD Regulation* is extended from *insurance distribution* to *insurance distribution activities*.

Identifying conflicts

...

3.3.6 EU UK 3(1) For the purposes of identifying, in accordance with ~~Article 28 of Directive (EU) 2016/97~~ [SYSC 3.3.5R, SYSC 3.3.13R, SYSC 10.1.3R and SYSC 10.1.8R], in so far as those rules apply to the insurance-based investment products, the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail a risk of damage to the interests of a customer, insurance intermediaries and insurance undertakings shall assess whether they, a relevant person or any person directly or indirectly linked to them by control, have an interest in the outcome of the insurance distribution activities, which meets the following criteria:

...

...

Conflicts policy

3.3.10 EU UK 4(1) For the purposes of ~~Article 27 of Directive (EU) 2016/97~~ [SYSC 3.3.8R, SYSC 3.3.9R, SYSC 10.1.3R, SYSC 10.1.7R and SYSC 10.1.7AR], in so far as those rules apply to insurance-based investment products, insurance intermediaries and insurance undertakings shall be expected to establish, implement and

maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business.

Where the insurance intermediary or insurance undertaking is a member of a group, the policy shall also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[**Note:** article 4(1) of the *IDD Regulation*]

Contents of policy

3.3.11 EU  
UK

...

[**Note:** article 4(2) of the *IDD Regulation*]

3.3.12 EU  
UK

...

[**Note:** article 5 of the *IDD Regulation*]

Disclosure of conflicts

...

3.3.14 EU  
UK

6(1) Insurance intermediaries and insurance undertakings shall avoid over-reliance on disclosure to ensure that disclosure to customers, pursuant to ~~Article 28(2) of Directive (EU) 2016/97~~ [SYSC 3.3.13R] and [SYSC 10.1.8R], in so far as those rules apply to insurance-based investment products, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage conflicts of interest in accordance with ~~Article 27 of Directive (EU) 2016/97~~ [SYSC 3.3.8R, SYSC 3.3.9R, SYSC 10.1.3R, SYSC 10.1.7R, SYSC 10.1.7AR], in so far as these rules apply to insurance-based investment products are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

...

[**Note:** article 6 of the *IDD Regulation*]

Review of conflicts policy

3.3.15 EU  
UK

7(1) For the purposes of ~~Article 27 of Directive (EU) 2016/97~~ 3.3.8, [SYSC 3.3.9R, SYSC 10.1.3R, SYSC 10.1.7R and SYSC 10.1.7AR],



in so far as those rules apply to insurance-based investment products, insurance intermediaries and insurance undertakings shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with Article 4 and take all appropriate measures to address any deficiencies.

[Note: article 7(1) of the *IDD Regulation*]

Record keeping

3.3.16 EU ...  
UK

[Note: article 7(2) of the *IDD Regulation*]

...

3.3.18 G ...

(2) For the purposes of *SYSC 3.3.17R*, a *firm* will need to consider whether the requirement in article 19 of the *IDD Regulation* (or in *COBS 9A.4.3EUUK* or *10A.7.2EUUK* for any *firm* to whom the *IDD Regulation* is not directly applicable does not apply) means that a record needs to be retained for longer than five years.

3.3.19 EU  
UK

19(4) The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority FCA. The competent authority FCA shall be able to access them readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications.

[Note: article 19(4) of the *IDD Regulation*]

...

## 4 General organisational requirements

### 4.1 General requirements

...

4.1.1D R A *UK UCITS management company* must comply with the *UCITS Remuneration Code* if it:

- (1) manages a *UCITS scheme*; ~~or~~
- (2) ~~manages an EEA UCITS scheme.~~

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

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

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

...

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

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

Resources for management companies and AIFMs

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

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

...

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

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

...

## 4.2 Persons who effectively direct the business

General requirement

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

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

...

## Composition of management

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

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

...

### 4.3A Management body and nomination committee

...

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

[**Note:** article 91(4) and (5) of *CRD* and article 9(1) of *MiFID*]

...

## 5 Employees, agents and other relevant persons

### 5.1 Skills, knowledge and expertise

...

- 5.1.5A G ~~*ESMA has issued guidelines specifying*~~ The *ESMA* “Guidelines for the assessment of knowledge and competence”, 3 January 2017 (ESMA71-  
D

1154262120-153 EN (rev)), specify the criteria for the assessment of knowledge and competence for the purposes of SYSC 5.1.5ABR. The *ESMA guidelines* can be found at <https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence>.

...

## 6 Compliance, internal audit and financial crime

### 6.1 Compliance

...

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

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

...

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

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

...

## 7 Risk control

### 7.1 Risk control

...

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

...

## 8 Outsourcing

### 8.1 General outsourcing requirements

...

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

...

...

## 9 Record-keeping

### 9.1 General rules on record-keeping

#### General requirements

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

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

...

- 9.1.2B G ...
- (2) For the purposes of *SYSC* 9.1.2AR, a *firm* will need to consider whether the requirement in article 19 of the *IDD Regulation* (or in *COBS* 9A.4.3~~EUUK~~ or *COBS* 10A.7.2~~EUUK~~ for any *firm* to whom the *IDD Regulation* ~~is not directly applicable~~ does not apply) means that a record needs to be retained for longer than five years.

- 9.1.2C ~~EU~~  
UK 19(4) The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the ~~competent authority~~ Financial Conduct Authority. The ~~competent authority~~ Financial Conduct Authority shall be able to access them readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications.

[Note: article 19(4) of the *IDD Regulation*]

- 9.1.2D R (1) ~~SYSC 9.1.2C~~EUUK applies as if it was a *rule to firms* doing *insurance distribution activities* to which the *IDD Regulation* does not apply, in relation to the records for an *insurance-based investment product* required in *COBS 9A.4* and *COBS 10A.7*.
- (2) ~~Firms to whom (1) applies must read references in SYSC 9.1.2C EU to “the competent authority” as meaning “the FCA”. [deleted]~~

...

## 9.2 Credit institutions providing account information services or payment initiation services

- 9.2.1 R A *credit institution* must keep records of any *account information services* and *payment initiation services* it provides in the UK.
- 9.2.2 R ~~A UK firm must keep the records required by SYSC 9.2.1R in respect of account information services and payment initiation services provided anywhere in the EEA. The records must make clear in which EEA State those services were provided. [deleted]~~
- 9.2.3 R ~~An EEA firm must keep the records required by SYSC 9.2.1R in respect of account information services and payment initiation services provided in the UK. [deleted]~~

...

...

## 10 Conflicts of interest

### 10.1 Application

Application to insurance intermediaries

- 10.1.-4 G (1) Subject to SYSC 10.1.-3R, this section applies to a *firm* carrying on *insurance distribution activities* in accordance with the tables in Part 3 of SYSC 1 Annex 1. Certain *rules* are disapplied where the *firm* is subject to ~~directly applicable~~ the provisions in the *IDD Regulation* (see SYSC 10.1.-3R).

...

...

## General application

10.1.1 R ...

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

...

10.1.1A R This section also applies to:

- (1) a *full-scope UK AIFM* of:
- (a) a *UK AIF*; and
  - (b) ~~an EEA AIF managed or marketed from an establishment in the UK; and~~ [deleted]
  - (c) a ~~non-EEA AIF~~ non-UK AIF; and
- (2) ~~an incoming EEA AIFM branch which manages or markets a UK AIF.~~ [deleted]

...

## Additional requirements for a management company

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

- (1) the interests of the *firm*, including those deriving from its belonging to a *group* or from the performance of services and activities, the interests of the *clients* and the duty of the *firm* towards the *UCITS scheme* ~~or EEA UCITS scheme~~ it manages; and
- (2) where it manages two or more *UCITS schemes* ~~or EEA UCITS schemes~~, the interests of all of them.

...

10.1.18 G For a ~~management company~~ UK UCITS management company, references to client in SYSC 10.1.4R and in the other *rules* in this section should be construed as referring to any *UCITS scheme* ~~or EEA UCITS scheme~~ managed by that *firm* or which it intends to manage, and with or for the benefit of which the relevant activity is to be carried on.

## Structure and organisation of a management company

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

...

#### Avoidance of conflicts of interest for a management company

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

...

#### Disclosure of conflicts of interest for a management company

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

...

### 10.1A IDD Regulation – Conflicts of interest

#### Application

- 10.1A.1 G The *IDD Regulation* ~~is~~ applies directly ~~applicable~~ to a *firm* when carrying on *insurance distribution* in relation to *insurance-based investment products*. The relevant articles relating to conflicts of interest are set out in this section for information only.

#### Identifying conflicts

- 10.1A.2 EU 3(1) For the purposes of identifying, in accordance with ~~Article 28 of Directive (EU) 2016/97~~ [SYSC 3.3.5R, SYSC 3.3.13R, SYSC 10.1.3R and SYSC 10.1.8R], in so far as those rules apply to the



insurance-based investment products, the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail a risk of damage to the interests of a customer, insurance intermediaries and insurance undertakings shall assess whether they, a relevant person or any person directly or indirectly linked to them by control, have an interest in the outcome of the insurance distribution activities, which meets the following criteria:

...

...

[**Note:** article 3 of the *IDD Regulation*]

#### Conflicts policy

- 10.1A.3 EU 4(1) For the purposes of ~~Article 27 of Directive (EU) 2016/97~~ [SYSC 3.3.8R, SYSC 3.3.9R, SYSC 10.1.3R, SYSC 10.1.7R and SYSC 10.1.7AR], in so far as those rules apply to insurance-based investment products, insurance intermediaries and insurance undertakings shall be expected to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business.
- UK
- Where the insurance intermediary or insurance undertaking is a member of a group, the policy shall also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[**Note:** article 4(1) of the *IDD Regulation*]

#### Contents of policy

- 10.1A.4 EU ...
- UK

[**Note:** article 4(2) of the *IDD Regulation*]

- 10.1A.5 EU ...
- UK

[**Note:** article 5 of the *IDD Regulation*]

#### Disclosure of conflicts

- 10.1A.6 EU 6(1) Insurance intermediaries and insurance undertakings shall avoid over-reliance on disclosure to ensure that disclosure to customers, pursuant to ~~Article 28(2) of Directive (EU) 2016/97~~ [SYSC 3.3.13R and SYSC 10.1.8R], in so far as those rules apply to insurance-based investment products, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage conflicts of interest in accordance with ~~Article 27 of Directive (EU) 2016/97~~ [SYSC 3.3.8R, SYSC 3.3.9R, SYSC 10.1.3R, SYSC 10.1.7R and SYSC 10.1.7AR], in so far as those rules apply to insurance-based investment products are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

...

[**Note:** article 6 of the *IDD Regulation*]

## Review of conflicts policy

- 10.1A.7 EU 7(1) For the purposes of ~~Article 27 of Directive (EU) 2016/97~~ [SYSC 3.3.8R, SYSC 3.3.9R, SYSC 10.1.3R, SYSC 10.1.7R and SYSC 10.1.7AR], in so far as those rules apply to insurance-based investment products, insurance intermediaries and insurance undertakings shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with Article 4 and take all appropriate measures to address any deficiencies.

[**Note:** article 7(1) of the *IDD Regulation*]

## Record keeping

- 10.1A.8 EU ...

[**Note:** article 7(2) of the *IDD Regulation*]

...

**10A Recording telephone conversations and electronic communications****10A.1 Application**

## Application

- 10A.1.1 R Subject to the exemptions in SYSC 10A.1.4R, this chapter applies to a *firm*:
- (1) that is a:

...

(a) ~~UK MiFID investment firm; or~~(d) ~~incoming EEA AIFM; or [deleted]~~

...

(g) ~~EEA MiFID investment firm; or [deleted]~~

...

(2) ...

...

(e) *managing a UK UCITS to the extent that this comprises the function of investment management referred to in Annex II of the UCITS Directive;*

...

**[Note:** article 16(7) and 16(11) of *MiFID*]

10A.1.2 G Where this chapter applies to a *third country investment firm*, it applies in conjunction with *GEN 2.2.22AR*, to ensure that such *firms* are not treated in a more favourable way than ~~an EEA~~ a UK *firm*.

10A.1.3 R For a *firm* in *SYSC 10A.1.1R(1)* (other than a *MiFID investment firm* or a *third country investment firm*) *MiFIR*, and any EU *Regulation* adopted under *MiFIR* or *MiFID* which is an *onshored regulation*, apply to the extent relevant to the subject matter of this chapter as if ~~it~~ the firm were a *MiFID investment firm* providing *investment services* or performing *investment activities* in accordance with article 16(7) of *MiFID*.

...

## **12 Group risk systems and controls requirements**

### **12.1 Application**

12.1.1 R Subject to *SYSC 12.1.2R* to *SYSC 12.1.4R*, this section applies to each of the following which is a member of a *group*:

(1) a *firm* that falls into any one or more of the following categories:(a) a *regulated entity* that is:(i) an *investment firm*, except a *designated investment firm* unless (ii) applies; or

- (ii) a *credit institution* or *designated investment firm* that is a *subsidiary undertaking* of a UK parent institution ~~in a Member State~~ that is an *IFPRU investment firm*;
  - (b) [deleted]
  - (c) an *insurer*;
  - (d) a *BIPRU firm*;
  - (e) a *parent financial holding company* in ~~a Member State~~ the UK or a UK parent financial holding company that is a member of one of the following:
    - (i) a *UK consolidation group*; or
    - (ii) an *FCA consolidation group*; and
  - (f) a *firm* subject to the *rules* in *IPRU(INV)* Chapter 14.
  - (2) a *UCITS firm*, but only if its *group* contains a *firm* falling into (1); and
  - (3) the *Society*.
- 12.1.2 R Except as set out in SYSC 12.1.4R, this section applies with respect to different types of *group* as follows:
- (1) SYSC 12.1.8R and SYSC 12.1.10R apply with respect to all *groups*, including ~~UK regulated EEA financial conglomerates, other financial conglomerates~~ and *groups* dealt with in SYSC 12.1.13R to SYSC 12.1.15R;
  - (2) the additional requirements set out in SYSC 12.1.11R and SYSC 12.1.12R only apply with respect to ~~UK regulated EEA financial conglomerates; and~~ a *financial conglomerate* of which notification has been made that it has been identified as a *financial conglomerate* as contemplated by regulation 2 of the *Financial Groups Directive Regulations*; and
  - (3) the additional requirements set out in SYSC 12.1.13R to SYSC 12.1.15R only apply with respect to *groups* of the kind dealt with by whichever of those *rules* apply.
- 12.1.3 R This section does not apply to:
- (1) ~~an incoming EEA firm; or~~
  - (2) ~~an incoming Treaty firm; or~~

- (3) ~~a UCITS qualifier; or~~
- (4) ~~an ICVC; or~~
- (5) ~~an incoming ECA provider acting as such.~~

- 12.1.4 R (1) This *rule* applies in respect of the following *rules*:
- (a) SYSC 12.1.8R(2);
  - (b) SYSC 12.1.10R(1), so far as it relates to SYSC 12.1.8R(2);
  - (c) SYSC 12.1.10R(2); and
  - (d) SYSC 12.1.11R to SYSC 12.1.15R.
- (2) The *rules* referred to in (1):
- (a) only apply with respect to a *financial conglomerate* if it is a ~~UK-regulated EEA financial conglomerate~~ *financial conglomerate* of which notification has been made that it has been identified as a *financial conglomerate* as contemplated by regulation 2 of the *Financial Groups Directive Regulations*;
  - (b) ~~(so far as they apply with respect to a group that is not a financial conglomerate) do not apply with respect to a group for which a competent authority in another EEA state is lead regulator; [deleted]~~
  - (c) (so far as they apply with respect to a *financial conglomerate*) do not apply to a *firm* with respect to a *financial conglomerate* of which it is a member if the interest of the *financial conglomerate* in that *firm* is no more than a *participation*;
  - (d) (so far as they apply with respect to other *groups*) do not apply to a *firm* with respect to a *group* of which it is a member if the only relationship of the kind set out in paragraph (3) of the definition of *group* between it and the other members of the *group* is nothing more than a *participation*; and
  - (e) do not apply with respect to a *third-country group*.

...

Purpose

...

12.1.7 G This section implements article 109(2) of the *CRD* and article 9 of the *Financial Groups Directive* (Internal control mechanisms and risk management processes). [deleted]

...

CRR firms and non-CRR firms that are parent financial holding companies in a ~~Member State~~ the United Kingdom or UK parent financial holding companies

- 12.1.13 R If this *rule* applies under SYSC 12.1.14R to a *firm*, the *firm* must:
- (1) comply with SYSC 12.1.8R(2) in relation to any *UK consolidation group* or, if applicable, ~~non-EEA sub-group~~ non-UK sub-group of which it is a member, as well as in relation to its *group*; and
  - (2) ensure that the risk management processes and internal control mechanisms at the level of any *consolidation group* or, if applicable, ~~non-EEA sub-group~~ non-UK sub-group of which it is a member comply with the obligations set out in the following provisions on a consolidated (or sub-consolidated) basis:
    - (a) SYSC 4.1.1R and SYSC 4.1.2R;
    - (b) SYSC 4.1.7R;
    - (bA) SYSC 4.3A;
    - (c) SYSC 5.1.7R;
    - (d) SYSC 7;
    - (dA) the *Remuneration Code*; or the *dual-regulated firms Remuneration Code*, whichever is applicable;
    - (e) *BIPRU 12.3.4R, BIPRU 12.3.5R, BIPRU 12.3.7AR, BIPRU 12.3.8R, BIPRU 12.3.22AR, BIPRU 12.3.22BR, BIPRU 12.3.27R, BIPRU 12.4.-2R, BIPRU 12.4.-1R, BIPRU 12.4.5AR, BIPRU 12.4.10R, BIPRU 12.4.11R and BIPRU 12.4.11AR*;
    - (f) [deleted];
    - (g) [deleted];
    - (h) [deleted];

[**Note:** article 109(2) of *CRD*]
  - (3) ensure that compliance with the obligations in (2) enables the consolidation group or, if applicable, the ~~non-EEA sub-group~~ non-UK sub-group to have arrangements, processes and mechanisms

that are consistent and well integrated and that any data relevant to the purpose of supervision can be produced.

[**Note:** article 109(2) of *CRD*]

12.1.14 R *SYSC* 12.1.13R applies to a *firm* that is:

- (1) [deleted]
- (2) a *CRR firm*; or
- (3) a non-*CRR firm* that is a *parent financial holding company* in ~~a~~ Member State the United Kingdom or ~~and is a member of a UK consolidation group~~ a UK parent financial holding company.

...

## 13 Operational risk: systems and controls for insurers

### 13.1 Application

- 13.1.1 G SYSC 13 applies to an *insurer* unless it is:
- (1) ~~a non-directive friendly society; or~~
  - (2) ~~an incoming EEA firm; or~~
  - (3) ~~an incoming Treaty firm.~~

- 13.1.2 G SYSC 13 applies to:
- (1) ~~an EEA deposit insurer; and~~
  - (2) ~~a Swiss general insurer;~~
- only in respect of the activities of the *firm* carried on from a *branch* in the *United Kingdom*.

...

### 13.9 Outsourcing

...

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

...

...

## 14 Risk management and associated systems and controls for insurers

### 14.1 Application

- 14.1.1 R This section applies to an insurer unless it is:
- (1) ~~a non-directive friendly society; or~~
  - (2) ~~an incoming EEA firm; or~~
  - (3) ~~an incoming Treaty firm.~~

- 14.1.2 G This section applies to:
- (1) ~~an EEA deposit insurer; and~~



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

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

...

## 18 Whistleblowing

### 18.1 Application and purpose

...

#### Purpose

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

...

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

...

### 18.3 Internal arrangements

...

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

...

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

#### Whistleblowing obligations under the MiFID regime

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

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

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

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

...

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

#### Whistleblowing obligations under other sectoral legislation

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

- (1) article 32(3) of the *Market Abuse Regulation*, as implemented in section 131AA of the *Act*;
- (2) the UK provisions which implemented article 71(3) of the *CRD* (see *IFPRU* 2.4.1R in respect of *IFPRU investment firms*);
- (3) the UK provisions which implemented article 99d(5) of the *UCITS Directive* (see *SYSC* 4.1.1ER in respect of *UK UCITS management companies*, and *COLL* 6.6B.30R in respect of *depositories*); and
- (4) article 24(3) of the *securities financing transactions regulation*.

...

## 19A IFPRU Remuneration Code

### 19A.1 General application and purpose

Who? What? Where?

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

...

- (d) an *overseas firm* that:
- (i) ~~is not an EEA firm;~~
  - (ii) ~~has its head office outside the EEA;~~ and
  - (iii) ...

...

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

...

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

(a) a firm's UK activities; and

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

...

...

Purpose

19A.1.6 G ...

(2) The *Remuneration Code* implements the main provisions of the *CRD* which relate to *remuneration*. In applying the *Remuneration Code*, firms should comply with the EBA "Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013", 21 December 2015 (EBA/GL/2015/22). ~~Guidelines published by the EBA on 21 December 2015 on sound remuneration policies under articles 74(3) and 75(2) of the CRD and on disclosures under article 450 of the EU CRR. The Guidelines can be found at:~~

~~[http://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-](http://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22-Guidelines-on-Sound-Remuneration-Policies.pdf/1b0f3f99-f913-461a-b3e9-fa0064b1946b)~~

~~[22-Guidelines-on-Sound-Remuneration-Policies.pdf/1b0f3f99-f913-461a-b3e9-fa0064b1946b](http://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22-Guidelines-on-Sound-Remuneration-Policies.pdf/1b0f3f99-f913-461a-b3e9-fa0064b1946b).~~

(3) [deleted]

...

### 19A.3 Remuneration principles for IFPRU investment firms

Application: groups

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

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

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

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

...

- 19A.3.4 R (1) *Remuneration Code staff* comprises:
- (a) an *employee* of an *IFPRU investment firm* whose professional activities have a material impact on the *firm's* risk profile, including any *employee* who is deemed to have a material impact on the *firm's* risk profile in accordance with ~~Regulation (EU) 604/2014 of 4 March 2014~~ ~~(Regulatory technical standards to identify staff who are material risk-takers)~~ the *Material Risk Takers Regulation*; or
  - (b) subject to (2) and (3), an *employee* of an *overseas firm* in SYSC 19A1.1.1R(1)(d) (i.e., an *overseas firm* that would have been an *IFPRU investment firm* if it had been a *UK domestic firm*) whose professional activities have a material impact on the *firm's* risk profile, including any *employee* who would meet any of the criteria set out in articles 3 or 4(1) of ~~Regulation (EU) 604/2014 of 4 March 2014~~ ~~(Regulatory technical standards to identify staff who are material risk-takers)~~ the *Material Risk Takers Regulation* if it had applied to him.
- (2) An *overseas firm* in SYSC 19A1.1.1R(1)(d) (i.e., an *overseas firm* that would have been an *IFPRU investment firm* if it had been a *UK domestic firm*) may deem an *employee* not to be *Remuneration Code staff* where:
- (a) the *employee*:

- (i) would meet the criteria in article 4(1) of ~~Regulation (EU) No 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*;
  - (ii) would not meet any of the criteria in article 3 of ~~Regulation (EU) No 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*; and
  - (iii) was awarded total remuneration of less than €750,000 in the previous year; and
- (b) the *overseas firm* determines that the professional activities of the *employee* do not have a material impact on its risk profile on the grounds described in article 4(2) of ~~Regulation (EU) No 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*.
- (3) Where the *overseas firm* deems an *employee* not to be *Remuneration Code staff* as set out in (2), it must notify the *FCA*, applying the approach described in article 4(4) of ~~Regulation (EU) No 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*.

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

...

#### Remuneration Principle 11: Non-compliance with the Remuneration Code

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

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

...

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

...

- (3) the *firm* must:

...

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

...

...

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

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

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

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

[**Note:** the *EBA Guidelines on the applicable notional discount rate for variable remuneration* can be found at:

[http://www.eba.europa.eu/documents/10180/643987/EBA\\_GL\\_2014\\_01+%28Final+Guidelines+on+the+discount+rate+for+remuneration%29.pdf/e8b3b3f6-6258-439d-a2d9-633e6e5de5e9](http://www.eba.europa.eu/documents/10180/643987/EBA_GL_2014_01+%28Final+Guidelines+on+the+discount+rate+for+remuneration%29.pdf/e8b3b3f6-6258-439d-a2d9-633e6e5de5e9)]

...

## 19B AIFM REMUNERATION CODE

### 19B.1 Application

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

- (1) a *UK AIF*; and
- (2) ~~an *EEA AIF* a non-*UK AIF*;~~ and
- (3) ~~a non-*EEA AIF*.~~ [deleted]

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

- (2) ...

...

## 19C BIPRU Remuneration Code

**19C.1 General application and purpose**

...

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

...

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

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

...

...

**19C.3 Remuneration principles**

Application: groups

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

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

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

...

**19D Dual-regulated firms Remuneration Code****19D.1 Application and purpose**

Who? What? Where?

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

...

- (d) an *overseas firm* that;
- (i) is not an *EEA firm*;
  - (ii) ~~has its head office outside the *EEA*; and~~
  - (iii) would be a *firm* in (a), (b) or (c) if it had been a *UK domestic firm*, had carried on all of its business in the *United Kingdom* and had obtained whatever authorisations for doing so as are required under the *Act*.

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

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

...

...

...

Purpose

19D.1.6 G ...

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

...

19D.3 Remuneration principles



## Application: groups

- 19D.3.1 R (1) A *firm* must apply the requirements of this section at *group, parent undertaking and subsidiary undertaking* levels, including those *subsidiaries* established in a country or territory which is ~~not an~~ EEA State outside the *United Kingdom*.
- (2) Paragraph (1) does not limit SYSC 12.1.13R(2)(dA) (which relates to the application of the *dual-regulated firms Remuneration Code* within *UK consolidation groups* and ~~non-EEA sub-groups~~ non-UK sub-groups).

[Note: article 92(1) of CRD]

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

...

- 19D.3.4 R (1) *Dual-regulated firms Remuneration Code staff* comprises:
- (a) an *employee* of a *dual-regulated firm* whose professional activities have a material impact on the *firm's* risk profile, including any *employee* who is deemed to have a material impact on the *firm's* risk profile in accordance with ~~Regulation (EU) 604/2014 of 4 March 2014 (Regulatory technical standards to identify staff who are material risk takers)~~ the *Material Risk Takers Regulation*; or
- (b) subject to (2) and (3), an *employee* of an *overseas firm* in SYSC 19D.1.1R(1)(d) (i.e., an *overseas firm* that would have been a *UK bank, building society* or *UK designated investment firm* if it had been a *UK domestic firm*) whose professional activities have a material impact on the *firm's* risk profile, including any *employee* who would meet any of the criteria set out in articles 3 or 4(1) of ~~Regulation (EU) 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation* if it had applied to him.
- (2) An *overseas firm* in SYSC 19D1.1.R(1)(d) (i.e., an *overseas firm* that would have been a *dual-regulated firm* if it had been a *UK domestic firm*) may deem an *employee* not to be a *dual-regulated firms Remuneration Code staff* where:

- (a) the *employee*:
- (i) would meet the criteria in article 4(1) of ~~Regulation (EU) No 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*;
  - (ii) would not meet any of the criteria in article 3 of ~~Regulation (EU) No 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*; and
  - (iii) was awarded total remuneration of less than €750,000 in the previous year; and
- (b) the *overseas firm* determines that the professional activities of the *employee* do not have a material impact on its risk profile on the grounds described in article 4(2) of ~~Regulation (EU) 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*.
- (3) Where the *overseas firm* deems an *employee* not to be *dual-regulated firms Remuneration Code staff* as set out in (2), it must notify the *FCA*, applying the approach described in article 4(4) of ~~Regulation (EU) 604/2014 of 4 March 2014~~ the *Material Risk Takers Regulation*.

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

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

...

#### Remuneration Principle 11: Non-compliance with the dual-regulated firms Remuneration Code

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

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

...

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

...

(3) the *firm* must:

...

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

...

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

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

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

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

~~[**Note:** the *EBA* Guidelines on the applicable notional discount rate for variable remuneration can be found at:~~

~~[http://www.eba.europa.eu/documents/10180/643987/EBA\\_GL\\_2014-01+%28Final+Guidelines+on+the+discount+rate+for+remuneration%29.pdf/e8b3b3f6-6258-439d-a2d9-633e6e5de5e9](http://www.eba.europa.eu/documents/10180/643987/EBA_GL_2014-01+%28Final+Guidelines+on+the+discount+rate+for+remuneration%29.pdf/e8b3b3f6-6258-439d-a2d9-633e6e5de5e9)~~

...

## 19E UCITS Remuneration Code

### 19E.1 Application

- 19E.1.1 R (1) The *UCITS Remuneration Code* applies to a *UK UCITS management company* that:
- (a) manages a *UCITS scheme*; ~~or~~
  - (b) manages an *EEA UCITS scheme*.
- (2) ~~This section does not apply to an *EEA UCITS management company* that manages a *UCITS scheme*. [deleted]~~
- (3) In this section, a *firm* under (1)(a) ~~or (1)(b)~~ above, is referred to as a *management company*.

...

**19F Remuneration and performance management of sales staff****19F.1 MiFID remuneration incentives**

Application

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

...

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

...

...

**19F.2 IDD remuneration incentives**

Application

...

19F.2.1A R This section does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* if:(1) the *firm's designated professional body* has made rules which ~~implement~~ implemented article 17(3) of the *IDD*;

...

...

**20 Reverse stress testing****20.1 Application and purpose**

Application

20.1.1A R ...

(3) Subject to (4), where all of the *BIPRU firms* within the same *UK consolidation group* or ~~the non EEA sub-group~~ non-UK sub-group, taken together, as if they were one *firm*, meet any of the criteria in

(2), SYSC 20 applies to each of those *BIPRU firms* as if it individually met the criteria in (2).

...

...

## 20.2 Reverse stress testing requirements

...

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

...

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

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

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

...

## 28 Insurance distribution: specific knowledge, ability and good repute requirements

...

### 28.2 Knowledge and ability requirements

Knowledge and ability requirements

...

28.2.3 R A *firm* must, including in relation to the relevant employee, demonstrate compliance with the following professional knowledge and competence requirements:

...

(2) for ~~insurance-based investment products~~ insurance-based investment products as defined at article 2(1)(17) of the *IDD* (which in summary says that it is an insurance product which offers a maturity or surrender value, and where the maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations. This excludes products such as ~~non-investment insurance and certain life insurance~~):

...

(3) for *long-term insurance contracts*:

...

(b) minimum necessary knowledge of organisation and benefits guaranteed by the pension system of the relevant ~~Member State~~ state;

...

...

## Annex C

### Amendments to the Threshold Conditions (COND)

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

#### 1 Introduction

##### 1.1A Application

...

To what extent does COND apply to incoming EEA firms and incoming Treaty firms?

1.1A.4 G ~~COND applies to incoming EEA firms and incoming Treaty firms as set out below:~~

- (1) ~~for an incoming EEA firm or an incoming Treaty firm which does not carry on any PRA-regulated activities, FCA threshold conditions 2C to 2F apply; and~~
- (2) ~~for an incoming EEA firm or an incoming Treaty firm which carries on a PRA-regulated activity, FCA threshold conditions 3B to 3E apply.~~

~~FCA threshold conditions apply to incoming EEA firms and incoming Treaty firms only in as far as relevant to the discharge by the FCA of its relevant functions in relation to an application for, or the exercise of its own initiative powers in relation to, a top-up permission or the functions relating to the FCA's consent or consultation rights relating to the exercise by the PRA of its powers in relation to an application for, or use of its own initiative powers relating to, a top-up permission. [deleted].~~

...

Where does COND apply?

1.1A.7 G ~~COND applies in relation to all of the regulated activities wherever they are carried on, except as stated in COND 1.1A.4G.~~

##### 1.2 Purpose

...

Applications for a Part 4A permission or variation of Part 4A permission

1.2.2 R ...

- (2) ~~If, however, the applicant for permission is an incoming firm seeking top-up permission, or variation of top-up permission, under~~

~~Part 4A of the Act (Permission to carry on regulated activities), then under paragraphs 6A and 7A of Schedule 6 to the Act (Threshold conditions), the FCA will have regard only to satisfaction of the FCA threshold conditions specified as applicable in COND 1.1A.4G, as relevant to the regulated activities for which the applicant has, or will have, Part 4A permission. [deleted]~~

Exercise of the FCA’s own initiative powers

1.2.3 R ...

- (3) ~~The FCA can also exercise its own initiative powers under section 55J or section 55L of the Act in relation to the top-up permission of an incoming firm. But this is only on the grounds that the incoming firm is failing, or likely to fail, to satisfy the FCA threshold conditions specified as applying to incoming firms under COND 1.1A.4G. [deleted]~~

...

## 2 The threshold conditions

...

### 2.3 Effective supervision

Paragraph 2C of Schedule 6 to the Act

2.3.1A UK (1) A must be capable of being effectively supervised by the FCA having regard to all the circumstances including-

...

(f) if A has close links with another person (“CL”)-

- (i) the nature of the relationship between A and CL;
- (ii) whether those links are or that relationship is likely to prevent the FCA’s effective supervision of A; and
- (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State ~~the UK~~ (“the foreign provisions”), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA’s effective supervision of A.

...

...

Paragraph 3B of Schedule 6 to the Act



- 2.3.1C UK (1) B must be capable of being effectively supervised by the FCA having regard to all the circumstances including-
- ...
- (f) if B has close links with another person (“CL”)-
- (i) the nature of the relationship between B and CL;
  - (ii) whether those links are or that relationship is likely to prevent the FCA’s effective supervision of B; and
  - (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not ~~an EEA State~~ the UK (“the foreign provisions”), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA’s effective supervision of B.
- ...

...

- 2.3.7 G (1) For the purposes of the *threshold conditions* set out in paragraphs 2C and 3B of Schedule 6 to the *Act*, and except in relation to an *incorporated friendly society*, an *undertaking* is a *parent undertaking* of another *undertaking* (a subsidiary undertaking) if any of the following apply to it:

...

- (g) it is an individual and would be a *parent undertaking* of the *subsidiary undertaking*; ~~or~~
- (h) ~~it is incorporated in or formed under the law of another EEA State and is a *parent undertaking* within the meaning of any rule of law in that State for purposes connected with implementation of the *Seventh Company Law Directive*.~~  
[deleted]

...

## Annex D

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

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

## 2 Short selling

...

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

...

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

#### Exchange rate calculations

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

...

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

## Annex E

### Amendments to the Training and Competence sourcebook (TC)

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

#### 1 Application and Purpose

##### 1.1 Who, what and where?

Who and what?

...

- 1.1.1B G *ESMA* has issued guidelines specifying criteria for the assessment of knowledge and competence (3 January 2017 ESMA71-1154262120-153 EN (rev)). ~~The *ESMA* guidelines can be found at <https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence>~~

...

#### 2 Competence

##### 2.1 Assessing and maintaining competence

Assessment of competence and supervision

###### 2.1.1 R ...

- (2) ~~A firm may assess an *employee* who is subject to, but has not satisfied, an appropriate qualification requirement as competent to the extent that:~~
- (a) ~~that *employee* works in a *branch* in an *EEA State* other than the *United Kingdom*;~~
  - (b) ~~the *employee* is engaging in *MiFID business*; and~~
  - (c) ~~there is no appropriate qualification or equivalent in that *EEA State*. [deleted]~~

...

#### 4 Specified modified requirements

##### 4.1 Specified requirements for MiFID investment firms and for third country investment firms

...

4.1.3 R References in *TC* 4.1.4R to a relevant individual’s knowledge and competence are to the knowledge and competence necessary to ensure that the *firm*, on behalf of which the relevant individual acts, is able to meet its obligations under:

- (1) those *rules* which ~~implement~~ implemented articles 24 and 25 of *MiFID* (including those *rules* which ~~implement~~ implemented related provisions under the *MiFID Delegated Directive*); and
- (2) related provisions of the *MiFID Org Regulation*.

4.1.4 R Unless the context requires otherwise the *rules* in column 1 of the table are amended as set out in column 2:

Column 1	Column 2
Relevant rule	Amendments
TC 2.1.1R(1)	<p>Insert the following at the end of <i>TC</i> 2.1.1R(1):</p> <p>“In addition, a <i>firm</i> must not assess a relevant individual as competent unless the <i>firm</i> has satisfied itself that the relevant individual possesses the knowledge and competence to enable the <i>firm</i> to meet its obligations under <i>SYSC</i> 5.1.5ABR. This means that the relevant individual has also:</p> <p>(a) obtained appropriate experience which means that the relevant individual has successfully demonstrated the ability to carry on the activities through previous work experience. This work must have been performed, on a full-time equivalent basis, for a minimum period of 6 <i>months</i>; and</p> <p>(b) attained an appropriate qualification which means a qualification or other test or training course that meets the criteria set out by the <i>ESMA</i> guidelines <u>referred to in <i>TC</i> 1.1.1BG</u>.</p> <p>The level of knowledge and competence needed to fulfil the <i>firm</i>’s obligations reflects the scope and degree of the activities, as described in <i>TC</i> 4.1.2R above, carried out by the relevant individual.”</p>
...	...

...

**App 1.1 Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3**

1.1.1	R	Activity	Products/Sectors	Is there an appropriate qualification requirement?
		...		
		...		
		<i>MiFID business bidding</i>	13C <i>Emissions auction products that are financial instruments</i> [deleted]	No
		...		

**App 2.1 TCs Territorial Scope subject to the limitation in TC Appendix 3**

2.1.1	R		<i>UK domestic firm</i>	<i>Incoming EEA firm</i> [deleted]	<i>Overseas firm (other than an incoming EEA firm)</i>
		<i>MiFID business and equivalent third country business</i>	<i>TC applies in respect of employees who carry on activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom and if an activity is carried on from an establishment maintained by the firm (or its appointed representative or, where applicable, its tied agent) in, and within the territory of,</i>	<i>TC does not apply</i>	...

	<p>another <i>EEA State</i>, <i>TC</i> applies although <del>matters which would otherwise be covered by SYSC 5.1.5ABR</del> are matters reserved for the <i>Host State regulator</i></p>		
<p><i>Insurance distribution activities</i></p>	<p><i>TC</i> applies in respect of <i>employees</i> who carry on activities from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i></p> <p>and</p> <p><del><i>TC</i> also applies in respect of <i>employees</i> who engage in or oversee activities from a branch established in another <i>EEA state</i></del></p>	<p><del><i>TC</i> does not apply</del></p>	<p>...</p>
<p>Mortgage activities and <i>reversion activities</i> numbers 20, 20A, 21, 21A, 21B, 22 and 23 in TC App 1.1.1R; and</p> <p><i>MCD credit agreement activities</i> numbers 23A to</p>	<p><i>TC</i> applies if the customer is resident in the <i>United Kingdom</i> at the time the activity is carried on</p> <p>and</p> <p><del><i>TC</i> also applies if the <i>customer</i> is resident in another <i>EEA</i></del></p>	<p>Same as for <i>UK domestic firm</i> except that:</p> <p>(1) if the <i>firm</i> carries on the activity from an establishment maintained by the <i>firm</i> or its <i>appointed representative</i> in the <i>United Kingdom</i> and</p>	<p>...</p>

<p>23E in <i>TC</i> App 1.1.1R</p>	<p><i>State</i> (at the time that the activity is carried on) but only if the activity is carried on from an establishment maintained by the <i>firm</i> or its <i>appointed representative</i> in the <i>United Kingdom</i></p>	<p>the <i>customer</i> is resident in another <i>EEA State</i> when the activity is carried on, <i>TC</i> does not apply; and                  (2) if the <i>firm</i> carries on the activity from an establishment maintained by the <i>firm</i> in another <i>EEA State</i> (and the customer is resident in the <i>United Kingdom</i> when the activity is carried on), the following provisions of <i>TC</i> apply: <i>TC</i> 2.1.5AR; <i>TC</i> 2.1.5BR(2), (3), (5) and (6); <i>TC</i> 2.1.5CR; <i>TC</i> 2.1.5DG; <i>TC</i> 2.1.5ER; and <i>TC</i> 2.1.5FG.                  [Note: article 9(3) of the <i>MCD</i>]</p>	
<p>Any other activity in Appendix 1</p>	<p>...</p>	<p><i>TC</i> applies in respect of its <i>employees</i> who carry on activities from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i></p>	<p>...</p>

**App 3.1 Circumstances in which TC does not apply**

3.1.1

Type of firm/activity	Application
<i>Incoming EEA firm</i>	<del>This sourcebook does not apply where responsibility for any matter it covers is reserved by an EU instrument to the firm's Home State regulator</del>
<i>Incoming Treaty firm</i>	<del>This sourcebook does not apply where responsibility for any matter it covers is reserved by an EU instrument to the firm's Home State regulator</del>
<i>UCITS qualifier</i>	<del>This sourcebook only applies where it is relevant to the manner in which a firm communicates or approves a financial promotion</del>
...	
<i>Incoming ECA provider</i>	<del>TC does not apply to an incoming ECA provider acting as such.</del>

...

**TP 1 Designated Investment Business: Assessments of competence before commencement**

TC TP 1.1

...			
1.1A	G	Notwithstanding TC TP 1 1.1R:	
		(1)	a firm is subject to SYSC 5.1.5ABR in respect of such an <i>employee</i> and should have regard to the guidelines ESMA has issued specifying the criteria for the assessment of knowledge and competence (3 January 2017   ESMA71-1154262120-153 EN (rev)). <del>The ESMA guidelines can be found at: <a href="https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence">https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence</a>; and</del>
		...	

...



## Annex F

### Amendments to the General Provisions (GEN)

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

#### 1 FCA approval and emergencies

##### 1.1 Application

...

1.1.1 R ...

- (2) ~~For a *UCITS* qualifier, this chapter applies only with respect to the communication and approval of financial promotions to which *COBS 4* (Communicating with clients, including financial promotion) applies and to the maintenance of facilities to which *COLL 9.4* (Facilities in the United Kingdom) applies. [deleted]~~

...

##### 1.2 Referring to approval by the FCA

...

1.2.2A R ...

- (1A) Paragraph (1) does not apply to a *firm* to the extent that it is incompatible with the ~~*United Kingdom's*~~ obligations under article 44(8) of the *MiFID Org Regulation*.

...

...

1.2.4 G A *firm* that carries on *MiFID*, equivalent third country or optional exemption business should have regard to the requirement in article 44(8) of the *MiFID Org Regulation* which is reproduced at ~~*COBS 4.5A.16EU*~~ *COBS 4.5A.16UK*.

##### 1.3 Emergency

...

1.3.5 *GEN 1.3.2R* operates on the *FCA's rules*. It does not affect the *FCA's* powers to take action against a *firm* in an emergency, based on contravention of other requirements and standards under the *regulatory system*. For example, the *FCA* may exercise its *own-initiative power* in appropriate cases to vary a *firm's Part 4A permission* based on a failure or potential failure to satisfy the *threshold conditions* (see *SUP 7* (Individual requirements) and *EG 8* (Variation and

cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms)).

## 2 Interpreting the Handbook

...

### 2.2 Interpreting the Handbook

...

European Economic Area (EEA)

- 2.2.21 G ~~The agreement on the *European Economic Area*, signed at Oporto on 2 May 1992, extends certain *EU* legislation to those *EEA States* which are not Member States of the *EU*, namely Norway, Iceland and Liechtenstein. References in the *Handbook* concerning the territorial scope of *EU* law should therefore be read as extending throughout the *EEA* where the context requires. [deleted]~~

Treaty of Lisbon

- 2.2.22 G As a result of the Treaty of Lisbon, the European Union has replaced and succeeded the European Community. References in the *Handbook* to the European Community should therefore be interpreted as references to the European Union, where the context requires. ~~In particular, references which are copied out directly from *EU* or *UK* legislation may contain references to the Community which should be read in conjunction with section 3 of the European Union (Amendment) Act 2008.~~

~~EU Onshored Regulations and third country firms~~

- 2.2.22A R (1) Unless exempted in (2) and subject to (3), *MiFIR*, and any ~~*EU regulation onshored regulations*~~ adopted as at 3 January 2018 under previously deriving from *MiFIR* or *MiFID*, apply to a *third country investment firm* as if it were a *UK MiFID investment firm* when the following conditions are met:
- ...
- (2) Paragraph (1) does not apply:
- (a) to the extent *MiFIR* or an ~~*EU regulation onshored regulation*~~ adopted under previously deriving from *MiFIR* or *MiFID* imposes a specific requirement in relation to a *third country investment firm*; and
- (b) to ~~*EU regulations onshored regulations*~~ *EU regulations* adopted under ~~articles~~ article 7, 34 and 35 of *MiFID*.

...

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

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

(2) ...

...

## 4 Statutory status disclosure

### 4.1 Application

Who? What?

- 4.1.1 R This chapter applies to every *firm* and with respect to every *regulated activity*, except that:
- (1) ~~for an incoming ECA provider, this chapter does not apply when the firm is acting as such; [deleted]~~
  - (2) ~~for an incoming EEA firm which has permission only for cross-border services and which does not carry on regulated activities in the United Kingdom, this chapter does not apply; [deleted]~~
  - (3) ~~for an incoming firm not falling under (1) or (2), this chapter does not apply to the extent that the firm is subject to equivalent rules imposed by its Home State; [deleted]~~
  - (4) ~~for a UCITS qualifier, this chapter does not apply; [deleted]~~
  - (5) only GEN 4.1 (Application) and GEN 4.5 (Statements about authorisation and regulation by the appropriate regulator) apply in relation to *MiFID or equivalent third country business* and only where that *MiFID or equivalent third country business* is not business falling within paragraph 2 (Transactions between an MTF operator and its users), 3 (Transactions concluded on an MTF) or 4 (Transactions concluded on a regulated market) of Part 1 of COBS 1 Annex 1; and

- (6) only *GEN 4.1* (Application) and *GEN 4.5* (Statements about authorisation and regulation by the appropriate regulator) apply in relation to *administering a benchmark*.

...

- 4.1.4 R *GEN 4.5* (Statements about authorisation and regulation by the *appropriate regulator*) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, ~~provided that, in the case of the *MiFID* business of an *EEA MiFID investment firm* or the activities of an *EEA UCITS management company*, it only applies to business conducted within the territory of the *United Kingdom*.~~

...

### 4.3 Letter disclosure

...

- 4.3.1B G An example for *GEN 4.3.1AG* would be where a letter covers business for which the *FCA* is the *competent authority* under the *UK* provisions which implemented the *IDD* and under the *UK* provisions which implemented *MiFID*.

...

Exception: insurers

- 4.3.4 R *GEN 4.3.1R* (Disclosure in letters to retail clients) does not apply in relation to:
- (1) *general insurance business* if:
    - (a) ~~the *State of the risk* is an *EEA State* other than the *United Kingdom*; or~~
    - (b) the *State of the risk* is outside the ~~*EEA*~~ *United Kingdom* and the *client* is not in the *United Kingdom* when the *contract of insurance* is entered into; or
  - (2) *long-term insurance business* if:
    - (a) ~~the *client* is *habitually resident* in an *EEA State* other than the *United Kingdom*; or~~
    - (b) the *client* is *habitually resident* outside the ~~*EEA*~~ *United Kingdom* and is not present in the *United Kingdom* when the *contract of insurance* is entered into.

...

Exception: credit firms

- 4.3.7 R *GEN 4.3.1R (Disclosure in letters to retail clients) does not apply to a credit firm (other than a firm with a limited permission) with respect to the activity of entering into a regulated credit agreement as lender to which the Consumer Credit Directive applies, to the extent it would be contrary to the United Kingdom's obligations under an EU instrument would have applied if the activity had been carried on immediately before exit day.*
- 4.3.8 G *A credit firm which carries on the activity of entering into a regulated credit agreement as lender, in respect of an agreement to which ~~articles 5 and 6 of the Consumer Credit Directive~~ apply GEN 4.3.1R (Disclosure in letters to retail clients) does not apply as a result of GEN 4.3.7R is under an obligation to disclose pre-contract information in the form and to the extent required by the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013). Firms which carry on credit broking may take on the same obligation. A credit firm must also ensure specified information is included in credit agreements to which ~~the Consumer Credit Directive~~ applies GEN 4.3.1R (Disclosure in letters to retail clients) does not apply as a result of GEN 4.3.7R in the form and to the extent required by the Consumer Credit (Agreements) Regulations 2010 (SI 2010/1014).*
- 4.3.9 G *The effect of GEN 4.3.7R is that a credit firm in relation to a regulated credit agreement which would have been covered by the Consumer Credit Directive if the activity had been carried on immediately before exit day does not need to comply with GEN 4.3.1R in relation to those letters (or electronic equivalents) that accompany the information required under the Regulations referred to in GEN 4.3.8G.*
- 4.3.10 G *GEN 4.3.7R and the guidance related to it are not relevant to Regulated regulated activities covered by a limited permission (see the “relevant credit activities” set out in paragraph 2G of Schedule 6 to the Act) ~~do not fall within the scope of articles 5 and 6 of the Consumer Credit Directive, therefore GEN 4.3.7R and the guidance related to it are not relevant to those activities.~~*

...

#### 4.5 Statements about authorisation and regulation by the appropriate regulator

...

- 4.5.5 G *~~SUP 13A Annex 1 provides guidance on the application of the Handbook to an incoming EEA firm. [deleted]~~*
- 4.5.6 G (1) *~~Neither an incoming EEA firm nor an incoming Treaty firm is authorised by the FCA or PRA when acting as such.~~*
- (2) *It is likely to be misleading for a firm that is not authorised by the FCA or PRA to state or imply that it is so authorised. It is also likely to be misleading for a firm to state or imply that a client will have*

recourse to the *Financial Ombudsman Service* or the *FSCS* where this is not the case.

...

#### 4 Annex Statutory status disclosure 1R

This rule applies to firms that are not *PRA-authorized persons*:

	Type of firm	Required disclosure (Note 5)
(1)	<i>UK domestic firm; or overseas firm (which is not an incoming firm)</i>	<b>“Authorized and regulated by the Financial Conduct Authority” (Note 1)</b>
(2)	<i>Incoming firm without a top-up permission [deleted]</i>	(a) <b>“Authorized by [name of Home State regulator] or</b> (b) <b>“Authorized by [name of Home State regulator] and subject to limited regulation by the Financial Conduct Authority. Details about the extent of our regulation by the Financial Conduct Authority are available from us on request”</b> <b>(Notes 1, 2, 2a and 3)</b>
(3)	<i>Incoming firm with a top-up permission [deleted]</i>	<b>“Authorized by [name of Home State regulator] and authorized and subject to limited regulation by the Financial Conduct Authority. Details about the extent of our authorisation and regulation by the Financial Conduct Authority are available from us on request”</b> <b>(Notes 1, 2 and 3)</b>
(4)	...	...
<p>...</p> <p><b>Note 2 = An incoming firm is free to translate the name of its Home State regulator into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear. [deleted]</b></p> <p><b>Note 2a = An incoming firm without a top-up permission may make either disclosure (a) or disclosure (b) unless it otherwise indicates or implies to the</b></p>		

~~customer that it is regulated or supervised by the FCA, in which case it must make disclosure (b).~~ [deleted]  
 ...

**4 Annex 1AR Statutory status disclosure (PRA-authorized persons)**

This rule applies to firms that are *PRA-authorized persons*:

	Type of firm	Required disclosure (Note 5)
(1)	...	...
(2)	overseas firm (which is not an incoming firm)	...
(3)	Incoming firm without a top-up permission [deleted]	(a) “Authorized by [name of <i>Home State regulator</i> ]” or (b) “Authorized by [name of <i>Home State regulator</i> ] and subject to limited regulation by the Financial Conduct Authority and Prudential Regulation Authority. Details about the extent of our regulation by the Financial Conduct Authority and Prudential Regulation Authority are available from us on request” (Notes 1, 2, 2a and 3)
(4)	Incoming firm with a top-up permission [deleted]	“Authorized by [name of <i>Home State regulator</i> ] and the Prudential Regulation Authority and subject to limited regulation by the Financial Conduct Authority and Prudential Regulation Authority. Details about the extent of our authorisation and regulation by the Prudential Regulation Authority, and regulation by the Financial Conduct Authority are available from us on request” (Notes 1, 2 and 3)
...	...	...
... Note 2 = An <del>incoming firm</del> or overseas firm is free to translate the name of its <i>Home State regulator</i> or <i>overseas regulator</i> into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear.		

Note 2a = ~~An incoming firm without a top-up permission may make either disclosure (a) or disclosure (b) unless it otherwise indicates or implies to the customer that it is regulated or supervised by the FCA or PRA, in which case it must make disclosure (b).~~ [deleted]

...

Note 3a = An overseas firm ~~that is not an incoming firm~~ is only required to disclose its authorisation and/or regulated by an *overseas regulator* if it is so authorised and/or regulated.

...

...

**Sch 4 Powers exercised**

...

4.2G Powers to make rules

The following powers and related provisions in or under the *Act* have been exercised by the *FCA* to make the *rules* in *GEN*:

	...
	<del>Paragraphs 19 (Establishment), 20 (Services) and 20C (Notice of intention to market an AIF) of Schedule 3 (EEA Passport Rights)</del>
	...

...

4.6G

The following additional powers and related provisions have been exercised by the *FCA* to issue the parts of the statements in *GEN*:

	...
	<del>Regulation 14 (Guidance) of the <i>Cross Border Payments in Euro Regulations</i></del>
	...

4.7G Powers to direct, require or specify

The following powers and related provisions in the *Act* have been exercised by the *FCA* in *GEN* to direct, require or specify:



	...
	<del>Section 293A (Information: compliance with EU requirements)</del>
	...
	<del>Paragraph 5(4) (Notice to UK Regulator) of Schedule 4 (Treaty Rights)</del>
	...

...

4.12G

The following additional powers have been exercised by the <i>FCA</i> to give the other <i>guidance</i> in <i>GEN</i> :	
	...
	<del>Regulation 14 (Guidance) of the <i>Cross-Border Payments in Euro Regulations</i></del>
	...
	Regulation 15 (Guidance) of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (SI 2012/3122)
	...

After GEN TP 4 (Transitional Provision on early compliance with the Insurance Distribution Directive applying across the Handbook) insert a new TP 5. The text is not underlined.

**TP 5 Transitional provisions applying across the FCA Handbook and relating to the UK's exit from the EU**

Table 1: Transitional provisions applying across the FCA Handbook

(1)	The purpose of these transitional provisions is to assist a smooth transition on <i>exit day</i> . They comprise various technical provisions that will apply across the whole <i>FCA Handbook</i> and achieve results that most people would probably expect to apply in any event.
(2)	These transitional provisions consist of general transitional provisions, which apply at a high level of generality, and more specific transitional provisions in relation to record keeping and <i>notification rules</i> .

(3)	The more specific transitional provisions relating to record keeping and <i>notification rules</i> override the general transitional provisions. Both the general and the more specific transitional provisions do not apply if the context requires otherwise and are subject to any more specific transitional provision elsewhere in the <i>FCA Handbook</i> or other legislative material relating to the matter.
(4)	Definitions for these transitional provisions, additional to those in the <i>Glossary</i> , are provided at row 13 of Table 2.

Table 2: Transitional provisions applying across the FCA Handbook

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force.	(6) Handbook provision: coming into force
1	Every provision in the <i>FCA Handbook</i> , unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<p><b>Acts under pre-exit day provisions</b></p> <p>Anything done, or having effect as done, under or for the purposes of any pre-<i>exit day</i> provision has effect as if done under or for the purposes of any substantially similar provision in the <i>FCA Handbook</i>.</p>	From <i>exit day</i>	<i>exit day</i>
2	Row 1 of this table	G	For example, a <i>firm</i> may continue to treat a <i>client</i> as an <i>elective eligible counterparty</i> pursuant to <i>COBS</i> 3.6.4R where prior to <i>exit day</i> it had categorised that <i>client</i> as such in deference to the status of that undertaking under the law or measures of the <i>EEA State</i> of that	From <i>exit day</i>	<i>exit day</i>

			client's <i>establishment</i> in accordance with <i>COBS 3.6.7R</i> .		
3	Every provision in the <i>FCA Handbook</i> , unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<b>Series of events</b> If the application of any provision in the <i>FCA Handbook</i> is dependent on the occurrence of a series of events, some of which occur before, and some of which occur after, <i>exit day</i> , the provision applies with respect to the events that occur after <i>exit day</i> .	From <i>exit day</i>	<i>exit day</i>
4	Every provision in the <i>FCA Handbook</i> , unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<b>Deemed references to pre-exit day provisions</b> Any reference (express or implied) in a provision in the <i>FCA Handbook</i> to a provision of or made under the <i>Act</i> or of retained EU law is to be read (so far as the context permits and according to the context) as being or including, in relation to times, circumstances and purposes before <i>exit day</i> , a reference to any substantially similar pre- <i>exit day</i> provision.	From <i>exit day</i>	<i>exit day</i>

5	Row 4 of this table	G	<p>For example, <i>BIPRU 2.1.11R</i> requires a <i>firm</i> to notify the <i>FCA</i> immediately of any breach, or expected breach, of the <i>main BIPRU firm Pillar 1 rules (GENPRU 2.1.40R (Variable capital requirement for BIPRU firms), GENPRU 2.1.41R (Base capital resources requirement for BIPRU firms) and GENPRU 2.1.48R (Table: Base capital resources requirement for a BIPRU firm)</i>. This includes breaches of the <i>main BIPRU firm Pillar 1 rules</i> as they applied before <i>exit day</i>.</p>	From <i>exit day</i>	<i>exit day</i>
6	Every provision in the <i>FCA Handbook</i> , unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	<p><b>Time starting before exit day</b></p> <p>If, at <i>exit day</i>, time has begun to run for any purpose under any pre-<i>exit day</i> provision applicable to a <i>firm</i> or other person, then:</p> <p>(1) time will be regarded as having started to run, for the purposes of any substantially similar provision in the <i>FCA Handbook</i>, when it started to run for</p>	From <i>exit day</i>	<i>exit day</i>

			<p>that other purpose; and</p> <p>(2) the <i>firm</i> or other person will be relieved of its obligation to comply with the relevant <i>pre-exit day</i> provision if and to the extent that it complies with the substantially similar provision as extended by this transitional provision.</p>		
7	<p>Every <i>rule</i> in the <i>FCA Handbook</i> requiring a record to be made or retained, unless the context otherwise requires and subject to any more specific transitional provision relating to the matter</p>	R	<p><b>Record keeping</b></p> <p>A <i>firm</i> or other person will not contravene a <i>rule</i> in the <i>FCA Handbook</i> requiring a record to be made or retained to the extent that the <i>firm</i> or other person:</p> <p>(1) made a record of the matter before <i>exit day</i> in accordance with the <i>rule</i> or with a substantially similar <i>pre-exit day</i> provision applicable to the <i>firm</i> or other person; and</p> <p>(2) retains that record as if the <i>rule</i> was in force when the record was made.</p>	From <i>exit day</i>	<i>exit day</i>
8	<p>Every <i>rule</i> in the <i>FCA Handbook</i></p>	G	<p>This transitional provision makes</p>	From <i>exit day</i>	<i>exit day</i>

	requiring a record to be made or retained, unless the context otherwise requires and subject to any more specific transitional provision relating to the matter		specific provision, in relation to record keeping, for the matters covered by row 1 of this table. It is included for clarity and overrides those general transitional provisions.		
9	Every <i>rule</i> in the <i>FCA Handbook</i> requiring a record to be made or retained, unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	A <i>firm</i> or other person must retain a record in accordance with a <i>rule</i> in the <i>FCA Handbook</i> requiring a record of that sort to be retained, if the <i>firm</i> or other person was required to make and retain that record before <i>exit day</i> under a substantially similar pre- <i>exit day</i> provision applicable to the <i>firm</i> or other person.	From <i>exit day</i>	<i>exit day</i>
10	Row 7 of this table	G	This transitional provision makes specific provision, in relation to records, for the matters covered by rows 4 and 6 of this table. It is included for clarity and overrides those general transitional provisions.		
11	Every <i>notification rule</i> in the <i>FCA Handbook</i> , unless the context otherwise requires	R	<b>Notification</b> A <i>firm</i> (or its auditor, appointed actuary or <i>appropriate</i>	From <i>exit day</i>	<i>exit day</i>

	and subject to any more specific transitional provision relating to the matter		<p><i>actuary</i>) or other person will not contravene a <i>notification rule</i> in the <i>FCA Handbook</i> to the extent that notice of the relevant matter was given to the <i>FCA</i> before <i>exit day</i> in accordance with:</p> <p>(1) the <i>notification rule</i>; or</p> <p>(2) a substantially similar pre-<i>exit day</i> provision applicable to the <i>firm</i> or other person.</p>		
12	Row 11 of this table	G	This transitional provision makes specific provision, in relation to notifications, for the matters covered by rows 1 and 3 of this table. It is included for clarity and overrides those general transitional provisions.	From <i>exit day</i>	<i>exit day</i>
13	As rows 1 to 12 of this table	R	<p><b>Definitions</b></p> <p>In these transitional provisions:</p> <p>(1) “pre-<i>exit day</i> provision” means a provision in force on the day preceding <i>exit day</i>;</p> <p>(2) “substantially similar” means substantially similar in purpose and effect; and</p>	From <i>exit day</i>	<i>exit day</i>

			(3) a reference to a “provision” in the <i>FCA Handbook</i> means every type of provision, including <i>rules</i> , <i>guidance</i> , provisions in codes, and so on.		
14	Rows 15 and 16 of this table	G	<p><b>Application for provisions which are not rules</b></p> <p>The purpose of row 15 of this table is to ensure that the transitional provisions in rows 1 to 13 apply throughout the <i>FCA Handbook</i>. The purpose of row 16 is to ensure that the transitional provisions in rows 1 to 13 apply throughout Technical Standards made by the Board of the <i>FCA</i>.</p>	From <i>exit day</i>	<i>exit day</i>
15	Directions, requirements, guidance, evidential provisions and other provisions in the <i>FCA Handbook</i> (that is, provisions with the status letter “D” or “G” or “E” in the margin or heading) unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	G	The provisions in rows 1 to 13 apply to every <i>person</i> to whom the provisions referred to in column (2) apply as if the <i>rules</i> in those rows were part of those provisions.	From <i>exit day</i>	<i>exit day</i>
16	Technical Standards (that is, provisions	TS	The provisions in rows 1 to 13 of this	From <i>exit day</i>	<i>exit day</i>



	<p>with the status letter “TS” in the margin or heading) made by the Board of the <i>FCA</i> under The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 unless the context otherwise requires and subject to any more specific transitional provision relating to the matter</p>		<p>table apply to every person to whom the provisions referred to in column (2) apply as if references to the <i>Handbook</i> were to Technical Standards made by the Board of the <i>FCA</i>. References in this table and in headings to the <i>FCA Handbook</i> should be read as referring to Technical Standards made by the Board of the <i>FCA</i>, where the context requires.</p>		
--	---	--	--	--	--

## Annex G

### Amendments to the Fees manual (FEES)

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

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

#### 1 Fees Manual

#### 1.1 Application and Purpose

...

#### 1.1.2 ...

(2) *FEES* 1, 2 and 4 apply to:

(a) every *firm* (~~except an *AIFM* qualifier, *ICVC* or *UCITS* qualifier~~);

...

(da) every *AIFM* *UK AIFM* of a ~~*UK ELTIF*~~ *an LTIF*;

...

(m) every *AIFM* applying to become a ~~*small registered UK AIFM*~~ and every *small registered UK AIFM*;

(n) every *AIFM* notifying the *FCA* under regulation 57, 58 and 59 of the *AIFMD UK* regulation and every *AIFM* which has made such a notification;

(p) a *data reporting services provider* (~~*FEES 4* does not apply to an *incoming data reporting services provider*~~).

(3) *FEES* 1, 2 and 5 apply to:

(a) every *firm* (~~except to the extent it is *bidding in emissions auctions*~~), *fee-paying payment service provider* and *fee-paying electronic money issuer* which is subject to the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*; and

...

...

(5) *FEES 1, 2, 7 and 7A (in relation to the SFGB money advice levy and SFGB debt advice levy only) apply to:*

(a) *every person having a Part 4A permission;*

(b) *an incoming EEA firm; [deleted]*

(c) *an incoming Treaty firm; [deleted]*

...

~~FEES 1, 2, 7 and 7A do not apply to an incoming EEA firm or an incoming Treaty firm that has not established a branch in the United Kingdom.~~

...

...

### **3 Application, Notification and Vetting Fees**

#### **3.1 Introduction**

...

3.1.2 **G** This chapter does not apply to:

(1) ~~an EEA firm that wishes to exercise an EEA right unless it is:~~

(a) ~~an incoming data reporting services provider connecting to the market data processor system; or~~

(b) ~~an EEA firm connecting to the market data processor system; or~~

(2) ~~a EEA authorised payment institution; or~~

(3) ~~an EEA authorised electronic money institution. [deleted]~~

...

- 3.1.5 G (1) ~~The rates set for authorisation fees represent an appropriate proportion of the costs of the FCA in processing the application or exercise of Treaty rights.~~
- (2) ~~{deleted}~~
- (3) ~~{deleted}~~ [deleted]

...

- 3.1.6 G Applications for *Part 4A permission* ~~(and exercises of Treaty rights)~~ other than in respect of *credit-related regulated activities* are categorised by the FCA for the purpose of fee raising as straightforward, moderately complex and complex as identified in FEES 3 Annex 1. This differentiation is based on the permitted activities sought and does not reflect the FCA’s risk assessment of the applicant ~~(or Treaty firm)~~.

...

- 3.1.7 G A potential applicant for *Part 4A permission* ~~(or Treaty firm)~~ has the opportunity to discuss its proposed application ~~(or exercise of Treaty rights)~~ with the FCA before submitting it formally. If an applicant for *Part 4A permission* ~~(or Treaty firm)~~ does so, the FCA will be able to use that dialogue to make an initial assessment of the fee categorisation and therefore indicate the authorisation fee that should be paid.

...

## 3.2 **Obligation to pay fees**

- 3.2.1 R A person in column (1) of the table in FEES 3.2.7R as the relevant fee payer for a particular activity must pay to the FCA (in its own capacity or, if the fee is payable to the PRA, in its capacity as collection agent for the PRA) a fee for each application or request for vetting, or request for support relating to compatibility of its systems with FCA systems, or admission approval made, or notification ~~or notice of exercise of a Treaty right given~~, or other matter as is applicable to it, as set out or calculated in accordance with the provisions referred to in column (2) of the appropriate table:

...

...

3.2.2 G If an application for a *Part 4A permission* (~~or exercise of a *Treaty right*~~) falls within more than one category set out in *FEES 3 Annex 1*, other than where one of the applications is an application under the *benchmarks regulation*, only one fee is payable. That fee is the one for the category to which the highest fee tariff applies. Where applications are made under the *benchmarks regulation*, a separate fee will be payable for this application. The relevant fee is set out in *FEES 3.2.7R*.

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	(3) Due date
...	...	...
(b) Any <i>Treaty firm</i> that wishes to exercise a <i>Treaty right</i> to qualify for authorisation under Schedule 4 to the <i>Act</i> (Treaty rights) in respect of <i>regulated activities</i> for which it does not have an <i>EEA right</i> , except for a firm providing <i>cross border services only</i> [deleted]	(1) Where no certificate has been issued under paragraph 3(4) of Schedule 4 to the <i>Act</i> the fee payable is, in respect of a particular exercise, set out in <i>FEES 3 Annex 1, part 4</i> (2) Where a certificate in (i) has been issued no fee is payable	On or before the notice of exercise is given
...		
(ea) (i) An <i>A non-UK AIFM</i> (other than a <i>UK AIFM</i> or an <i>EEA AIFM</i> with a branch in the <i>UK</i> ) notifying the <i>FCA</i> of its intention to market an <i>AIF</i> in the <i>UK</i> under regulation 57 59 of the <i>AIFMD UK regulation</i> ...	<i>FEES 3 Annex 2 R, part 4</i>	On or before the notice of exercise is given
...		

<p>(g) Any applicant for recognition as a <i>UK recognised body</i>:</p> <p><del>(i) under section 287 of the Act; or</del></p> <p><del>(ii) under regulation 2(1) of the <i>RAP regulations</i></del></p>	<p><i>FEES</i> 3 Annex 3, part 1</p>	<p>On or before the date the application is made</p>
<p>...</p>		
<p>(o) In relation to a <i>BIPRU firm</i>, either:</p> <p><del>(i) a firm applying to the FCA for permission to use one of the <i>advanced prudential calculation approaches</i> listed in <i>FEES</i> 3 Annex 6R (or <i>guidance</i> on its availability), including any future proposed amendments to those approaches, or (in the case of any application being made for such permission to the FCA as <i>EEA consolidated supervisor</i> under the (transposing parts of the <i>BCD</i> and <i>CAD</i>, as applicable under article 95(2) of the <i>EUCRR</i>)) any firm making such an application; or</del></p> <p><del>(ii) in the case of an application to a <i>Home State regulator</i> other than the FCA for the use of the <i>Internal Ratings Based approach</i> and the <i>Home State regulator</i> requesting the FCA's assistance in accordance with the <i>Capital Requirements Regulations 2006</i> (transposing parts of the <i>BCD</i> and <i>CAD</i>, as applicable under article 95(2) of the <i>EU CRR</i>), any firm to which the</del></p>	<p>(1) Unless (2) applies, <i>FEES</i> 3 Annex 6.</p> <p>(2) (a) Unless (b) applies a firm submitting a second application for the permission or <i>guidance</i> described in column (1) within 12 months of the first application (where the fee was paid in accordance with (1)) must pay 50% of the fee applicable to it under <i>FEES</i> 3 Annex 6, but only in respect of that second application</p> <p>(b) No fee is payable by a firm in relation to a successful application for a permission based on a minded to grant decision in respect of the same matter following a complete application for <i>guidance</i> in accordance with prescribed submission requirements.</p> <p>(c) No fee is payable where the <i>Home State regulator</i> has requested the assistance described in paragraph (o)(ii) of column 1 except in the cases specified in <i>FEES</i> 3 Annex 6.</p>	<p>Where the <i>firm</i> has made an application directly to the FCA, on or before the date the application is made, otherwise within 30 days after the FCA notifies the <i>firm</i> that its <i>EEA parent's Home State regulator</i> has requested assistance.</p>

<p><del>FCA would have to apply any decision to permit the use of that approach.</del></p>		
<p>(oa) Either:</p> <p>(i) a <i>firm</i> applying to the <i>FCA</i> for permission to use one of the internal approaches listed in <i>FEES 3 Annex 6A</i> (or <i>guidance</i> on its availability), including any future proposed amendments to those approaches or (in the case of any application being made for such permission to the <i>FCA</i>) as consolidating supervisor under the <del><i>EU-CRR UK CRR</i></del> any <i>firm</i> making such an application; or</p> <p>(ii) in the case of an application to the consolidating supervisor other than the <i>FCA</i> for the use of the IRB approach and the consolidating supervisor requesting the <i>FCA</i>'s assistance in accordance with the <del><i>EU-CRR UK CRR</i></del>, any <i>firm</i> to which the <i>FCA</i> would have to apply any decision to permit the use of that approach.</p>	<p>...</p>	<p>...</p>
<p>...</p>		
<p>(zy) (1) Subject to (2) and (3) below, any <i>person</i> applying to connect to the <i>market data processor system</i> to provide <i>markets data (other than transaction reports)</i> under <del><i>MiFID and MiFIR MAR 10</i></del>.</p> <p>(2) If a <i>person</i> has previously applied as stated in (zy)(1) above and has been connected then no further fee</p>	<p><del>(1) Unless (2) applies, 10,000.</del></p> <p><del>(2) Any incoming data reporting services provider authorised by another EEA State will pay 80% of the fee at (1).</del></p>	<p>On the date the application is made.</p>

<p>is payable for any further such applications in relation to reporting the same data.</p> <p>(3) If a <i>person</i> has previously applied as stated in (zy)(1) above and makes a further application in relation to the provision of different data then a separate fee is payable for such application.</p>		
<p>...</p>		

**3 Annex 1R Authorisation fees payable**

...

Part 2 – Complexity groupings not relating to *credit-regulated activities*

Straightforward cases

Straightforward cases	
Activity grouping	Description
...	...
A.10	<del>A firm to the extent it is bidding in emissions auctions</del> [deleted]
...	...

Moderately complex cases

Moderately complex cases	
Activity grouping	Description
...	...
A.10	<del>Firms dealing as principal, except to the extent the firm is bidding in emissions auctions</del>
...	...



...

**Part 4—Authorisation Fees for Treaty Firms R**

<p>If the <i>Treaty firm</i> wishes to undertake the permitted activities in question through its branch in the <i>United Kingdom</i>, the fee is 50% of the fee that would be payable under <i>FEES 3.2.7R</i> for an applicant for <i>Part 4A permission</i>.</p>
<p>If the <i>Treaty firm</i> wishes to undertake the permitted activities in question by providing services in the <i>United Kingdom</i>, the fee is 25% of the fee which would be payable under <i>FEES 3.2.7R</i> for an applicant for <i>Part 4A permission</i>.</p>

...

**3 Annex 2R Application and notification fees payable in relation to collective investment schemes, ELTIFs, money market funds and AIFs marketed in the UK**

Legislative provision	Nature and purpose of fee	Payable by	Amount of fee (£)	Umbrella factor (note 1)
...				
Section 272 of the <i>Act</i>	On application for an order declaring a <i>scheme</i> to be recognised where the <i>scheme</i> is:	An applicant		
	an <i>EEA AIF</i> equivalent to a <i>non-UCITS retail scheme</i>		1500	2
	an <i>EEA AIF</i> equivalent to a <i>qualified investor scheme</i>		2400	2
	a non- <i>EEA AIF</i> a <i>non-UK AIF</i> or <i>AIF</i> equivalent to a <i>UK UCITS</i> , non- <i>UCITS retail scheme</i> or		8000	2

	<i>a qualified investor scheme</i>			
	Where funds of any kind set out in Part 2 exist prior to 21 July 2018, a flat fee will be payable on an application for authorisation under the <i>Money Market Funds Regulation</i>		300	
...				
Part 2B Application fees payable for UK or non-EEA firms applying for authorisation under article 5 of the Money Market Funds Regulation				
Article 5 of the <i>Money Market Funds Regulation</i>	<i>UK AIF</i> (apart from those authorised as a <u><i>UK UCITS</i></u> , a non- <i>UCITS retail scheme</i> or a <i>qualified investor scheme</i> )		500	
	<del>Non-EEA AIF</del> <u><i>Non-UK AIF</i></u> which is marketed in the <del><i>UK/EEA</i></del> without a passport		750	
	<del>Non-EEA AIF</del> <u><i>Non-UK AIF</i></u> which is marketed in the <del><i>UK/EEA</i></del> with a passport or is not marketed in the <del><i>UK/EEA</i></del>		500	

	<del>Non-EEA AIF</del> <del>Non-UK AIF</del> which is not managed by an <del>EU AIFM</del> but is marketed in the <del>UK/EEA with a</del> passport		750	
...				

...

**3 Annex 3R Application fees payable in connection with Recognised Investment Exchanges and Recognised Auction Platforms**

Description of applicant	Amount payable	Due date
Part 1 (UK recognised bodies)		
...	...	...
Applicant for recognition as an <i>RAP</i> (payable in addition to any other application fee due under this part) [deleted]	35,000	Date the application is made
...		

...

**3 Annex 6AR Fees payable for a permission or guidance on its availability in connection with the ~~EU CRR~~ UK CRR**

Part 1

Fees payable in relation to internal approaches that require permission under Part Three of the ~~EU CRR~~ UK CRR other than the internal model method for counterparty credit risk.

- (1) Subject to (3), for applications made to the *FCA* to authorise a new internal approach:
- (i) where the application relates to *IFPRU investment firms* and to five or more significant overseas entities within the same group (Group 1) and the application is

for a permission to use one of the internal approaches in Tables 1 or 2 or guidance on the availability of such a permission, the fees in Table 1 are applicable; and

(ii) for all other *IFPRU* investment firms the fees in Table 2 are applicable.

(2) [deleted]

(3) If however the application or request for assistance is in relation to the use of the Advanced IRB approach and the *FCA* (in the case of (1)) has already granted permission for the use of the Foundation IRB approach then Table 3 applies.

(4) References to the internal approaches in Tables 1, 2 and 3 are to be construed as follows:

(i) Foundation IRB means the internal approach for credit risk referred to in article 143(1) of the ~~*EU CRR*~~ *UK CRR*;

(ii) Advanced IRB means the internal approach for credit risk referred to in article 151(4) and (9) of the ~~*EU CRR*~~ *UK CRR*; and

(iii) AMA means the internal approach for operational risk referred to in article 312(2) of the ~~*EU CRR*~~ *UK CRR*.

(5) All fees are shown in £.

...

## 4 Periodic fees

...

### 4.1 Introduction

...

#### 4.1.4 G ...

- (3) The periodic fees for *fee-paying payment service providers, fee-paying electronic money issuers, CBTL firms, data reporting service providers* (other than *incoming data reporting services providers and issuers of regulated covered bonds* are set out in *FEES 4 Annex 11R*. This annex sets out the activity groups, tariff base, valuation dates and, where applicable, the flat fees due for these *firms*.

...

### 4.2 Obligation to pay periodic fees

- 4.2.7E R (1) (a) A *firm* (other than an ~~AIFM-qualifier~~, an *ICVC*, a ~~UCITS-qualifier~~, or an *issuer of regulated covered bonds*) which becomes authorised or registered, or whose *permission* and/or activities is extended, during the course of the *fee year* must pay a fee based on its projected valuation for the first twelve *months* of its new business.
- (b) This is the valuation provided by the *firm* in the course of its application or if not provided at that time, the valuation provided subsequently.
- (2) The calculation for the first year of *authorisation* or registration for:
- (a) ~~an AIFM-qualifier~~, an *ICVC* ~~and a UCITS-qualifier~~ is in *FEES 4 Annex 4R Part 1*; and
- ...

...

4.2.7K R ...

Table A: calculating tariff data for second and subsequent years of authorisation when full trading figures are not available

Fee-block	Tariff base	Calculation where trading data are not available
...	...	...
<del>B. Recognised auction platforms [deleted]</del>	<del>Flat fee</del>	<del>Not applicable.</del>
...	...	...

4.2.8 R ~~In relation to an incoming EEA firm or an incoming Treaty firm the modification provisions of FEES 4.2.7R apply only in relation to the relevant regulated activities of the firm, which are passported activities or Treaty activities and which are carried on in the United Kingdom, and which are not provided on a cross border services basis. For payment services and electronic money issuance, the adjustment only applies to the business to which the calculation made in FEES 4.3.12AR relates.~~

...

## 4.2.11 R Table of Periodic fees payable to the FCA

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to the modified periodic fee
Any <i>firm</i> (except an <i>AIFM</i> <i>qualifier</i> , <i>ICVC</i> or a <i>UCITS</i> <i>qualifier</i> )	...	...	...
...			
<i>AIFM</i> <u>UK</u> <i>AIFM</i> of a <u>UK</u> <i>ELTIF</i> <u>an</u> <i>LTIF</i>	In relation to each <i>ELTIF</i> <i>LTIF</i> the amount specified in part 1 of <i>FEES</i> 4 Annex 4	...	The <del><i>ELTIF</i></del> <i>LTIF</i> is authorised by the FCA under the <del><i>ELTIF</i></del> <i>regulation</i> <i>LTIF</i> <i>Regulation</i>
...			
<i>UK</i> <i>recognised</i> <i>body</i>	<i>FEES</i> 4 Annex 6, part 1 for a <i>UK</i> <i>RIE</i> ; and  <del><i>FEES</i> 4 Annex 6R, part 1A for a <i>UK</i> <i>RIE</i> that is also an <i>RAP</i></del>	(1) On or before the relevant dates specified in <i>FEES</i> 4.3.6R  (2) If the event in column 4 occurs during the course of a <i>fee</i> year, 30 days after the occurrence of that event	<i>Recognition order</i> is made.  The modified periodic fee is specified in <i>FEES</i> 4 Annex 6R, Part 1 and (in the case of an <i>RAP</i> ) Part 1A.
...			
(i) An <i>AIFM</i> <i>A non-UK</i>	...	...	...

<p><del><i>AIFM</i></del> (other than a <i>UK AIFM</i> or an <i>EEA AIFM</i> with a branch in the <i>UK</i>) which has notified the <i>FCA</i> of its intention to market an <i>AIF</i> in the <i>UK</i> under regulation 57 59 of the <i>AIFMD UK regulation</i> and which has not ceased to market that <i>AIF</i> in the <i>UK</i> as at 1 April of the current <i>fee year</i>.</p> <p>(ii) <del>An <i>AIFM</i></del> non-<i>UK AIFM</i> which has notified the <i>FCA</i> of its intention to market an <i>AIF</i> in the <i>UK</i> under regulation 58 or 59 of the <i>AIFMD UK regulation</i> and which has not ceased to market that <i>AIF</i> in the <i>UK</i> as at 1 April of the current <i>fee year</i>.</p>			
--	--	--	--

...			

**4.3 Periodic fee payable by firms (other an AIFM qualifiers, ICVCs and UCITS qualifiers)**

...

4.3.2 G ...

- (2) ~~Incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions receive a discount to reflect the reduced scope of the appropriate regulator’s responsibilities in respect of them. The level of the discount varies from fee block to fee block, according to the division of responsibilities between the appropriate regulator and Home state regulators for firms in each fee block (see FEES 4.3.11G, FEES 4.3.12R and FEES 4.3.12AR). [deleted]~~

...

Calculation of periodic fee for fee-paying payment service providers, CBTL firms, data reporting services providers (~~other than incoming data reporting services providers~~) and fee-paying electronic money issuers

4.3.3A R The periodic fee referred to in FEES 4.3.1R in relation to *fee-paying payment service providers, CBTL firms, data reporting services providers* (~~other than incoming data reporting services providers~~) and *fee-paying electronic money issuers* is calculated in accordance with FEES 4 Annex 11R.

Modification for firms with new or extended permissions

4.3.4 G ...

- (3) ~~These provisions apply (with some changes) to incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions. [deleted]~~

...

...



~~Incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions~~

- 4.3.11 G (1) ~~The FCA recognises that its responsibilities in respect of an incoming EEA firm, an incoming Treaty firm, an EEA authorised payment institution or an EEA authorised electronic money institution are reduced compared with a firm which is incorporated in the United Kingdom.~~
- (2) ~~Accordingly the periodic fees which would otherwise be applicable to incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions are reduced.~~  
~~[deleted]~~
- 4.3.12 R For an *incoming EEA firm*, (excluding MTF and OTF operators), or an *incoming Treaty firm*, the calculation required by FEES 4.3.3R is modified as follows:
- (1) ~~the tariffs set out in Part 1 of FEES 4 Annex 2AR are applied only to the regulated activities of the firm which are carried on in the United Kingdom; and~~
- (2) ~~those tariffs are modified in accordance with Part 3 of FEES 4 Annex 2AR.~~ ~~[deleted]~~
- 4.3.12A R For:
- (1) (a) ~~a full credit institution which is a fee-paying payment service provider and an EEA firm; or~~
- (b) ~~a full credit institution which is a fee paying electronic money issuer and an EEA firm; or~~
- (c) ~~an EEA authorised payment institution; or~~
- (d) ~~an EEA authorised electronic money institution;~~

~~the calculation required by FEES 4.3.3AR is modified as follows:~~

- (1) ~~the tariffs set out in Part 5 of FEES 4 Annex 11 are only applied to the payment services or electronic money issuance of the firm carried on from an establishment in the United Kingdom, including any payment services carried on through any of its agents established in the United Kingdom; and~~

- (2) ~~those tariffs are modified in accordance with Part 7 of FEES 4 Annex 11. [deleted]~~

...

**4.4 Information on which fees are calculated**

...

4.4.2A R If a *firm* is a UK Solvency II firm, ~~an incoming EEA firm or an incoming Treaty firm~~ in activity group A.3 or A.4 and the PRA or the FCA has either:

- (1) not received the necessary tariff data on a timely basis in line with Part 3 and 5 of FEES 4 Annex 1AR; or
- (2) deemed the tariff data received to be incomplete or insufficiently reliable, by reference to a specific *firm* or across all or part of the activity group,

the FCA may use tariff data from the previous reporting period for the periodic fees calculation.

...

4.4.5 R ~~For an incoming EEA firm or an incoming Treaty firm, the information required under FEES 4.4 is limited to the regulated activities of the firm which are carried on in the United Kingdom, except those provided on a cross border services basis. [deleted]~~

...

**4 Annex FCA activity groups, tariff bases and valuation dates 1AR**

Part 1

This table shows how the FCA links the *regulated activities* for which a *firm* has *permission* to activity groups (fee-blocks). A *firm* can use the table to identify which fee-blocks it falls into based on its *permission*.

Activity group	Fee payer falls in the activity group if:
...	...

<p><b>A.10 Firms dealing as principal</b></p>	<p>its <i>permission</i> includes:</p> <p><del>(a) dealing in investments as principal; and/or</del></p> <p><del>(b) bidding in emissions auctions;</del></p> <p><b>BUT NOT</b> if one or more of the following apply:</p> <p>...</p> <p>the <i>firm</i> is an oil market participant, energy market participant or a local <del>(except where the firm is bidding in emissions auctions);</del></p> <p>...</p>
<p>...</p>	<p>...</p>
<p><b>B. Recognised auction platforms</b> [deleted]</p>	<p>it is a <i>recognised auction platform</i>.</p>
<p>...</p>	<p>...</p>

...

<p>Part 3</p> <p>This table indicates the tariff base for each fee-block set out in Part 1.</p> <p>The tariff base in this Part is the means by which the <i>FCA</i> measures the amount of business conducted by a <i>firm</i> for the purposes of calculating the annual periodic fees payable to the <i>FCA</i> by that <i>firm</i>.</p>	
<p>Activity group</p>	<p>Tariff base</p>
<p>...</p>	<p>...</p>
<p><b>A3</b></p>	<p><b>GROSS WRITTEN PREMIUM FOR FEES PURPOSES AND BEST ESTIMATE LIABILITIES FOR FEES PURPOSES</b></p> <p>Gross written premium for fees purposes means:</p> <p>(1) for UK Solvency II firms, a <i>firm</i>'s gross written premium as reported to the <i>PRA</i>, being the total of items entered under row codes R0110, R0120 and R0130, as expressed in column code C0200 where this column is completed for those row codes of the annual quantitative reporting template S.05.01.01; <u>and</u></p>

	<p>(2) <del>for incoming EEA firms or incoming Treaty firms, a firm's gross written premium as reported to their Home State regulator, being the total of items entered under row codes R0110, R0120 and R0130, as expressed in column code C0200 where this column is completed for those row codes, of the annual quantitative reporting template S.05.01.01 but only in relation to the regulated activities of the firm which are carried on in the United Kingdom, (except those provided on a cross border services basis); and [deleted]</del></p> <p>(3) ...</p> <p><b>AND</b></p> <p>Best estimate liabilities for fees purposes means:</p> <p>(1) for UK Solvency II firms, a firm's best estimate liabilities as reported to the PRA, being the sum of items entered under row codes R0010, R0370, R0380, R0410 and R0420, column code C0180, of the annual quantitative reporting template S17.01.01; plus the sum of items entered under row codes R0010, R0030, column codes C0090, C0140 and C0190, of the annual quantitative reporting template S12.01.01; <u>and</u></p> <p>(2) <del>for incoming EEA firms or incoming Treaty firms, a firm's best estimate liabilities as reported to their Home State regulator, being the sum of items entered under row codes R0010, R0370, R0380, R0410 and R0420, column code C0180, of the annual quantitative reporting template S17.01.01; plus the sum of items entered under row codes R0010, R0030, column codes C0090, C0140 and C0190, of the annual quantitative reporting template S12.01.01 but only in relation to the regulated activities of the firm which are carried on in the United Kingdom, except those provided on a cross border services basis; and [deleted]</del></p> <p>(3) ...</p>
<p>...</p>	<p>...</p>
<p><b>A4</b></p>	<p><b>GROSS WRITTEN PREMIUM FOR FEES PURPOSES AND BEST ESTIMATE LIABILITIES FOR FEES PURPOSES</b> (see FEES 4 Annex 12G)</p> <p>Gross written premium for fees purposes means:</p>

~~(1) for UK Solvency II firms, a *firm's* gross written premium as reported to the *PRA*, being the item entered under row code R1410, column code C0300 of the annual quantitative reporting template S05.01.01 minus corporate pension business as reported to the *PRA* under the annual quantitative reporting template S14.01.01;~~ ~~and~~

~~(2) for *incoming EEA firms or incoming Treaty firms*, a *firm's* gross written premium as reported to their *Home State regulator*, being the item entered under row code R1410, column code C0300 of the annual quantitative reporting template S05.01.01 minus corporate pension business as reported to the *PRA* under the annual quantitative reporting template S14.01.01 but only in relation to the *regulated activities* of the *firm* which are carried on in the *United Kingdom*, except those provided on a *cross border services* basis~~

**AND**

Best estimate liabilities for fees purposes means:

~~(1) for UK Solvency II firms, a *firm's* best estimate liabilities as reported to the *PRA*, being the sum of items entered under row codes R0010 and R0030, column codes C0150 and C0210 minus the sum of items entered under row codes R0010 and R0030, column codes C0090, C0140 and C0190 of the annual quantitative reporting template S12.01.01; minus corporate pension business reported under the annual quantitative reporting template S14.01.01;~~ ~~and~~

~~(2) for *incoming EEA firms or incoming Treaty firms*, a *firm's* best estimate liabilities as reported to their *Home State regulator*, being the sum of items entered under row codes R0010 and R0030, column codes C0150 and C0210 minus the sum of items entered under row codes R0010 and R0030, column codes C0090, C0140 and C0190 of the annual quantitative reporting template S12.01.01; minus corporate pension business reported under the annual quantitative reporting template S14.01.01 but only in relation to the *regulated activities* of the *firm* which are carried on in the *United Kingdom*, except those provided on a *cross border services* basis. [deleted]~~

...

...	...
<b>A.10 Firms dealing as principal</b>	... A <i>firm</i> may, as an option, report <i>employees</i> or agents as full-time equivalents (FTE), taking account of any part-time staff. In calculating the FTE, <i>firms</i> must take into account the total hours <i>employees</i> or agents have contracted to work for the <i>firm</i> and not the time <i>employees</i> or agents devote to the <i>dealing in investments as principal and bidding in emissions auctions</i> functions set out in fee-block A.10. Any figures using the FTE calculation to be recorded to one decimal place, rounded down to the nearest decimal place.
...	...
<b>B. Recognised auction platforms [deleted]</b>	Not applicable.
...	...

...

**4 Annex 2AR FCA Fee rates and EEA/Treaty firm modifications for the period from 1 April 2018 to 31 March 2019**

Part 1

This table shows the tariff rates applicable to each of the fee blocks set out in Part 1 of FEES 4 Annex 1AR.

...

Activity group	Fee payable
...	...
A.10	... For <i>firms</i> carrying on <i>auction regulation bidding</i> , the fee in A.10 is calculated as above less 20% for each trader that carries on <i>auction regulation bidding</i> but not <i>MiFID business bidding</i> or <i>dealing in investments as principal</i> .
...	...
<b>B. Recognised auction platforms[deleted]</b>	55,143.00
...	...

...

Part 3 [deleted]	
This table shows the modifications to fee tariffs that apply in respect of the <i>FCA</i> to <i>incoming EEA firms</i> and <i>incoming Treaty firms</i> which have established branches in the UK.	
Activity group	Percentage deducted from the tariff payable under Part 1 applicable to the firm
A.1	10%
A.3	10%
A.4	10%
A.7	10%
A.9	10%
A.10	In relation to each trader that carries on <i>auction regulation bidding</i> but not <i>MiFID business bidding</i> or <i>dealing in investments as principal</i> , 100%. In relation to all other traders, 10%.
A.13	10%
A.18	10%
A.19	50%
B. MTF and OTF operators	Not applicable
AP.0	100%
Note 1	The modifications to fee tariffs payable by an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i> which has established a branch in the UK apply only in relation to the relevant <i>regulated activities</i> of the firm which are <i>passport activities</i> or <i>Treaty activities</i> and which are carried on in the UK.
Note 2	The <i>FCA</i> minimum fee described in Part 2 of <i>FEES 4 Annex 2AR</i> applies in full and the modifications in this Part do not apply to it.

...

**4 Annex 4R Periodic fees in relation to collective investment schemes, AIFs marketed in the UK, small registered UK AIFMs and money market funds payable for the period 1 April 2018 to 31 March 2019**

Part 1 - Periodic fees payable

Scheme type	Basic fee (£)	Total funds/sub-funds aggregate	Fund factor	Fee (£)
<i>ICVC,</i>	386	1-2	1	386
<i>AUT,</i>		3-6	2.5	965
<i>ACS,</i>		7-15	5	1,930
<i><u>UK ELTIFs</u></i> <i><u>LTIFs,</u></i>		16-50	11	4,246
Money market funds with effect from 21 July 2018		>50	22	8,492
<del>Section 264 of the Act, schemes other than non-EEA AIFs recognised under section 272 of the Act,</del>				
<del><i>Non-EEA AIFs non-UK AIFs</i> recognised under section 272 of the Act</del>	1,570	1-2	1	1,570
		3-6	2.5	3,925
		7-15	5	7,850
		16-50	11	17,270
		>50	22	34,540

...



**4 Annex 10R Periodic fees for MTF operators payable in relation to the period 1 April 2018 to 31 March 2019**

...

...	...	...
an <i>EEA firm</i>	0	
...		

...

**4 Annex 11R Periodic fees in respect of payment services, electronic money issuance, regulated covered bonds, CBTL business, data reporting services and third party verifiers in relation to the period 1 April 2019 to 31 March 2020**

...

Part 2 - Activity groups relevant to fee-paying payment service providers	
...	
Activity group	Fee payer falls into this activity group if:
...	...
G.3 Large payment institutions and registered account information service providers	it is a <i>fee-paying payment service provider</i> that is an <i>authorised payment institution</i> , <del>an <i>EEA authorised payment institution</i></del> , a <i>registered account information service provider</i> , <del>an <i>EEA registered account information service provider</i></del> , the Post Office Limited or a <i>fee-paying electronic money issuer</i> (except if it is a <i>small electronic money institution</i> )
...	...

...

Part 7 – This table shows the modifications to fee tariffs that apply to *EEA authorised payment institutions*, *EEA authorised electronic money institutions*, and *full credit institutions* that are *EEA firms*.

Activity group	Percentage deducted from the tariff payable under Part 5 applicable to the firm	Minimum amount payable
G.2	40%	

G.3	40%	
G.10	40%	
[deleted]		

...

**5 Financial Ombudsman Service Funding**

...

**5.4 Information requirement**

...

5.4.1-A R ...

- (2) If a *firm* is a UK Solvency II firm, ~~an incoming EEA firm or an incoming Treaty firm~~ in industry blocks 2 and 4 in FEES 5 Annex 1R, the FCA may use tariff data from the previous reporting period for the periodic fees calculation if the PRA or the FCA has either:

...

...

**5 Annex 1R Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2019/20**

...

Compulsory jurisdiction - general levy

Industry block	Tariff base	General levy payable by firm
...		
11-fee-paying payment service providers (but excluding firms in any other Industry block except Industry block 18)	For authorised payment institutions, registered account information service providers, electronic money issuers (except for small electronic money institutions), the Post Office Limited, the Bank of England, government departments and local	£0.0003 per £1,000 of relevant income subject to a minimum levy of £75

	authorities, and <del>EEA authorised payment institutions</del> relevant income as described in FEES 4 Annex 11 Part 3	
	For <i>small payment institutions</i> and <i>small electronic money institutions</i> a flat fee	Levy of £35
...		

...

**7A SFGB levies**

**7A.1 Application and Purpose**

...

7A.1.2 R The *SFGB pensions guidance levy* applies to a *firm* that:

(1)

- (a) has a *Part 4A Permission*; ~~or~~
- (b) is an *incoming EEA firm* with a *branch* in the *United Kingdom*; ~~or~~
- (c) is an *incoming Treaty firm* with a *branch* in the *United Kingdom*; and

...

...

**7A.3 The SFGB money advice levy and debt advice levy**

...

7A.3.10 R Table of rules in FEES 4 that also apply to FEES 7A to the extent that in FEES 4 they apply to fees payable to the FCA

FEES 4 rules incorporated into FEES 7A	Description
...	...
<del>FEES 4.2.8R</del>	<del>How FEES 4.2.7R applies in relation to an incoming EEA firm or an incoming Treaty firm</del>

...	...
-----	-----

...

**7A SFGB debt advice levy for the period from 1 April 2018 to 31 March 2019**  
**Annex**  
**2R**

...

Part 2

...

Activity group	Tariff base
...	...
Notes <u>Note</u>	
(1) ...	
(2) The tariff base for an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i> is the same as set out above but limited to the <i>regulated activities</i> of the <i>firm</i> which are carried out in the <i>United Kingdom</i> , except those provided on a <i>cross border services</i> basis, and should be reported to the <i>FCA</i> as required by <i>FEES 4.4.1R</i> and <i>FEES 4.4.2R</i> . The valuation date is in accordance with the <i>CC.3</i> valuation date in Part 3.	

...

...

**10 Pensions guidance levy**

**10.1 Application, purpose and background**

Application

10.1.1 R This chapter applies to a *firm* that:

- (1) (a) has a *Part 4A Permission*; or
- (b) is an *incoming EEA firm* with a branch in the *United Kingdom*; or

- (e) ~~is an incoming Treaty firm with a branch in the United Kingdom;~~  
and

...

...

**10.5 Application of FEES 4 to the pensions guidance levy**

...

10.5.4 R Table of *rules* in FEES 4 that also apply in FEES 10.

FEES 4 incorporated into FEES 10	Description	Modification
...	...	...
<del>FEES 4.2.8R</del>	<del>How FEES 4.2.7R applies to an incoming EEA firm or an incoming Treaty firm</del>	none
...	...	...

...

**13 Illegal money lending levy**

...

**13.2 The IML levy**

...

13.2.6 R The modifications:

- (1) ~~for incoming EEA firms and incoming Treaty firms which have established branches in the UK in Part 3 of FEES 4 Annex 2AR apply; and~~
- (2) ~~for EEA authorised payment institutions, EEA authorised electronic money institutions, and full credit institutions that are EEA firms in Part 7 of FEES 4 Annex 11R apply. [deleted]~~

...

13.2.9 R Table of rules in *FEES* 4 that also apply to *FEES* 13 to the extent that in *FEES* 4 they apply to fees payable to the *FCA*.

FEES 4 rules incorporated into FEES 13	Description
...	...
<i>FEES</i> 4.2.8R	How <i>FEES</i> 4.2.7R applies in relation to an incoming <i>EEA firm</i> or an incoming <i>Treaty firm</i>
...	...

...

**Part 2: Comes into force on 1 April 2019**

**6 Financial Services Compensation Scheme Funding**

**6.1 Application**

...

6.1.2 G (1) *Firms* which are not *participant firms* (such as ~~certain types of incoming EEA firms,~~ service companies, ~~and ICVCs~~ and, for the purposes of *FEES* 6, pre-exit incoming EEA firms) are not required to contribute towards the funding of the *compensation scheme*.

...

...

**Incoming EEA firms**

6.1.17 G ~~*Incoming EEA firms* which obtain cover or “top up” under the provisions of COMP 14 are firms whose Home State scheme provides no or limited compensation cover in the event that they are determined to be in default. Under FEES 6.6, the FSCS is required to consider whether incoming EEA firms should receive a discount on the amount that they would otherwise pay as their share of the levy, to take account of the availability of their Home State cover. The amount of any discount is recoverable from the other members of the incoming EEA firm’s class.~~ [deleted]

...

**6.3 The FSCS’s power to impose levies**

...

Adjustments to calculation of levy shares

6.3.22 R The *FSCS* may adjust the calculation of a *participant firm's* share of any levy to take proper account of:

...

(5) *FEES 2.3* (Relieving Provisions), *FEES 6.5.9R* (New participant firms); or *FEES 6.3.23R* (Remission of levy or additional administrative fee) ~~or~~ *FEES 6.6* (Incoming EEA firms); or

...

...

**6.6 Incoming EEA firms [deleted]**

6.6.1 R If an *incoming EEA firm*, which is an *IDD insurance intermediary*, an *MCD mortgage credit intermediary* or a *MiFID investment firm*, is a *participant firm*, the *FSCS* must give the *firm* such discount (if any) as is appropriate on the share of any levy it would otherwise be required to pay, taking account of the nature of the levy and the extent of the compensation coverage provided by the *firm's Home State* scheme. [deleted]

...

**6 Annex 3AR Financial Services Compensation Scheme – classes and categories**

This table belongs to *FEES 6.5.6AR*

...

...	
<b>Class 2</b>	<b>Investment Intermediation Claims</b>
...	
<b>Category 2.3</b>	Investment provision
<b>Firms with permission for:</b>	any of the following:
	...
	<i>managing a <u>UK UCITS</u></i> ;
	...
...	

Class 3	Investment Provision Claims
Firms with permission for:	any of the following:
	...
	<i>managing a <u>UK UCITS</u>;</i>
	...
...	

After FEES TP 20A (Transitional provisions relating to changes to the FSCS levy arrangements taking effect in 2019/20) insert the following new TP 21. The text is not underlined.

**TP 21 Transitional provisions relating to FSCS levy arrangements after 1 April 2019**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provisions coming into force
21.1	The changes made to <i>FEES</i> 6 by the Exiting the European Union: High Level Standards (Amendments) Instrument 2019	R	The changes in column (2) apply to any levy made after 1 April 2019. This is even if:  (1) the <i>claim</i> against the <i>relevant person</i> or <i>successor in default</i> arose or relates to circumstances arising before that date; or  (2) the <i>relevant person</i> or <i>successor</i> was <i>in default</i> before that date.	From 1 April 2019, indefinitely	1 April 2019



**EXITING THE EUROPEAN UNION: PRUDENTIAL SOURCEBOOKS  
(AMENDMENTS) INSTRUMENT 2019**

**Powers exercised**

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

**Commencement**

- B. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to the Handbook**

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

(1)	(2)
General Prudential sourcebook (GENPRU)	Annex A
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex B
Prudential sourcebook for Investment Firms (IFPRU)	Annex C
Prudential sourcebook for insurers (INSPRU)	Annex D
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex E
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex F
Interim Prudential sourcebook for Insurers (IPRU(INS))	Annex G
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex H

**Citation**

- D. This instrument may be cited as the Exiting the European Union: Prudential Sourcebooks (Amendments) Instrument 2019.

By order of the Board  
[date]

**Editor's notes**

- (1) The near-final instrument relates to the statutory instruments set out in Annex 4 of the accompanying Policy Statement and other matters arising from the UK's withdrawal from the EU.
- (2) We will set out our approach in due course for any additional amendments which are required as a result of further statutory instruments.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 29 March 2019.

## Annex A

## Amendments to the General Prudential sourcebook (GENPRU)

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

## 1 Application

...

### 1.2 Adequacy of financial resources

...

Purpose

...

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

...

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

- 1.2.46 R ...

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

...

- 1.2.48 R ...

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

- 1.2.49 R ...

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

...

Group risk (BIPRU firm only)

...

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

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

...

### 1.3 Valuation

...

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

General requirements: Accounting principles to be applied

1.3.4 R ...

(5) UK-adopted international accounting standards;

...

...

1.3.12 G The provisions of *GENPRU* 1.3.9R to *GENPRU* 1.3.10R and *GENPRU* 1.3.36R apply only to the extent that the items referred to in those paragraphs would otherwise be recognised under the accounting requirements applicable to the *firm*. Some of those requirements may only be relevant to a *firm* subject to UK-adopted international accounting standards.

...

## 2 Capital

## 2.1 Calculation of capital resources requirements

Application

...

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

...

Purpose

...

- 2.1.8 G (2) This section also implements the third paragraph of article 95(2) of the ~~EU CRR~~ UK CRR applying requirements that correspond to the provisions of the *Capital Adequacy Directive* and *Banking Consolidation Directive* concerning the level of *capital resources* which a *BIPRU firm* is required to hold. In particular it ~~implements~~ corresponds (in part) to article 75 of the *Banking Consolidation Directive* and Articles 5, 9, 10 and 18 of the *Capital Adequacy Directive*.

...

Definition of BIPRU firm

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

...

...

## 2.2 Capital resources

...

Purpose

...

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

part), Article 22(1)(c) (in part) and paragraphs 13 - 15 of Part B of Annex VII of the *Capital Adequacy Directive (2006/49/EC)*.

...

Notification of issuance of capital instruments

...

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

...

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

...

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

Note (5): The *material holdings* that must be deducted by a *firm* at part 3 of stage E and at stage J or at Part 1 of stage M are *material holdings* issued by *undertakings* which would have been members of that *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* if the *firm* did not have an *investment firm consolidation waiver* and which do not fall into Note (4).

Note (6): The contingent liabilities that must be deducted by a *firm* at Part 1 of stage M are any contingent liabilities which the *firm* has in favour of *BIPRU firms, financial institutions, asset management companies* and *ancillary services undertakings* which would have been members of the *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* if the *firm* did not have an *investment firm consolidation waiver*.

### 3 Cross sector groups

#### 3.1 Application

3.1.1 R (1) Unless otherwise stated, *GENPRU* 3.1 applies to every *firm* that is a member of a *financial conglomerate* other than:

(a) ~~an incoming EEA firm; [deleted]~~

(b) ~~an incoming Treaty firm; [deleted]~~

(c) ~~a UCITS qualifier; [deleted]~~

...

(1A) *GENPRU* 3.1 (except *GENPRU* 3.1.5R to *GENPRU* 3.1.132G) applies to each of the following *firms* that is a member of a *financial conglomerate*:

...

#### Purpose

3.1.2 G *GENPRU* 3.1 implements requirements that correspond to the *Financial Groups Directive*. However, material on the following topics is to be found elsewhere in the *Handbook* as follows:

...

#### Introduction: identifying a financial conglomerate

3.1.3 G (1) In general the process in (2) to (8) applies for identifying *financial conglomerates*.

(2) The relevant ~~Competent authorities~~ *competent authority* that ~~have~~ has authorised *regulated entities* should try to identify any *consolidation group* that is a *financial conglomerate*. If a *competent authority* is of the opinion that a *regulated entity* authorised by that *competent authority* is a member of a *consolidation group* which may be a *financial conglomerate* it should communicate its view to the other ~~competent authorities~~ authority concerned.

...

(10) If a *mixed financial holding company* is subject to equivalent provisions under the ~~EEA~~ UK *prudential sectoral legislation* in relation to the *banking and investment services sector* and under *GENPRU* 3 (Cross sector groups) and the *FCA* is the *coordinator*, the *FCA* may, on application by a *firm* and after consulting the other ~~competent authorities~~ authority responsible for the supervision of subsidiaries, disapply such provisions of the ~~EEA~~ UK *prudential*



*sectoral legislation* in relation to the *banking and investment services sector* with regard to the *mixed financial holding company* and apply only the relevant provisions of *GENPRU 3* to the *mixed financial holding company*.

- 3.1.3 G A If a *mixed financial holding company* is subject to equivalent provisions under this Chapter and under ~~EEA UK prudential sectoral legislation~~ in relation to the *insurance sector* as ~~implemented in the United Kingdom~~ and the *FCA* is the *coordinator*, the *FCA* may, on application by the *firm* ~~and after consulting other relevant competent authorities~~, disapply such provisions of the ~~EEA UK prudential sectoral legislation as implemented in the United Kingdom~~ with regard to that undertaking which are considered by the *FCA* as equivalent to those applying to the *firm* under *GENPRU 3.1*.

[**Note:** article 120(2) of *CRD*]

Introduction: The role of other competent authorities

- 3.1.4 G A lead supervisor (called the *coordinator*) is appointed for each *financial conglomerate*. ~~Article 10 of the *Financial Groups Directive*~~ The definition of coordinator in the *Financial Groups Directive Regulations* describes the criteria for deciding which *competent authority* is appointed as *coordinator*. ~~Article 11 of the *Financial Groups Directive* sets out the tasks of the *coordinator*.~~

[**Note:** Article 10 and 11 of the *Financial Groups Directive*]

...

Definition of financial conglomerate: adjustment of the percentages

- 3.1.9 R Once a *financial conglomerate* has become a *financial conglomerate* and subject to supervision in accordance with ~~the *Financial Groups Directive*~~ this chapter, the figures in the *financial conglomerate definition decision tree* are altered as follows:

...

...

Definition of financial conglomerate: discretionary changes to the definition

- 3.1.13 G ~~Articles 3(3) to 3(6), Article 5(4) and Article 6(5) of the *Financial Groups Directive*~~ Regulation 16 to 20, 21 and 24 of the *financial groups directive regulations* allow *competent authorities*, on a case by case basis, to:
- (1) change the definition of *financial conglomerate* and the obligations applying with respect to a *financial conglomerate* (which would include, where the *appropriate regulator* would be the *coordinator* under *GENPRU 3.1.3G* (6), permitting *firms* to apply, on an annual basis and subject to publication and notification to the ~~relevant competent authorities~~ competent authority, for a group of which it is a member not to be regarded as a *financial conglomerate* on the

basis of ~~Article 3(3) of the *Financial Groups Directive*~~ (regulation 16 of the *financial groups directive regulations* (for a group that, in terms of the tests in *GENPRU 3 Annex 4R*, does not meet Threshold Test 2 but meets Threshold Test 3) or ~~Article 3(3a) of the *Financial Groups Directive*~~ regulation 17 of the *financial groups directive regulations* (for a group that, in terms of the tests in *GENPRU 3 Annex 4R*, meets Threshold Test 2 but not Threshold Test 3));

- (2) apply the scheme in the *Financial Groups Directive financial groups directive regulations* to ~~EEA~~ UK regulated entities in specified kinds of group structures that do not come within the definition of *financial conglomerate*; and
- (3) exclude a particular entity in the scope of capital adequacy requirements that apply with respect to a *financial conglomerate*.

#### Capital adequacy requirements: introduction

...

- 3.1.16 G *GENPRU 3.1.29R to GENPRU 3.1.31R and GENPRU 3 Annex 1R* ~~implement~~ apply the detailed capital adequacy requirements ~~of that correspond with~~ the *Financial Groups Directive*. They only deal with a *financial conglomerate* for which the *FCA* is the *coordinator*. If another *competent authority* is *coordinator* of a *financial conglomerate*, those rules do not apply with respect to that *financial conglomerate* and instead that *coordinator* will be responsible for implementing those detailed requirements.
- 3.1.17 G Annex I of the *Financial Groups Directive* ~~lays~~ laid down three methods for calculating capital adequacy at the level of a *financial conglomerate*. Those three methods ~~are~~ were implemented as follows:
- ...
- (4) Method 3 consists of a combination of Methods 1 and 2 ~~from Annex I of the *Financial Groups Directive*~~ and would be implemented by means of a *requirement*.
- 3.1.18 G [deleted]
- 3.1.19 G Paragraph 5.7 of *GENPRU 3 Annex 1R* (Capital adequacy calculations for financial conglomerates) deals with a case in which there are no capital ties between entities in a *financial conglomerate*. In particular, the *FCA*, after consultation with the other ~~relevant competent authorities~~ authority and in accordance with ~~Annex I of the *Financial Groups Directive*~~ this chapter, will determine which proportional share of a solvency deficit in such an entity will have to be taken into account, bearing in mind the liability to which the existing relationship gives rise.
- 3.1.20 G (1) [deleted]

(2) [deleted]

3.1.21 G The ~~Annex I~~ method to be applied may be decided by the *coordinator* after consultation with the other relevant competent authority and the *financial conglomerate* itself. Where the *FCA* acts as *coordinator*, the *financial conglomerate* itself may choose which of Method 1 or Method 2 ~~from Annex I~~ it will apply, unless the *firm* is subject to a *requirement* obliging the *firm* to apply a particular method.

3.1.22 G [deleted]

3.1.23 G [deleted]

3.1.24 G [deleted]

#### Capital adequacy requirements: high level requirement

3.1.25 R (1) A *firm* that is a member of a *financial conglomerate* must at all times have capital resources of such an amount and type that results in the capital resources of the *financial conglomerate* taken as a whole being adequate.

(2) This *rule* does not apply with respect to any *financial conglomerate* until notification has been made that it has been identified as a *financial conglomerate* as contemplated by ~~Article 4(2) of the *Financial Groups Directive*~~ regulation 2 of the *Financial Groups Directive Regulations*.

3.1.26 R [deleted]

3.1.27 R [deleted]

3.1.28 R (1) [deleted]

(2) [deleted]

#### Capital adequacy requirements: application of Method 1 or 2 ~~from Annex I of the *Financial Groups Directive*~~

3.1.29 R If, with respect to a *firm* and a *financial conglomerate* of which it is a member, this *rule* applies under *GENPRU* 3.1.29AR to the *firm* with respect to that *financial conglomerate* as described in *GENPRU* 3.1.30R, the *firm* must at all times have capital resources of an amount and type that ensures that the *conglomerate capital resources* of that *financial conglomerate* at all times equal or exceed its *conglomerate capital resources requirement*.

3.1.29 R *GENPRU* 3.1.29R applies to a *firm* with respect to the *financial conglomerate* of which it is a member if notification has been made in accordance with regulation 2 of the *Financial Groups Directive Regulations* that the *financial conglomerate* is a *financial conglomerate* and that the *FCA* is *coordinator* of that *financial conglomerate*.

A

Capital adequacy requirements: use of requirement to apply ~~Annex I of the Financial Groups Directive~~ Method 1 or 2 for calculating capital adequacy

- 3.1.30 R If *GENPRU* 3.1.29R (application of Method 1 or 2 ~~from Annex I of the Financial Groups Directive~~) applies to a *firm* with respect to the *financial conglomerate* of which it is a member, then with respect to the *firm* and the *financial conglomerate*:
- (1) the definitions of *conglomerate capital resources* and *conglomerate capital resources requirement* that apply for the purposes of that *rule* are the ones from whichever of Part 1 or Part 2 of *GENPRU* 3 Annex 1R the *firm* has indicated to the *FCA* it will apply, unless the *firm* is subject to a *requirement* obliging the *firm* to apply a specific part of *GENPRU* 3 Annex 1R, in which case *GENPRU* 3.1.31R will apply; and
  - (2) the *firm* must indicate to the *FCA* in advance which Part of *GENPRU* 3 Annex 1R the *firm* intends to apply.
- 3.1.31 R If *GENPRU* 3.1.29R (application of Method 1 or 2 ~~from Annex I of the Financial Groups Directive~~) applies to a *firm* with respect to a *financial conglomerate* of which it is a member, and the *firm* is subject to a *requirement* obliging the *firm* to apply a specific part of *GENPRU* 3 Annex 1R, the definitions of *conglomerate capital resources* and *conglomerate capital resources requirement* that apply for the purposes of that *rule* are the ones from whichever of Part 1 or Part 2 of *GENPRU* 3 Annex 1R is specified in the *requirement*.

Risk concentration and intra-group transactions: introduction

- 3.1.32 G *GENPRU* 3.1.35R implements requirements that correspond to Article 7(4) and Article 8(4) of the *Financial Groups Directive*, ~~which provide~~ that where a *financial conglomerate* is headed by a *mixed financial holding company*, the *sectoral rules* regarding *risk concentration* and *intra-group transactions* of the *most important financial sector* in the *financial conglomerate*, if any, shall apply to that sector as a whole, including the *mixed financial holding company*.
- 3.1.3 G ~~Articles 7(3) (Risk concentration) and 8(3) (Intra-group transactions) and Annex II (Technical application of the provisions on intra-group transactions and risk concentration) of the *Financial Groups Directive* say that Member States~~ The *FCA* may, on a case by case basis, require the application apply at the level of the *financial conglomerate* of the provisions of the *sectoral rules* on *risk concentrations* and *intra-group transactions*. *GENPRU* 3.1 does not take up that option, although the *FCA* may impose such obligations on a case by case basis.

[Note: Article 7(3), Article 8(3) and Annex II of the *Financial Groups Directive*]

Risk concentration and intra-group transactions: application

- 3.1.34 R *GENPRU 3.1.35R applies to a firm with respect to a financial conglomerate of which it is a member if the financial conglomerate is headed by a mixed financial holding company.*
- (1) ~~the condition in Articles 7(4) and 8(4) of the *Financial Groups Directive* is satisfied (the financial conglomerate is headed by a mixed financial holding company); and~~
- (2) ~~that financial conglomerate is a UK regulated EEA financial conglomerate.~~

Risk concentration and intra group transactions: the main rule

- 3.1.35 R *A firm must ensure that the sectoral rules regarding risk concentration and intra-group transactions of the most important financial sector in the financial conglomerate referred to in GENPRU 3.1.34R are complied with with respect to that financial sector as a whole, including the mixed financial holding company. The sectoral rules for these purposes are those identified in the table in GENPRU 3.1.36R.*

...

- 3.1.37 R [deleted]

- 3.1.38 R (1) [deleted]
- (2) [deleted]
- (3) [deleted]
- (4) [deleted]

The financial sectors: asset management companies and alternative investment fund managers

- 3.1.39 R (1) ~~In accordance with Articles 30 and 30a of the *Financial Groups Directive* (Asset management companies and Alternative investment fund managers), this~~ This rule deals with the inclusion of an asset management company or an alternative investment fund manager that is a member of a financial conglomerate in the scope of regulation of financial conglomerates.
- [Note: Articles 30 and 30a of the *Financial Groups Directive*]
- (2) *An asset management company or an alternative investment fund manager is in the overall financial sector and is a regulated entity for the purpose of:*
- (a) *GENPRU 3.1.29R to GENPRU 3.1.36R;*

- (b) *GENPRU 3 Annex 1R* (Capital adequacy calculations for financial conglomerates) and *GENPRU 3 Annex 2R* (Prudential rules for third country groups); and
  - (c) any other provision of the *Handbook* relating to the supervision of *financial conglomerates*.
- (3) In the case of a *financial conglomerate* for which the *FCA* is the *coordinator*, all *asset management companies* and all *alternative investment fund managers* must be allocated to one *financial sector* to which they belong for the purposes in (2), being either the *investment services sector* or the *insurance sector*. But if that choice has not been made in accordance with (4) and notified to the *FCA* in accordance with (4)(d), an *asset management company* or an *alternative investment fund manager* must be allocated to the smallest *financial sector*.
- (4) The choice in (3):
- (a) must be made by the *undertaking* in the *financial conglomerate* ~~holding the position referred to in Article 4(2) of the *Financial Groups Directive* (group member to whom notice must be given that the group has been found to be a *financial conglomerate*); that is:
 
    - (i) the parent undertaking at the head of the group or,
    - (ii) in the absence of a parent undertaking, the regulated entity with the largest balance sheet total in the most important financial sector;~~
  - (b) applies to all *asset management companies* and all *alternative investment fund managers* that are members of the *financial conglomerate* from time to time;
  - (c) cannot be changed; and
  - (d) must be notified to the *FCA* as soon as reasonably practicable after the notification in (4)(a).
- [Note: Article 4(2) of the *Financial Groups Directive*]**
- (5) This *rule* applies even if:
- (a) a *UCITS management company* is an *IFPRU investment firm*; or
  - (b) an *asset management company* or *alternative investment fund manager* is an *investment firm*.

## 3.2 Third-country groups

## Application

- 3.2.1 R *GENPRU 3.2 applies to every firm that is a member of a third-country group. But it does not apply to:*
- (1) ~~an incoming EEA firm; or [deleted]~~
  - (2) ~~an incoming Treaty firm; or [deleted]~~
  - (3) ~~a UCITS qualifier; or [deleted]~~
  - (4) an ICVC; or
  - (5) a bank; or
  - (6) a designated investment firm; or
  - (7) an insurer.

...

## Purpose

- 3.2.2 G *GENPRU 3.2 implements requirements that correspond in part to article 18 of the Financial Groups Directive, article 127 of the CRD and (in relation to BIPRU firms) article 143 of the BCD.*

## Equivalence

- 3.2.3 G *The first question that must be asked about a third-country financial group is whether the EEA UK regulated entities in that third-country group are subject to supervision by a third-country competent authority, which is equivalent to that provided for by the Financial Groups Directive in GENPRU 3 (in the case of a financial conglomerate) or the EEA UK prudential sectoral legislation for the banking sector or the investment services sector (in the case of a banking and investment group). Article 18(1) of the Financial Groups Directive sets out the process for establishing equivalence with respect to third-country financial conglomerates and article 127(1) and (2) of the CRD does so with respect to third-country banking and investment groups, except where the investment firms in the group are CAD investment firms only, in which case article 143 of the BCD applies.*

## Other methods: General

- 3.2.4 G *If the supervision of a third-country group by a third-country competent authority does not meet the equivalence test referred to in GENPRU 3.2.3G, the methods set out in the UK provisions which implemented the CRD and EU CRR UK CRR will apply or competent authorities the FCA may apply other methods that ensure appropriate supervision of the EEA UK regulated entities in that third-country group in accordance with the aims of supplementary supervision under the Financial Groups Directive in GENPRU 3 or*

consolidated supervision under the applicable ~~EEA~~ UK prudential sectoral legislation.

Supervision by analogy: introduction

- 3.2.5 G If the supervision of a *third-country group* by a *third-country competent authority* does not meet the equivalence test referred to in *GENPRU 3.2.3G*, a ~~competent authority~~ the FCA may, rather than take the measures described in *GENPRU 3.2.4G*, apply, by analogy, the provisions concerning supplementary supervision ~~under the Financial Groups Directive in GENPRU 3~~ or, as applicable, consolidated supervision under the applicable ~~EEA~~ UK prudential sectoral legislation, to the ~~EEA~~ UK regulated entities in the *banking sector*, *investment services sector* and (in the case of a *financial conglomerate*) *insurance sector*.
- 3.2.6 G The *FCA* believes that it will only be right to adopt the option in *GENPRU 3.2.5G* in response to very unusual group structures.
- 3.2.7 G *GENPRU 3.2.8R* and *GENPRU 3.2.9R* and *GENPRU 3 Annex 2R* set out *rules* to deal with the situation covered in *GENPRU 3.2.5G*. Those *rules* do not apply automatically. Instead, they can only be applied with respect to a particular *third-country group* through the *Part 4A permission* of a *firm* in that *third-country group*.

Supervision by analogy: rules for third-country conglomerates

- 3.2.8 R If the *Part 4A permission* of a *firm* contains a *requirement* obliging it to comply with this *rule* with respect to a *third-country financial conglomerate* of which it is a member, it must comply, with respect to that *third-country financial conglomerate*, with the *rules* in Part 1 of *GENPRU 3 Annex 2R*, as adjusted by Part 3 of that annex.

Supervision by analogy: rules for third-country banking and investment groups

- 3.2.9 R If the *Part 4A permission* of a *firm* contains a *requirement* obliging it to comply with this *rule* with respect to a *third-country banking and investment group* of which it is a member, it must comply, with respect to that *third-country banking and investment group*, with the *rules* in Part 2 of *GENPRU 3 Annex 2R*, as adjusted by Part 3 of that annex.

**3  
Anne  
x 1R** **Capital adequacy calculations for financial conglomerates (~~GENPRU 3.1.26R~~  
and GENPRU 3.1.29R)**

1 Table: PART 1: Method 1 of Annex I of the ~~Financial Groups Directive~~  
(Accounting Consolidation Method)

Capital resources	1.1	The <i>conglomerate capital resources</i> of a <i>financial conglomerate</i> calculated in accordance with this Part are the capital of that <i>financial conglomerate</i> , calculated on an
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		accounting consolidation basis, that qualifies under paragraph 1.2.
	1.2	The elements of capital that qualify for the purposes of paragraph 1.1 are those that qualify in accordance with the <i>applicable sectoral rules</i> , in accordance with the following:
		(1) the <i>conglomerate capital resources requirement</i> is divided up in accordance with the contribution of each <i>financial sector</i> to it; and
		(2) the portion of the <i>conglomerate capital resources requirement</i> attributable to a particular <i>financial sector</i> must be met by capital resources that are eligible in accordance with the <i>applicable sectoral rules</i> for that <i>financial sector</i> .
Capital resources requirement	1.3	The <i>conglomerate capital resources requirement</i> of a <i>financial conglomerate</i> calculated in accordance with this Part is equal to the sum of the capital adequacy and solvency requirements for each <i>financial sector</i> calculated in accordance with the <i>applicable sectoral rules</i> for that <i>financial sector</i> .
Consolidation	1.4	The information required for the purpose of establishing whether or not a <i>firm</i> is complying with <i>GENPRU 3.1.29R</i> (insofar as the definitions in this Part are applied for the purpose of that <i>rule</i> ) must be based on the consolidated accounts of the <i>financial conglomerate</i> , together with such other sources of information as appropriate.
	1.5	The <i>applicable sectoral rules</i> that are applied under this Part are the <i>applicable sectoral consolidation rules</i> . Other <i>applicable sectoral rules</i> must be applied if required.

2 Table: PART 2: Method 2 of Annex I of the Financial Groups Directive (Deduction and aggregation Method)

Capital resources	2.1	<p>The <i>conglomerate capital resources</i> of a <i>financial conglomerate</i> calculated in accordance with this Part are equal to the sum of the following amounts (so far as they qualify under paragraph 2.3) for each member of the <i>overall financial sector</i>:</p> <p>(1) (for the <i>person</i> at the head of the <i>financial conglomerate</i>) its <i>solo capital resources</i>;</p> <p>(2) (for any other member):</p> <p>(a) its <i>solo capital resources</i>; less</p> <p>(b) the book value of the <i>financial conglomerate's</i> investment in that member, to the extent not already deducted in the calculation of the <i>solo capital resources</i> for:</p>
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		(i) the <i>person</i> at the head of the <i>financial conglomerate</i> ; or (ii) any other member.
	2.2	The deduction in paragraph 2.1(2) must be carried out separately for each type of capital represented by the <i>financial conglomerate's</i> investment in the member concerned.
	2.3	The elements of capital that qualify for the purposes of paragraph 2.1 are those that qualify in accordance with the <i>applicable sectoral rules</i> . In particular, the portion of the <i>conglomerate capital resources requirement</i> attributable to a particular member of a <i>financial sector</i> must be met by capital resources that would be eligible under the <i>sectoral rules</i> that apply to the calculation of its <i>solo capital resources</i> .
Capital resources requirement	2.4	The <i>conglomerate capital resources requirement</i> of a <i>financial conglomerate</i> calculated in accordance with this Part is equal to the sum of the <i>solo capital resources requirement</i> for each member of the <i>financial conglomerate</i> that is in the <i>overall financial sector</i> .
Partial inclusion	2.5	The capital resources and capital resources requirements of a member of the <i>financial conglomerate</i> in the <i>overall financial sector</i> must be included proportionally. If however the member is a <i>subsidiary undertaking</i> and it has a <i>solvency deficit</i> , they must be included in full.
Accounts	2.6	The information required for the purpose of establishing whether or not a <i>firm</i> is complying with <i>GENPRU 3.1.29R</i> (insofar as the definitions in this Part are applied for the purpose of that <i>rule</i> ) must be based on the individual accounts of members of the <i>financial conglomerate</i> , together with such other sources of information as appropriate.

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[deleted]

[deleted]

6 Table

Types of financial conglomerate	4.3	(1) This paragraph sets out how to determine the category of <i>financial conglomerate</i> . (2) If there is <del>an EEA</del> a <u>UK</u> regulated entity at the head of the <i>financial conglomerate</i> , then: (a) if that entity is in the <i>banking sector</i> or the <i>investment services sector</i> , the <i>financial conglomerate</i> is a <i>banking and investment services conglomerate</i> ; or
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		<p>(b) if that entity is in the <i>insurance sector</i>, the <i>financial conglomerate</i> is an <i>insurance conglomerate</i>.</p> <p>(3) If (2) does not apply and the <i>most important financial sector</i> is the <i>banking and investment services sector</i>, it is a <i>banking and investment services conglomerate</i>.</p> <p>(4) If (2) and (3) does not apply, it is an <i>insurance conglomerate</i>.</p>
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## 7 Table

A mixed financial holding company	4.4	<p>A <i>mixed financial holding company</i> must be treated in the same way as:</p> <p>(1) a <i>financial holding company</i> (if Part One, Title II, Chapter 2 of the <del>EU CRR</del> <u>UK CRR</u> and the PRA Rulebook: Groups Part) are applied; or</p> <p>(2) an <i>insurance holding company</i> (if the rules in PRA Rulebook: Solvency II Firms: Group Supervision are applied).</p>
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## 8 Table: PART 5: Principles applicable to all methods

Transfer-ability of capital	5.1	<p>Capital may not be included in</p> <p>(1) a <i>firm's conglomerate capital resources</i> under GENPRU 3.1.29R</p> <p>if the effectiveness of the transferability and availability of the capital across the different members of the <i>financial conglomerate</i> is insufficient, given the objectives <del>(as referred to in the third unnumbered sub-paragraph of paragraph 2(ii) of Annex I of the <i>Financial Groups Directive</i> (Technical principles))</del> of the capital adequacy rules for <i>financial conglomerates</i>.</p> <p><u>[Note: third unnumbered sub-paragraph of paragraph 2(ii) of Annex I of the <i>Financial Groups Directive</i> (Technical principles)]</u></p>
Double counting	5.2	<p>Capital must not be included in a <i>firm's conglomerate capital resources</i> under GENPRU 3.1.29R</p> <p>if:</p> <p>(1) it would involve double counting or multiple use of the same capital; or</p> <p>(2) it results from any inappropriate intra-group creation of capital.</p>
Cross sectoral capital	5.3	<p><del>In accordance with the second sub-paragraph of paragraph 2(ii) of Section I of Annex I of the <i>Financial</i></del></p>

		<p><del>Groups Directive (Other technical principles and insofar as not already required in Parts 1-2):</del></p> <p>(1) <del>the</del> <u>The</u> solvency requirements for each different <i>financial sector</i> represented in a <i>financial conglomerate</i> required by <i>GENPRU</i> 3.1.29R must be covered by own funds elements in accordance with the corresponding <i>applicable sectoral rules</i>; <del>and</del></p> <p>(2) <del>if</del> <u>If</u> there is a deficit of own funds at the <i>financial conglomerate</i> level, only cross sectoral capital (as referred to in that sub-paragraph) shall qualify for verification of compliance with the additional solvency requirement required by <i>GENPRU</i> 3.1.29R.</p> <p><u>[Note: second sub-paragraph of paragraph 2(ii) of Section I of Annex I of the <i>Financial Groups Directive</i>]</u></p>
<p>Application of sectoral rules: General</p>	<p>5.4</p>	<p>The following adjustments apply to the <i>applicable sectoral rules</i> as they are applied by the <i>rules</i> in this annex.</p> <p>(1) [deleted]</p> <p>(2) If any of those <i>rules</i> would otherwise not apply to a situation in which they are applied by <i>GENPRU</i> 3 Annex 1R, those <i>rules</i> nevertheless still apply (and in particular, any of those <i>rules</i> that would otherwise have the effect of disapplying consolidated supervision do not apply).</p> <p>(3) (If it would not otherwise have been included) an <i>ancillary insurance services undertaking</i> is included in the <i>insurance sector</i>.</p> <p>(4) The scope of those <i>rules</i> is amended so as to remove restrictions relating to where members of the <i>financial conglomerate</i> are incorporated or have their head office, so that the scope covers every member of the <i>financial conglomerate</i> that would have been included in the scope of those <i>rules</i> if those members had their head offices in <del>an EEA State</del> <u>the UK</u>.</p> <p>(5) (For the purposes of Parts 1 and 2) those <i>rules</i> must be adjusted, if necessary, when calculating the capital resources, capital resources requirements or solvency requirements for a particular <i>financial sector</i> to exclude those for a member of another <i>financial sector</i>.</p> <p>(6) Any <i>waiver</i>, approval or permission granted to a member of the <i>financial conglomerate</i> under those <i>rules</i> does not apply for the purposes of this annex.</p>

Application of sectoral rules: Insurance sector	5.5	[deleted]
Application of sectoral rules: Banking sector and investment services sector	5.6	<p>In relation to a <i>BIPRU firm</i> that is a member of a <i>financial conglomerate</i> where there are no <i>credit institutions</i> or <i>investment firms</i>, the following adjustments apply to the <i>applicable sectoral rules</i> for the <i>banking sector</i> and the <i>investment services sector</i> as they are applied by the <i>rules</i> in this annex.</p> <p>(1) References in those <i>rules</i> to <del><i>non-EEA sub-groups</i></del> <u><i>non-UK sub-groups</i></u> –if applicable – do not apply.</p> <p>[deleted]</p> <p>(3) Any <i>investment firm consolidation waivers</i> granted to members of the <i>financial conglomerate</i> do not apply.</p> <p>(4) (For the purposes of Parts 1 and 2), without prejudice to the application of requirements in <i>BIPRU 8</i> preventing the use of an <i>advanced prudential calculation approach</i> on a consolidated basis, any <i>advanced prudential calculation approach permission</i> that applies for the purpose of <i>BIPRU 8</i> does not apply.</p> <p>(5) (For the purposes of Parts 1 and 2), <i>BIPRU 8.5.9R</i> and <i>BIPRU 8.5.10R</i> do not apply.</p> <p>(6) (For the purposes of Part 3), where the <i>financial conglomerate</i> does not include a <i>credit institution</i>, the method in <i>GENPRU 2 Annex 4</i> must be used for calculating the capital resources and <i>BIPRU 8.6.8R</i> does not apply.</p> <p>(Other than as above) the <u><i>UK CRR</i></u> and the <u>provisions which implemented the <i>CRD</i> and <del><i>EU CRR</i></del></u> apply for the <i>banking sector</i> and the <i>investment services sector</i>.</p>
No capital ties	5.7	<p>(1) This <i>rule</i> deals with a <i>financial conglomerate</i> in which some of the members are not linked by capital ties at the time of the notification referred to in <i>GENPRU 3.1.29AR</i> (Capital adequacy requirements: Application of Method 1 or 2 <del>from Annex I of the Financial Groups Directive</del>).</p> <p>[deleted]</p> <p>[deleted]</p> <p>(4) If:</p> <p>[deleted]</p> <p>(b) <i>GENPRU 3.1.29R</i> (Capital adequacy requirements: Application of Method 1 or 2 <del>from Annex I of the</del></p>

		<p><del>Financial Groups Directive</del>) applies with respect to a <i>financial conglomerate</i> falling into (1);</p> <p>then:</p> <p>(c) the treatment of the links in (1) (including the treatment of any <i>solvency deficit</i>) is as provided for in whichever of Part 1 or Part 2 of <i>GENPRU</i> 3 Annex 1R the <i>firm</i> has, under <i>GENPRU</i> 3.1.30R, indicated to the <i>FCA</i> it will apply or, if applicable, in the <i>requirement</i> referred to in <i>GENPRU</i> 3.1.31R; and</p> <p>(d) <i>GENPRU</i> 3.1.29R applies even if the <i>applicable sectoral rules</i> do not deal with how <i>undertakings</i> not linked by capital ties are to be dealt with for the purposes of consolidated supervision.</p> <p>[deleted]</p>
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9 Table: PART 6: Definitions used in this Annex

<p>Defining the financial sectors</p>	<p>6.1</p>	<p>For the purposes of Parts 1 and 2 of this annex:</p> <p>(1) an <i>asset management company</i> is allocated in accordance with <i>GENPRU</i> 3.1.39R; an <i>alternative investment fund manager</i> is allocated in accordance with <i>GENPRU</i> 3.1.39R; and</p> <p>(3) a <i>mixed financial holding company</i> must be treated as being a member of the <i>most important financial sector</i>.</p>
<p>Solo capital resources requirement: Banking sector and investment service sector</p>	<p>6.2</p>	<p>(1) The <i>solo capital resources requirement</i> of an <i>undertaking</i> in the <i>banking sector</i> or the <i>investment services sector</i> must be calculated in accordance with this <i>rule</i>, subject to <del>paragraphs</del> <u>paragraph 6.5</u> and 6.6.</p> <p>(2) The <i>solo capital resources requirement</i> of a <i>building society</i> is its <i>own funds requirements</i>.</p> <p>(3) The <i>solo capital resources requirement</i> of an <i>electronic money institution</i> is the capital resources requirement that applies to it under the <i>Electronic Money Regulations</i>.</p> <p>(4) If there is a <i>credit institution</i> in the <i>financial conglomerate</i>, the <i>solo capital resources requirement</i> for any <i>undertaking</i> in the <i>banking sector</i> or the <i>investment services sector</i> is, subject to (2) and (3), calculated in accordance with the <del><i>EU CRR</i></del> <u><i>UK CRR</i></u> for calculating the <i>own funds requirements</i> of a <i>bank</i>.</p> <p>(5) If:</p> <p>(a) the <i>financial conglomerate</i> does not include a <i>credit institution</i>;</p>

		<p>(b) there is at least one <i>investment firm</i> in the <i>financial conglomerate</i>; and (c) all the <i>investment firms</i> in the <i>financial conglomerate</i> are <i>limited licence firms</i> or <i>limited activity firms</i>;</p> <p>the <i>solo capital resources requirement</i> for any <i>undertaking</i> in the <i>banking sector</i> or the <i>investment services sector</i> is calculated in accordance with the <del>EU CRR</del> <u>UK CRR</u> for calculating the <i>own funds requirements</i> of:</p> <p>(i) (if there is a limited activity firm in the financial conglomerate), an <i>IFPRU limited activity firm</i>; or</p> <p>(ii) (in any other case), an <i>IFPRU limited licence firm</i>.</p> <p>(6) If:</p> <p>(a) the <i>financial conglomerate</i> does not include a <i>credit institution</i>; and</p> <p>(b) (5) does not apply;</p> <p>the <i>solo capital resources requirement</i> for any <i>undertaking</i> in the <i>banking sector</i> or the <i>investment services sector</i> is calculated in accordance with the <del>EU CRR</del> <u>UK CRR</u> for calculating the <i>own funds requirements</i> of a <i>full-scope IFPRU investment firm</i>.</p> <p>(7) In relation to a <i>BIPRU firm</i> that is a member of a <i>financial conglomerate</i> where there are no <i>credit institutions</i> or <i>investment firms</i>, any <i>capital resources requirements</i> calculated under a <i>BIPRU TP</i> may be used for the purposes of the <i>solo capital resources requirement</i> in this rule in the same way that the <i>capital resources requirements</i> can be used under <i>BIPRU 8</i>.</p>
Solo capital resources requirement: application of rules	6.3	Any exemption that would otherwise apply under any rules applied by paragraph 6.2 do not apply for the purposes of this Annex.
Solo capital resources requirement: Insurance sector	6.4	<p>(1) The <i>solo capital resources requirement</i> of an <i>undertaking</i> in the <i>insurance sector</i> must be calculated in accordance with this rule. The <i>solo capital resources requirement</i> of an <i>undertaking</i> in the <i>insurance sector</i> is:</p> <p>(a) in respect of a UK Solvency II firm, the <i>SCR</i>;</p> <p>(b) <del>in respect of a Solvency II undertaking other than a UK Solvency II firm, the equivalent SCR as calculated in accordance with the Solvency II EEA implementing measures in the EEA State in which it has received</del></p>

		<p>authorisation in accordance with article 14 of the <i>Solvency II Directive</i>; <del>[deleted]</del></p> <p>(c) in respect of a third country insurance undertaking or third country reinsurance undertaking to which the PRA Rulebook: Solvency II Firms: Group Supervision, 10.4(2) applies, the equivalent of the <i>SCR</i> as calculated in accordance with the applicable requirements in that <i>third country</i>; and</p> <p>(d) in respect of any <i>undertaking</i> which is not within (a) to (c), the capital resources requirement calculated according to the rules for the calculation of the solo capital resources requirement applicable to that <i>undertaking</i> for the purposes of the calculation referred to in the PRA Rulebook: Solvency II Firms: Group Supervision and Chapter 1 of Title II of the delegated acts, or if no rules are applicable for that calculation under Group Supervision and Chapter 1 of Title II of the delegated acts, in accordance with the <i>SCR Rules</i>.</p> <p>For the purpose of this Part as it applies in relation to <i>GENPRU</i> 3.1, the following expressions bear the same meaning as defined in the PRA Rulebook: Glossary:</p> <p>(i) “UK Solvency II firm”;</p> <p>(ii) “Solvency II undertaking” <del>[deleted]</del></p> <p>(iii) “delegated acts”;</p> <p>(iv) “third country insurance undertaking”;</p> <p>(v) “third country reinsurance undertaking”; and</p> <p>(vi) “SCR Rules”.</p>
<p>Solo capital resources requirement: EEA firms in the banking sector or investment services sector</p>	<p>6.5</p>	<p><del>The solo capital resources requirement for an EEA regulated entity (other than a bank, building society, designated investment firm, IFPRU investment firm, BIPRU firm, an insurer or an EEA insurer) that is subject to the solo capital adequacy sectoral rules for its financial sector of competent authority that authorised it is equal to the amount of capital it is obliged to hold under those sectoral rules provided that the following conditions are satisfied:</del></p> <p><del>(1) (for the purposes of the banking sector and the investment services sector) those sectoral rules must correspond to the FCA’s sectoral rules identified in paragraph 6.2 as applying to that financial sector;</del></p> <p><del>(2) the entity must be subject to those sectoral rules in (1); and</del></p>



		<del>(3) paragraph 6.3 applies to the entity and those sectoral rules. [deleted]</del>
Solo capital resources requirement: non- <del>EEA</del> <u>UK</u> firms subject to equivalent regimes in the banking sector or investment services sector	6.6	The <i>solo capital resources requirement</i> for a <i>recognised third country credit institution</i> or a <i>recognised third country investment firm</i> is the amount of capital resources that it is obliged to hold under the <i>sectoral rules</i> for its <i>financial sector</i> that apply to it in the state or territory in which it has its head office provided that:  (1) there is no reason for the <i>firm</i> applying the <i>rules</i> in this annex to believe that the use of those <i>sectoral rules</i> would produce a lower figure than would be produced under paragraph 6.2; and  (2) paragraph 6.3 applies to the entity and those <i>sectoral rules</i> .
Solo capital resources requirement: mixed financial holding company	6.7	The <i>solo capital resources requirement</i> of a <i>mixed financial holding company</i> is a notional capital requirement. It is the capital adequacy requirement that applies to <i>regulated entities</i> in the <i>most important financial sector</i> under the table in paragraph 6.10.
Reference to “rules”	6.7A	A reference to “ <i>rules</i> ” in this annex includes any <del>directly applicable Community regulation legislation</del> <i>onshored regulations</i> that <del>is</del> <u>are</u> relevant to the purpose of which “ <i>rules</i> ” as used refers to.

10 Table

Solo capital resources requirement: the insurance sector	6.8	References to capital requirements in the provisions of <i>GENPRU 3 Annex 1R</i> defining <i>solo capital resources requirement</i> must be interpreted in accordance with paragraph 5.4.
Applicable sectoral consolidation rules	6.9	The <i>applicable sectoral consolidation rules</i> for a <i>financial sector</i> are the <i>sectoral rules</i> about capital adequacy and solvency on a consolidated basis that are applied in the table in paragraph 6.10.

11 Table: Paragraph 6.10: Application of sectoral consolidation rules

<b>Financial sector</b>	Sectoral rules
<b>Banking sector</b>	Part One, Title II, Chapter 2 of the <del>EU CRR</del> <u>UK CRR</u> and <i>IFPRU 8.1</i> .
<b>Insurance sector</b>	PRA Rulebook: Solvency II Firms: Group Supervision.

<b>Investment services sector</b>	<p>(in relation to an <i>IFPRU investment firm</i> which is a member of a <i>financial conglomerate</i> for which the <i>PRA</i> is the <i>coordinator</i>) Part One, Title II, Chapter 2 of the <del><i>EU CRR</i></del> <i>UK CRR</i> and the <i>PRA</i> Rulebook;</p> <p>(in relation to a <i>designated investment firm</i> or an <i>IFPRU investment firm</i> which is a member of a <i>financial conglomerate</i> for which the <i>FCA</i> is the <i>coordinator</i>) Part One, Title II, Chapter 2 of the <del><i>EU CRR</i></del> <i>UK CRR</i> and <i>IFPRU</i> 8.1;</p> <p>(in relation to a <i>BIPRU firm</i> that is a member of a <i>financial conglomerate</i> where there are no <i>credit institutions</i> or <i>investment firms</i> for which the <i>FCA</i> is the <i>coordinator</i>) <i>BIPRU</i> 8 and <i>BIPRU</i> TP.</p>
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12 Table:

Part 5	1	This Part 6 is subject to Part 5 of this Annex.
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### 3 Prudential rules for third country groups (GENPRU 3.2.8R to GENPRU 3.2.9R)

#### Annex 2R

1 Table: PART 1: Third-country financial conglomerates

1.1	This Part of this annex sets out the <i>rules</i> with which a <i>firm</i> must comply under <i>GENPRU</i> 3.2.8R with respect to a <i>financial conglomerate</i> of which it is a member.
1.2	A <i>firm</i> must comply, with respect to the <i>financial conglomerate</i> referred to in paragraph 1.1, with <i>GENPRU</i> 3.1.29R as applied under paragraph 1.3.
1.3	For the purposes of paragraph 1.2: [deleted] the definitions of <i>conglomerate capital resources</i> and <i>conglomerate capital resources requirement</i> that apply for the purposes of that <i>rule</i> are the ones from whichever of Part 1 or Part 2 of <i>GENPRU</i> 3 Annex 1R is specified in the <i>requirement</i> referred to in <i>GENPRU</i> 3.2.8R; and the <i>rules</i> so applied (including those in <i>GENPRU</i> 3 Annex 1R) are adjusted in accordance with paragraph 3.1.
1.4	If the condition in Articles 7(4) and 8(4) of the <i>Financial Groups Directive</i> is satisfied (the <i>financial conglomerate</i> is headed by a <i>mixed financial holding company</i> ) with respect to the <i>financial conglomerate</i> referred to in paragraph 1.1, the <i>firm</i> must also comply with <i>GENPRU</i>

	3.1.35R (as adjusted in accordance with paragraph 3.1) with respect to that <i>financial conglomerate</i> .
1.5	A <i>firm</i> must comply with the following with respect to the <i>financial conglomerate</i> referred to in paragraph 1.1: <i>SYSC</i> 12 (as it applies to <i>financial conglomerates</i> and as adjusted under paragraph 3.1); and <i>GENPRU</i> 3.1.25R.

2 Table: PART 2: Third-country banking and investment groups

2.1	This Part of this annex sets out the <i>rules</i> with which a <i>firm</i> must comply under <i>GENPRU</i> 3.2.9R with respect to a <i>third-country banking and investment group</i> of which it is a member.
2.2	A <i>firm</i> must comply with one of the sets of <i>rules</i> specified in paragraph 2.3 as adjusted under paragraph 3.1 with respect to the <i>third-country banking and investment group</i> referred to in paragraph 2.1.
2.3	The rules referred to in paragraph 2.2 are: the <i>applicable sectoral consolidation rules</i> in paragraph 6.10 of <i>GENPRU</i> 3 Annex 1R.
2.4	The set of <i>rules</i> from paragraph 2.3 that apply with respect to a particular <i>third-country banking and investment group</i> (as referred to in paragraph 2.1) are those that would apply if they were adjusted in accordance with paragraph 3.1.
2.5	The <i>sectoral rules</i> applied by Part 2 of this annex cover all prudential <i>rules</i> applying on a consolidated basis including those relating to large exposures.
2.6	A <i>firm</i> must comply with <i>SYSC</i> 12 (as it applies to <i>banking and investment groups</i> and as adjusted under paragraph 3.1) with respect to the <i>third-country banking and investment group</i> referred to in paragraph 2.1.

3 Table: PART 3: Adjustment of scope

3.1	The adjustments that must be carried out under this paragraph are that the scope of the <i>rules</i> referred in Part 1 or Part 2 of this annex, as the case may be, are amended: so as to remove any provisions disapplying those <i>rules</i> for <i>third-country groups</i> ;
-----	--

	<p>so as to remove all limitations relating to where a member of the <i>third-country group</i> is incorporated or has its head office; and</p> <p>so that the scope covers every member of the <i>third-country group</i> that would have been included in the scope of those <i>rules</i> if those members had their head offices in, and were incorporated in, <del>an EEA State</del> <u>the UK</u>.</p>
--	--

4 Table: PART 4: Definition used in this Annex

4.1	This Part sets out the definition which a <i>firm</i> must apply for the purposes of this annex as it applies in relation to <i>GENPRU 3.2</i> .
4.2	A reference to “ <i>rules</i> ” in this annex includes any <del>directly applicable Community regulation</del> <i>onshored regulations</i> that <del>is</del> <u>are</u> relevant to the purpose of which “ <i>rules</i> ” as used refers to.

In GENPRU 3 Annex 4R (see GENPRU 3.1.5R), the words “*EEA regulated entity*” are replaced by the words “*UK regulated entity*”. This change is not shown.

## Annex B

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

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

#### 1 Application

##### 1.1 Application

...

Purpose

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

The definition of a BIPRU firm

- 1.1.7 R None of the following is a *BIPRU firm*:
- (1) ~~an incoming EEA firm;~~ [deleted]
  - (2) ~~an incoming Treaty firm;~~ [deleted]
  - (3) ~~any other~~ an *overseas firm*;
  - (4) ~~an ELMF;~~ [deleted]
  - (5) an *insurer*; and
  - (6) an *ICVC*.

...

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

laws, regulations and administrative provisions to which it is subject in its home state. The reasons for that policy include:

...

...

...

#### Meaning of dealing on own account

- 1.1.23 R (1) *Dealing on own account* means (for the purpose of *GENPRU* and *BIPRU*) the service of dealing in any *financial instruments* for own account as referred to in ~~point 3 of Section A of Annex I to MiFID~~ paragraphs 3 of Part 3 of Schedule 2 to the *Regulated Activities Order*, subject to (2) and (3).
- (2) ~~In accordance with article 5(2) of the *Capital Adequacy Directive* (Definition of dealing on own account), a A *CAD investment firm* that executes investors' orders for *financial instruments* and holds such *financial instruments* for its own account does not for that reason *deal on own account* if all of the following conditions are met:~~
- ...
- (d) ~~(in the case of a *CAD investment firm* that is an *EEA firm*) it complies with the *CRD implementation measures* of its *Home State* for Articles 18 and 20 (Minimum capital requirements) of the *Capital Adequacy Directive*; [deleted]~~
- (e) (in the case of ~~any other~~ a *CAD investment firm*) it would comply with the *rules* in (2)(c) if it had been a *BIPRU firm* on the basis of the following assumptions:
- (i) its head office had been in ~~an *EEA State*~~ the UK; and
- (ii) it had carried on all its business in the ~~*EEA UK*~~ the UK and had obtained whatever ~~authorisations~~ Part 4A permission required for doing so ~~as are required under *MiFID*~~; and
- ...
- (3) ~~In accordance with in article 5(2) of the *Capital Adequacy Directive*, the holding Holding of *non-trading book positions* in *financial instruments* in order to invest *capital resources* is not *dealing on own account* for the purposes referred to in article 4(1)(2)(c) of the ~~*EU CRR UK CRR*~~ *UK CRR* (see *BIPRU* 1.1.7AG).~~

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

...

## 1.2 Definition of the trading book

...

### Purpose

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

...

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

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

...

## 1.3 Applications for advanced approaches and waivers

...

### Purpose

- 1.3.2 G (1) A *firm* may apply for ~~an Article 129 permission~~ or a *waiver* in respect of:
- ...
- (2) A *firm* should apply for a *waiver* if it wants to:
- ...
- (c) disapply consolidated supervision under *BIPRU 8* for its *UK consolidation group* or ~~non-EEA sub-group~~ non-UK sub-group; or
- ...

### Article 129

- 1.3.3 G ~~An EEA parent institution and its subsidiary undertakings or the subsidiary undertakings of its EEA parent financial holding company or the subsidiary undertakings of its EEA parent mixed financial holding company~~ that wish

to use any of the approaches listed in *BIPRU 1.3.2G(1)* in respect of its group, including members of its group that are *BIPRU firms*, may apply for an *Article 129 permission*. [deleted]

- 1.3.4 G ~~The *Article 129 procedure* allows an *EEA parent institution* and its *subsidiary undertakings* or the *subsidiary undertakings* of its *EEA parent financial holding company* or the *subsidiary undertakings* of its *EEA parent mixed financial holding company* to apply for permission to use the approaches in *BIPRU 1.3.2G(1)* without making separate applications to the *competent authority* of each *EEA State* where members of a *firm's* group are authorised. [deleted]~~
- 1.3.5 G ~~The *Capital Requirements Regulations 2006* set out the *Article 129 procedure*. [deleted]~~
- 1.3.6 G ~~Where a *firm* or its group has been granted an *Article 129 permission*, each *competent authority*, including the *lead competent authority*, will need to take action to apply that *Article 129 permission* to the *institutions* that they authorise. Part 3 of the *Capital Requirements Regulations 2006* governs how the *appropriate regulator* will take that action, whether or not the *appropriate regulator* is the *lead competent authority*. [deleted]~~

...

#### Forms and method of application

...

- 1.3.15 D ~~If a *firm* wishes to apply for a *waiver* or an *Article 129 permission* to use the *IRB approach*, it must complete and submit the form in *BIPRU 1 Annex 2DD*.~~
- 1.3.16 D ~~If a *firm* wishes to apply for a *waiver* or an *Article 129 permission* to use the *CCR internal model method*, it must complete and submit the form in *BIPRU 1 Annex 3DD*.~~
- 1.3.17 D ~~Where a *firm* makes an application in accordance with *BIPRU 1.3.14D*, *BIPRU 1.3.15D* or *BIPRU 1.3.16D*, the *firm* must state on the application whether it is making an application for a *waiver* or an *Article 129 permission*. [deleted]~~
- 1.3.18 D ~~Where a *firm* applies for a *VaR model permission*, the *firm* must state whether it is making an application for a *waiver* or an *Article 129 permission*. [deleted]~~
- 1.3.19 G In respect of the application for *waivers* to apply the approaches set out in *BIPRU 1.3.2G(1)*, the *appropriate regulator* will aim to give decisions on applications as soon as practicable. However, the *appropriate regulator* expects that it will take a significant period to determine and give a decision due to the complexity of the issues raised by the applications. Details of



timelines for applications for waivers to use advanced approaches ~~and under the Article 129 procedure~~ are set out on the *appropriate regulator* website.

...

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

...

## 2 Capital

### 2.1 Solo consolidation

...

#### Purpose

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

...

#### The basic rules for solo consolidation

...

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

...

#### Solo consolidation and capital and concentration risk requirements

...

- 2.1.10 R A *firm* must treat itself and each *subsidiary undertaking* referred to in *BIPRU 2.1.7R* as a single *undertaking* and must apply, on that basis, *BIPRU 8* (Group risk - consolidation) to the group made up of the *firm* and such

*subsidiary undertakings* in the same way as *BIPRU 8* applies to a *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.

...

#### Minimum standards

...

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

...

## 2.2 Internal capital adequacy standards

...

The drafting of individual capital guidance and capital planning buffer

...

- 2.2.19 G (1) ...
- (2) If *BIPRU 8.2.1R* (General consolidation rule for a *UK consolidation group*) applies to the *firm* the *guidance* relates to its *UK consolidation group*. If *BIPRU 8.3.1R* (General consolidation rule for a ~~*non-EEA sub-group*~~ *non-UK sub-group*) applies to the *firm* the *guidance* relates to its ~~*non-EEA sub-group*~~ *non-UK sub-group*. If both apply to the *firm* the *guidance* relates to its *UK consolidation group* and to its ~~*non-EEA sub-group*~~ *non-UK sub-group*.

...

...

Business risk: Stress tests for firms using the IRB approach

...

- 2.2.43 R ...
- (1) references to *capital resources* are to the *consolidated capital resources* of the *firm's UK consolidation group* or, as the case may be, its ~~*non-EEA sub-group*~~ *non-UK sub-group*; and
- (2) references to the capital requirements in *GENPRU 2.1* (Calculation of capital resources requirements) are to the consolidated capital requirements with respect to the *firm's UK consolidation group* or,

as the case may be, its ~~non-EEA sub-group~~ non-UK sub-group under BIPRU 8 (Group risk - consolidation).

...

## 2.3 Interest rate risk in the non-trading book

...

Purpose

...

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

...

## 3 Standardised credit risk

### 3.1 Application and purpose

...

Purpose

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

- (1) Articles 78 to 80, paragraph (1) of Article 81, Article 83, Annex II and Parts 1 and 3 of Annex VI of the *Banking Consolidation Directive*;
- (2) Article 18 of the *Capital Adequacy Directive* so far as it applies Articles 78 to 80, paragraph (1) of Article 81, Article 83 and Parts 1 and 3 of Annex VI of the *Banking Consolidation Directive* to *investment firms*; and
- (3) Article 40 of the *Capital Adequacy Directive* for the purposes of the calculation of credit risk under the *Banking Consolidation Directive*.

...

### 3.2 The central principles of the standardised approach to credit risk

...

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

...

3.3.29A G (1) ...

- (2) For the purpose of *BIPRU 3.2.25R(1)(d)* (Incorporation in the UK), if a counterparty is of a type that falls within the scope of the ~~Council Regulation of 29 May 2000 on insolvency proceedings (Regulation 1346/2000/EC)~~ *Insolvency Proceedings Regulation* and it is established in the *United Kingdom* other than by incorporation, a *firm* wishing to include that counterparty in its *core UK group* may apply to the *appropriate regulator* for a *waiver* of this condition if it can demonstrate fully to the *appropriate regulator* that the counterparty's centre of main interests is situated in the *United Kingdom* within the meaning of that Regulation.

...

### 3.3 The use of the credit assessments of ratings agencies

...

#### Recognition of ratings agencies

...

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

...

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

#### Mapping of credit assessments

...

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

[**Note:** For the most recent version of the table, refer to:

<http://www.fca.org.uk/your-fca/documents/fsa-ecais-standardised> for the *FCA* and

<http://www.bankofengland.co.uk/publications/Documents/other/pr/policy/2013/ecaisstandardised.pdf> for the *PRA*]

### 3.4 Risk weights under the standardised approach to credit risk

...

Exposures in the national currency of the borrower

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

[Note: BCD Annex VI Part 1 point 4]

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

[Note: BCD Annex VI Part 1 point 5]

...

Exposures to regional governments or local authorities: General

- 3.4.10 R Without prejudice to *BIPRU* 3.4.1R to *BIPRU* 3.4.19R:
- (1) a *firm* must *risk weight exposures* to regional governments and local authorities in accordance with *BIPRU* 3.4.11R to *BIPRU* 3.4.14R and *BIPRU* 3.4.19AR; and

...

...

Table: Central government risk weight based method

...

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

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

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

[Note: BCD Annex VI Part 1 point 10]

...

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

[Note: BCD Annex VI Part 1 point 11]

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

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

...

#### Public sector entities

...

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

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

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

[Note: BCD Annex VI Part 1 point 17]

#### Exposures to multilateral development banks: Treatment

...

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

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

Exposures to international organisations

...

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

Exposures to institutions: Treatment

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

[Note: BCD Annex VI Part 1 point 24]

...

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

...

- 3.4.45 R (1) ~~Where a competent authority of another EEA State implements point 37 of Part 1 of Annex VI of the Banking Consolidation Directive by exercising the discretion to allow the treatment in that point, a firm may assign to the relevant national currency exposures the risk weight permitted by that CRD implementation measure. [deleted]~~
- (2) When the *competent authority* of a third country which applies supervisory and regulatory arrangements at least equivalent to those applied in the ~~EEA~~ UK assigns to an *exposure* to an *institution* formed under the law of that third country of a residual maturity of 3 months or less denominated and funded in the national currency a *risk weight* that is one category less favourable than the preferential *risk weight*, as described in *BIPRU 3.4.6R* (Exposures in the national currency of the borrower), assigned to *exposures* to the central government of that third country, a *firm* may *risk weight* such *exposures* in the same manner.

[Note: BCD Annex VI Part 1 point 37]

...

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

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

- (1) ~~the reserves are held in accordance with Regulation (EC) No. 1745/2003 of the European Central Bank of 12 September 2003 or a subsequent replacement regulation or in accordance with national requirements in all material respects equivalent to that Regulation; and~~
- (2) ~~in the event of the bankruptcy or insolvency of the *institution* where the reserves are held, the reserves will be fully repaid to the *firm* in a timely manner and will not be available to meet other liabilities of the *institution*. [deleted]~~

~~{Note: BCD Annex VI Part 1 point 40}~~

...

## Exposures secured by real estate property

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

...

## Exposures secured by mortgages on residential property

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

~~{Note: BCD Annex VI Part 1 point 46}~~

...

3.4.60 R ...

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

~~{Note: BCD Annex VI Part 1 point 48}~~



...

3.4.62 G The ~~Banking Consolidation Directive~~ permits a ~~competent authority to disapply~~ FCA may disapply the condition in *BIPRU* 3.4.60R(3), if it has evidence that a well-developed and long-established residential real estate market is present in its territory ~~the UK~~ with loss rates which are sufficiently low to justify ~~such treatment~~ disapplying the condition in *BIPRU* 3.4.60R(3). *BIPRU* 3.4.61R implements that option. However, if the evidence changes so that these conditions are no longer satisfied, the ~~appropriate regulator may be obliged to~~ revoke *BIPRU* 3.4.61R.

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

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

...

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

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

...

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

...

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

...

Exposures secured by mortgages on commercial real estate

...

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

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

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

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

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

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

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

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

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

~~(2) However a firm may not apply the treatment in (1) if the eligibility to use that treatment under the CRD implementation measure referred to in (1) ceases as contemplated under point 59 of Annex VI of the~~

~~*Banking Consolidation Directive* (condition in point 54(b) must apply where conditions in point 58 are not satisfied). [deleted]~~

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

#### Past due items

...

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

[Note: BCD Annex VI Part 1 point 64]

...

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

[Note: BCD Annex VI Part 1 point 65]

...

#### Items belonging to regulatory high-risk categories

...

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

[Note: BCD Annex VI Part 1 point 66]

#### Exposures in the form of covered bonds

...

- 3.4.107 R (1) ~~Covered bonds~~ means covered bonds as defined in ~~paragraph (1) of the definition in the *glossary*~~ Glossary (Definition based on Article 22(4) of the ~~*UCITS Directive*~~) and collateralised by any of the following eligible assets:
- (a) ~~exposures to or guaranteed by the central governments,~~ central bank, UK central government, the Bank of England, public sector entities, regional governments and local authorities in the EEA UK;

- (b) (i) ~~exposures to or guaranteed by non-EEA non-UK central governments, non-EEA non-UK central banks, multilateral development banks, international organisations that qualify for the credit quality step 1;~~
- (ii) ~~exposures to or guaranteed by non-EEA non-UK public sector entities, non-EEA non-UK regional governments and non-EEA non-UK local authorities that are risk weighted as exposures to institutions or central governments and central banks according to BIPRU 3.4.23R, BIPRU 3.4.24R, BIPRU 3.4.10R or BIPRU 3.4.16G to BIPRU 3.4.17R respectively and that qualify for the credit quality step 1; and~~
- ...
- ...
- (d) ~~loans secured:~~
- (i) ~~by residential real estate or shares in Finnish residential housing companies as referred to in BIPRU 3.4.57R up to the lesser of the principal amount of the liens that are combined with any prior liens and 80% of the value of the pledged properties; or~~
- (ii) ~~by senior units issued by French Fonds Communs de Créances or by equivalent securitisation entities governed by the laws of an EEA State securitising residential real estate exposures provided that the special public supervision to protect bond holders as provided for in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council ensures that the assets underlying such units must, at any time while they are included in the cover pool, be at least 90% composed of residential mortgages that are combined with any prior liens up to the lesser of the principal amounts due under the units, the principal amounts of the liens, and 80% of the value of the pledged properties, that the units qualify for credit quality step 1 and that such units do not exceed 10% of the nominal amount of the outstanding issue; or [deleted]~~
- (e) (i) ~~loans secured by commercial real estate or shares in Finnish housing companies as referred to in BIPRU 3.4.57R up to the lesser of the principal amount of the liens that are combined with any prior liens and 60% of the value of the pledged properties; or [deleted]~~

- (ii) ~~loans secured by senior units issued by French Fonds Communs de Créances or by equivalent *securitisation* entities governed by the laws of an *EEA State securitising commercial real estate exposures* provided that the special public supervision to protect bond holders as provided for in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council ensures that the assets underlying such units must, at any time while they are included in the cover pool, be at least 90% composed of commercial mortgages that are combined with any prior liens up to the lesser of the principal amounts due under the units, the principal amounts of the liens, and 60% of the value of the pledged properties, that the units qualify for *credit quality step 1* and that such units do not exceed 10% of the nominal amount of the outstanding issue; or [deleted]~~
- (iii) a *firm* may recognise loans secured by commercial real estate as eligible where the loan to value ratio of 60% is exceeded up to a maximum level of 70% if the value of the total assets pledged as collateral for the *covered bonds* exceed the nominal amount outstanding on the covered bond by at least 10%, and the bondholders' claim meets the legal certainty requirements set out in *BIPRU 3* and *BIPRU 5*; the bondholders' claim must take priority over all other claims on the collateral; ~~or~~
- (f) loans secured by ships where only liens that are combined with any prior liens within 60% of the value of the pledged ship.
- (2) ~~For the purposes of *BIPRU 3.4.107R(1)(d)(ii)* and *BIPRU 3.4.107R(1)(e)(ii)* *exposures* caused by transmission and management of payments of the obligors of, or liquidation proceeds in respect of, loans secured by pledged properties of the senior units or debt *securities* must not be comprised in calculating the 90% limit. [deleted]~~
- ...
- (4A) ~~Until 31 December 2013, the 10% limit for senior units issued by French Fonds Communs de Créances or by equivalent *securitisation* entities as specified in (1)(d)(ii) and (1)(e)(ii) does not apply, provided that:~~
- (a) ~~the *securitised* residential or commercial real estate *exposures* were originated by a member of the same consolidated group of which the *issuer* of the *covered bonds*~~

is also a member or by an entity affiliated to the same central body to which the *issuer* of the *covered bonds* is also affiliated (that common group membership or affiliation to be determined at the time the senior units are made collateral for *covered bonds*); and

(b) a member of the same consolidated group of which the *issuer* of the *covered bonds* is also a member or an entity affiliated to the same central body to which the *issuer* of the *covered bonds* is also affiliated retains the whole first loss tranche supporting those senior units. [deleted]

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

[Note: BCD Annex VI Part 1 point 68]

...

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

[Note: BCD Annex VI Part 1 point 69]

...

Exposures in the form of collective investment undertakings (CIUs)

....

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

(1) one of the following conditions is satisfied:

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

(b) the following conditions are satisfied:

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

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

...

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

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

...

### 3.5 Simplified method of calculating risk weights

...

3.5.5 G Table: Simplified method of calculating risk weights  
This table belongs to BIPRU 3.5.4G.

Exposure class	Exposure sub-class	Risk weights	Comments
Central government	<i>Exposures to United Kingdom government or Bank of England in sterling</i>	0%	
	<del><i>Exposures to United Kingdom government or Bank of England in the currency of another EEA State</i></del>	0%	<del>See Note 2.</del>
	<del><i>Exposures to EEA State's central government or central bank in currency of that state</i></del>	0%	
	<del><i>Exposures to EEA State's central government or central bank in the currency of another EEA State</i></del>	0%	<del>See Notes 2 and 3.</del>

	<i>Exposures to central governments or central banks of certain countries outside the EEA UK in currency of that country</i>	See next column	The <i>risk weight</i> is whatever it is under local law. See <i>BIPRU</i> 3.4.6R for precise details.
	<i>Exposures to European Central Bank</i>	0%	
	Other <i>exposures</i>	100%	
Regional/local governments	<i>Exposures to the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly in sterling</i>	0%	
	<i>Exposures to the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly in the currency of another EEA State</i>	0%	See Note 2.
	<i>Exposures to EEA States' equivalent regional/local governments in currency of that state</i>	0%	See <i>BIPRU</i> 3.4.17R for details of type of local/regional government covered.
	<i>Exposures to EEA States' equivalent regional/local</i>	0%	See <i>BIPRU</i> 3.4.17R for details of type of



	governments in the currency of another <i>EEA State</i>		local/regional government covered. See Notes 2 and 3.
	<i>Exposures to local or regional governments of certain countries outside the <u>EEA UK</u> in currency of that country</i>	0%	See <i>BIPRU</i> 3.4.19R for details of type of local/regional government covered. See Note 4.
	<i>Exposures to United Kingdom or <del>EEA States'</del> local/regional government in currency of that state sterling if the exposure has original effective maturity of 3 months or less</i>	20%	
	<i>Exposures to United Kingdom or <del>EEA States'</del> local/regional government in the currency of another <i>EEA State</i> if the exposure has original effective maturity of 3 months or less</i>	<del>20%</del>	See Note 2. See Note 3 for local/regional government of an <i>EEA State</i> other than the <i>United Kingdom</i>
	<i>Exposures to local or regional governments of countries outside the <u>EEA UK</u> in currency of that country if the exposure has</i>	20%	See Note 4.

	original effective maturity of 3 months or less		
	Other <i>exposures</i>	100%	
<i>PSE</i>	<i>Exposures to a PSE of the United Kingdom or of an EEA State if that PSE is guaranteed by its central government and if the exposure is in currency of that PSE's state in sterling.</i>	0%	<i>BIPRU 3.4.24R describes the United Kingdom PSEs covered and BIPRU 3.4.25R describes the EEA PSEs covered.</i>
	<i>Exposures to PSE of a country outside the EEA UK if that PSE is guaranteed by the country's central government and if the exposure is in currency of that country.</i>	0%	See <i>BIPRU 3.4.26R</i> and Note 1.
	<i>Exposures to a PSE of the United Kingdom or of an EEA State in currency of that state sterling if the exposure has original effective maturity of 3 months or less</i>	20%	
	<i>Exposures to a PSE of the United Kingdom or of an EEA</i>	20%	See Notes 2 and 3.

	<i>State in the currency of another <del>EEA</del> State if the exposure has original effective maturity of 3 months or less</i>		
	<i>Exposures to PSE of a country outside the <del>EEA</del> UK in currency of that country if the exposure has original effective maturity of 3 months or less</i>	20%	See Note 4.
	<i>Other exposures</i>	100%	
<i>Multilateral development banks</i>	<i>Exposures to multilateral development banks listed in paragraph (1) of the Glossary definition</i>	0%	Simplified approach does not apply. Normal rules apply.
	<i>Other exposures</i>	Various	Treated as an institution
<i>EU, <del>the</del> The International Monetary Fund and the Bank for International Settlements</i>		0%	Simplified approach does not apply. Normal rules apply.
<i>Institutions</i>	<i>Exposures to United Kingdom institution in sterling with original effective maturity of three months or less</i>	20%	

	<i>Exposures to United Kingdom institution in the currency of another EEA State with original effective maturity of three months or less</i>	20%	See Note 2.
	<i>Exposures to institution whose head office is in another EEA State in the currency of that state with original effective maturity of three months or less</i>	20%	
	<i>Exposures to institution whose head office is in another EEA State in the currency of another EEA State with original effective maturity of three months or less</i>	20%	See Notes 2 and 3.
	<i>Exposures to institution with a head office in a country outside the EEA UK in the currency of that country with original effective maturity of three months or less</i>	20%	See Note 4.

	<i>Exposures to United Kingdom institution in sterling with original effective maturity of over three months</i>	50%	
	<del><i>Exposures to United Kingdom institution in the currency of another EEA State with original effective maturity of over three months</i></del>	<del>50%</del>	<del>See Note 2.</del>
	<del><i>Exposures to an EEA institution with a head office in another EEA State in the currency of that state with original effective maturity of over three months</i></del>	<del>50%</del>	
	<del><i>Exposures to an EEA institution with a head office in another EEA State in the currency of another EEA State with original effective maturity of over three months</i></del>	<del>50%</del>	<del>See Notes 2 and 3.</del>
	<i>Exposures to institution with a head office in a country outside the EEA UK in</i>	50%	See Note 4.

	the currency of that country with original effective maturity of over three months		
	Other <i>exposures</i>	100%	
...			
<p>Note 4: The <i>risk weight</i> should not be lower than the <i>risk weight</i> that applies for national currency <i>exposures</i> of the central government of the third country in question under <i>BIPRU 3.5</i>. That means that this <i>risk weight</i> only applies if the third country is one of those to which <i>BIPRU 3.4.6R</i> (Preferential <i>risk weight</i> for <i>exposures</i> of the central government of countries outside the <del>EEA</del> <u>UK</u> that apply equivalent prudential standards) applies.</p>			
<p><del>Note 2: This is a transitional measure. It lasts until 31 December 2012.</del></p>			
<p><del>Note 3: The <i>risk weight</i> should not be lower than the <i>risk weight</i> that applies for <i>exposures</i> of the central government of the <del>EEA State</del> in question in the currency of another <del>EEA State</del> under <i>BIPRU 3.5</i>.</del></p>			

## 4 The IRB approach

### 4.1 The IRB approach: Application, purpose and overview

...

#### Purpose

- 4.1.2 G Pursuant to the third paragraph of article 95(2) of the ~~EU-CRR~~ UK CRR, *BIPRU 4* ~~implements~~ applies requirements that correspond to the following provisions of the *Banking Consolidation Directive*:
- (1) Articles 84 - 89; and
  - (2) Annex VII.
- 4.1.3 G Pursuant to the third paragraph of article 95(2) of the ~~EU-CRR~~ UK CRR, *BIPRU 4* also ~~implements~~ applies requirements that correspond to Annex VIII of the *Banking Consolidation Directive* so far as it applies to the *IRB approach*. In particular, it ~~implements~~ applies requirements corresponding to (in part):
- (1) from Part 1 of that Annex, points 12-16, 19-22, 26(g)(ii) and 27;

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

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

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

...

#### Overview

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

...

#### IRB permissions: general

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

...

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

...

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

...

(6) ~~(in the case of *collateral* that is only eligible for recognition under paragraph 21 of Part 1 of Annex VIII of the *Banking Consolidation*~~

~~Directive (Other physical collateral)~~ a *firm* may not recognise as eligible collateral an item of a type referred to in *BIPRU* 4.10.16R (Other physical collateral) unless that item is of a type specified as permitted in its *IRB permission*.

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

...

## 4.2 The IRB approach: High level material

...

General approach to granting an IRB permission

...

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

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

Outsourcing

- 4.2.4 G (1) This *guidance* sets out the basis on which a *firm* may rely upon a *rating system* or data provided by another member of its *group*.
- (2) A *firm* may rely upon a *rating system* or data provided by another member of its *group* if the following conditions are satisfied:
- (a) the *firm* only does so to the extent that it is appropriate, given the nature and scale of the *firm's* business and portfolios and the *firm's* position within the *group*;
- (b) the *group* is an ~~EEA~~ *banking and investment group*;
- ...
- (e) (if the provision of the *rating system* or data is not carried out in the *United Kingdom* ~~or in the jurisdiction of the competent authority that is the lead regulator of the group~~) the *firm* can demonstrate to the *appropriate regulator* that the ability of the *appropriate regulator* ~~and that lead regulator~~ to carry out their responsibilities under the *Handbook*, ~~the Banking~~



~~Consolidation Directive and the Capital Adequacy Directive~~  
 are is not adversely affected.

...

...

Combined use of methodologies: Basic provisions

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

...

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

...

...

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

...

...

### 4.3 The IRB approach: Provisions common to different exposure classes

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Corporate governance

...

- 4.3.12 G Where the *firm's rating systems* are used on a unified basis for the *parent undertaking* and its *subsidiary undertakings* under BIPRU 4.2.3R, and approval and reporting of the *ratings systems* are carried out at the group level, the governance requirements in BIPRU 4.3.9R and BIPRU 4.3.11R may be met if:
- (1) the *subsidiary undertakings* have delegated to the *governing body* or *designated committee* of the ~~EEA parent institution~~ parent institution in the UK or ~~EEA parent financial holding company~~ parent financial holding company in the UK responsibility for approval of the *firm's rating systems*;
  - (2) the *governing body* or *designated committee* of the ~~EEA parent institution~~ parent institution in the UK or ~~EEA parent financial holding company~~ parent financial holding company in the UK approves either:
    - (a) all aspects of the *firm's rating systems*, and material changes; or
    - (b) all aspects of the *firm's rating systems* that are material in the context of the group, and material changes to those, and a policy statement defining the overall approach to material aspects of rating and estimation processes for all *rating systems*, including non-material *rating systems*.

...

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

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Risk quantification: Definition of default

- 4.4.22 R ...
- (3) ~~For counterparts that are PSEs situated in another EEA State the number of days past due is the lower of:~~
    - (a) ~~180; and~~
    - (b) ~~the number of days past due fixed under the CRD implementation measure with respect to point 48 of Part 4 of Annex VII of the Banking Consolidation Directive for that EEA State for such exposures. [deleted]~~
  - (4) For counterparts that are PSEs in a state ~~outside the EEA~~ other than the UK the number of days past due is the lower of:
    - (a) 180; and

- (b) (if a number of days past due for such *exposures* has been fixed under any law of that state applicable to *undertakings* in the *banking sector* or the *investment services sector* that implements the *IRB approach*) that number.

[**Note:** BCD Annex VII Part 4 point 44 (part) and point 48 (part)]

...

Double default

...

- 4.4.83 R An *institution*, an *insurance undertaking* (including an *insurance undertaking* that carries out *reinsurance*) or an export credit agency which fulfils the following conditions may be recognised as an eligible provider of *unfunded credit protection* which qualifies for the treatment set out in *BIPRU 4.4.79R*:
- (1) the protection provider has sufficient expertise in providing *unfunded credit protection*;
  - (2) the protection provider is regulated in a manner equivalent to the rules laid down in ~~the *Banking Consolidation Directive*~~ *GENPRU* and *BIPRU* or had, at the time the credit protection was provided, a credit assessment by an *eligible ECAI* which is associated with *credit quality step 3* or above under the *rules* for the *risk weighting of exposures to corporates* under the *standardised approach*;

...

...

## 4.6 The IRB approach: Retail exposures

...

Risk quantification: Definition of default

...

- 4.6.20 R (1) This *rule*, in accordance with *BIPRU 4.3.57R(4)* (Definition of default), sets the exact number of days past due that a *firm* must abide by in the case of *retail exposures*.
- (2) For *retail exposures* to counterparts situated within the *United Kingdom* the number of days past due is 180 days with the exception of *retail SME exposures*. For these *exposures* the number is 90 days.
  - (3) ~~For *retail exposures* to counterparts situated in another *EEA State* the number of days past due is the lower of:~~

- (a) ~~180; and~~
- (b) ~~the number of days past due fixed under the CRD implementation measure in that EEA State with respect to paragraph 48 of Part 4 of Annex VII of the Banking Consolidation Directive for such exposures. [deleted]~~
- (4) For retail exposures to counterparts in a state outside the EEA United Kingdom the number of days past due is the lower of:

...

...

#### 4.9 The IRB approach: Securitisation, non-credit obligations assets and CIUs

...

##### Collective investment undertakings

- 4.9.11 R (1) Where exposures in the form of a CIU meet the criteria set out in *BIPRU 3.4.121R* to ~~*BIPRU 3.4.122R*~~ (Conditions for look through treatment under the standardised approach) and the firm is aware of all of the underlying exposures of the CIU, the firm must look through to those underlying exposures in order to calculate risk weighted exposure amounts and expected loss amounts in accordance with the methods set out in *BIPRU 4.9.12R*. *BIPRU 4.9.12R* applies to the part of the underlying exposures of the CIU of which the firm is not aware or could not reasonably be aware. In particular, *BIPRU 4.9.12R* must apply where it would be unduly burdensome for the firm to look through the underlying exposures in order to calculate risk weighted exposure amounts and expected loss amounts in accordance with methods set out in this rule.

...

- 4.9.12 R (1) Where exposures in the form of a CIU do not meet the criteria set out in *BIPRU 3.4.121R* to ~~*BIPRU 3.4.122R*~~ (Conditions for look through treatment under the standardised approach) or the firm is not aware of all of the underlying exposures of the CIU, a firm must look through to the underlying exposures and calculate risk weighted exposure amounts and expected loss amounts in accordance with the approach set out in *BIPRU 4.7.9R - BIPRU 4.7.12R* (Simple risk weights). If, for those purposes, the firm is unable to differentiate between private equity, exchange-traded and other equity exposures, it must treat the exposures concerned as other equity exposures. For these purposes, non-equity exposures must be assigned to one of the classes (private equity, exchange traded equity or other equity) set out in *BIPRU 4.7.9R* (Simple risk weight approach) and unknown exposures must be assigned to the other equity class.

...

...

#### 4.10 The IRB approach: Credit risk mitigation

...

Eligibility of funded credit protection: General

- 4.10.5 R In addition to the collateral set out in *BIPRU 5.3.1R* to *BIPRU 5.3.2R*, *BIPRU 5.4.1R* to *BIPRU 5.4.8R* and *BIPRU 5.6.1R* (Eligibility of funded credit protection) the provisions of *BIPRU 4.10.6R* - *BIPRU 4.10.11R* ~~*BIPRU 4.10.12R*~~ (Eligibility of real estate collateral), *BIPRU 4.10.14R* (Eligibility: receivables), *BIPRU 4.10.16R* (Eligibility: other physical collateral), and *BIPRU 4.10.19R* (Eligibility: leasing), apply where a *firm* calculates *risk weighted exposure amounts* and *expected loss amounts* under the *IRB approach*.

[**Note:** *BCD Annex VIII Part 1 point 12*]

...

Real estate collateral: Types of eligible collateral: General

...

- 4.10.8 G (1) ~~Under paragraph 16 of Part 1 of Annex VIII of the Banking Consolidation Directive, a *competent authority*~~ The *FCA* may only disapply the condition in *BIPRU 4.10.6R(3)* if ~~the *competent authority*~~ it has evidence that the ~~relevant~~ *UK* market is well-developed and long-established with loss-rates which are sufficiently low to justify such action.
- (2) If the evidence were to change so that the action was no longer justified the *appropriate regulator* would expect to revoke *BIPRU 4.10.7R*.

[**Note:** *BCD Annex VIII Part 1 point 16*]

- 4.10.9 R (1) The condition in *BIPRU 4.10.6R(3)* does not apply for *exposures* secured by residential real estate property situated ~~within the territory of another *EEA State*~~ outside the *UK*.
- (2) ~~However (1) only applies if and to the extent that the *CRD implementation measures* for that *EEA State* in relation to the *IRB approach* implement the option set out in paragraph 16 of Part 1 of Annex VIII of the *Banking Consolidation Directive* (waiver for residential real estate property) with respect to residential real estate property situated within that *EEA State*. Therefore (1) does not apply if the eligibility to use this treatment under those measures ceases as~~

contemplated under paragraph 18 of Part 1 of Annex VIII of the *Banking Consolidation Directive* (suspension of alternative treatment). [deleted]

~~[Note: BCD Annex VIII Part 1 point 16 (part)]~~

- 4.10.10 R (1) The condition in *BIPRU* 4.10.6R(3) does not apply for commercial real estate property situated ~~within the territory of another *EEA State* outside the *UK*.~~
- (2) ~~However (1) only applies if and to the extent that the *CRD implementation measures* for that *EEA State* in relation to the *IRB approach* implement the option set out in paragraph 17 of Part 1 of Annex VIII of the *Banking Consolidation Directive* (waiver for commercial real estate property) with respect to commercial real estate property situated within that *EEA State*. Therefore (1) does not apply if the eligibility to use this treatment under those measures ceases as contemplated under paragraph 18 of Part 1 of Annex VIII of the *Banking Consolidation Directive* (suspension of alternative treatment). [deleted]~~

~~[Note: BCD Annex VIII Part 1 point 19]~~

Real estate collateral: Types of eligible collateral: Finnish housing legislation

- 4.10.11 R ~~A *firm* may also recognise as eligible collateral shares in Finnish residential housing companies operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation in respect of residential property which is or will be occupied or let by the owner, as residential real estate collateral, provided that the conditions in *BIPRU* 4.10.6R are met. [deleted]~~

~~[Note: BCD Annex VIII Part 1 point 14]~~

- 4.10.12 R ~~A *firm* may also recognise as eligible collateral shares in Finnish housing companies operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation as commercial real estate collateral, provided that the conditions in *BIPRU* 4.10.6R are met. [deleted]~~

~~[Note: BCD Annex VIII Part 1 point 15]~~

....

Other physical collateral: Types of eligible collateral

- 4.10.16 R A *firm* may recognise as eligible collateral a physical item of a type other than those types indicated in *BIPRU* 4.10.6R - ~~*BIPRU* 4.10.8R *BIPRU* 4.10.12R~~ (Eligibility of real estate collateral) if its *IRB permission* provides that the *firm* may treat collateral of that type as eligible and if the *firm* is able to demonstrate the following:

...

....

Calculating risk weighted exposure amounts and expected loss amounts: General treatment

- 4.10.23 R ~~BIPRU 4.10.24 R - BIPRU 4.10.28R BIPRU 4.10.29R~~ apply to collateral in the form of real estate collateral, receivables, other physical collateral and leasing permitted by *BIPRU 4.10* and *exposures* secured by such collateral.

...

Calculating risk weighted exposure amounts and expected loss amounts for funded credit risk mitigation: Alternative treatment for real estate collateral

- 4.10.29 R (1) ~~A firm may apply the treatment in paragraph 74 of Part 3 of Annex VIII of the *Banking Consolidation Directive* (50% risk weight for exposures secured by real estate) in respect of *exposures* collateralised by:~~
- ~~(a) residential real estate property; or~~
  - ~~(b) commercial real estate property;~~
- ~~located in the territory of another *EEA State*.~~
- (2) ~~However (1)(a) or (1)(b) only applies if the *CRD implementing measures* for that *EEA State* with respect to the *IRB approach* have implemented the option set out in the provision of the *Banking Consolidation Directive* referred to in (1) with respect to the relevant category of real estate property situated within that *EEA State*.~~
- (3) ~~The use of the treatment in (1) with respect to property in another *EEA State* must be subject to the same conditions as apply under the relevant *CRD implementation measures* for that *EEA State*. [deleted]~~

~~[Note: *BCD Annex VIII Part 3 point 75*]~~

...

## 5 Credit risk mitigation

### 5.1 Application and purpose

...

Purpose

- 5.1.2 G Pursuant to the third paragraph of article 95(2) of the *EU CRR UK CRR*, *BIPRU 5* ~~implements~~ applies requirements that correspond, in part, to

Articles 78(1) and 91 to 93 and Annex VIII of the *Banking Consolidation Directive*.

...

- 5.1.4 G *BIPRU 4.10* ~~implements~~ applies requirements that correspond to those parts of Articles 91 to 93 and Annex VIII of the *Banking Consolidation Directive* which are specific to the recognition of *credit risk mitigation* by firms using the *IRB approach*, and modifies the application of the provisions in *BIPRU 5* to those firms.

...

## 5.4 Financial collateral

...

The financial collateral simple method: Repurchase transactions and securities lending or borrowing transactions

- 5.4.19 R A *risk weight* of 0% must be assigned to the collateralised portion of the *exposure* arising from transactions which fulfil the criteria enumerated in *BIPRU 5.4.62R* ~~or *BIPRU 5.4.65R*~~. If the counterparty to the transaction is not a *core market participant* a *risk weight* of 10% must be assigned.

[**Note:** *BCD Annex VIII Part 3 point 27*]

...

The financial collateral comprehensive method: General

...

- 5.4.24 R In valuing financial collateral for the purposes of the *financial collateral comprehensive method*, volatility adjustments must be applied to the market value of collateral, as set out in *BIPRU 5.4.30R* to *BIPRU 5.4.64R* ~~*BIPRU 5.4.65R*~~, in order to take account of price volatility.

[**Note:** *BCD Annex VIII Part 3 point 30*]

- 5.4.25 R Subject to the treatment for currency mismatches in the case of *financial derivative instrument* set out in *BIPRU 5.4.26R*, where collateral is denominated in a currency that differs from that in which the underlying *exposure* is denominated, an adjustment reflecting currency volatility must be added to the volatility adjustment appropriate to the collateral as set out in *BIPRU 5.4.30R* to *BIPRU 5.4.64R* ~~*BIPRU 5.4.65R*~~.

[**Note:** *BCD Annex VIII Part 3 point 31*]

...



- 5.4.27 R In the case of a *firm* using the *financial collateral comprehensive method*, where an *exposure* takes the form of securities or *commodities* sold, posted or lent under a *repurchase transaction* or under a *securities or commodities lending or borrowing transaction*, and *margin lending transactions* the *exposure* value must be increased by the volatility adjustment appropriate to such securities or *commodities* as prescribed in *BIPRU 5.4.30R* to *BIPRU 5.4.64R* ~~*BIPRU 5.4.65R*~~.

[**Note:** *BCD* Article 78(1), third sentence]

The financial collateral comprehensive method: Calculating adjusted values

- 5.4.28 R ...
- (3) The fully adjusted value of the *exposure*, taking into account both volatility and the risk-mitigating effects of collateral is calculated as follows:
- $$E^* = \max \{0, [E_{VA} - C_{VAM}]\}$$
- Where:
- ...
- (e)  $H_E$  is the volatility adjustment appropriate to the *exposure* (E), as calculated under *BIPRU 5.4.30R* to *BIPRU 5.4.64R* ~~*BIPRU 5.4.65R*~~.
- (f)  $H_C$  is the volatility adjustment appropriate for the collateral, as calculated under *BIPRU 5.4.30R* to *BIPRU 5.4.64R* ~~*BIPRU 5.4.65R*~~.
- (g)  $H_{FX}$  is the volatility adjustment appropriate for currency mismatch, as calculated under *BIPRU 5.4.30R* to *BIPRU 5.4.64R* ~~*BIPRU 5.4.65R*~~.
- ...
- ...

The financial collateral comprehensive method: Calculation of volatility adjustments to be applied: General

- 5.4.29 R ~~*BIPRU 5.4.30R*~~ - *BIPRU 5.4.64R* ~~*BIPRU 5.4.65R*~~ set out the calculation of volatility adjustments under the *financial collateral comprehensive method*.

...

The financial collateral comprehensive method: Conditions for applying a 0% volatility adjustment

....

- 5.4.65 R ~~If under the *CRD implementation measure* for a particular *EEA State* with respect to point 58 of Part 3 of Annex VIII of the *Banking Consolidation Directive* (Conditions for applying the 0% volatility adjustment) the treatment set out in that point is permitted to be applied in the case of *repurchase transactions or securities lending or borrowing transactions in securities issued by the domestic government of that EEA State*, then a *firm* may adopt the same approach to the same transactions. [deleted]~~

~~[Note: BCD Annex VIII Part 3 point 59]~~

...

## 5.5 Other funded credit risk mitigation

...

Life insurance policies: Minimum requirements

- 5.5.5 R For life insurance policies pledged to a *lending firm* to be recognised the following conditions must be met:
- (1) the party providing the life insurance must be ~~subject to the *Solvency II Directive*~~ a *Solvency II firm* listed in paragraphs (a), (d) or (e) of the definition in the *Glossary*, or is subject to supervision by a competent authority of a third country which applies supervisory and regulatory arrangements at least equivalent to those applied in the ~~Community~~ UK;

...

## 5.6 Master netting arrangements

...

Calculation of the fully adjusted exposure value: the supervisory volatility adjustments approach and the own estimates of volatility adjustments approach

...

- 5.6.5 R In calculating the ‘fully adjusted *exposure value*’ (E\*) for the *exposures* subject to an eligible master netting agreement *covering repurchase transactions and/or securities or commodities lending or borrowing transactions and/or other capital market-driven transactions*, a *firm* must calculate the volatility adjustments to be applied in the manner set out in *BIPRU 5.6.6R to BIPRU 5.6.11R* either using the *supervisory volatility adjustments approach* or the *own estimates of volatility adjustments approach* as set out in *BIPRU 5.4.30R to ~~BIPRU 5.4.64R BIPRU 5.4.65R~~* for the *financial collateral comprehensive method*. For the use of the *own estimates of volatility adjustments approach* the same conditions and requirements apply as under the *financial collateral comprehensive method*.

[Note: BCD Annex VIII Part 3 point 5]

...

- 5.6.7 R For the purposes of *BIPRU 5.6.6R*, type of *security* means *securities* which are issued by the same entity, have the same issue date, the same maturity and are subject to the same terms and conditions and are subject to the same liquidation periods as indicated in *BIPRU 5.4.30R* to *BIPRU 5.4.64R* ~~*BIPRU 5.4.65R*~~.

[Note: BCD Annex VIII Part 3 point 7]

...

Calculation of the fully adjusted exposure value: the master netting agreement internal models approach

...

- 5.6.18 R A *firm* may use the *master netting agreement internal models approach* independently of the choice it has made between the *standardised approach* and the *IRB approach* for the calculation of *risk weighted exposure amounts*. However, if a *firm* uses the *master netting agreement internal models approach*, it must do so for all counterparties and *securities*, excluding immaterial portfolios where it may use the *supervisory volatility adjustments approach* or the *own estimates of volatility adjustments approach* as set out in *BIPRU 5.4.30R* to *BIPRU 5.4.64R* ~~*BIPRU 5.4.65R*~~.

[Note: BCD Annex VIII Part 3 point 13]

...

## 5.7 Unfunded credit protection

...

Additional requirements for guarantees

...

- 5.7.12 R In the case of guarantees ~~provided in the context of mutual guarantee schemes recognised for these purposes by another EEA competent authority under a CRD implementation measure with respect to point 19 of Part 2 of Annex VIII of the Banking Consolidation Directive~~ or provided by or counter-guaranteed by entities referred to in *BIPRU 5.7.9R*, the requirements in *BIPRU 5.7.1R(1) - (3)* will be satisfied where either of the following conditions are met:
- (1) the *lending firm* has the right to obtain in a timely manner a provisional payment by the guarantor calculated to represent a robust estimate of the amount of the economic *loss*, including losses resulting from the non-payment of interest and other types of

payment which the borrower is obliged to make, likely to be incurred by the *lending firm* proportional to the coverage of the guarantee; or

- (2) the *lending firm* is able to demonstrate to the *appropriate regulator* that the loss-protecting effects of the guarantee, including losses resulting from the non-payment of interest and other types of payments which the borrower is obliged to make, justify such treatment.

[Note: BCD Annex VIII Part 2 point 19]

...

## 7 Market risk

### 7.1 Application, purpose, general provisions and non-standard transactions

...

#### Purpose

- 7.1.2 G Pursuant to the third paragraph of article 95(2) of the ~~EU CRR~~ UK CRR, the purpose of this chapter is to ~~implement~~ apply requirements that correspond to Annexes I, III, IV and V of the Capital Adequacy Directive.

...

### 7.2 Interest rate PRR

...

Derivation of notional positions: Futures, forwards or synthetic futures on a basket or index of debt securities

...

- 7.2.15 G Under *BIPRU 7.2.14R(2)(b)*, a *forward* on basket of three Euro denominated debt securities and two Dollar denominated debt securities would be treated as a *forward* on a single notional Euro denominated debt security and a *forward* on a single notional Dollar denominated debt security.

...

#### Specific risk calculation

...

- 7.2.44 R Table: specific risk position risk adjustments  
This table belongs to *BIPRU 7.2.43R*.

Issuer	Residual maturity	Position risk adjustment
<p>Debt <i>securities</i> issued or guaranteed by central governments, issued by <i>central banks</i>, <i>international organisations</i>, <i>multilateral development banks</i> or <del>EEA States</del>' <u>United Kingdom</u> regional governments or local authorities which would qualify for <i>credit quality step 1</i> or which would receive a 0% <i>risk weight</i> under the <i>standardised approach</i> to credit risk.</p>	<p>Any</p>	<p>0%</p>
<p>(A) Debt <i>securities</i> issued or guaranteed by central governments, issued by <i>central banks</i>, <i>international organisations</i>, <i>multilateral development banks</i> or <del>EEA States</del>' <u>United Kingdom</u> regional governments or local authorities which would qualify for <i>credit quality step 2</i> or <i>3</i> under the <i>standardised approach</i> to credit risk.</p> <p>...</p>	<p>Zero to six months</p> <p>...</p>	<p>0.25%</p> <p>...</p>
<p>(A) Debt <i>securities</i> issued or guaranteed by central governments, issued by <i>central banks</i>, <i>international organisations</i>, <i>multilateral development banks</i> or <del>EEA States</del>' <u>United Kingdom</u> regional governments or local</p>	<p>Any</p>	<p>8%</p>

<p>authorities or <i>institutions</i> which would qualify for <i>credit quality step 4</i> or <i>5</i> under the <i>standardised approach</i> to credit risk.</p> <p>(B) Debt <i>securities</i> issued or guaranteed by <i>corporates</i> which would qualify for <i>credit quality step 4</i> under the <i>standardised approach</i> to credit risk.</p> <p>(C) Exposures for which a credit assessment by a <i>nominated ECAI</i> is not available.</p>		
<p>(A) Debt <i>securities</i> issued or guaranteed by central governments, issued by <i>central banks</i>, <i>international organisations</i>, <i>multilateral development banks</i> or <del>EEA States'</del> <i>United Kingdom</i> regional governments or local authorities or <i>institutions</i> which would qualify for <i>credit quality step 6</i> under the <i>standardised approach</i> to credit risk.</p> <p>(B) Debt <i>securities</i> issued or guaranteed by <i>corporates</i> which would qualify for <i>credit quality step 5</i> or <i>6</i> under the <i>standardised approach</i> to credit risk.</p> <p>(C) An instrument that shows a particular risk because of the insufficient solvency of the issuer of liquidity. This paragraph applies even if the instrument would otherwise qualify for a lower <i>position risk adjustment</i> under this table.</p>	Any	12%
<p><b>Note:</b> The question of what a <i>corporate</i> is and of what category a debt <i>security</i> falls into must be decided under the <i>rules</i> relating to the <i>standardised approach</i> to credit risk.</p>		

[**Note:** CAD Annex I point 14 Table 1]

...

Definition of a qualifying debt security

7.2.49 R A debt *security* is a *qualifying debt security* if:

...

- (4) it is a debt *security* issued by an *institution* subject to the capital adequacy requirements set out in the ~~EU CRR~~ UK CRR or, as may be applicable, ~~the Banking Consolidation Directive~~ GENPRU and BIPRU, that satisfies the following conditions:
- (a) it is considered by the *firm* to be sufficiently liquid;
  - (b) its investment quality is, according to the *firm's* own discretion, at least equivalent to that of the assets referred to under (1) above; or
- (5) it is a debt *security* issued by an *institution* that is deemed to be of equivalent or higher credit quality than that associated with *credit quality step 2* under the *standardised approach* to credit risk and that is subject to supervision and regulatory arrangements comparable to those under ~~the Capital Adequacy Directive~~ GENPRU and BIPRU.

...

## 7.7 Position risk requirements for collective investment undertakings

...

Look through methods: General criteria

...

- 7.7.7 R The general eligibility criteria for using the methods in *BIPRU 7.7.4R* and *BIPRU 7.7.9R - BIPRU 7.7.11R*, for *CIUs* issued by *companies* supervised or incorporated within the ~~EEA~~ UK are that:

...

...

## 7.9 Use of a CAD 1 model

Introduction

...

- 7.9.5 G *Waivers* permitting the use of models in the calculation of *PRR* will not be granted if that would be contrary to ~~the CAD~~ BIPRU. ~~Any waiver which is granted will only be granted on terms that are compatible with the CAD.~~ When granting any 'waivers' the FCA will have regard to the CAD. Accordingly, the only *waivers* permitting the use of models in calculating *PRR* that the *appropriate regulator* is likely to grant are CAD 1 model *waivers* and VaR model permissions.

...

## 7.10 Use of a Value at Risk Model

...

Introduction and purpose

...

- 7.10.3 G The models described in *BIPRU 7.10* are described as VaR models in order to distinguish them from *CAD 1 models*, which are dealt with in *BIPRU 7.9* (Use of a CAD 1 model). A *VaR model* is a risk management model which uses a statistical measure to predict profit and loss movement ranges with a confidence interval. From these results *PRR charges* can be calculated. The standards described in *BIPRU 7.10*, and which will be applied by the *appropriate regulator*, are based on ~~and implement~~ Annex V of the *Capital Adequacy Directive*.

...

Conditions for granting a VaR model permission

- 7.10.7 G A *waiver* or other permission allowing the use of models in the calculation of *PRR* will ~~not be granted if that would be contrary to the *Capital Adequacy Directive*~~ be considered with regards to *CAD* and any *VaR model permission* which is granted will ~~only be granted on terms that are compatible with the *Capital Adequacy Directive*~~ be considered with regards to *CAD*. Accordingly, the *appropriate regulator* is likely only to grant a *waiver* or other permission allowing the use of models in the calculation of *PRR* if it is a *VaR model permission* or a *CAD 1 model waiver*.

...

- 7.10.9 G The *appropriate regulator* recognises that the nature of *VaR models* will vary between *firms*. The scope of and the requirements and conditions set out in a *VaR model permission* may therefore differ in substance or detail from *BIPRU 7.10* in order to address individual circumstances adequately. ~~However any differences will only be allowed if they are compliant with the *Capital Adequacy Directive*. The *FCA* will consider any differences by having regard to the *CAD*.~~ A *VaR model permission* will implement any such variation by modifying *BIPRU 7.10*. A *VaR model permission* may also include additional conditions to meet the particular circumstances of the *firm* or the model.

...

## 8 Group risk consolidation

### 8.1 Application

- 8.1.1 R This chapter applies to:



- (1) a *BIPRU firm* that is a member of *UK consolidation group*;
  - (2) a *BIPRU firm* that is a member of a ~~*non-EEA sub-group*~~ *non-UK sub-group*; and
  - (3) [deleted]
  - (4) a *firm* that is not a *BIPRU firm* and is a *parent financial holding company in a Member State* *the UK* in a *UK consolidation group*.
- 8.1.2 R This chapter does not apply to a *firm* in *BIPRU* 8.1.1R(1) to *BIPRU* 8.1.1R(3) which is a member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* if the interest of the relevant *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* in that *firm* is no more than a *participation*.
- 8.1.2A R A *firm* is not subject to consolidated supervision under *BIPRU* 8 where any of the following conditions are fulfilled:
- (1) the *firm* is included in the supervision on a *consolidated basis* of the *group* of which it is a member by the *FCA* or *PRA* under the ~~*EU-CRR*~~ *UK CRR*; or
  - (2) ~~the *firm* is included in the supervision on a *consolidated basis* of the *group* of which it is a member by a *competent authority* other than the *FCA* under the *EU-CRR* as implemented by that *competent authority*.~~ [deleted]
- 8.1.2B R Where a *group* includes one or more *BIPRU firms* and one or more *IFPRU investment firms* which has permission under article 19 of the ~~*EU-CRR*~~ *UK CRR* (Exclusion from the scope of prudential consolidation) from the *FCA* not to be included in the supervision on a *consolidated basis* of the *group* of which it is a member, consolidated supervision under *BIPRU* 8 applies to those *IFPRU investment firms* and the *BIPRU firms*.
- Purpose
- 8.1.3 G Pursuant to the third paragraph of article 95(2) of the ~~*EU-CRR*~~ *UK CRR*, this chapter ~~implements~~ applies provisions corresponding to articles 71, 73(1) and (2), 125, ~~126~~, 127(1), 133 and 134 of the *Banking Consolidation Directive* and articles 2 (in part), 22-27 and 37(1) (in part) of the *Capital Adequacy Directive*.
- How this chapter is organised
- ...
- 8.1.5 G *BIPRU* 8.3 sets out the definition of a ~~*non-EEA sub-group*~~ *non-UK sub-group* and the basic requirement to apply financial resources and concentration risk requirements to that group on a consolidated basis.

...

Consolidation requirements for BIPRU firms elsewhere in the Handbook

...

- 8.1.16 G *GENPRU 3.2* (Prudential rules for third country groups) deals, amongst other things, with banking and investment services groups headed by a *parent undertaking* outside the ~~EEA~~ UK.

## 8.2 Scope and basic consolidation requirements for UK consolidation groups

Main consolidation rule for UK consolidation groups

- 8.2.1 R A *firm* that is a member of a *UK consolidation group* must comply, to the extent and in the manner prescribed in *BIPRU 8.5*, with the obligations laid down in *GENPRU 1.2* (Adequacy of financial resources) and the *main BIPRU firm Pillar 1 rules* (but not the *base capital resources requirement*) on the basis of the consolidated financial position of:
- (1) where either Test 1A or Test 1B in *BIPRU 8 Annex 1* (Decision tree identifying a UK consolidation group) apply, the *parent institution in ~~a Member State~~ the UK* in the *UK consolidation group*; or
  - (2) where either Test 1C or Test 1D in *BIPRU 8 Annex 1* apply, the *parent financial holding company in ~~a Member State~~ the UK* or the *parent mixed financial holding company in ~~a Member State~~ the UK*.

...

Definition of UK consolidation group

- 8.2.4 R A *firm's UK consolidation group* means a group that is identified as a *UK consolidation group* in accordance with the decision tree in *BIPRU 8 Annex 1R* (Decision tree identifying a UK consolidation group); the members of that group are:
- (1) where either Test 1A or Test 1B in *BIPRU 8 Annex 1R* apply, the members of the *consolidation group* made up of the *sub-group* of the *parent institution in ~~a Member State~~ the UK* identified in *BIPRU 8 Annex 1R* together with any other *person* who is a member of that *consolidation group* because of a *consolidation Article 12(1) relationship* or an *Article 134 relationship*; or
  - (2) where either Test 1C or Test 1D in *BIPRU 8 Annex 1R* apply, the members of the *consolidation group* made up of the *sub-group* of the *parent financial holding company in ~~a Member State~~ the UK* or

the parent mixed financial holding company in ~~a Member State~~ the UK identified in BIPRU 8 Annex 1R together with any other person who is a member of that *consolidation group* because of a *consolidation Article 12(1) relationship* or an *Article 134 relationship*;

in each case only *persons* included under BIPRU 8.5 (Basis of consolidation) are included in the *UK consolidation group*.

...

- 8.2.7 G ~~BIPRU 8 Annex 1 (Decision tree identifying a UK consolidation group) shows that Articles 125 and 126 of the *Banking Consolidation Directive* are important in deciding whether the *appropriate regulator* is obliged to supervise a group or part of a group and hence whether that group or part of a group is a *UK consolidation group*. BIPRU 8 Annex 4 (Text of Articles 125 and 126 of the *Banking Consolidation Directive*) sets out these articles together with an explanation of how those articles should be read in the case of a group which also contains *CAD investment firms*. [deleted]~~

### 8.3 Scope and basic consolidation requirements for ~~non-EEA sub-groups~~ non-UK sub-groups

Main consolidation rule for ~~non-EEA sub-group~~ non-UK sub-groups

- 8.3.1 (1) A BIPRU firm that is a *subsidiary undertaking* of a BIPRU firm or of a *financial holding company* or of a *mixed financial holding company* must apply the requirements laid down in GENPRU 1.2 (Adequacy of financial resources) and the *main BIPRU firm Pillar 1 rules* (but not the *base capital resources requirement*) on a sub-consolidated basis if the BIPRU firm, or the *parent undertaking* where it is a *financial holding company* or a *mixed financial holding company*, have a ~~third country investment services undertaking~~ *third country investment services undertaking* as a *subsidiary undertaking* or hold a *participation* in such an *undertaking*.
- (2) ~~(1) only applies if the *appropriate regulator* is required by the *Banking Consolidation Directive* or the *Capital Adequacy Directive* to supervise the group established under (1) under Article 73(2) of the *Banking Consolidation Directive* (Non-EEA sub-groups). [deleted]~~
- 8.3.2 R Further to BIPRU 8.3.1R, a firm that is a member of a ~~non-EEA sub-group~~ non-UK sub-group must at all times ensure that the *consolidated capital resources* of that ~~non-EEA sub-group~~ non-UK sub-group are equal to or exceed its *consolidated capital resources requirement*.

...

8.3.4 G The *sub-group* identified in *BIPRU* 8.3.1R is called a ~~*non-EEA sub-group*~~ *non-UK sub-group*.

How to identify a ~~*non-EEA sub-group*~~ *non-UK sub-group*

8.3.6 G The remainder of this section sets out a process for identifying a ~~*non-EEA sub-group*~~ *non-UK sub-group* in straightforward cases.

8.3.7 G A *firm* will not be a member of a ~~*non-EEA sub-group*~~ *non-UK sub-group* unless it is also a member of a *UK consolidation group*. So the first step is to identify each *undertaking* in the *firm's UK consolidation group* that satisfies the following conditions:

- (1) it is a *CAD investment firm, financial institution or asset management company* whose head office is outside the ~~*EEA*~~ *UK* (a *third country investment services undertaking*);
- (2) one of the following applies:
  - (a) it is a *subsidiary undertaking* of a *BIPRU firm* in that *UK consolidation group*; or
  - (b) a *BIPRU firm* in that *UK consolidation group* holds a *participation* in it; and
- (3) that *BIPRU firm* is not a *parent institution in a Member State* *the UK*.

8.3.8 G The *sub-group* of the *BIPRU firm* identified in *BIPRU* 8.3.7G(2)(a) or *BIPRU* 8.3.7G(2)(b) is a potential ~~*non-EEA sub-group*~~ *non-UK sub-group*.

8.3.9 G If more than one *BIPRU firm* is a direct or indirect *parent undertaking* in accordance with *BIPRU* 8.3.7G(2)(a) then the *sub-groups* of each of them are all ~~*non-EEA sub-group*~~ *non-UK sub-groups*.

8.3.10 G Similarly if there is more than one *BIPRU firm* that holds a *participation* in the *third country investment services undertaking* in accordance with *BIPRU* 8.3.7G(2)(b) then the *sub-group* of each such *BIPRU firm* is a potential ~~*non-EEA sub-group*~~ *non-UK sub-group*.

8.3.11 G The effect of *BIPRU* 8.3.7G(3) is that a ~~*non-EEA sub-group*~~ *non-UK sub-group* cannot be headed by a *parent institution in a Member State* *the UK*.

8.3.12 G The *firm* should then identify each *undertaking* in the *firm's UK consolidation group* that satisfies the following conditions:

- (1) it is a *CAD investment firm, financial institution or asset management company* whose head office is outside the ~~*EEA*~~ *UK* (a *third country investment services undertaking*);

...

- 8.3.13 G The *sub-group* of the *financial holding company* identified in *BIPRU* 8.3.12G(2)(a) or *BIPRU* 8.3.12G(2)(b) is a potential ~~*non-EEA sub-group*~~ *non-UK sub-group*.
- 8.3.14 G The *financial holding company* identified in *BIPRU* 8.3.12G may be a *parent financial holding company* in ~~a Member State~~ the UK.
- 8.3.15 G If more than one *financial holding company* is a direct or indirect *parent undertaking* in accordance with *BIPRU* 8.3.12G(2)(a) then the *sub-groups* of each of them are all potential ~~*non-EEA sub-groups*~~ *non-UK sub-groups*.
- 8.3.16 G Similarly if there is more than one *financial holding company* that holds a *participation* in the *third country investment services undertaking* in accordance with *BIPRU* 8.3.12G(2)(b) then the *sub-group* of each such *financial holding company* is a potential ~~*non-EEA sub-group*~~ *non-UK sub-group*.
- 8.3.17 G The *firm* should apply the process in *BIPRU* 8.3.12G to a *third country investment services undertaking* even though it may be also be part of a potential ~~*non-EEA sub-group*~~ *non-UK sub-group* under *BIPRU* 8.3.7G.
- 8.3.18 G Having identified potential ~~*non-EEA sub-groups*~~ *non-UK sub-groups* for each *third country investment services undertaking* in its *UK consolidation group* the *firm* should then eliminate overlapping potential ~~*non-EEA sub-groups*~~ *non-UK sub-groups* in the following way. If:
- (1) one potential ~~*non-EEA sub-group*~~ *non-UK sub-group* is contained within a wider potential ~~*non-EEA sub-group*~~ *non-UK sub-group*; and
  - (2) the *third country investment services undertakings* in the two potential ~~*non-EEA sub-groups*~~ *non-UK sub-groups* are the same;
- then the smaller potential ~~*non-EEA sub-group*~~ *non-UK sub-group* is eliminated.
- 8.3.19 G If there is a chain of three or more ~~*non-EEA sub-group*~~ *non-UK sub-groups*, each with the same *third country investment services undertakings*, the elimination process may remove all but the highest.
- 8.3.20 G Each remaining potential ~~*non-EEA sub-group*~~ *non-UK sub-group* is a ~~*non-EEA sub-group*~~ *non-UK sub-group*, even though it may be part of a wider ~~*non-EEA sub-group*~~ *non-UK sub-group*.
- 8.3.22 G If a *UK consolidation group* is headed by a *parent financial holding company* in ~~a Member State~~ the UK the result of the elimination process may be that a *firm's UK consolidation group* contains only one ~~*non-EEA sub-group*~~ *non-UK sub-group* and that the ~~*non-EEA sub-group*~~ *non-UK sub-group* is the same as the *UK consolidation group*. In theory that means that there are two sets of consolidation requirements, one in relation to the *UK consolidation group* and one in relation to the ~~*non-EEA*~~

~~sub-group non-UK sub-group~~. However as the *UK consolidation group* and the ~~non-EEA sub-group non-UK sub-group~~ are the same, in practice this means that the additional ~~non-EEA sub-group non-UK sub-group~~ consolidation disappears.

- 8.3.23 G Even where the requirements for a ~~non-EEA sub-group non-UK sub-group~~ are absorbed into those for the *UK consolidation group* a firm should still make clear in its regulatory reporting that the consolidation figures relate to a *UK consolidation group* and a ~~non-EEA sub-group non-UK sub-group~~ and that they both contain the same members.
- 8.3.24 G The examples in this section have so far assumed that the only *EEA State* involved is the *United Kingdom*. If a potential ~~non-EEA sub-group~~ that would otherwise be regulated by the *appropriate regulator* contains a potential ~~non-EEA sub-group~~ in another *EEA State* then the *United Kingdom* one is eliminated if the *third country investment services undertaking* in the *UK* potential ~~non-EEA sub-group~~ and the potential ~~non-EEA sub-group~~ in the other *EEA State* are the same. The intention here is that the ~~EEA competent authority~~ closest to the *third country investment services undertaking* should be responsible for the ~~non-EEA sub-group~~ subconsolidation. Example 6 in *BIPRU 8 Annex 3* (Examples of how to identify a ~~non-EEA sub-group~~) illustrates this situation. [deleted]

## 8.4 CAD Article 22 groups and investment firm consolidation waiver

...

The effect of an investment firm consolidation waiver and the conditions for getting one

...

- 8.4.3 G An *investment firm consolidation waiver* will waive the application of *BIPRU 8.2.1R* and *BIPRU 8.2.2R* (if it applies with respect to a *UK consolidation group*) or *BIPRU 8.3.1R* and *BIPRU 8.3.2R* (if it applies with respect to a ~~non-EEA sub-group non-UK sub-group~~). The effect will be to switch off this chapter with respect to the group in question apart from this section.
- 8.4.4 G The *FCA* will not grant an *investment firm consolidation waiver* unless:
- (1) the *UK consolidation group* or ~~non-EEA sub-group non-UK sub-group~~ meets the conditions for being a *CAD Article 22 group*;
  - (2) the *FCA* is satisfied that each *BIPRU firm* in the *UK consolidation group* or ~~non-EEA sub-group non-UK sub-group~~ will be able to meet its capital requirements using the calculation of *capital*

resources in GENPRU 2 Annex 6R (Capital resources table for a BIPRU firm with a waiver from consolidated supervision); and

- (3) the *firm* demonstrates that the requirements in BIPRU 8.4.11R to BIPRU 8.4.18R will be met.

...

#### Meeting the terms of an investment firm consolidation waiver

8.4.7 R If a *firm* has an *investment firm consolidation waiver* with respect to its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* but that *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* ceases to meet the definition of a *CAD Article 22 group* the *firm* must comply with the rest of this chapter rather than this section notwithstanding the *investment firm consolidation waiver*.

8.4.8 G Compliance with the capital requirements set out in BIPRU 8.4.11R is a condition under the *Capital Adequacy Directive* for the exemption from capital requirements as it applies in accordance with article 95(2) of the UK CRR. Thus if they are breached the *FCA* is likely to revoke the *investment firm consolidation waiver*.

#### Definition of a CAD Article 22 group

- 8.4.9 R
- (1) A *CAD Article 22 group* means a *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* that meets the conditions in this rule.
  - (2) There must be no *bank*, *building society* or *credit institution* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* and any *investment firm* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* must not be subject to consolidated supervision under the ~~*EU CRR*~~ *UK CRR*.
  - (3) Each *CAD investment firm* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *UK sub-group* ~~which is an *EEA firm*~~ must use the definition of own funds ~~given in the *CRD implementation measure* of its *EEA State* for Article 16 of the *Capital Adequacy Directive* that would be at least equivalent to that which would apply under *GENPRU* and *BIPRU*.~~
  - (4) Each *CAD investment firm* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* must be a:
    - (a) *limited activity firm*; or
    - (b) *limited licence firm*.
  - (5) Each *CAD investment firm* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *UK sub-group* ~~which is an *EEA firm*~~ must:

- (a) meet the requirements ~~imposed by the CRD implementation measures~~ of its ~~EEA State~~ for Articles 18 and Article 20 of the ~~Capital Adequacy Directive~~ that would be at least equivalent to those that would apply under GENPRU and BIPRU on an individual basis; and
- (b) deduct from its own funds any contingent liability in favour of other members of the *UK consolidation group* or ~~non-EEA sub-group~~ UK sub-group.
- (6) Each *BIPRU firm* in the *UK consolidation group* or ~~non-EEA sub-group~~ non-UK sub-group must comply with the *main BIPRU firm Pillar 1 rules* on an individual basis.
- 8.4.10 G ~~GENPRU 2.2 (Capital resources) says that a BIPRU firm with an investment firm consolidation waiver should calculate its capital resources on a solo basis using GENPRU 2 Annex 6 (Capital resources table for a BIPRU firm with a waiver from consolidated supervision). GENPRU 2 Annex 6 requires a BIPRU firm to deduct contingent liabilities in favour of other members of the UK consolidation group or non-EEA sub-group. Therefore BIPRU 8.4.9R(5)(b) only imposes the requirement to deduct them on EEA firms. [deleted]~~

Capital adequacy obligations relating to a CAD Article 22 group: General rule

- 8.4.11 R If a *firm* has an *investment firm consolidation waiver*, it must ensure that any *financial holding company* in the *UK consolidation group* or the ~~non-EEA sub-group~~ non-UK sub-group that is the ~~UK~~ parent financial holding company in in a Member State the UK of a *CAD investment firm* in the *UK consolidation group* or ~~non-EEA sub-group~~ non-UK sub-group has capital resources, calculated under *BIPRU 8.4.12R*, in excess of the sum of the following (or any higher amount specified in the *investment firm consolidation waiver*):
- (1) the sum of the solo notional capital resources requirements for each *CAD investment firm, financial institution, asset management company and ancillary services undertaking* in the *UK consolidation group* or the ~~non-EEA sub-group~~ non-UK sub-group, as calculated in accordance with *BIPRU 8.4.13R*; and
- (2) the total amount of any contingent liability in favour of *CAD investment firms, financial institutions, asset management companies and ancillary services undertakings* in the *UK consolidation group* or ~~non-EEA sub-group~~ non-UK sub-group.

Capital adequacy obligations relating to a CAD Article 22 group: Capital resources



8.4.12 R A *firm* must calculate the capital resources of the *parent financial holding company in a Member State* the UK for the purpose of BIPRU 8.4.11R as follows:

...

...

Additional rules that apply to a firm with an investment firm consolidation waiver

- 8.4.18 R If a *firm* has an *investment firm consolidation waiver*, it must:
- (1) ensure that each *CAD investment firm* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* which is a *firm* or ~~an *EEA firm*~~ has in place systems to monitor and control the sources of capital and funding of all the members in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*;
  - (2) notify the *FCA* of any serious risk that could undermine the financial stability of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*, as soon as the *firm* becomes aware of that risk, including those associated with the composition and sources of the capital and funding of members of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*;
  - (3) report the amount of the *consolidated capital resources* and *consolidated capital resources requirement* of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* on a periodic basis as set out in the *investment firm consolidation waiver*;
  - (4) report any *large exposures* risks of members of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* including any undertakings not located in ~~an *EEA State*~~ *the UK* on a periodic basis set out in the *investment firm consolidation waiver*;
  - (5) notify the *FCA* immediately it becomes aware that the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* has ceased to meet the conditions for being a *CAD Article 22 group*; and
  - (6) notify the *FCA* immediately it becomes aware of any breach of BIPRU 8.4.11R.

8.4.19 G Although an *investment firm consolidation waiver* switches off most of this chapter, a *firm* should still carry out the capital adequacy calculations in BIPRU 8.3 to BIPRU 8.8 as if those parts of this chapter still applied to the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* and report these to the *FCA*. It should also still monitor *large exposure* risk on a consolidated basis.

## 8.5 Basis of consolidation

### Undertakings to be included in consolidation

- 8.5.1 R A *firm* must include only the following types of *undertaking* in a *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* for the purposes of this chapter:
- ...
- 8.5.2 G Although an *undertaking* falling outside *BIPRU 8.5.1R* will not be included in a *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* it may be relevant in deciding whether one *undertaking* in the *banking sector* or the *investment services sector* is a *subsidiary undertaking* of another with the result that they should be included in the same *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.
- 8.5.3 G An example of *BIPRU 8.5.2G* is as follows. Say that the *undertaking* at the head of a *BIPRU firm's UK group* is a *parent financial holding company in a Member State the UK*. One of its *subsidiary undertakings* is the *firm*. The *parent financial holding company in a Member State the UK* also has an *insurer* as a *subsidiary undertaking*. That *insurer* has several *BIPRU firms* as *subsidiary undertakings*. Say that the *UK group* is not a *financial conglomerate*. The *UK consolidation group* will include the *parent financial holding company in a Member State the UK* and the *firm*. It will also include the *BIPRU firms* that are *subsidiary undertakings* of the *insurer*. This is because the *BIPRU firms* are *subsidiary undertakings* of the *parent financial holding company in a Member State the UK* through the *parent financial holding company in a Member State's the UK's* holding in the *insurer*. However it will not include the *insurer* itself.

### Basis of inclusion of undertakings in consolidation

- 8.5.4 R A *firm* must include any *subsidiary undertaking* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* in full in the calculations in this chapter.
- 8.5.5 R In carrying out the calculations for the purposes of this chapter a *firm* must only include the relevant proportion of an *undertaking* that is a member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*:
- ...
- 8.5.6 R In *BIPRU 8.5.5R*, the relevant proportion is either:
- (1) (in the case of a *participation*) the proportion of *shares* issued by the *undertaking* held by the *UK consolidation group* or the ~~*non-EEA sub-group*~~ *non-UK sub-group*; or

...

...

## Exclusion of undertakings from consolidation: Other reasons

- 8.5.11 R ~~Article 73(1) of the Banking Consolidation Directive~~ allows Article 95(2) preserves the discretion for the appropriate regulator to decide to exclude a *BIPRU firm, financial institution, asset management company or ancillary services undertaking* that is a *subsidiary undertaking* in, or an *undertaking* in which a *participation* is held by, the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* for the purposes of this chapter in the following circumstances:
- (1) where the head office of the *undertaking* concerned is situated in a country outside the ~~*EEA*~~ *UK* where there are legal impediments to the transfer of the necessary information; or

...

...

## Information about excluded undertakings

- 8.5.14 G The *appropriate regulator* may require a *firm* to provide information about the *undertakings* excluded from consolidation of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* pursuant to this section.

**8.6 Consolidated capital resources**

## General

- 8.6.1 R A *firm* must calculate the *consolidated capital resources* of its *UK consolidation group* or its ~~*non-EEA sub-group*~~ *non-UK sub-group* by applying *GENPRU 2.2* (Capital resources) to its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* on an accounting consolidation basis, treating the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as a single *undertaking*. The *firm* must adjust *GENPRU 2.2* in accordance with this section for this purpose.

## Notification of issuance of capital instruments

- 8.6.1A R This section applies to a *firm* if another member of its *group* intends to issue a *capital instrument* on or after 1 March 2012 for inclusion in the *firm's capital resources* or *consolidated capital resources* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.
- 8.6.1B R A *firm* must notify the *appropriate regulator* in writing of the intention of another member of its *group* which is not a *firm* to issue a *capital*

*instrument* which the *firm* intends to include within its *capital resources* or the *consolidated capital resources* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as soon as it becomes aware of the intention of the *group undertaking* to issue the *capital instrument*. When giving notice, a *firm* must:

...

...

8.6.1D R If a *group undertaking* proposes to establish a debt securities program for the issue of *capital instruments* which the *firm* intends to include within its *capital resources* or the *consolidated capital resources* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*, it must:

...

8.6.1E R The *capital instruments* to which *BIPRU* 8.6.1BR does not apply are:

...

(3) *capital instruments* which are not materially different in terms of their characteristics and eligibility for inclusion in a particular tier of capital to *capital instruments* previously issued by a *group undertaking* for inclusion in the *firm's capital resources* or *consolidated capital resources* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.

8.6.1F R A *firm* must notify the *appropriate regulator* in writing, no later than the date of issue, of the intention of a *group undertaking* to issue a *capital instrument* listed in *BIPRU* 8.6.1ER which the *firm* intends to include within its *capital resources* or the *consolidated capital resources* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*. When giving notice a *firm* must:

...

#### Limits on the use of different forms of capital

8.6.2 R The *capital resources gearing rules* apply for the purposes of calculating *consolidated capital resources*. They apply to the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* on an accounting consolidation basis, treating the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as a single undertaking.

8.6.3 R As the various components of capital differ in the degree of protection that they offer, the *capital resources gearing rules* as applied on a consolidated basis place restrictions on the extent to which certain types of capital are eligible for inclusion in a *UK consolidation group* or ~~*non-EEA sub-group's*~~ *non-UK sub-group's* *consolidated capital resources*. *GENPRU*

2.2.25R (Limits on the use of different forms of capital: Use of higher tier capital in lower tiers) also applies.

...

#### Calculation of consolidated capital resources for a BIPRU firm group

- 8.6.8 R A firm must calculate *the consolidated capital resources* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* using the calculation of capital resources in *GENPRU 2 Annex 4* (Capital resources table for a BIPRU firm deducting material holdings) or *GENPRU 2 Annex 5* (Capital resources table for a BIPRU firm deducting illiquid assets).

...

#### Treatment of minority interests

- 8.6.10 R (1) This *rule* sets out how to determine whether minority interests in an *undertaking* in a *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* may be included in *tier one capital*, *tier two capital* or *tier three capital* for the purpose of calculating *consolidated capital resources* (each referred to as a “tier” of capital in this rule).

...

#### Indirectly issued capital and group capital resources

...

- 8.6.12 R *Consolidated indirectly issued capital* means any *capital instrument* issued by a member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* where:

- (1) ...
- (2) any of the *SPVs* referred to in (1) is a member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* or a *subsidiary undertaking* of any member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.

- 8.6.13 R A firm may only include *consolidated indirectly issued capital* in the *consolidated capital resources* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* if:

- (1) it is issued by an *SPV* that is a member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* to persons who are not members of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*; and

...

- 8.6.14 R *Consolidated indirectly issued capital* that is eligible for inclusion in the *consolidated capital resources* of a *UK consolidation group* ~~*non-EEA sub-group*~~ *non-UK sub-group* may only be included as a minority interest created by the *capital instrument* issued by the *SPV* referred to in *BIPRU* 8.6.13R. If it is eligible, it is *innovative tier one capital*.
- 8.6.15 R For the purposes of this section, an *undertaking* is an *SPV* if the main activity of the *SPV* is to raise funds for *undertakings* in:
- (1) (in the case of a *UK consolidation group*) that *UK consolidation group*; or
  - (2) (in the case of a ~~*non-EEA sub-group*~~ *non-UK sub-group*) that ~~*non-EEA sub-group*~~ *non-UK sub-group* or any *UK consolidation group* of which it forms part.
- 8.6.16 R The *SPV* referred to in *BIPRU* 8.6.13R must satisfy the conditions in *GENPRU* 2.2.127R (Conditions that an *SPV* has to satisfy if indirectly issued capital is to be included in *capital resources* on a solo basis) as modified by the following:
- (1) references in *GENPRU* 2.2.127R(1) to being controlled by the *firm* are to being controlled by a member of the *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as the case may be; and
  - (2) references to the *firm's group* are to the *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as the case may be.
- 8.6.17 R The capital issued by the *SPV* referred to in *BIPRU* 8.6.13R must satisfy the conditions in *GENPRU* 2.2.129R (Conditions that capital issued by an *SPV* has to satisfy if indirectly issued capital is to be included in capital resources on a solo basis) as modified by the following:
- (1) references to the *firm's group* are to the *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as the case may be;
  - (2) the substitution obligation in *GENPRU* 2.2.129R(2) need not be the *firm's* but may apply to any member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as the case may be; and
  - (3) that substitution obligation applies if the *consolidated capital resources* of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*, as the case may be, fall, or are likely to fall, below its *consolidated capital resources requirement*.
- 8.6.18 R The *SPV* referred to in *BIPRU* 8.6.13R must invest the funds raised from the issue of capital by the *SPV* by subscribing for capital resources issued

by an *undertaking* that is a member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*. Those capital resources must satisfy the following conditions:

...

...

## 8.7 Consolidated capital resources requirements

### General approach

- 8.7.1 G The calculation of the *consolidated capital resources requirement* of a *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* involves taking the individual components that make up the *capital resources requirement* on a solo basis and applying them on a consolidated basis. Those components are the capital charge for credit risk (the *credit risk capital requirement*), the capital charge for *market risk* (the *market risk capital requirement*) and the *fixed overheads requirement*.

...

### Method of calculation to be used

- 8.7.10 R A *firm* must calculate the *consolidated capital resources requirement* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as the higher of the following *consolidated requirements components*:

...

### Calculation of the consolidated requirement components

- 8.7.11 R A *firm* must calculate a *consolidated requirement component* by applying the *risk capital requirement* applicable to that *consolidated requirement component* to the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* in accordance with *BIPRU* 8.7.13R. ~~Except where *BIPRU* 8.7.34R to *BIPRU* 8.7.38R allow the requirements of another regulator to be used, the~~ The *risk capital requirement* must be calculated in accordance with the *appropriate regulator's rules*. The *risk capital requirement* applicable to a *consolidated requirement component* is the one specified in the second column of the table in *BIPRU* 8.7.12R.

...

### Choice of consolidation method

- 8.7.13 R (1) A *firm* must calculate a *consolidated requirement component* by using one of the methods in this *rule*.
- (2) Under the first method a *firm* must:

- (a) apply the *risk capital requirement* set out in BIPRU 8.7.12R to each *undertaking* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*; and
  - (b) add the *risk capital requirements* together.
- (3) Under the second method a *firm* must:
- (a) treat the whole *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as a single *undertaking*; and
  - (b) apply the *risk capital requirement* set out in BIPRU 8.7.12R to the group on an accounting consolidation basis.
- (4) The third method is a mixture of methods one and two. Under the third method a *firm* must:
- (a) treat one or more parts of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as separate single *undertakings*;
  - (b) apply the *risk capital requirement* set out in BIPRU 8.7.12R to each such part of the group on an accounting consolidation basis;
  - (c) apply the *risk capital requirement* set out in BIPRU 8.7.12R to each of the remaining *undertakings* in the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* (if any); and
  - (d) add the *risk capital requirements* together.
- (5) A *firm* may use different methods for different *consolidated requirement components*.

...

Notifying the appropriate regulator of the choice of consolidation technique

- 8.7.16 R A *firm* must notify the *appropriate regulator* which method under BIPRU 8.7.13R it applies for which *consolidated requirement component* and to which parts of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* it is applying an aggregation approach and to which parts it is applying an accounting consolidation approach.

Special rules for the consolidated credit risk requirement

...

- 8.7.20 R A *firm* may use a combination of the *CCR standardised method*, the *CCR mark to market method* and the *CCR internal model method* on a



permanent basis with respect to the *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* for the purposes of calculating the *consolidated credit risk requirement*. In particular, where the *firm* is permitted to apply the *CCR internal model method* on a consolidated basis with respect to its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*, it may combine the use of *CCR standardised method* and *CCR mark to market method* on a permanent basis for *financial derivative instruments* and *long settlement transaction* not covered by its *CCR internal model method permission*.

- 8.7.21 R *BIPRU 9.4.1R* (Minimum requirements for recognition of significant credit risk transfer) as applied on a consolidated basis requires the transfer to be to a *person* outside the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.
- 8.7.22 R A *firm* must not use both the *financial collateral simple method* and the *financial collateral comprehensive method* with respect to its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*.
- 8.7.23 R (1) A *firm* may only treat an *exposure* as exempt under *BIPRU 3.2.25R* (Zero risk-weighting for intra-group exposures) as applied on a consolidated basis if the member of the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* that has the *exposure*:
- ...
- ...

#### Special rules for the consolidated market risk requirement

- 8.7.24 R For the purposes of calculating the *consolidated market risk requirement* of a *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*, a *firm* must apply *BIPRU 1.2.3R* (Definition of the trading book) and *BIPRU 1.2.17R* (Size thresholds for the purposes of the definition of the trading book) to the whole *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as if the group were a single *undertaking*.
- 8.7.25 R A *firm* may not apply the second method in *BIPRU 8.7.13R(3)* (accounting consolidation for the whole group) or apply accounting consolidation to parts of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* under method three as described in *BIPRU 8.7.13R(4)(a)* for the purposes of the calculation of the *consolidated market risk requirement* unless the group or sub-group and the *undertakings* in that group or sub-group satisfy the conditions in this *rule*. Instead the *firm* must use the aggregation approach described in *BIPRU 8.7.13R(2)* (method one) or *BIPRU 8.7.13R(4)(c)*. Those conditions are as follows:
- (1) each of the *undertakings* in that group or sub-group is an *institution* that is:

- (a) a *BIPRU firm*; or
  - (b) ~~an EEA firm that is a CAD investment firm; or [deleted]~~
  - (c) a *recognised third country investment firm*;
- (2) each of the *undertakings* referred to in (1) that is a *BIPRU firm* has *capital resources* that are equal to or in excess of its *capital resources requirement*;
  - (3) ~~each of the undertakings referred to in (1) that is an EEA firm complies with the CRD implementation measures in its EEA State that correspond to the requirements in (2); [deleted]~~
  - (4) each of the *undertakings* referred to in (1) that is a *recognised third country investment firm* complies with laws in the state or territory in which it has its head office that are equivalent to the requirements of the ~~Banking Consolidation Directive or Capital Adequacy Directive~~ GENPRU and BIPRU relating to capital adequacy;

...

#### Special rules for calculating specific consolidated requirement components

- 8.7.28 G *BIPRU 8.7.21R to BIPRU 8.7.26R* are generally examples of the application of the general principles in *BIPRU 8.2.1R* (Main consolidation rule for *UK consolidation groups*) and *BIPRU 8.3.1R* (Main consolidation rule for ~~non-EEA sub-groups~~ non-UK sub-groups). *BIPRU 8.7.20R* and *BIPRU 8.7.25R* are exceptions to those principles.

#### Elimination of intra-group transactions

- 8.7.29 R In accordance with *BIPRU 8.2.1R* and *BIPRU 8.3.1R* (The basic consolidation rules for a *UK consolidation group* or ~~non-EEA sub-groups~~ non-UK sub-groups), a *firm* may exclude that part of the *risk capital requirement* that arises as a result of:
- (1) (in respect of the *consolidated credit risk requirement*) intra-group balances; or
  - (2) (in respect of the *consolidated fixed overheads requirement*) intra-group transactions;

with other *undertakings* in the *UK consolidation group* or ~~non-EEA sub-group~~ non-UK sub-group.

...

#### Use of the solo requirements of another EEA competent authority

- 8.7.34 R ~~A firm may calculate the risk capital requirement for an institution in the firm's UK consolidation group or non-EEA sub-group that is an EEA firm in accordance with the CRD implementation measures in the EEA firm's EEA State that correspond to the appropriate regulator's rules that would otherwise apply under this section if the institution is subject to those CRD implementation measures. [deleted]~~

~~Use of the consolidated requirements of another EEA competent authority~~

- 8.7.37 R (1) This rule applies if:
- (a) ~~a firm is applying an accounting consolidation approach to part of its UK consolidation group or non-EEA sub-group under method three as described in BIPRU 8.7.13R(4)(a); and~~
  - (b) ~~the part of the group in (a) constitutes the whole of a group subject to the consolidated capital requirements of a competent authority under the CRD implementation measures relating to consolidation under the Banking Consolidation Directive or the Capital Adequacy Directive.~~
- (2) ~~If the conditions in this rule are satisfied, a firm may apply the consolidated capital requirement in (1)(b) as the risk capital requirement for the group identified in (1)(a) so far as that consolidated capital requirement corresponds to the appropriate regulator's rules that would otherwise apply under this section. [deleted]~~

~~Prohibition on using the standardised rules of a regulator outside the EEA UK~~

- 8.7.38A R (1) This rule applies to a firm if:
- (a) ~~an institution in its UK consolidation group or non-EEA sub-group~~ non-UK sub-group is subject to any of the rules or requirements of, or administered by, a *third-country competent authority* applicable to its *financial sector* that correspond to the *sectoral rules* applicable to that *financial sector* (“corresponding sectoral rules”); or
  - (b) ~~a part of its UK consolidation group or non-EEA sub-group~~ non-UK sub-group constitutes the whole of a group subject to the consolidated capital requirements of a *third-country competent authority* under the corresponding sectoral rules applicable to the *banking sector* or the *investment services sector* for a state or territory outside the EEA UK.
- (2) A firm may not use the requirements under any of the corresponding sectoral rules of a state or territory outside the EEA

UK in order to calculate the *consolidated capital resources requirement* of its *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* for the purpose of this chapter.

...

## 8.8 Advanced prudential calculation approaches

...

### Prohibition on using the rules of an overseas regulator

- 8.8.3 R Even if a *firm* has an *advanced prudential calculation approach permission* that allows it to use an *advanced prudential calculation approach* for the purposes of this chapter, the *firm* may not use the requirements of another state or territory to the extent they provide for that *advanced prudential calculation approach*. ~~Therefore a *firm* may not use *BIPRU 8.7.34R* and *BIPRU 8.7.37R* (Use of the capital requirements of another EEA competent authority) if that would involve using an *advanced prudential calculation approach*.~~

### Special provisions relating to the internal ratings based approach

- 8.8.4 R The conditions in *BIPRU 4.2.26R* (Combined use of methodologies under the IRB approach) apply to a *firm's UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group* as if that group were a single *undertaking*.

...

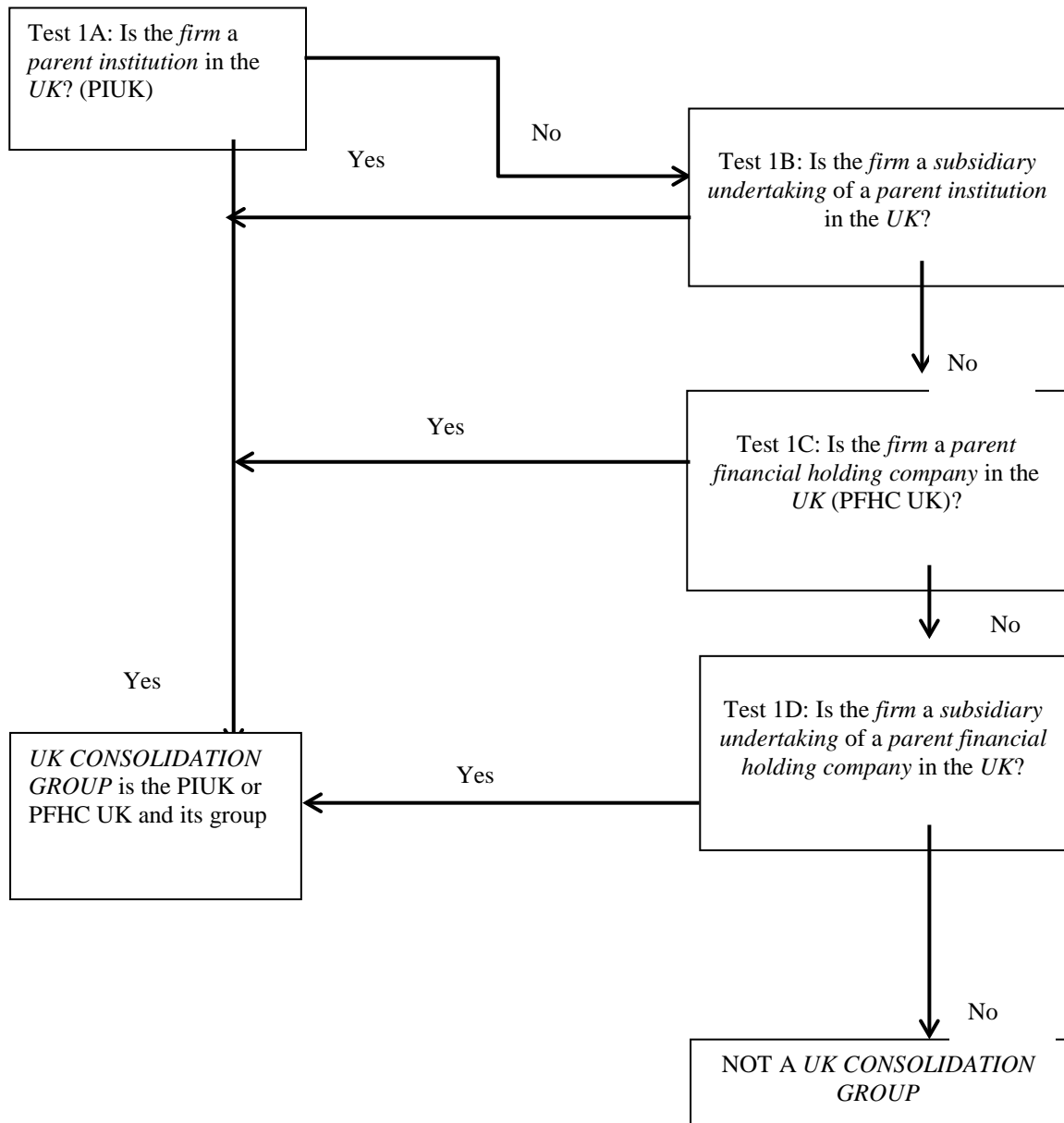
### Corporate governance arrangement for the IRB approach and the AMA

- 8.8.9 G The governance arrangements that apply to the *governing body*, the senior management and any *designated committee* of a *firm* in relation to the *IRB approach* also apply to the body or *persons* with equivalent powers with respect to the *UK consolidation group* or ~~*non-EEA sub-group*~~ *non-UK sub-group*. Where the *parent undertaking* and its *subsidiary undertakings* use rating systems on a unified basis, the approval and reporting process described in *BIPRU 4.3.12G* (Approval and reporting arrangements for the *IRB approach* where rating systems are used on a unified group basis) apply for the purpose of this paragraph too.

...

The current decision tree (diagram) in BIPRU 8 Annex 1 is deleted and is replaced by the one below. The new decision tree (diagram) below is not underlined.

**8 Annex 1R** Decision tree identifying a *UK consolidation group*



BIPRU 8 Annex 4 is deleted in its entirety. The deleted text of the Annex is not shown but it is marked as [deleted] as shown below.

**8 Annex 4G**     **Text of Articles 125 and 126 of the Banking Consolidation Directive**  
[deleted]

Amend the following as shown.

**8 Annex 6R**     **~~Non-EEA~~ Non-UK regulators' requirements deemed ~~CRD~~-equivalent for individual risks**

Regime regulators	Market risk	Credit risk	Operational risk
Part 1 ( <del>Non-EEA</del> <u>Non-UK</u> banking regulators' requirements deemed <del>CRD</del> -equivalent for individual risks)			
...			
Regime regulators	Market risk	Credit risk	Operational risk
Part 2 ( <del>Non-EEA</del> <u>Non-UK</u> investment firm regulators' requirements deemed <del>CRD</del> -equivalent for individual risks)			
...			

## 9 Securitisation

### 9.1 Application and purpose

...

Purpose

- 9.1.2 G Pursuant to the third paragraph of article 95(2) of the ~~EU CRR~~ UK CRR, the purpose of *BIPRU* 9 is to ~~implement~~ apply requirements that correspond to:

...

...

## 11 Disclosure (Pillar 3)

### 11.1 Application and purpose

...

Purpose

- 11.1.2 G Pursuant to the third paragraph of article 95(2) of the ~~EU CRR~~ UK CRR, the purpose of *BIPRU* 11 is to ~~implement~~ apply requirements that correspond to:

...

### 11.2 Basis of disclosures

Disclosure on an individual basis

- 11.2.1 R The following must comply with the obligations laid down in *BIPRU* 11.3 on an individual basis:

- (1) a *firm* which is neither a *parent undertaking* nor a *subsidiary undertaking*;
- (2) a *firm* which is excluded from a *UK consolidation group* or ~~non-EEA sub-group~~ non-UK sub-group pursuant to *BIPRU* 8.5; and

[Note: *BCD* Article 68(3)]

- (3) a *firm* which is part of a *group* which has been granted an *investment firm consolidation waiver* under *BIPRU* 8.4;

[Note: *CAD* Article 23]

~~EEA parent~~ Parent institutions in the UK

- 11.2.2 R A *firm* which is ~~an EEA parent institution~~ a parent institution in the UK must comply with the obligations laid down in *BIPRU* 11.3 on the basis of its consolidated financial situation.

[Note: *BCD* Article 72(1)]

- 11.2.3 R A *firm* which is a significant subsidiary of ~~an EEA parent institution~~ a parent institution in the UK must disclose the information specified in *BIPRU* 11.4.5R on an individual or sub-consolidated basis.

Firms controlled by ~~an EEA~~ a parent financial holding company in the UK

- 11.2.4 R A *firm* controlled by ~~an EEA parent financial holding company~~ a parent financial holding company in the UK or ~~an EEA parent mixed financial holding company~~ a parent mixed financial holding company in the UK must comply with the obligations laid down in *BIPRU* 11.3 on the basis of the consolidated financial situation of that ~~EEA parent financial holding company~~ parent financial holding company in the UK or ~~EEA parent mixed financial holding company~~ parent financial holding company in the UK.

[Note: *BCD* Article 72(2)]

- 11.2.5 R A *firm* which is a significant subsidiary of ~~an EEA parent financial holding company~~ a parent financial holding company in the UK or ~~an EEA parent mixed financial holding company~~ a parent financial holding company in the UK must disclose the information specified in *BIPRU* 11.4.5R on an individual or sub-consolidated basis.

Waiver: Comparable disclosures provided on a consolidated basis by a parent undertaking established in a third country

- 11.2.6 G A *firm* which is included within comparable disclosures provided on a consolidated basis by a *parent undertaking* whose head office is not in ~~an EEA State~~ the UK may apply for a waiver from the relevant disclosure requirements in *BIPRU* 11.2.2R - *BIPRU* 11.2.5R. The *appropriate regulator's* approach to granting *waivers* is set out in the Supervision manual (see *SUP* 8).

[Note: *BCD* Article 72(3)]

- 11.2.7 G A *firm* applying for a *waiver* from one or more of the disclosure requirements in *BIPRU* 11.2.2R - *BIPRU* 11.2.5R will need to:
- (1) satisfy the *appropriate regulator* that it is included within comparable disclosures provided on a consolidated basis by a *parent undertaking* whose head office is not in ~~an EEA State~~ the UK; and



- (2) notify the *appropriate regulator* of the location where the comparable disclosures are provided.

...

#### 11.4 Technical criteria on disclosure: General

...

Disclosures: Significant subsidiaries

- 11.4.5 R A *firm* which is a significant subsidiary of:
- (1) ~~an EEA parent institution~~ a parent institution in the UK; or
  - (2) ~~an EEA parent financial holding company~~ a parent financial holding company in the UK; or
  - (3) ~~an EEA parent mixed financial holding company~~ a parent mixed financial holding company in the UK;

must disclose the information specified in *BIPRU* 11.5.3R to *BIPRU* 11.5.4R on an individual or sub-consolidated basis.

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

#### 11.5 Technical criteria on disclosure: General requirements

...

Disclosure: Scope of application of directive requirements

- 11.5.2 R A *firm* must disclose the following information regarding the scope of application of the requirements of ~~the Banking Consolidation Directive~~ *GENPRU* and *BIPRU*:

...

...

Disclosures: remuneration

...

- 11.5.19 G The *appropriate regulator* would normally consider the requirements to publish disclosures in accordance with *BIPRU* 11.3.8R and 11.3.9R in respect of *BIPRU* 11.5 as a whole to meet the requirement ~~in paragraph 15 of Annex XII to the Banking Consolidation Directive~~ to publish “regular, at least annual, updates” ~~(as implemented in *BIPRU* 11.5.18R).~~

11.5.20 R (1) A *firm* that is significant in terms of its size, internal organisation and the nature, scope and the complexity of its activities must also disclose the quantitative information referred to in *BIPRU* 11.5.18R at the level of *senior personnel*.

(2) *Firms* must comply with the requirements set out in *BIPRU* 11.5.18R in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities and without prejudice to the *General Data Protection Regulation*. ~~UK or other national transposition of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.~~

[**Note:** Paragraph 15 of Annex XII to the *Banking Consolidation Directive*.]

[**Note:** The *appropriate regulator* has given *guidance* for the purpose of providing a framework for complying with the disclosure requirements of *BIPRU* 11.5.18R in accordance with the proportionality test set out in *BIPRU* 11.5.20R(2).]

...

## 12 Liquidity standards

### 12.1 Application

...

12.1.7 R ~~In relation to an *incoming EEA firm* or a *third country BIPRU firm*, this chapter applies only with respect to the activities of the *firm's UK branch*.  
[deleted]~~

### 12.2 Adequacy of liquidity resources

The overall liquidity adequacy rule

12.2.1 R ...

(2) For the purpose of (1):

...

(b) ~~an *incoming EEA firm* or a *third country BIPRU firm* may not, in relation to its *UK branch*, include liquidity resources other than those which satisfy the conditions in *BIPRU* 12.2.3R; [deleted]~~

...

...

## Branch liquidity resources

- 12.2.3 R ~~The conditions to which *BIPRU* 12.2.1R(2)(b) refers are that the *firm's* liquidity resources are:~~
- ~~(1) under the day to day control of the *UK branch's* senior management;~~
  - ~~(2) held in an account with one or more *custodians* in the sole name of the *UK branch*;~~
  - ~~(3) unenumbered; and~~
  - ~~(4) for the purpose of the *overall liquidity adequacy rule* only, attributed to the balance sheet of the *UK branch*. [deleted]~~
- 12.2.4 G ~~The effect of *BIPRU* 12.2.1R(2)(b) and *BIPRU* 12.2.3R is to require an *incoming EEA firm* or a *third country BIPRU firm* to maintain a local operational liquidity reserve in relation to the activities of its *UK branch*. *BIPRU* 12.9 contains further *guidance* on this point. [deleted]~~

## Liquidity resources: general

...

- 12.2.6 G ~~The *overall liquidity adequacy rule* is expressed to apply to each *firm* on a solo basis. Each *firm* must be able to satisfy that *rule* relying solely on its own liquidity resources. ~~Where the *firm* is an *incoming EEA firm* or a *third country BIPRU firm*, compliance with the *overall liquidity adequacy rule* with respect to the *UK branch* must be achieved relying solely on liquidity resources that satisfy the conditions in *BIPRU* 12.2.3R.~~~~
- 12.2.7 G ~~The starting point, therefore, is that each *firm*, or where relevant its *UK branch*, must be self-sufficient in terms of its own liquidity adequacy. The *appropriate regulator* does, however, recognise that there are circumstances in which it may be appropriate for a *firm* or *branch* to rely on liquidity support provided by other entities in its *group* or from elsewhere within the *firm*. A *firm* wishing to rely on support of this kind, whether for itself or for its *UK branch*, may only do so with the consent of the *appropriate regulator*, given by way of a *waiver* under section 138A (Modification or waiver of rules) of the *Act* to the *overall liquidity adequacy rule*.~~

...

**12.3 Liquidity risk management**

...

## Overarching liquidity systems and controls requirements

...

- 12.3.5 R The strategies, policies, processes and systems referred to in *BIPRU* 12.3.4R must be proportionate to the complexity, risk profile and scope of operation of the *firm*, and the liquidity risk tolerance set by the *firm's governing body* in accordance with *BIPRU* 12.3.8R, ~~and must reflect the *firm's* importance in each *EEA State*, in which it carries on business.~~
- [**Note:** article 86(2) (part) of the *CRD*]

...

#### Management of collateral

...

- 12.3.22B R A *firm* must also have regard to existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, both within and outside the *EEA UK*.
- [**Note:** article 86(6) of the *CRD*]

...

## 12.4 Stress testing and contingency funding

...

#### Contingency funding plans

...

- 12.4.11 R A *firm* must have in place liquidity recovery plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls, ~~including in relation to *branches* established in another *EEA State*.~~ Those plans must be tested at least annually, updated on the basis of the outcome of the alternative scenarios set out in *BIPRU* 12.4.-1R, and be reported to and approved by the *firm's governing body*, so that internal policies and processes can be adjusted accordingly. A *firm* must take the necessary operational steps in advance to ensure that liquidity recovery plans can be implemented immediately.
- [**Note:** article 86(11) (part) of the *CRD*]

...

## 12.5 Individual Liquidity Adequacy Standards

...

#### Wholesale secured and unsecured funding risk

...

- 12.5.18 G In the *appropriate regulator's* view, Type A wholesale funding is likely to include at least funding which:
- ...
- (5) is accepted from overseas counterparties (other than those in the country or territory of incorporation of a *firm's parent undertaking* or, in the case of a *UK branch*, of the *firm* of which it forms part); or
- ...

...

#### Intra-group liquidity risk

...

- 12.5.38 R ~~In relation to an *incoming EEA firm* or *third country BIPRU firm* which does not have a *whole firm liquidity modification*, that *firm* must assess the risk that its *UK branch* may be exposed to calls on liquidity under its control from its head office:~~
- (1) ~~in normal financial conditions; and~~
- (2) ~~under the liquidity stresses required by *BIPRU 12.5.6R*. [deleted]~~

- 12.5.39 R ~~In complying with *BIPRU 12.5.38R* a *firm* is therefore assessing its exposure to *inter-office liquidity risk*, rather than *intra-group liquidity risk*. It is the *appropriate regulator's* assessment of the *firm's inter-office liquidity risk* that is one of the factors that will inform the *appropriate regulator's* decision as to the appropriate size for the *firm's* local operational liquidity reserve (as described in *BIPRU 12.2*). [deleted]~~

...

## 12.7 Liquid assets buffer

...

- 12.7.5 R Subject to *BIPRU 12.7.6R*, for the purpose of *BIPRU 12.7.2R(3)* a *firm* may include reserves in the form of sight deposits held by the *firm* with the central bank of a third country:
- (1) ~~an *EEA State*; or~~
- (2) ~~Canada, the Commonwealth of Australia, Japan, Switzerland or the United States of America.~~
- 12.7.6 R For the purpose of *BIPRU 12.7.5R*, a *firm* may not include reserves held at a central bank unless:

- (1) the central bank in question has been assessed by at least two *eligible ECAIs* as having a credit rating associated with credit quality step 1 in the table set out in *BIPRU 12 Annex 1R* (Mapping of credit assessments of *ECAIs* to credit quality steps); ~~and~~
- (2) those reserves are denominated in the domestic currency of the central bank in question; and
- (3) there are no legal or practical impediments to the firm using or withdrawing those reserves.

...

## 12.8 Cross-border and intra-group management of liquidity

- 12.8.1 R Every *firm* subject to *BIPRU 12* is subject to the *overall liquidity adequacy rule*. The effect of that rule is that every *firm* is required to be self-sufficient in terms of liquidity adequacy and to be able to satisfy that rule relying on its own liquidity resources. ~~Where the firm is an incoming EEA firm or third country BIPRU firm compliance with the overall liquidity adequacy rule with respect to the UK branch must be achieved relying solely on liquidity resources that satisfy the conditions in BIPRU 12.2.3R.~~
- 12.8.2 G However, the *appropriate regulator* recognises that there may be circumstances in which it would be appropriate for a *firm* to rely on liquidity resources which can be made available to it by other members of its *group*, ~~or for a firm to rely on liquidity resources elsewhere in the firm for the purposes of ensuring that its UK branch has adequate liquidity resources in respect of the activities carried on from the branch.~~ Where the *appropriate regulator* is satisfied that the statutory tests in section 138A (Modification or waiver of rules) of the *Act* are met, the *appropriate regulator* will consider modifying the *overall liquidity adequacy rule* to permit reliance on liquidity support of this kind.
- 12.8.3 G *BIPRU 12.8* provides *guidance* on ~~two types~~ a type of modification to the *overall liquidity adequacy rule* and to other *rules* in *BIPRU 12* for which the *appropriate regulator* considers a *firm* may wish to apply, namely:
- (1) an *intra-group liquidity modification*; ~~and~~
  - (2) ~~a whole firm liquidity modification.~~ [deleted]
- 12.8.4 G In considering whether the statutory tests in section 138A of the *Act* have been met, the *appropriate regulator* will, amongst others, have regard to the factors detailed below in relation to an *intra-group liquidity modification* (of the kind permitting the inclusion in a *firm's* liquidity resources of *parent undertaking* liquidity support) ~~and a whole firm liquidity modification.~~ In practice it is likely that the *appropriate regulator* will view these as preconditions to the grant of an *intra-group liquidity modification* of that type ~~or a whole firm liquidity modification~~ and will therefore ordinarily need to be satisfied fully that each has been adequately

addressed. They include matters on which the *appropriate regulator* will need to reach agreement with ~~the Home State regulator, third country competent authority, or other~~ another relevant supervisor, and also matters which it will need to agree directly with a *firm* or the *parent undertaking* of a *firm*. It is likely that a number of these matters will be reflected as requirements or conditions in the modification.

- 12.8.5 G This section represents merely an indication of the matters to which the *appropriate regulator* will have regard in considering an application for a ~~whole firm liquidity modification~~ or an *intra-group liquidity modification*. In considering such an application, the *appropriate regulator* will always take into account anything that it reasonably considers to be relevant for the purposes of assessing whether the statutory tests in section 138A of the *Act* are met. In doing so, it will have regard to the role and importance of a *firm* or ~~UK branch~~ in the *UK financial system*.

...

#### Whole firm liquidity modification: general

- 12.8.22 G In relation to an *incoming EEA firm* or *third country BIPRU firm*, the *overall liquidity adequacy rule* provides that, for the purpose of complying with that *rule*, a *firm* may not, in relation to its *UK branch*, include liquidity resources other than those which satisfy the conditions in *BIPRU 12.2.3R*. Those conditions seek to ensure that a *firm* of this kind has a reserve of liquidity for operational purposes that is under the control of, and available for use by, that *firm's UK branch*. Further *guidance* is given in *BIPRU 12.5.39G* in relation to the local operational liquidity reserve. In addition, *BIPRU 12.9.10G* explains how the *appropriate regulator* will approach the giving of *individual liquidity guidance* to an *incoming EEA firm* or *third country BIPRU firm*. The *appropriate regulator* does, however, recognise that there are circumstances in which it may be appropriate for a *UK branch* to rely on the availability of liquidity resources from elsewhere within the *firm*. A *firm* wishing to rely on support of this kind for its *UK branch* may apply for a modification to the *overall liquidity adequacy rule* where it considers that the statutory tests in section 138A of the *Act* are met. [deleted]
- 12.8.23 G Although an *incoming EEA firm* or *third country BIPRU firm* may apply to modify the *overall liquidity adequacy rule* and other *rules* in *BIPRU 12*, in relation to its *UK branch*, the *appropriate regulator* anticipates that many such *firms* will wish to apply for a modification in the form which the *appropriate regulator* defines as a *whole firm liquidity modification*. In the *appropriate regulator's* view, a modification to the *overall liquidity adequacy rule* for a *firm* of this kind will tend to be appropriate where an applicant *firm* manages its liquidity on an integrated, ~~whole firm~~ basis. Where that is the case, and having regard to the matters outlined in the *guidance* in this section, the *appropriate regulator* is likely to consider it more appropriate for the *UK branch* to be subject, in large part, to the same regulatory liquidity regime which applies to the rest of the *firm*. In granting a *whole firm liquidity modification* the *appropriate regulator* therefore

recognises that in certain circumstances a *UK branch* can have adequate liquidity resources in circumstances where the liquidity resources upon which the *firm* seeks to rely do not meet the criteria set out in *BIPRU 12.2.3R*. [deleted]

- 12.8.24 G Accordingly, a *whole firm liquidity modification* envisages:
- (1) a modification to the *overall liquidity adequacy rule* so as to permit reliance by the *firm*, in relation to its *UK branch*, on liquidity resources wherever held in the *firm* for the purposes of meeting that *rule*; and
  - (2) a *waiver* of the remainder of the substantive *rules* in *BIPRU 12*, with the effect that the *UK branch* of the applicant *firm* becomes subject for the purpose of day-to-day liquidity supervision to the liquidity regime of the *Home State regulator* or *third country competent authority* in question. [deleted]
- 12.8.25 R The effect of a *whole firm liquidity modification* is that the *appropriate regulator* will in its supervision of the liquidity of the *UK branch* place reliance on the liquidity regime of the *Home State regulator* or *third country competent authority* in question. The *appropriate regulator* will wish to ensure that it has adequate data at the time of consideration of the *whole firm liquidity modification* application and, if the application is granted, on a continuing basis thereafter, about the liquidity position of the *firm* as a whole. It is therefore likely that an applicant *firm* will be asked to provide as part of its application relevant liquidity *data items* covering the liquidity position of the *firm* as a whole. It is also likely that an applicant *firm* will be asked, as part of its application, to provide an appropriately detailed account as to the activities conducted by its *UK branch* as at the date of the application. In addition, the *appropriate regulator* anticipates that an applicant *firm* will be asked to ensure as a condition of the modification, if granted, that it provides relevant *data items*, covering the *whole firm* liquidity position, to the *appropriate regulator* on a continuing basis at a frequency to be determined as part of the *appropriate regulator's* consideration of the applicant *firm's* case but in any event likely to be reflective of the *appropriate regulator's* assessment of the *liquidity risk* profile of the *firm*. [deleted]

#### Consideration of an application for a whole firm liquidity modification

- 12.8.26 G In relation to the *Home State regulator's* or *third country competent authority's* regime of liquidity regulation, the *appropriate regulator* will, before granting a *whole firm liquidity modification*, ordinarily expect to be satisfied that:
- (1) the regime in question delivers outcomes as regards the regulation of the applicant *firm's* *liquidity risk* that are broadly equivalent to those intended by this chapter; and



- (2) there is clarity as to any legal constraints imposed by the *Home State regulator* or *third country competent authority* on the provision of liquidity by a *firm* to its *UK branch*, as well as the potential for such restrictions to be imposed in the future. [deleted]

12.8.27 G In relation to the applicant *firm* in question, the *appropriate regulator* will, before granting a *whole firm liquidity modification*, ordinarily expect to have reached agreement with the *Home State regulator* or *third country competent authority* in a number of areas, including agreement that:

- (1) it will notify the *appropriate regulator* promptly of any material or persistent breaches by that *firm* of its liquidity rules, or of risks that such breaches are imminent;
- (2) it is satisfied with the adequacy of the arrangements in place for *firm wide liquidity risk* management;
- (3) it is satisfied as to the adequacy of that *firm's* liquidity resources including the size and quality of its liquid assets buffer;
- (4) it does not object to any undertakings given by that *firm* in respect of its *UK branch* to ensure that the *branch* has adequate liquidity resources; and
- (5) it will have due regard to the views of the *appropriate regulator* in its supervision of that *firm's* liquidity position. [deleted]

12.8.28 G In relation to the applicant *firm* in question, the *appropriate regulator* will, before granting a *whole firm liquidity modification*, ordinarily expect to have reached agreement with that *firm* in a number of areas, including agreement that:

- (1) it will make available liquidity resources at all times to its *UK branch* if needed;
- (2) it will make available to the *appropriate regulator* information in an appropriate format on *firm wide* liquidity;
- (3) it will notify the *appropriate regulator* at the same time as it notifies the *Home State regulator* or *third country competent authority* of any issues relevant to the liquidity position of its *UK branch* or compliance with the rules to which it is subject in respect of its liquidity (including with the terms of its *whole firm liquidity modification*);
- (4) its *UK branch* will continue to be fully integrated with the rest of the *firm* for *liquidity risk* management purposes;
- (5) it will participate in the *appropriate regulator's* thematic supervisory work in relation to liquidity when requested to do so by the *appropriate regulator*. [deleted]

## Ongoing requirements

- 12.8.29 G The *appropriate regulator* also anticipates that a *whole firm liquidity modification* would be made subject to a number of ongoing conditions and requirements. These are likely to include:
- (1) the *appropriate regulator* receiving annual confirmation from the *Home State regulator* or *third country competent authority* that it remains satisfied with the arrangements in respect of that *firm* for liquidity supervision and their operation;
  - (2) an annual meeting with the *Home State regulator* or *third country competent authority* to discuss liquidity supervision of that *firm*;
  - (3) the *appropriate regulator* receiving annual confirmation from the *firm*, approved by its *governing body*, that it remains in full compliance with the terms of its *whole firm liquidity modification*; and
  - (4) as at the first anniversary of the grant of the *whole firm liquidity modification* and on each anniversary thereafter, the *appropriate regulator* receiving from the *firm*:
    - (a) an appropriate account of the activities conducted by the *UK branch* over the previous year; and
    - (b) a copy of the *firm's* latest business plan where this differs from that previously sent to the *appropriate regulator* after grant of its *whole firm liquidity modification*. [deleted]
- 12.8.30 G In determining the appropriate duration of a *whole firm liquidity modification*, the *appropriate regulator* will have regard to the role and importance of the *UK branch* in question in the *UK financial system*. In some cases, the *appropriate regulator* may take the view that a *whole firm liquidity modification*, covering a *UK branch* whose role and importance in the *UK financial system* are significant, ought to be reviewed more regularly than one granted in respect of a less systemically significant *branch*. The *appropriate regulator* will consider this issue in determining the appropriate duration of such a modification. The *appropriate regulator* is also likely to consider it appropriate in modifications other than those of short duration to reflect in the terms of the modification representations made either in an applicant *firm's* business plan or direct to the *appropriate regulator* as part of the application process, but in either case as to the expected nature and size of the *UK branch's* activities over the course of the duration of the modification. Where requirements are included in a modification in relation to these matters, a *firm* that anticipates that it will breach those requirements will need to apply in advance of any such event for a variation to its then existing *whole firm liquidity modification*. In considering an application to vary, the *appropriate regulator* will consider afresh whether the tests in section 138A of the *Act* continue to be met for

~~the grant of a whole firm liquidity modification to the firm in question.~~  
~~[deleted]~~

...

## 12.9 Individual liquidity guidance and regulatory intervention points

...

Additional guidance for branches

- 12.9.10 G In relation to an *incoming EEA firm* or *third country BIPRU firm*, where the *appropriate regulator* gives that *firm individual liquidity guidance* in relation to its *UK branch*, it will have regard to the *liquidity risk* profile of the *branch*. In the absence of a *whole firm liquidity modification*, the effect of *BIPRU 12.2.1R(2)(b)* and *BIPRU 12.2.3R* is to require the *firm* to hold a liquid assets buffer of the amount identified as appropriate in its *individual liquidity guidance* (or in the case of a *simplified ILAS BIPRU firm*, the amount of its *simplified buffer requirement* unless this has been superseded by the *appropriate regulator* issuing *individual liquidity guidance* to the *firm* in question) in the form of a local operational liquidity reserve. Further *guidance* is given in *BIPRU 12.5.39G* in relation to the local operational liquidity reserve. In determining the appropriate size of such a *firm's* liquid assets buffer the *appropriate regulator* will have regard to all relevant factors, including the extent to which the *appropriate regulator* has adequate data to enable it to assess accurately the *liquidity risk* elsewhere in the *firm* beyond its *UK branch*. ~~[deleted]~~

...

## 13 The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions

### 13.1 Application and Purpose

...

Purpose

- 13.1.4 G Pursuant to the third paragraph of article 95(2) of the ~~EU CRR~~ UK CRR, *BIPRU 13* ~~implements~~ applies requirements that correspond to:

...

...

### 13.3 Calculation of exposure values for financial derivatives and long settlement transactions: General provisions

...

## Definition of financial derivative instrument

13.3.3 R Each of the following is a *financial derivative instrument*:

...

- (3) a contract of a nature similar to those in 1(a) to (e) and 2(a) to (d) concerning other reference items or indices, including as a minimum all instruments specified in ~~points paragraphs~~ 4 to 7, 9 and 10 of ~~Section C of Annex I to the MIFID~~ Part 1 of Schedule 2 to the Regulated Activities Order not otherwise included in (1) or (2).

[Note: BCD Annex IV]

...

## 13.6 CCR internal model method

...

## Use of other models

13.6.9 G ~~Point 2 of Part 6 of Annex III of the Banking Consolidation Directive provides that a~~ A firm using the *CCR internal model method* may use a type of model other than the type set out in *BIPRU 13.6*. If the *appropriate regulator* agrees to this the details of the model and the necessary calculations will be set out in the *CCR internal model method permission*, which will modify *BIPRU 13.6* to the extent necessary. The *appropriate regulator* would not expect to agree to such a request unless the *firm* was able to satisfy the *appropriate regulator* that the method was at least as conservative as the method set out in *BIPRU 13.6* and in particular that, for every *counterparty*, any method was more conservative than alpha multiplied by *effective EPE* calculated according to the equation in *BIPRU 13.6.27R*.

[Note: BCD Annex III Part 6 point 2 (second sentence) and point 11]

...

## 14 Capital requirements for settlement and counterparty risk

### 14.1 Application and purpose

...

## Purpose

14.1.3 G Pursuant to the third paragraph of article 95(2) of the ~~EU CRR~~ UK CRR, *BIPRU 14* ~~implements~~ applies requirements that correspond to:

...

...

## TP 2 Capital floors for a firm using the IRB approach

...

### Purpose

- 2.3 G Pursuant to the third paragraph of article 95(2) of the ~~EU CRR~~ UK CRR, this section in part ~~implements~~ applies requirements that correspond to Articles 152(1) - (7) of the *Banking Consolidation Directive* and Article 43 of the *Capital Adequacy Directive*.
- 2.4 G The purpose of this section is to limit the amount of capital reduction arising from the ~~implementation~~ application of the requirements that correspond to the *Banking Consolidation Directive* and the *Capital Adequacy Directive* compared with the requirements arising from the previous versions of those Directives. As such it is effectively a comparison of the capital resource requirements arising from *BIPRU* with those arising from the appropriate *IPRU* sourcebook that would have applied as at 31 December 2006. However the effect of changes to the market risk requirements is removed by requiring *BIPRU* 7 (Market risk) to be used for both sides of the comparison.

### How to apply the capital floors

...

- 2.6 G ~~The Directive provisions on which this section is based are written as a floor on a firm's capital resources requirement. This section is intended as a floor on the firm's capital resources.~~ This section is intended as a floor on the firm's capital resources. This section ~~however~~ is also written as a second capital resources requirement that sits beside the general capital resources requirements of *BIPRU* and *GENPRU*. The reason for this is that a *firm* should meet the general capital resources requirements of *BIPRU* and *GENPRU* using *capital resources* calculated under *GENPRU* 2.2 (Capital resources). On the other hand a *firm* should meet the capital resources requirements of this section (which are based on *IPRU*) using the relevant *IPRU* definition. In practice the two sets of definitions of capital resources are similar apart from the provisions about *expected loss*. Therefore as shown by the example in *BIPRU* TP 2.12G and *BIPRU* TP 2.13G, in practice a *firm* is subject to a single capital resources requirement.

...

### Waiver from IPRU capital resources requirement

- 2.11A G ~~Article 152(5d) and (5e) of the Banking Consolidation Directive allows the~~ The appropriate regulator to may waive the capital floor calculation based on the *IPRU* capital resources requirement in *BIPRU* TP 2.8R(3) on a case-by-case basis only if a *firm* started to use the *IRB approach* on or after 1 January 2010. The *appropriate regulator* will consider an application for such a *waiver* in the light of the criteria in section 138A of the *Act* (Modification or waiver of rules).

[**Note:** *BCD Annex VII part 1 point 152*]

...

Capital floors: consolidation

...

2.32 R The scope of the consolidation under *BIPRU* TP 2.30R and any exemption from consolidation is determined in accordance with *BIPRU* 8 (Group risk - consolidation) rather than *IPRU*. In particular, the following adjustments apply:

- (1) if a *firm* is a member of a *UK consolidation group* and applies the *IRB approach* with respect to that *UK consolidation group*, *BIPRU* TP 2.30R applies with respect to that *UK consolidation group*; and
- (2) if a *firm* is a member of a ~~*non-EEA sub-group*~~ *non-UK sub-group* and applies the *IRB approach* with respect to that ~~*non-EEA sub-group*~~ *non-UK sub-group*, *BIPRU* TP 2.30R applies with respect to that ~~*non-EEA sub-group*~~ *non-UK sub-group*.

2.33 G If for example the consolidation *rules* that apply for the purposes of this section are those in chapter 14 of *IPRU(INV)* (Consolidated supervision of *investment firms*) then *IPRU(INV)* 14.1 (Application) and 14.2 (Scope of consolidation) do not apply. *BIPRU* 8.2 (Scope and basic consolidation requirements for UK consolidation groups), *BIPRU* 8.3 (Scope and basic consolidation requirements for ~~*non-EEA sub-groups*~~ *non-UK sub-groups*), *BIPRU* 8.4 (CAD Article 22 groups and investment firm consolidation waiver) and *BIPRU* 8.5 (Basis of consolidation) apply instead.

...

## **TP 15 Commodities firm transitionals: Exemption from capital requirements**

Application

15.1 R Subject to *BIPRU* TP 15.2R, *BIPRU* TP 15 applies to a *BIPRU firm*:

- (1) whose main business consists exclusively of the provision of investment services or investment activities in relation to the financial instruments set out in ~~points~~ paragraphs 5, 6, 7, 9 and 10 of Section C of Annex I to the MIFID Part 1 of Schedule 2 to the *Regulated Activities Order*; and

...

...

Purpose

- 15.3 G ~~*BIPRU TP 15 implements*~~ applies requirements that correspond to Article 48(1) of the *Capital Adequacy Directive* as applied pursuant to the discretion in the third paragraph of article 95(2) of the ~~*EU-CRR*~~ *UK CRR*.

...

#### Consolidation

- 15.13 R *BIPRU TP 15* does not apply for the purposes of *BIPRU 8* with respect to a firm's *UK consolidation group* or, as the case may be, ~~*non-EEA sub-group*~~ *non-UK sub-group* unless the following conditions are satisfied:
- (1) there is no *credit institution* in that group;
  - (2) each CAD investment firm in the group meets the conditions in *BIPRU TP 15.1R(1)*; and
  - (3) ~~each CAD investment firm whose head office is in an *EEA State* satisfies the conditions in *BIPRU TP 15.1R(2)*; and [deleted]~~
  - (4) any CAD investment firm whose head office is outside the ~~*EEA*~~ *UK* would have fallen into *BIPRU TP 15.1R(2)* if:
    - (a) its head office had been in an ~~*EEA State*~~ *the UK*; and
    - (b) it had carried on all its business in the ~~*EEA*~~ *UK* and had obtained whatever authorisations for doing so were required under the *ISD* in the form that Directive was in on 31 December 2006.

...

## Annex C

### Amendments to the Prudential sourcebook for Investment Firms (IFPRU)

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

## 1 Application

### 1.1 Application and Purpose

...

Exclusion of certain types of firms

1.1.5 R None of the following is an *IFPRU investment firm*:

- (1) ~~an incoming EEA firm~~ [deleted];
- (2) ~~an incoming Treaty firm~~ [deleted];
- (3) ~~any other~~ an overseas firm;

...

...

Meaning of dealing on own account

1.1.1 R (1) For the purpose of *IFPRU* and the ~~EU CRR~~ UK CRR, dealing on  
2 own account means the service of dealing in any *financial instruments* for own account as referred to in ~~point paragraph~~ paragraph 3 of Section A of Annex I to MiFID Part 3 of Schedule 2 to the Regulated Activities Order, subject to (2) and (3).

- (2) ~~In accordance with article 29(2) of CRD (Definition of dealing on own account), an~~ An investment firm that executes investors' orders for *financial instruments* and holds such *financial instruments* for its own account does not, for that reason, deal on own account if the following conditions are met:

...

- (c) (for an *investment firm* that is an *IFPRU investment firm* ~~or an EEA firm~~) it complies with the requirements in articles 92 to 95 (Own funds requirements for investment firms with limited authorisation to provide investment services) and Part Four (Large exposures) of the ~~EU CRR~~ UK CRR;

...



- (3) ~~In accordance with article 29(4) of CRD, the~~ The holding on non-trading book positions in financial instruments in order to invest in *own funds* is not dealing on own account for the purposes of *IFPRU* 1.1.9R (Types of IFPRU investment firm: IFPRU 125K firm) and *IFPRU* 1.1.10R (Types of IFPRU investment firm: IFPRU 50K firm).

**[Note: article 29(4) of CRD]**

Interpretation of the definition of types of firm and undertaking

- 1.1.1 G 3 A *firm* whose head office is not in ~~an EEA State~~ the UK is an *investment firm* if it would have been subject to the requirements imposed by *MiFID* (but it is not a *bank*, *building society*, *credit institution*, *local firm*, *exempt CAD firm* and *BIPRU firm*) if:
- (1) its head office had been in ~~an EEA State~~ the UK; and
  - (2) it had carried on all its business in ~~an EEA State~~ the UK and had obtained whatever authorisations for doing so as are required under the UK legislation that implemented MiFID.
- ...
- 1.1.1 G 5 For the purposes of the definitions in *IFPRU* and Part Three, Title I, Chapter 1, Section 2 of the ~~EU CRR~~ UK CRR (Own funds requirements for investment firms with limited authorisation to provide investment services), a *person* does any of the activities referred to in *IFPRU* and the ~~EU~~ UK CRR if:
- ...
- (3) ~~(for an EEA firm) it is authorised by its Home State regulator to do that activity; or~~ [deleted]
  - (4) (if the carrying on of that activity is prohibited in a state or territory without an authorisation in that state or territory) that *firm* has such an authorisation.
- ...

## 1.2 Significant IFPRU firm

Purpose

- 1.2.1 G Throughout *CRD* and the ~~EU CRR~~ UK CRR there are various policies which have restricted application based on a *firm's* scope, nature, scale, internal organisation and complexity. These policies are provided in the UK legislation related to the following:

- (1) article 76 of *CRD* on the establishment of an independent risk committee;
- (2) article 88 of *CRD* on the establishment of an independent nominations committee;
- (3) article 91 of *CRD* on the limitations on the number of directorships an individual may hold;
- (4) article 95 of *CRD* on the establishment of an independent remuneration committee;
- (5) article 100 of *CRD* on supervisory stress testing to facilitate the *SREP* under article 97 of *CRD*;
- (6) articles 129 and 130 of *CRD* on applicability of the capital conservation buffer and the countercyclical capital buffer (provided that an exemption from the application of these articles does not threaten the stability of the financial system of the *EEA State UK*);
- (7) article 6(4) of the ~~*EU-CRR*~~ *UK CRR* on the scope of liquidity reporting on an individual basis;
- (8) article 11(3) of the ~~*EU-CRR*~~ *UK CRR* on the scope of liquidity reporting on a consolidated basis; and
- (9) article 450 of the ~~*EU-CRR*~~ *UK CRR* on disclosure on *remuneration*.

...

### 1.3 Supervisory benchmarking of internal approaches for calculating own funds requirements

...

- 1.3.2 G A *firm* must submit the results of the calculations referred to in *IFPRU* 1.3.1R(1), in line with the template set out in the ~~Commission Regulation adopted under article 78(8) of *CRD*, to the *FCA* and to *EBA*~~ *CRD ITS on templates, definitions and IT-solutions*.
- 1.3.3 R Where the *FCA* has chosen to develop specific portfolios ~~in accordance with article 78(2) of *CRD*~~, a *firm* must report the results of the calculations separately from the results of the calculations for ~~*EBA* portfolios~~ referred to in *IFPRU* 1.3.1R.

[**Note:** article 78(2) of *CRD*]

...

### 1.5 Notification of FINREP reporting

...

- 1.5.2 R A firm must notify the FCA if it adjusts its firm's accounting reference date under the ~~Commission Regulation made under article 99 of the EU CRR~~ CRR ITS on supervisory reporting.

...

## 2 Supervisory processes and governance

### 2.1 Application and purpose

[Note: On 19 December 2014, the EBA published guidelines “Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP)”, EBA/GL/2014/13. The FCA has confirmed its intention to make every effort to comply with these guidelines ~~that can be found at: <http://www.eba.europa.eu/documents/10180/935249/EBA-GL-2014-13-%28Guidelines+on+SREP+methodologies+and+processes%29.pdf/>~~.]

...

### 2.2 Internal capital adequacy assessment process

...

- 2.2.4 R A firm which is a UK parent institution ~~in a Member State~~ must comply with the ICAAP rules on a consolidated basis.  
7

[Note: article 108(2) of CRD]

- 2.2.4 R A firm controlled by a UK parent financial holding company ~~in a Member State~~ or a UK parent mixed financial holding company ~~in a Member State~~ must comply with the ICAAP rules on the basis of the consolidated situation of that holding company, if the FCA is responsible for supervision of the firm on a consolidated basis under ~~article 111 of CRD~~ article 4B of the UK CRR.  
8

[Note: article 108(3) of CRD]

- 2.2.4 R A firm that is a subsidiary must apply the ICAAP rules on a sub-consolidated basis if the firm, or the parent undertaking where it is a financial holding company or mixed financial holding company, have an institution or financial institution or an asset management company as a subsidiary in a third country or hold a participation in such an undertaking as members of a ~~non-EEA sub-group~~ non-UK sub-group.  
9

[Note: article 108(4) of CRD]

...

- 2.2.5 R Where a *firm* is a member of a *FCA consolidation group* or a ~~*non-EEA sub-*~~  
9 ~~*group non-UK sub-group*~~, the *firm* must ensure that the risk management processes and internal control mechanisms at those levels comply with the obligations set out in the *risk control rules* on a *consolidated basis* (or a *sub-consolidated basis*).

[Note: article 109(2) of *CRD*]

- 2.2.6 R Compliance with the obligations in *IFPRU 2.2.59R* must enable the *FCA*  
0 *consolidation group* or the ~~*non-EEA sub-group*~~ *non-UK sub-group* to have arrangements, processes and mechanisms that are consistent, well integrated and ensure that data relevant to the purpose of supervision can be produced.

[Note: article 109(2) of *CRD*]

...

- 2.2.8 G A *firm* should include in the written record in *IFPRU 2.2.43R*  
6 (Documentation of risk assessments) a description of the broad business strategy of the *FCA consolidation group* or the ~~*non-EEA sub-group*~~ *non-UK sub-group* of which it is a member, the group's view of its principal risks and its approach to measuring, managing and controlling the risks. This description should include the role of stress testing, scenario analysis and contingency planning in managing risk on an individual basis and *consolidated basis*.

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

...

### 2.3 Supervisory review and evaluation process: internal capital adequacy standards

[Note: On 19 December 2014, the *EBA* published ~~guidelines~~ “Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP)”, *EBA/GL/2014/13*. The *FCA* has confirmed its intention to make every effort to comply with these guidelines ~~that can be found at:~~ <http://www.eba.europa.eu/documents/10180/935249/EBA-GL-2014-13+%28Guidelines+on+SREP+methodologies+and+processes%29.pdf/>.]

...

- 2.3.1 G (1) ...  
2

- (2) In making these assessments, the *FCA* will have regard to the nature, scale and complexity of a *firm's* business and of the major sources of risks relevant to such business as referred to in the *general stress and scenario testing rule* and *SYSC 20* (Reverse stress testing), and the extent to which the *firm* has used any of the capital buffers that are required of it under the UK legislation that implemented the CRD, as applicable.

...

2.3.5 R If *IFPRU 2.3.50R* applies to a *firm* on a *consolidated basis*, the following adjustments are made to *IFPRU 2.3.50R* in accordance with the general principles of Part One, Title II, Chapter 2 of the ~~*EU CRR*~~ *UK CRR* (Prudential consolidation):

- (1) references to *own funds* are to the consolidated *own funds* of the *firm's FCA consolidation group* or, as the case may be, its ~~*non-EEA sub-group*~~ *non-UK sub-group*; and
- (2) references to the capital requirements in Part Three of the ~~*EU UK CRR*~~ (Capital requirements) are to the consolidated capital requirements with respect to the *firm's FCA consolidation group* or, as the case may be, its ~~*non-EEA sub-group*~~ *non-UK sub-group* under Part One, Title II, Chapter 2 of the ~~*EU CRR*~~ *UK CRR* (Prudential consolidation).

...

### 3 Own funds

...

#### 3.3 Basel 1 floor

Permission not to apply the Basel 1 floor

3.3.1 G ~~The *FCA* does not expect that it will waive the application of the Basel 1 floor as contemplated in article 500(2) of the *EU CRR*. [deleted]~~

...

### 4 Credit risk

...

#### 4.2 Standardised approach

...

Retail exposures

- 4.2.6 G Where an *exposure* is denominated in a currency other than the euro, the *FCA* expects a *firm* to use appropriate and consistent exchange rates to determine compliance with relevant thresholds in the *EU-CRR UK CRR*. Accordingly, a *firm* should calculate the euro equivalent value of the *exposure* for the purposes of establishing compliance with the aggregate monetary limit of €1 million for retail *exposures* using a set of exchange rates the *firm* considers to be appropriate. The *FCA* expects a *firm's* choice of exchange rate to have no obvious bias and to be derived on the basis of a consistent approach (see article 123(c) of the *EU-CRR UK CRR*).

...

#### Mapping of ECAIs credit assessments

- 4.2.1 G ~~Until such time as the European Commission adopts implementing~~  
2 ~~technical standards drafted by the European Supervisory Authorities Joint~~  
~~Committee to specify for all ECAIs the relevant credit assessments of the~~  
~~ECAI that correspond to credit quality steps, the FCA expects a firm to~~  
~~continue to have regard to the table mapping the credit assessments of~~  
~~certain ECAIs to credit quality steps produced in accordance with~~  
~~regulation 22(3) of the Capital Requirements Regulations 2006. For~~  
~~mapping of the credit quality step to the credit assessments of eligible~~  
~~ECAIs, refer to: <http://www.fca.org.uk>. [deleted]~~

### 4.3 Guidance on internal ratings based approach: high level material

...

Application of requirements to EEA groups applying the IRB approach on a unified basis

- 4.3.4 G Article 20(6) of the *EU-CRR UK CRR* states that, where the IRB approach is used on a unified basis by those entities which fall within the scope of article 20(6) (~~EEA group~~), the *FCA* is required to permit certain IRB requirements to be met on a collective basis by members of that group. In particular, the *FCA* considers that, where a *firm* is reliant upon a rating system or data provided by another member of its group, it will not meet the condition that it is using the IRB approach on a unified basis unless:
- (1) the *firm* only does so to the extent that it is appropriate, given the nature and scale of the *firm's* business and portfolios and the *firm's* position within the group;
  - (2) the integrity of the *firm's* systems and controls is not adversely affected;
  - (3) the outsourcing of these functions meets the requirements of *SYSC*;  
and

- (4) the abilities of the *FCA* and the *consolidating supervisor* of the group to carry out their responsibilities under the ~~*EU-CRR UK CRR*~~ *UK CRR* are not adversely affected.

...

#### Corporate governance

- 4.3.8 G (1) Where the *firm's* rating systems are used on a unified basis under article 20(6) of the ~~*EU-CRR UK CRR*~~, the *FCA* considers that the governance requirements in article 189 of the ~~*EU-CRR UK CRR*~~ can only be met if the subsidiaries have delegated to the *governing body* or designated committee of the ~~*EEA parent institution UK parent institution, EEA parent financial holding company UK parent financial holding company*~~ or ~~*EEA parent mixed financial holding company UK parent mixed financial holding company*~~ responsibility for approval of the *firm's* rating systems.
- (2) The *FCA* expects an appropriate individual in a *significant-influence function* role to provide to the *FCA* on an annual basis written attestation that the rating system permissions required by the ~~*EU-CRR UK CRR*~~ have been carried out appropriately.

[**Note:** see articles 189 and 20(6) of the ~~*EU-CRR UK CRR*~~ and article 3(1)(7) of *CRD*]

...

- 4.3.1 G 2 The following points set out the level at which the *FCA* expects the 15% test to be applied for a *firm* that is a member of a *group*:
- (1) if a *firm* is part of a group subject to consolidated supervision in the ~~*EEA UK*~~ and for which the *FCA* is the *consolidating supervisor*, the calculations in (1) are carried out with respect to the wider *group*;
- (2) if a *firm* is part of a group subject to consolidated supervision in the ~~*EEA UK*~~ and for which the *FCA* is not the *consolidating supervisor* the calculation in (1) would not apply but the requirements of the *consolidating supervisor* relating to materiality will need to be met for the wider *group*;
- (3) if the *firm* is part of a sub-group subject to consolidated supervision in the ~~*EEA UK*~~ and part of a wider third-country group subject to equivalent supervision by a regulatory authority outside of the ~~*EEA UK*~~, the calculation in (1) would not apply but the requirements of the consolidating or lead regulator relating to materiality would need to be met for both the sub-group and the wider *group*; and

- (4) if the *firm* is part of a sub-group subject to consolidated supervision in the *EEA UK* and is part of a wider third-country group that is not subject to equivalent supervision by a regulatory authority outside of the *EEA UK*, then the calculation in (1) would apply for the wider *group* if supervision by analogy is applied and for the sub-group if other alternative supervisory techniques are applied.

- 4.3.1 G Whether a third-country group is subject to equivalent supervision,  
3 whether it is subject to supervision by analogy or whether other alternative supervisory techniques apply, is decided in accordance with ~~article 127 of CRD (Assessment of equivalence of third countries' consolidated supervision)~~ *GENPRU 3.2 (Third-country groups)*. (See article 150(1)(c) of the *EU CRR UK CRR*.)

...

## 7 Liquidity

### 7.1 Application

...

Application of BIPRU 12 (Liquidity standards)

- 7.1.3 G The *FCA*'s liquidity regime and liquidity reporting in *BIPRU 12 (Liquidity standards)* and *SUP 16 (Reporting requirements)* ~~continue to apply~~ applies to an *IFPRU investment firm* ~~until the liquidity coverage requirement in article 412 of the *EU CRR* becomes applicable in 2015.~~
- 7.1.4 G ~~Pending specification of a uniform definition under article 460 of the *EU CRR (Liquidity)* of high and extremely high liquidity and credit quality, a A firm should be guided by *BIPRU 12 (Liquidity standards)* when complying with article 416 of the *EU CRR (Reporting on liquid assets)*.~~

...

## 8 Prudential consolidation and large exposures

### 8.1 Prudential consolidation

Application

- 8.1.1 R (1) This section applies to an *IFPRU investment firm*.
- (2) This section does not apply to an *exempt IFPRU commodities firm* if the conditions in (2) are met.
- (3) The conditions are:



- (a) article 498 of the ~~EU CRR~~ UK CRR (Exemptions for commodities dealers) applies to it;
- (b) the *exempt IFPRU commodities firm* is not a member of a ~~FCA consolidation group~~ consolidation group or ~~non-EEA sub-group~~ non-UK sub-group;
- (c) each *investment firm* in the group that the *exempt IFPRU commodities firm* belongs to meets the conditions in article 498 of the ~~EU CRR~~ UK CRR; and
- (d) any *investment firm* in the group that the *exempt IFPRU commodities firm* belongs to whose head office is outside the ~~EEA~~ UK would have been a *firm* to whom article 498 would have applied if its head office had been in an ~~EEA State~~ the UK.

...

## 8.2 Large exposures

...

8.2.5 G The FCA expects that applications for exemptions under article 400(2)(c) of the ~~EU CRR~~ UK CRR will be for *firms* established in the *UK* where the intra-group *undertakings* to which they have *exposures* meet the criteria for the *core UK group* in article 113(6) of the ~~EU CRR~~ UK CRR, except for article 113(6)(d) (established in the ~~same EEA State~~ UK).

8.2.6 R A *firm* with a *non-core large exposures group permission* may (in line with that permission) exempt, from the application of article 395(1) of the *EU CRR* (Limits to large exposures), *exposures*, including *participations* or other kinds of holdings, incurred by a *firm* to:

...

in so far as those *undertakings* are covered by the supervision on a *consolidated basis* to which the *firm* itself is subject, in accordance with the *EU CRR*, ~~Directive 2002/87/EC regarding the supplementary supervision of financial entities in a financial conglomerate~~ the UK legislation that implemented the *Financial Groups Directive* or with equivalent standards in force in a *third country*; *exposures* that do not meet these criteria, whether or not exempted from article 395(1), shall be treated as *exposures* to a third party.

[**Note:** article 400(2) of the *EU CRR*]

...

Conditions for exemptions

- 8.2.1 R A firm may only make use of the exemptions provided in this section  
3 where the following conditions are met:
- (1) the specific nature of the *exposure*, the counterparty or the relationship between the *firm* and the counterparty eliminate or reduce the risk of the *exposure*; and
  - (2) any remaining concentration risk can be addressed by other equally effective means, such as the arrangements, processes and mechanisms in ~~article 81 of CRD~~ IFPRU 2.2.22R (Concentration risk).

[**Note:** article 400(3) of the *EU CRR*]

...

## 10 Capital buffers

...

### 10.3 Countercyclical capital buffer

...

#### Calculation of countercyclical capital buffer rates

- 10.3. R (1) To calculate the weighted average in *IFPRU* 10.3.1R, a *firm* must  
2 apply to each applicable *countercyclical buffer rate* its total *own funds requirements* for credit risk, specific risk, incremental default and migration risk that relates to the *relevant credit exposures* in the jurisdiction in question, divided by its total *own funds requirements* for credit risk that relates to all of its *relevant credit exposures*.
- (2) For the purposes of (1), a *firm* must calculate its total *own funds requirement* for credit risk, specific risk, incremental default and migration risk in accordance with Part Three, Titles II (Capital requirements for credit risk) and IV (Own funds requirements for market risk) of the ~~*EU CRR*~~ *UK CRR*.
  - (3) The *countercyclical buffer rate* for an exposure located in the *UK* is the rate set by the *UK countercyclical buffer authority* for the *UK*.
  - (4) ~~The *countercyclical buffer rate* for an exposure located in an *EEA State* other than the *UK* is:~~
    - (a) ~~the rate set by the *EEA countercyclical buffer authority* for that jurisdiction; or~~

- (b) ~~if that rate exceeds 2.5% of total risk exposure amount and has not been recognised by the UK countercyclical buffer authority, 2.5%~~ [deleted]
- (5) The *countercyclical buffer rate* for an exposure located in a *third country* is the rate set by the *UK countercyclical buffer authority* for that jurisdiction.
- (6) If the *UK countercyclical buffer authority* has not set a rate for a *third country*, the *countercyclical buffer rate* for an exposure located in that jurisdiction is:
- (a) the rate set by the *third country countercyclical buffer authority* for that jurisdiction; or
- (b) if that rate exceeds 2.5% and has not been recognised by the *UK countercyclical buffer authority*, 2.5%.
- (7) If the *UK countercyclical buffer authority* has not set a rate for a *third country* and either there is no *third-country countercyclical buffer authority* for that country or the authority has not set a rate for that jurisdiction, the *countercyclical buffer rate* for an exposure located in that jurisdiction is zero.
- (8) If the *countercyclical buffer rate* for the *UK* is increased, that increase takes effect from the date specified by the *UK countercyclical buffer authority*.
- (9) ~~If the *countercyclical buffer rate* for an *EEA State* other than the *UK* is increased, subject to (4)(b), that increase takes effect from:~~
- (a) ~~the date specified by the *EEA countercyclical buffer authority* for that jurisdiction, if the rate applied under this chapter does not exceed 2.5%; or~~
- (b) ~~the date specified by the *UK countercyclical buffer authority* if the rate applied under this chapter exceeds 2.5%. [deleted]~~
- (10) If the *countercyclical buffer rate* for a *third country* is increased by the *UK countercyclical buffer authority*, that increase takes effect from the date specified by the *UK countercyclical buffer authority*.
- (11) If the *UK countercyclical buffer authority* does not set a *countercyclical buffer rate* for a *third country* and that rate is increased by the *third-country countercyclical buffer authority* for that jurisdiction, subject to 6(b), that increase takes effect from:
- (a) the date 12 months after the date on which the increase was published by the *third-country countercyclical buffer authority* in accordance with the relevant law of the *third*

country, if the rate applied under this chapter does not exceed 2.5%; or

- (b) the date specified by the *UK countercyclical buffer authority* if the rate applied under this chapter exceeds 2.5%.

- (12) If a *countercyclical buffer rate* is reduced, that reduction takes effect immediately.

[**Note:** articles 136(4) (part), 139(2) to (5) (part) and 140(1) to (4) and (6) (part) of *CRD*]

#### Location of exposures

- 10.3. G A firm must identify the geographical location of a *relevant credit*  
3 *exposure* in accordance with the ~~regulatory technical standards adopted under article 140(7) of *CRD*~~ *CRD RTS on the identification of the geographical location of credit exposures for calculating institution-specific countercyclical capital buffer rates.*

...

#### 10.6 Application on an individual and consolidated basis

...

##### Application on a consolidated basis

- 10.6. R A firm that is a *UK parent institution* ~~in a *Member State*~~ must comply with  
2 this chapter on the basis of its *consolidated situation*.
- 10.6. R A firm controlled by a *UK parent financial holding company* ~~in a *Member*~~  
3 ~~*State*~~ or a *UK parent mixed financial holding company* ~~in a *Member State*~~ must comply with this chapter on the basis of the *consolidated situation* of that holding company in the *FCA consolidation group*.

...

#### 10.7 Exemption

...

- 10.7. R (1) The condition referred to in *IFPRU* 10.7.1R is that the *firm* is a  
2 ~~small and medium-sized *SME* (as defined in article 4(1)(131) of the *UK CRR*) investment firm.~~
- (2) ~~For this purpose, a *firm* is categorised as small and medium-sized in accordance with the European Commission Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises. [deleted]~~

[Note: articles 129(4) and 130(4) of CRD]

...

## 11 Recovery and resolution

### 11.1 Application and purpose

...

11.1. G (1) ...  
2

(2) *An IFPRU 730k firm may be subject to supervision on a consolidated basis by the FCA, or the PRA ~~or another competent authority.~~*

...

Exclusion of non-UK firms

11.1. R This chapter does not apply to:  
4

(1) ~~an incoming firm; or~~

(2) ~~a firm that is incorporated in, or formed under the law of, a third country.~~

...

Guidance on application

11.1. G (1) ...  
6

(2) *It also applies to financial institutions, financial holding companies and mixed financial holding companies within the same group as these institutions that are subsidiaries of ~~an EEA~~ a UK parent undertaking. ~~An EEA~~ A UK parent undertaking is an institution, a financial holding company or a mixed financial holding company in the ~~EEA~~ UK that is not itself a subsidiary of an institution, a financial holding company or a mixed financial holding company in the ~~EEA~~ UK.*

...

11.1. G The table below summarises whether a section of IFPRU 11 applies to a  
7 *firm or qualifying parent undertaking:*

	(1) <i>IFPRU 730k firm</i> that is not subject to supervision on a consolidated basis	(2) <i>firm or qualifying parent undertaking</i> that is the <u>EEA UK</u> parent undertaking of an RRD group	(3) <del>specific application to an <i>IFPRU 730k firm</i> that is a subsidiary of an <u>EEA</u> parent undertaking in another <u>EEA State</u> (note 1)</del>	(4) <i>firm or qualifying parent undertaking</i> that is a subsidiary of <del>an <u>EEA</u></del> a <u>UK</u> parent undertaking of an RRD group	(5) <i>qualifying parent undertaking</i> that is a mixed activity holding company of an <i>IFPRU 730k firm</i>
<i>IFPRU 11.1</i> (Application and purpose)	Yes	Yes	No	Yes	Yes
<i>IFPRU 11.2</i> (Individual recovery plans)	Yes	No	No	No	No
<i>IFPRU 11.3</i> (Group recovery plans)	No	Yes	Yes	No	No
<i>IFPRU 11.4</i> (Information for resolution plans)	Yes	Yes	Yes	No	No
<i>IFPRU 11.5</i> (Intra-group financial support)	No	Yes	<del>Yes</del> <i>IFPRU 11.5.7R only</i>	Yes	Yes (note 2 <u>1</u> )
<i>IFPRU 11.6</i> (Contractual recognition of bail-in)	Yes	Yes	No	Yes	Yes (note 3 <u>2</u> )

<i>IFPRU</i> 11.7 (Notificatio ns)	Yes	Yes	No	Yes	Yes
Note 1: <i>IFPRU</i> 11.3.1R(3) and <i>IFPRU</i> 11.4.1R(4) more fully describe this type of <i>firm</i> . Where specific application is not provided for this type of <i>firm</i> , the application is explained by (4).					
Note 2: <i>IFPRU</i> 11.5 only applies to <i>mixed activity holding companies</i> of an <i>IFPRU</i> 730k <i>firm</i> in an <i>RRD group</i> .					
Note 3: <i>IFPRU</i> 11.6 only applies to <i>mixed activity holding companies</i> that do not hold an <i>RRD institution</i> using an intermediate <i>financial holding company</i> or <i>mixed financial holding company</i> .					

...

### 11.3 Group recovery plans

#### Application

11.3.1 R This section applies to:

- (1) a *firm* that is the ~~EEA~~ UK *parent undertaking* of an *RRD group*; and
- (2) a *qualifying parent undertaking* that is the ~~EEA~~ UK *parent undertaking* of an *RRD group*; ~~and~~
- (3) ~~an IFPRU 730k firm that is the subsidiary of the EEA parent undertaking of an RRD group where:~~
  - (a) ~~the EEA parent undertaking is an EEA parent financial holding company or an EEA parent mixed financial holding company that is incorporated in, or formed under, the law of an EEA state other than the United Kingdom; and~~
  - (b) ~~the IFPRU 730k firm has the FCA as its consolidating supervisor. [deleted]~~

...

#### General requirements of the group recovery plan

11.3.5 R The *group recovery plan* must:

- (1) ...
- (2) identify measures the *group* may need to implement at the level of:
  - (a) the ~~EEA~~ UK *parent undertaking*; and

(b) ...

...

- 11.3.6 R The *group recovery plan* must include arrangements to ensure the coordination and consistency of measures for each *RRD group member*, including, where applicable, each *significant branch*.

...

...

Group recovery plan for a group that includes an IFPRU 730k firm that is not a significant IFPRU firm

- 11.3.9 R If the *RRD group* includes an *IFPRU 730k* firm that is not a *significant IFPRU firm* (and does not include an *IFPRU 730k firm* that is a *significant IFPRU firm*) the *group recovery plan* must include:

...

- (7) a summary of any material changes to the *group recovery plan* since the previous version was sent to the ~~FCA or other EEA~~ *consolidating supervisor*;

...

...

Assessment and review by the management body of the ~~EEA~~ UK parent undertaking

- 11.3.18 R (1) A firm that is ~~an EEA~~ a UK parent undertaking or a *qualifying parent undertaking* must ensure that its management body assesses and approves the *group recovery plan* before sending it to its *consolidating supervisor*.
- (2) ~~An IFPRU 730k firm that is not an EEA parent undertaking must ensure the management body of its EEA parent undertaking assesses and approves the group recovery plan before the IFPRU 730k firm sends it to its consolidating supervisor. [deleted]~~

...

...

- 11.3.21 R (1) A firm or *qualifying parent undertaking* must send the *group recovery plan* to its ~~EEA~~ *consolidating supervisor*.
- (2) ~~Where the consolidating supervisor is the FCA, a~~ A firm or *qualifying parent undertaking* must send the *group recovery plan* in



line with SUP 16.20 (Recovery plans and information for resolution plans).

## 11.4 Information for resolution plans

Application

11.4.1 R This section applies to:

- (1) ...
- (2) a firm that is the ~~EEA~~ UK parent undertaking of an RRD group; and
- (3) a qualifying parent undertaking that is the ~~EEA~~ UK parent undertaking of an RRD group; ~~and~~
- (4) ~~an IFPRU 730K that is the subsidiary of the EEA parent undertaking of an RRD group:~~
  - (a) ~~where the EEA parent undertaking is an EEA parent financial holding company or an EEA parent mixed financial holding company that is incorporated in, or formed under, the law of an EEA state other than the United Kingdom; and~~
  - (b) ~~the IFPRU 730k firm has the FCA as its consolidating supervisor. [deleted]~~

...

## 11.5 Intra-group financial support

...

~~Summary of RRD intra-group financial support conditions~~

- 11.5.3 G
- (1) ~~RRD recognises a form of intra-group financial support. This allows an RRD group member in one EEA State or a third country to give financial support to an RRD institution in its group in another EEA State or third country, when that institution has infringed or is likely to infringe an RRD early intervention condition.~~
  - (2) ~~To give this specific form of financial support an RRD group member must use an RRD group financial support agreement and satisfy the applicable conditions~~
  - (3) ~~If the RRD group member meets the applicable conditions, other EEA States will recognise this financial support.~~
  - (4) ~~This section sets out the conditions which, in summary, are:~~

- (a) ~~the consolidating supervisor of the group approves the proposed RRD group financial support agreement (see IFPRU 11.5.7 to IFPRU 11.5.8G);~~
- (b) ~~the agreement complies with the conditions for entering into an RRD group financial support agreement (see IFPRU 11.5.9R to IFPRU 11.5.13G);~~
- (c) ~~the financial support complies with the conditions for giving financial support using an RRD group financial support agreement (see IFPRU 11.5.14R to IFPRU 11.5.15G);~~
- (d) ~~the management bodies of the relevant group members take the decision to give and receive financial support (see IFPRU 11.5.16R to IFPRU 11.5.17R)~~
- (e) ~~the relevant group members notify the relevant authorities of the intention to give financial support (see IFPRU 11.5.18R to IFPRU 11.5.21R); and~~
- (f) ~~the relevant group members make the relevant disclosures (see IFPRU 11.5.22R to IFPRU 11.5.23G). [deleted]~~

...

#### Approval of RRD group financial support agreements

- 11.5.7 R (1) The following must apply to their *consolidating supervisor* for approval of any proposed *RRD group financial support agreement* or of any amendment to that agreement:
- (a) a *firm* that is the *EEA UK parent undertaking* of an *RRD group*;
  - (b) a *qualifying parent undertaking* that is the *EEA UK parent undertaking* of an *RRD group*; and
  - (c) ~~an IFPRU 730K firm that is a subsidiary of an EEA parent undertaking of an RRD group:~~
    - (i) ~~where the EEA parent undertaking is an EEA parent financial holding company or an EEA parent mixed financial holding company that is incorporated in, or formed under, the law of an EEA State other than the United Kingdom; and~~
    - (ii) ~~has the FCA as its consolidating supervisor. [deleted]~~

...

...

## Conditions for entering into an RRD group financial support agreement

11.5.9 R The parties to an *RRD group financial support agreement* must include:

(1) one or more of the following:

(a) ~~a parent institution in a Member State;~~ [deleted]

(b) ~~an EEA or a UK parent institution;~~

...

...

...

## Conditions for giving group financial support using an RRD group financial support agreement

11.5.14 R A *firm or qualifying parent undertaking* must not give financial support using an *RRD group financial support agreement* unless it is satisfied that:

...

(7) the support will not create a threat to financial stability, ~~in particular~~ in the *United Kingdom*;

(8) the group member giving the support complies with the following when giving the support:

(a) the requirements of the UK provisions which implemented the articles of the CRD relating to capital and liquidity;

(b) any requirements imposed under the UK provisions which implemented article 104(2) (additional own funds requirements) of the *CRD*;

(c) the requirements relating to large exposures in the ~~CRR~~ UK CRR and the UK provisions which implemented the CRD.

...

...

11.5.16 G A *firm or qualifying parent undertaking* proposing to give financial support using an *RRD group financial support agreement* should also refer to articles 33 to 36 of the RRD Regulation Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing RRD:

A

~~<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1075&from=EN>~~

...

Notice of intention to give financial support using an RRD group financial support agreement

- 11.5.18 R A *firm* or a *qualifying parent undertaking* intending to give financial support using an *RRD group financial support agreement* must ensure that its management body notifies:
- (1) its *competent authority*;
  - (2) where different, its *consolidating supervisor*; and
  - (3) where different, the *competent authority* of the *group member* receiving the financial support; ~~and~~
  - (4) ~~the EBA~~; [deleted]

...

- 11.5.21 R A *firm* or *qualifying parent undertaking* must ensure it sends the decision of its *management body* to give financial support to:
- (1) its *competent authority*;
  - (2) where different, its *consolidating supervisor*; and
  - (3) where different, the *competent authority* of the *group member* receiving the support; ~~and~~
  - (4) ~~the EBA~~; [deleted]

...

## 11.6 Contractual recognition of bail-in

...

Contractual recognition of bail-in

- 11.6.3 R (1) If a liability meets the conditions in (2), a *firm* or *qualifying parent undertaking* must include a term in the contract governing the liability which states that the creditor or party to the agreement creating the liability:
- (a) ...
  - (b) agrees to be bound by any of the following actions of a ~~resolution authority~~ the Bank of England in relation to that liability:

...

- (2) The contractual recognition of a bail-in requirement in (1) applies to a liability that is:
- (a) governed by the law of a *third country* that is not an EEA State;
  - ...
  - (e) not a liability which the ~~resolution authority~~ Bank of England has determined can be subject to *write-down and conversion powers* by the ~~resolution authority of an EEA State~~ Bank of England under:
  - ...
- (3) The contractual recognition of bail-in requirement in (1) also applies to a liability that is:
- (a) governed by the law of an EEA State;
  - (b) issued or entered into after exit day;
  - (c) issued or entered into before exit day but materially amended after exit day;
  - (d) of a type that is not excluded under article 44(2) of RRD;
  - (e) not a deposit of a type referred to in point (a) of article 108 of RRD; and
  - (f) not a liability which the Bank of England has determined can be subject to write-down and conversion powers by the Bank of England under:
    - (i) the law of an EEA State; or
    - (ii) a binding agreement concluded with that EEA State.

[**Note:** article 55(1) of RRD]

- 11.6.4 G A firm or qualifying parent undertaking proposing to provide contractual recognition of bail-in should also refer to articles 42 to 44 of the RRD Regulation. ~~Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing RRD:~~

~~<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1075&from=EN>~~

...

IFPRU TP 3 (Gains and losses) is deleted in its entirety. The deleted text of the TP is not shown but it is marked as [deleted] as shown below.

**TP 3 Gains and losses** [deleted]

Amend the following as shown.

**TP 4 Deductions from own funds**

	Application	
4.1	R	<i>IFPRU</i> TP 4 applies to an <i>IFPRU investment firm</i> , unless it is an <i>exempt IFPRU commodities firm</i> .
	Purpose	
4.2	G	<i>IFPRU</i> TP 4 contains the <i>rules</i> that exercise the discretion afforded to the <i>FCA</i> as <i>competent authority</i> under articles 469, 474 and 477 of the <i>EU CRR UK CRR</i> . The applicable percentages in <i>IFPRU</i> TP 4 apply instead of articles 36(1), <del>56(1)(e)</del> and 66 of the <i>EU CRR UK CRR</i> for the duration of the transitional.
	Duration of transitional	
4.3	R	<i>IFPRU</i> TP 4 applies until 31 December 2023.
	Deduction from common equity tier 1	
4.4	R	For the purposes of article 469(1)(a) of the <i>EU CRR</i> , as it applies to the items in points (b), (d), (f), (g) and (h) of article 36(1) of the <i>EU CRR</i> (Deductions from Common Equity Tier 1 items), the applicable percentages are:
	(1)	20% during the period from 1 January 2014 to 31 December 2014;
	(2)	40% during the period from 1 January 2015 to 31 December 2015;
	(3)	60% during the period from 1 January 2016 to 31 December 2016; and
	(4)	80% for the period from 1 January 2017 to 31 December 2017. [expired]
4.5	R	For the purposes of article 469(1)(a) of the <i>EU CRR</i> as it applies to the items in points (a), (e) and (i) of article 36(1) of the <i>EU CRR</i> (Deductions from Common Equity Tier 1 items), the applicable percentages are:

		(1)	100% during the period from 1 January 2014 to 31 December 2014;
		(2)	100% during the period from 1 January 2015 to 31 December 2015;
		(3)	100% during the period from 1 January 2016 to 31 December 2016; and
		(4)	100% for the period from 1 January 2017 to 31 December 2017. [expired]
4.6	R	For the purposes of article 469(1)(c) of the <i>EU CRR</i> , as it applies to the items in point (c) of article 36(1) of the <del><i>EU CRR</i></del> <i>UK CRR</i> (Deductions from Common Equity Tier 1 items) that existed prior to 1 January 2014, the applicable percentages are:	
		(1)	0% for the period from 1 January 2014 to 31 December 2014;
		(2)	10% for the period from 1 January 2015 to 31 December 2015;
		(3)	20% for the period from 1 January 2016 to 31 December 2016;
		(4)	30% for the period from 1 January 2017 to 31 December 2017;
		(5)	40% for the period from 1 January 2018 to 31 December 2018;
		(6)	50% for the period from 1 January 2019 to 31 December 2019;
		(7)	60% for the period from 1 January 2020 to 31 December 2020;
		(8)	70% for the period from 1 January 2021 to 31 December 2021;
		(9)	80% for the period from 1 January 2022 to 31 December 2022; and
		(10)	90% for the period from 1 January 2023 to 31 December 2023.
4.7	R	For the purposes of article 469(1)(c) of the <del><i>EU CRR</i></del> , as it applies to the items in point (c) of article 36(1) of the <del><i>EU CRR</i></del> (Deductions from Common Equity Tier 1 items) that did not exist prior to 1 January 2014, the applicable percentages are:	
		(1)	20% during the period from 1 January 2014 to 31 December 2014;

		(2)	40% during the period from 1 January 2015 to 31 December 2015;
		(3)	60% during the period from 1 January 2016 to 31 December 2016; and
		(4)	80% for the period from 1 January 2017 to 31 December 2017. [expired]
Deductions from additional tier 1 items			
4.8	R	For the purposes of article 474(a) of the <i>EU CRR</i> , the applicable percentages are:	
		(1)	20% during the period from 1 January 2014 to 31 December 2014;
		(2)	40% during the period from 1 January 2015 to 31 December 2015;
		(3)	60% during the period from 1 January 2016 to 31 December 2016; and
		(4)	80% for the period from 1 January 2017 to 31 December 2017. [expired]
Deductions from tier 2 items			
4.9	R	For the purposes of article 476(a) of the <i>EU CRR</i> , the applicable percentages are:	
		(1)	20% during the period from 1 January 2014 to 31 December 2014;
		(2)	40% during the period from 1 January 2015 to 31 December 2015;
		(3)	60% during the period from 1 January 2016 to 31 December 2016; and
		(4)	80% for the period from 1 January 2017 to 31 December 2017. [expired]

## TP 5 Own funds: other transitionals

	Application	
5.1	R	<i>IFPRU</i> TP 5 applies to an <i>IFPRU investment firm</i> , unless it is an <i>exempt IFPRU commodities firm</i> .



	Purpose	
5.2	G	<i>IFPRU</i> TP 5 contains the <i>rules</i> that exercise the discretion afforded to the <i>FCA</i> as <i>competent authority</i> under articles <del>479 to 480</del> 484 to 486 of the <i>EU CRR</i> <i>UK CRR</i> . The applicable percentages in <i>IFPRU</i> TP 5 apply for the duration of the transitional.
	Duration of transitional	
5.3	R	<i>IFPRU</i> TP 5 applies until 31 December 2021.
	<del>Recognition of instruments and items not qualifying as minority interests</del>	
5.4	R	<del>For the purposes of article 479(2) of the <i>EU CRR</i>, the applicable percentages are:</del>
	(1)	<del>0% during the period from 1 January 2014 to 31 December 2014;</del>
	(2)	<del>0% during the period from 1 January 2015 to 31 December 2015;</del>
	(3)	<del>0% during the period from 1 January 2016 to 31 December 2016; and</del>
	(4)	<del>0% for the period from 1 January 2017 to 31 December 2017. [expired]</del>
	<del>Recognition of minority interests and qualifying additional tier 1 and tier 2 capital</del>	
5.5	R	<del>For the purposes of article 480(1) of the <i>EU CRR</i>, the applicable factors are:</del>
	(1)	<del>0.2 during the period from 1 January 2014 to 31 December 2014;</del>
	(2)	<del>0.4 during the period from 1 January 2015 to 31 December 2015;</del>
	(3)	<del>0.6 during the period from 1 January 2016 to 31 December 2016; and</del>
	(4)	<del>0.8 for the period from 1 January 2017 to 31 December 2017. [expired]</del>
	<del>Additional filters and deductions</del>	
5.6	R	<del>For the purposes of article 481(1) of the <i>EU CRR</i>, the applicable percentages are:</del>

		(1)	0% during the period from 1 January 2014 to 31 December 2014;
		(2)	0% during the period from 1 January 2015 to 31 December 2015;
		(3)	0% during the period from 1 January 2016 to 31 December 2016; and
		(4)	0% for the period from 1 January 2017 to 31 December 2017. <u>[expired]</u>
Limits on grandfathering			
5.7	R	For the purposes of article 486 of the <del>EU CRR</del> <u>UK CRR</u> the applicable factors are:	
		(1)	80% during the period from 1 January 2014 to 31 December 2014;
		(2)	70% during the period from 1 January 2015 to 31 December 2015;
		(3)	60% during the period from 1 January 2016 to 31 December 2016;
		(4)	50% during the period from 1 January 2017 to 31 December 2017;
		(5)	40% during the period from 1 January 2018 to 31 December 2018;
		(6)	30% during the period from 1 January 2019 to 31 December 2019;
		(7)	20% during the period from 1 January 2020 to 31 December 2020; and
		(8)	10% during the period from 1 January 2021 to 31 December 2021.

IFPRU TP 6 (Leverage) and IFPRU TP 7 (Capital conservation buffer: transitional) are deleted in their entirety. The deleted text of the TPs is not shown but they are marked as [deleted] as shown below.

**TP 6 Leverage** [deleted]

**TP 7 Capital conversation buffer: transitional** [deleted]

Amend the following as shown.

**Sch 1 Record-keeping requirements**

...

(3) Table

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<i>IFPRU</i> 4.3.17G	Documents relating to rating systems	All documentation relating to a <i>firm's</i> rating systems (including any document referenced in <i>IFPRU</i> 4 or required by the <del><i>EU CRR</i></del> <i>UK CRR</i> that relate to the IRB approach)	Not specified	At least three years

**Sch 2 Notification and reporting requirements**

...

(3) Table

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>IFPRU</i> 3.2.17R	Intention by <i>firm</i> or member of its <i>group</i> member to reduce <i>own funds</i> or consolidated <i>own funds</i>	Actions described in article 77 of the <del><i>EU CRR</i></del> <i>UK CRR</i>	Intention to carry out the actions described in article 77 of the <del><i>EU CRR</i></del> <i>UK CRR</i>	As soon as intention is formed
<i>IFPRU</i> 4.12.1R	Reliance on deemed transfer of significant risk	Sufficient information to allow the <i>FCA</i> to assess whether the	Intention to rely on deemed	Within a reasonable period before

	under articles 244(2) and 245(2) of the <del>EU CRR</del> <u>UK CRR</u> , including for the purposes of article 337(5) of the <del>EU CRR</del> <u>UK CRR</u>	possible reduction in risk-weighted exposure amounts achieved by the <i>securitisation</i> is justified by a commensurate transfer of credit risk to third parties	transfer of significant risk	or after a relevant transfer, not being later than one <i>month</i> after the date of transfer
...				

## Annex D

### Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

- 1 Capital resources requirements and technical provisions for insurance business**
- 1.1 Application**
- 1.1.1 R *INSPRU* 1.1 applies to an *insurer* unless it is:
- (1) a *non-directive friendly society*; or
  - (2) ~~an *incoming EEA firm*; or~~ [deleted]
  - (3) ~~an *incoming Treaty firm*; or~~ [deleted]
  - (4) a *Solvency II firm*.
- ...
- 1.1.3 R For a ~~*non-EEA*~~ an *insurer* with a *branch* in the *United Kingdom* whose *insurance business* in the *United Kingdom* is not restricted to *reinsurance* (other than ~~an *EEA deposit insurer*, a *Swiss general insurer* or a *UK deposit insurer*~~) *INSPRU* 1.1.27R applies separately in respect of its world-wide activities and its activities carried on from a *branch* in the *United Kingdom*.
- 1.1.4 R For a ~~*EEA deposit insurer* or a *Swiss general insurer*~~ *INSPRU* 1.1.27R applies in respect of the activities carried on from a *branch* in the *United Kingdom*. [deleted]
- 1.1.5 R For a ~~*UK deposit insurer*~~ *INSPRU* 1.1.27R applies separately in respect of its world-wide activities and its activities carried on from a *branch* in the *EEA*. [deleted]
- 1.1.6 G This section may apply in cases where a *firm* has its head office in another *EEA State* but is neither an *incoming EEA firm* nor an *incoming Treaty firm*. [deleted]
- ...
- 1.2 Mathematical reserves**
- Application
- 1.2.1 R *INSPRU* 1.2 applies to a *long-term insurer* unless it is:

- (1) a *non-directive friendly society*; or
- (2) ~~an *incoming EEA firm*; or [deleted]~~
- (3) ~~an *incoming Treaty firm*; or [deleted]~~
- (4) a *Solvency II firm*.

...

## 1.5 Internal-contagion risk

### Application

1.5.1 R *INSPRU* 1.5 applies to an *insurer* except any *insurer* in (1) to (3):

- (1) (a) *non-directive friendly societies*; or
- (b) *Solvency II firms*;
- (2) ~~none of the provisions, apart from *INSPRU* 1.5.33R (payment of financial penalties), apply to *firms* which qualify for authorisation under *Schedule 4* of the Act; [deleted]~~

...

...

1.5.5A R In the application of this section to ~~activities carried on by a *non-EEA insurer*~~ a *firm* with its head office outside the *United Kingdom*:

- (1) ...
- (2) all other provisions of this section apply only in relation to:
  - (a) ~~in the case of any *UK deposit insurer*, activities carried on from *branches* in any *EEA State*; and~~
  - (b) ~~in any other case, activities carried on from a *branch* in the *United Kingdom*.~~

...

1.5.12 G Finally, the section sets out requirements to protect *policyholders* of the *United Kingdom* branches of ~~*non-EEA firms*~~ *firms* with their head office outside the *United Kingdom* where these are supervised by the *appropriate regulator*. These apply only to a ~~*non-EEA firm*~~ that has established a *branch* in the *United Kingdom*.

...

## 3 Market risk

### 3.1 Market risk insurance

- 3.1.1 R *INSPRU* 3.1 applies to an *insurer* unless it is:
- (1) a *non-directive friendly society*; or
  - (2) ~~an *incoming EEA firm*; or [deleted]~~
  - (3) ~~an *incoming Treaty firm*; or [deleted]~~
  - (4) a *Solvency II firm*.

...

### 3.2 Derivatives in insurance

Application

- 3.2.1 R This section applies to an *insurer* unless it is:
- (1) a *non-directive friendly society*; or
  - (2) ~~an *incoming EEA firm*; or [deleted]~~
  - (3) ~~an *incoming Treaty firm*; or [deleted]~~

...

...

### TP Transitional provisions

Application

- 1.1 R *INSPRU* TP 1 applies to an *insurer* unless it is:

~~[FCA]~~

~~[PRA]~~

- (1) a *non-directive friendly society*; or
- (2) ~~an *incoming EEA firm*; or [deleted]~~
- (3) ~~an *incoming Treaty firm*; or [deleted]~~
- (4) a *Solvency II firm*.

...

- 1.6 R ~~*INSPRU* TP 1.4 does not have effect if, and to the extent that, it would be inconsistent with any *EU* law obligation of the *United Kingdom*. [deleted]~~

~~[FCA]~~

[PRA]

...

3 PRU waivers

Application

3.1 R *INSPRU* TP 3 applies to an *insurer* unless it is:

[FCA]

[PRA]

- (1) a *non-directive friendly society*; or
- (2) ~~an *incoming EEA firm*; or~~ [deleted]
- (3) ~~an *incoming Treaty firm*; or~~ [deleted]
- (4) a *Solvency II firm*.

...

3.6 R ~~*INSPRU* TP 3.4 does not have effect if, and to the extent that, it would be inconsistent with any *EU* law obligation of the *United Kingdom*.~~ [deleted]

[FCA]

[PRA]

...



## Annex E

### Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

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

#### 1 Application and general provisions

...

#### 1.3 Remuneration and property valuation requirements for MCD creditors

Application

1.3.1 R *MIPRU 1.3 applies to an MCD creditor ~~other than an incoming EEA firm.~~*

...

#### 2 Responsibility for insurance distribution and MCD credit intermediation activity

##### 2.1 Application and purpose

...

Purpose

2.1.2 G The ~~main~~ original purpose of this chapter is was to implement in part the provisions of the *IDD* and the *MCD*.

...

#### 3 Professional indemnity insurance

##### 3.1 Application and purpose

...

Purpose

3.1.3 G The purposes of this chapter are to:

(1) ~~implement~~ reflect the UK provisions which implemented articles 10(4) and 10(5) of the *IDD* in so far as it ~~requires~~ required *insurance intermediaries* to hold professional indemnity insurance, or some other comparable guarantee, against any liability that might arise from professional negligence; and

(2) ...

...

### 3.2 Professional indemnity insurance requirements

3.2.1 R A *firm* must take out and maintain professional indemnity insurance that is at least equal to the requirements of this section from:

- (1) an *insurance undertaking* which is authorised to transact professional indemnity insurance in the *EEA UK*; or
- (2) ...

[**Note:** articles 10(4) and 10(5) of the *IDD*]

...

3.2.3 G A ~~non-EEA firm~~ *non-UK firm* (such as a captive insurance company outside the *EEA UK*) will be able to provide professional indemnity insurance only if it is authorised to do so in one of the specified countries or territories. The purpose of this provision is to balance the level of protection required for the *policyholder* against a reasonable level of flexibility for the *firm*.

...

3.2.7A G ~~Article 10(7) of the *IDD* requires *EIOPA* to review the *limits of indemnity* every five years to take into account changes in the European index of consumer prices and to develop draft regulatory technical standards to adapt the base amount in euro by the percentage change in that index. Therefore, the *limits of indemnity* will be subject to further adjustments that will apply to *firms* in accordance with the regulatory technical standards adopted under article 10(7) of the *IDD*. [deleted]~~

[**Note:** The regulatory technical standards adopted under article 10(7) of the *IDD* will be available on *EIOPA*'s website at: <https://eiopa.europa.eu/>]

...

Minimum limits of indemnity: MCD credit intermediaries

3.2.9A R If the *firm* is:

- (1) an *MCD article 3(1)(b) credit intermediary* who is not also an *MCD article 3(1)(b) creditor* carrying out direct sales only; or
- (2) a *home finance intermediary* that is:
  - (a) an *MCD mortgage adviser*; or
  - (b) an *MCD mortgage arranger*,

who is not also an *MCD mortgage lender* carrying out direct sales only;

then the minimum *limit of indemnity* is ~~the amount set out in article 1 of the Commission Delegated Regulation (EU) No 1125/2014 which is reproduced in MIPRU 3.2.9BEU~~ that specified in *MCOB 3.2.9BR*.

[**Note:** article 29(2) of the *MCD*]

3.2.9B EU R The minimum monetary amount of the professional indemnity insurance or comparable guarantee ~~required to be held by credit intermediaries [as referred to in the first subparagraph of Article 29(2)(a) of Directive 2014/17/EU]~~ shall be is:

- (1) EUR 460 000 for each individual claim;
- (2) in aggregate EUR 750 000 per calendar year for all claims.

[**Note:** article 1 of the Commission Delegated Regulation (EU) No 1125/2014.]

...

## 4 Capital resources

### 4.1 Application and purpose

...

4.1.2 G ~~As this chapter applies only to a *firm* with *Part 4A permission*, it does not apply to an *incoming EEA firm* (unless it has a *top up permission*). An *incoming EEA firm* includes a *firm* which is *passporting* into the United Kingdom under the *IDD*. [deleted]~~

...

### 4.2 Capital resources requirements

...

4.2.16 G The requirement that the loan qualifies for the ‘linked presentation’ accounting treatment under FRS 5 is aimed at those *firms* which report according to FRS 5. Other *firms* which report under other standards, including ~~International Accounting Standards~~ UK-adopted international accounting standards, need not adopt FRS 5 in order to meet the second condition.

...

### 4.2F Exposures and risk weights

...

- 4.2F.36 R *Exposures* to residential property situated in an ~~EEA State~~ or a *third-country* must be assigned a *risk weight* of 75% up to a limit of 100% of the value of the property.

...

#### 4.4 Calculation of capital resources

...

Reversion providers: additional requirement for instalment reversions

- 4.4.10 R (1) If the *reversion provider* agrees under the terms of an *instalment reversion plan* to pay the *reversion occupier* for the *qualifying interest in land* over a period of time, then the provider must:
- (a) take out and maintain adequate insurance from an *insurance undertaking* authorised in the *EEA UK* or a *person* of equivalent status in:

...

...

## 5 Insurance distributors and home finance providers using insurance distribution or home finance mediation services

...

### 5.2 Use of intermediaries

...

- 5.2.2 R For the purposes of *MIPRU 5.2.1R*, the *person*, in relation to the activity must:

...

- (4) ~~be registered in another an EEA State for the purposes of the IDD; or~~  
[deleted]
- (5) in relation to *insurance distribution activity*, not be carrying this activity on in the *EEA UK*; or
- (6) ...

[**Note:** article 16 of the *IDD*]

- 5.2.3 E (1) A *firm* should:

- (a) before using the services of the intermediary, check:
- (i) the *Financial Services Register*; ~~or~~
  - (ii) ~~in relation to insurance distribution or reinsurance distribution carried on by an EEA firm, the register of its Home State regulator; [deleted]~~
- for the status of the *person*; and
- (b) use the services of that *person* only if the relevant register indicates that the *person* is registered for that purpose.
- (2) (a) Checking the *Financial Services Register* before using the services of the intermediary and using the services of that *person* only if the *Financial Services Register* indicates that the *person* is registered for that purpose may be relied on as tending to establish that:
- (i) the *person*, in relation to the activity, has *permission*; or
  - (ii) the *person*, in relation to *insurance distribution activity*, is an *exempt person* or an *authorised professional firm*.
- (b) ~~In relation to insurance distribution or reinsurance distribution carried on by an EEA firm, checking the register of the firm's Home State regulator and using the services of the EEA firm only if the register indicates that the firm is registered for that purpose may be relied on as tending to establish that the firm is registered for the purposes of the IDD [deleted].~~

...

## Annex F

### Amendments to the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))

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

#### GUIDANCE: THE PURPOSE OF THE PRUDENTIAL RULES FOR FRIENDLY SOCIETIES AND AN OVERALL DESCRIPTION

...

- 7A *Directive friendly societies* should also refer to the PRA Rulebook: Solvency II firms: Conditions Governing Business and the *Solvency II Regulation* ~~of (EU) 2015/35 of 10 October 2014~~ which contain systems and control requirements, and the *FCA* will take these into account.

...

#### Chapter 2: Integrity, Skill, Care and Diligence

##### LEGAL COMPLIANCE

- 2.1 A *friendly society* must take reasonable steps to ensure that:
- (a) ...
  - (b) ...
  - (ii) any applicable requirement ~~(whether of the law of any part of the *United Kingdom* or of the law of another *EEA State*)~~ which ~~gives effect to the~~ implemented the *Solvency II Directive* or is otherwise applicable to the insurance activities of the *friendly society*.

...

## Annex G

### Amendments to the Interim Prudential sourcebook for Insurers (IPRU(INS))

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

#### 1 Chapter 1: Application Rule

##### APPLICATION

###### *Insurers*

1.1 An *insurer* must comply with *IPRU (INS)* unless it is –

[FCA]

[PRA]

(a) ...

(b) ~~an *EEA insurer* or an *EEA pure reinsurer* qualifying for authorisation under Schedules 3 or 4 to the Act; or [deleted]~~

...

#### 8 Chapter 8: Non-UK Insurers

##### PART III: RULES APPLICABLE TO BRANCHES

8.3 An *insurer* which has its head office outside the United Kingdom (other than a ~~*pure reinsurer* which has a Treaty right under Schedule 4 to the Act, or a *Swiss general insurer*~~) must appoint and maintain the appointment of a chief executive (who alone or jointly with one or more others, is responsible for the conduct of its business through an establishment in the United Kingdom).

[FCA]

[PRA]

## Annex H

### Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

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

#### 1 Application and General provisions

...

#### 1.2 Application

...

##### 1.2.3 G For the avoidance of doubt, *IPRU-INV* does not apply to any of the following:

...

- (e) ~~an incoming EEA firm or an incoming Treaty firm which does not have a top-up permission; or~~ [deleted]
- (f) an insurer; ~~or~~
- (g) ~~a UCITS qualifier.~~ [deleted]

...

#### 2 Authorised professional firms

##### 2.1 Application

...

##### 2.1.7 G The activities that a *full-scope UK AIFM* and a *UCITS management company* are allowed to perform are restricted by ~~article 6 of AIFMD and article 6 of the UCITS Directive to the management of AIFs and/or UCITS and the additional investment activities permitted by article 6(4) of AIFMD and article 6(3) of the UCITS Directive~~ COLL 6.9.9R and FUND 1.4.3R (as applicable). As such, an *authorised professional firm* cannot be a *collective portfolio management firm* or a *collective portfolio management investment firm*.

...

#### 3 Financial resources for Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms or Exempt IFPRU Commodities Firms



...

**3-182 Other amounts owed to a firm arising out of investment business or investment dealing activities**

...

3-182(5)R **Consolidated Supervision**

~~Under the Financial Conglomerates and Other Financial Groups Instrument 2004, the rules in Chapter 14 shall (with respect to a particular firm, group or financial conglomerate) apply from the first day of its financial year beginning in 2005 in place of rules 3-190(1) to 3-195. [deleted]~~

...

**Appendix 1- Glossary terms for IPRU(INV) 3**

...

approved bank (in relation to a bank account opened by a firm) means:

...

(b) if the account is opened elsewhere:

...

(ii) ~~a credit institution established in an EEA State other than the United Kingdom and duly authorised by the relevant Home State regulator; or [deleted]~~

...

...

...

**5 Financial resources**

**5.1 Application**

**5.1.1 G (1)**

(a) This chapter applies to an *investment management firm*, other than:

(i) ~~an incoming EEA firm unless it has a top-up permission for acting as trustee or depositary of a UCITS; or [deleted]~~

...

...

- 5.1.3 R ~~An incoming EEA firm with a top-up permission for acting as trustee or depositary of a UCITS must comply with:~~
- (a) ~~IPRU-INV 5.2.1R;~~
  - (b) ~~IPRU-INV 5.2.2R;~~
  - (c) ~~IPRU-INV 5.2.3R;~~
  - (d) ~~IPRU-INV 5.3.2R;~~
  - (e) ~~IPRU-INV 5.4.4R; and~~
  - (f) ~~IPRU-INV 5.4.8R. [deleted]~~

...

## 5.2 General requirement

...

Financial resources

- 5.2.3 R A firm's **financial resources** means:
- (a) its **own funds**, if the firm is subject to an **own funds requirement** under *IPRU-INV 5.4.2R* ~~or *IPRU-INV 5.4.4R*~~; or
  - (b) its **liquid capital**, if the firm is subject to a **liquid capital requirement** under *IPRU-INV 5.4.1R*.

...

## 5.4 Financial resources requirement

Determination of requirement

- 5.4.1 R The **financial resources requirement** for a firm is a **liquid capital requirement**, determined in accordance with *IPRU-INV 5.4.10R*:
- (i) unless the firm falls within any of the exceptions in *IPRU-INV 5.4.2R*; ~~or~~
  - (ii) ~~the firm is an incoming EEA firm with a top-up permission of acting as trustee or depositary of a UCITS. [deleted]~~

Exceptions from the liquid capital requirement

5.4.2 R The **financial resources requirement** is an **own funds requirement** determined in accordance with *IPRU-INV 5.4.3R* for a *firm* if its **permitted business** does not include *establishing, operating or winding up a personal pension scheme* and which:

...

(ii) is not an *exempt CAD firm* if:

...

(c) the *firm* is a *trustee* of an *authorised unit trust scheme* whose **permitted business** consists only of trustee activities and does not include any other activity constituting **specified trustee business** or the *firm* is a depositary of an *ICVC* or *ACS* or a *depositary* appointed in line with *FUND 3.11.12R* (Eligible depositaries for UK AIFs) or a UK depositary of a ~~*non-EEA AIF non-*~~*UK AIF* whose **permitted business** consists only of depositary activities.

...

Own funds requirement

5.4.3 R The **own funds requirement** for a *firm* subject to *IPRU-INV 5.4.2R* is the higher of:

(i) £4 million for a *firm* which is a *depositary* of an *authorised fund*, if the *authorised fund* is an *AIF*;

(ia) €125,000 for a *firm* which is a *depositary* appointed in line with *FUND 3.11.12R* (Eligible depositaries for UK AIFs) or a *UK depositary* of a ~~*non-EEA AIF non-*~~*UK AIF*;

(ib) for a *firm* which is a *depositary* of a *UCITS scheme*, the higher of:

(A) the requirement calculated depending on the selected approach in accordance with articles 315 or 317 of the ~~*EU-CRR*~~ *UK CRR*; and

(B) £4 million; and

(ii) £5,000 for any other *firm*.

5.4.4 R The ~~**financial resources requirement**~~ for an *incoming EEA firm* with a *top-up permission for acting as trustee or depositary of a UCITS* is the ~~**own funds requirement**~~ in *IPRU-INV 5.4.3R*(ib). ~~[deleted]~~

- 5.4.5 G In accordance with *IPRU-INV 5.4.3R(ib)(A)* and ~~*IPRU-INV 5.4.4R*~~, a firm which is a *depository* of a *UCITS* scheme has a choice between:
- (a) the basic indicator approach in article 315 of the ~~*EU-CRR UK CRR*~~; and
  - (b) the standardised approach in article 317 of the ~~*EU-CRR UK CRR*~~.

...

- 5.4.7 G The effect of ~~*IPRU-INV 5.4.4R*~~ is to apply the **financial resources requirement** to an *incoming EEA firm* with a *top up permission* for *acting as trustee or depository of a UCITS* in relation to its activity in ~~the UK of acting as trustee or depository of a UCITS~~. ~~[deleted]~~

...

**5 App 1 Appendix 5(1): Glossary of terms for IPRU-INV 5**

5 App 1.1G ...

Term	Meaning
...	
<i>qualifying capital item</i>	means that part of a <i>firm's</i> capital which has the following characteristics:
	...
	<del>Note: Verification by internal auditors will suffice until such time as EU provisions making external auditing mandatory have been implemented.</del>
...	
<i>specified trustee business</i>	...
	2. For the purpose of this definition of “specified trustee business”:
	...
	(e) government, local authority or international organisation means:
	...

			(iii)	an international organisation the members of which include the United Kingdom or another EEA State.
		...		
...				

...

## 9 Financial resources requirements for an exempt CAD firm

...

### 9.2 General requirements

...

Initial capital and professional indemnity insurance requirements - exempt CAD firms that are not IDD insurance intermediaries

9.2.4 R (1) An *exempt CAD firm* which is not an *IDD insurance intermediary* must have:

...

- (b) professional indemnity insurance covering the whole territory of the *EEA UK* or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 1,000,000 applying to each claim and in aggregate EUR 1,500,000 per year for all claims; or

...

...

...

9.2.5A G ~~Article 10(7) of the *IDD* requires *EIOPA* to review the *limits of indemnity* every five years to take into account changes in the European index of consumer prices and to develop draft regulatory technical standards to adapt the base amount in euro by the percentage change in that index. Therefore, the *limits of indemnity* will be subject to further adjustments that will apply to *firms* in accordance with the regulatory technical standards adopted under article 10(7) of the *IDD*. [deleted]~~  
~~[Note: The regulatory technical standards adopted under article 10(7) of the *IDD* will be available on *EIOPA*'s website at: <https://eiopa.europa.eu/>]~~

- 9.2.6 G A trade-off between *initial capital* and professional indemnity insurance is appropriate such that EUR 1 of *initial capital* is the equivalent of professional indemnity insurance cover of EUR 20 for a single claim against the *firm* and EUR 30 in aggregate.

...

#### 9.4 Policy terms for professional indemnity insurance

Insurers whose professional indemnity insurance policies can be used by an exempt CAD firm

- 9.4.1 R An *exempt CAD firm* that has professional indemnity insurance in accordance with this chapter must take out and maintain professional indemnity insurance that is at least equal to the requirements of the rule below from:

- (1) an *insurance undertaking* which is authorised to transact professional indemnity insurance in the ~~EEA~~ UK; or
- (2) ...

...

## 11 Collective Portfolio Management Firms and Collective Portfolio Management Investment Firms

### 11.1 INTRODUCTION

...

Purpose

- 11.1.4 R (1) ...
- (2) This original purpose of this chapter ~~also was to implements~~ implement relevant requirements of *AIFMD* and the *UCITS Directive*, which ~~includes~~ included imposing capital and professional indemnity insurance requirements on a *full-scope UK AIFM* and a *UCITS management company*. *AIFMD* and the *UCITS Directive* incorporate references to provisions of the *Banking Consolidation Directive* and the *Capital Adequacy Directive* in relation to initial capital, own funds and fixed overheads. However, in line with article 163 of the *CRD*, the *Banking Consolidation Directive* and the *Capital Adequacy Directive* ~~are were~~ repealed from 1 January 2014 and references to these directives ~~are were~~ replaced with references to the *CRD* and the *EU CRR* in line with the correlation table set out in Annex II to the *CRD* and in Annex IV to the *EU CRR*.

...

## 11.2 MAIN REQUIREMENTS

Collective portfolio management firm

11.2.1 R A *firm* must:

...

(2) at all times, maintain *own funds* which equal or exceed:

(a) the higher of:

(i) the *funds under management requirement* (in line with *IPRU-INV* 11.3.2R); and

(ii) the amount specified in article 97 of the ~~EU~~ CRR UK CRR (Own funds based on fixed overheads) (as replicated in *IPRU-INV* 11.3.3A~~EU~~UK); plus

...

(3) at all times, hold liquid assets (in line with *IPRU-INV* 11.3.17R) which equal or exceed

(a) the higher of:

(i) the *funds under management requirement* (in line with *IPRU-INV* 11.3.2R) less the *base own funds requirement* (in line with *IPRU-INV* 11.3.1R); and

(ii) the amount specified in article 97 of the ~~EU~~ CRR UK CRR (Own funds based on fixed overheads); plus

...

...

## 11.3 DETAIL OF MAIN REQUIREMENTS

...

Own Funds based on Fixed Overheads

11.3.3A ~~EU~~ (1) In accordance with Articles 95 and 96, an investment firm and UK firms referred to in point (2)(c) of Article 4(1) that provide the investment services and activities listed in the UK legislation that implemented points (2) and (4) of Section A of Annex I to Directive 2004/39/EC shall hold eligible capital of at least one quarter of the fixed overheads of the preceding year.

...

...

## Professional negligence

- 11.3.11 G A *full-scope UK AIFM* should:
- (1) cover the professional liability risks set out in article 12 of the *AIFMD level 2 regulation* (professional liability risks) (as replicated in *IPRU-INV 11.3.12~~EU~~UK*) by either:
    - (a) maintaining an amount of *own funds* in line with article 14 of the *AIFMD level 2 regulation* (additional own funds) (as replicated in *IPRU-INV 11.3.14~~EU~~UK*) (the *professional negligence capital requirement*); or
    - (b) holding professional indemnity insurance and maintaining an amount of *own funds* to meet the *PII capital requirement* under article 15 of the *AIFMD level 2 regulation* (professional indemnity insurance) (as replicated in *IPRU-INV 11.3.15~~EU~~UK*) and *IPRU-INV 11.3.16R*; and
  - (2) comply with the qualitative requirements addressing professional liability risks in article 13 of the *AIFMD level 2 regulation* (qualitative requirements addressing professional liability risks) (as replicated in *IPRU-INV 11.3.13~~EU~~UK*).

## Professional liability risks

- 11.3.12 ~~EU~~  
UK (1) The professional liability risks to be covered pursuant to the UK legislation that implemented Article 9(7) of Directive 2011/61/EU shall be risks of loss or damage caused by a relevant person through the negligent performance of activities for which the AIFM has legal responsibility.

...

## Qualitative requirements addressing professional liability risks

- 11.3.13 ~~EU~~  
UK

## Additional own funds

- 11.3.14 ~~EU~~ ...  
UK
- (4) The ~~competent authority of the home Member State of the AIFM~~ FCA may authorise the AIFM to provide additional own funds lower than the amount referred to in paragraph 2 only if it is satisfied - on the basis of the historical loss data of the AIFM as recorded over an observation period of at least three years prior



to the assessment - that the AIFM provides sufficient additional own funds to appropriately cover professional liability risks. The authorised lower amount of additional own funds shall be not less than 0,008 % of the value of the portfolios of AIFs managed by the AIFM.

- (5) ~~The competent authority of the home Member State of the AIFM~~ FCA may request the AIFM to provide additional own funds higher than the amount referred to in paragraph 2 if it is not satisfied that the AIFM has sufficient additional own funds to appropriately cover professional liability risks. The competent authority shall give reasons why it considers that the AIFM's additional own funds are insufficient.

...

Professional indemnity insurance

11.3.15 ~~EU~~ ...  
UK

- (2) An *AIFM* shall take out and maintain at all times professional indemnity insurance that:

...

Any agreed defined excess shall be fully covered by own funds which are in addition to the own funds to be provided in accordance with the UK legislation that implemented Article 9(1) and (3) of Directive 2011/61/EU.

...

## 11.6 **ADDITIONAL REQUIREMENTS FOR COLLECTIVE PORTFOLIO MANAGEMENT INVESTMENT FIRMS**

...

11.6.2 G ...

- (2) Subject to the conditions that the *firm* is not authorised to provide safekeeping and administration in relation to *shares* or *units* of collective investment undertakings and is not permitted to hold client money or client assets in relation to its *MiFID business* (and for that reason may not place itself in debt with those clients) competent authorities may allow the *firm* to stay on the capital requirements that would be binding on that firm as at 31 December 2013 under the UK legislation that implemented the Banking Consolidation Directive and the Capital Adequacy Directive (in line with article 95(2) of the ~~EU CRR~~ UK CRR). The *FCA* has exercised this derogation and, as such, a *firm* meeting those conditions is a *BIPRU firm*. If the above

conditions are not met, a *collective portfolio management investment firm* is an *IFPRU investment firm*.

...

## 12 Financial resources requirements for operators of electronic systems in relation to lending

...

### 12.2 Financial resources requirements

...

Financial resources requirement: firms carrying on other regulated activities

- 12.2.3 R The **financial resources requirement** for a *firm* carrying on one or more regulated activities in addition to operating an electronic system in relation to lending, is the higher of:

...

- (2) the financial resources or own funds requirement which is applied by another *rule* or by directly applicable legislation of the *EU UK* to the *firm*.

...

## 13 Financial Resources Requirements for Personal Investment Firms

### 13.1 Application, general requirements and professional indemnity insurance requirements

...

- 13.1.3 G Although financial resources and appropriate systems and controls can generally mitigate operational risk, professional indemnity insurance has a role in mitigating the risks a *firm* faces in its day-to-day operations, including those arising from not meeting the legally required standard of care when *advising on investments*. The purpose of the *rules* in this section is also to ensure that a *firm* has in place the type, and level, of professional indemnity insurance necessary to mitigate these risks. ~~This includes, in the case of a *UK firm* exercising an *EEA right*, cover for breaches of obligations imposed by or under laws, or provisions having the force of law, in each *EEA State* in which the *firm* carries on business.~~

...

Requirement to hold professional indemnity insurance

- 13.1.5 R A *firm* must take out and maintain at all times professional indemnity insurance that is at least equal to the requirements in this section from:

- (1) an *insurance undertaking* which is authorised to transact professional indemnity insurance in the *EEA UK*; or

...

...

- 13.1.14 G ~~Article 10(7) of the *IDD* requires *EIOPA* to review the *limits of indemnity* every five years to take into account changes in the European index of FCA 2018/25 Page 101 of 401 consumer prices and to develop draft regulatory technical standards to adapt the base amount in euro by the percentage change in that index. Therefore, the *limits of indemnity* will be subject to further adjustments that will apply to *firms* in accordance with the regulatory technical standards adopted under article 10(7) of the *IDD*. [deleted]~~

~~[Note: The regulatory technical standards adopted under article 10(7) of the *IDD* will be available on *EIOPA*'s website at: <https://eiopa.europa.eu/>]~~

- 13.1.15 G If a policy is denominated in any currency other than euros, a *firm* must take reasonable steps to ensure that the *limits of indemnity* are, when the policy is effected (i.e. agreed) and at renewal, at least equivalent to those denominated in euros.

...

## 14 Consolidated supervision for investment businesses

...

### 14.2 Scope of consolidation

- 14.2.1 R For the purposes of the rules in this chapter, a *firm's* group means the *firm* and:

- (1) any *EEA UK parent institution* in the group which is a *financial holding company*, a *credit institution*, or an *investment firm*;
- (2) any *credit institution*, *investment firm* or *financial institution* which is a *subsidiary* either of the *firm* or of the *firm's EEA UK parent institution* as defined in (1); and
- (3) any *credit institution*, *investment firm* or *financial institution* in which the *firm* or one of the entities in (1) or (2) holds a *participation*.

...

- 14.2.4 G (1) A *firm's parent* is a *financial holding company* if it is either a *financial institution* or a *securities and futures firm* that is subject to the financial rules in Chapter 3 and that is a *broad scope firm*

(but not a *venture capital firm*) and if its *subsidiary undertakings* carry out mainly *listed activities*, activities of a *credit institution* or activities undertaken by a Chapter 3 *broad scope firm*. For this purpose the *FCA* interprets the phrases ‘mainly’ or ‘main business’ to mean where the balance of business is over 40% of the relevant group or sub-group’s balance sheet (measured on the basis of total assets) or profit and loss statement (measured on the basis of gross income). In addition, if the *firm’s parent* has significant holdings in *insurance undertakings* or *reinsurance undertakings*, it is a *mixed financial holding company*, and the *firm* is subject to the rules in GENPRU 3.1 instead of the rules in this chapter. This is because a *parent* cannot be a *financial holding company* and a *mixed financial holding company* at the same time. GENPRU 3.1 sets out what constitutes significant insurance holdings (broadly more than 10% of the financial sector activities of the group). A *firm’s parent* is a *financial holding company* and not regarded as a *mixed financial holding company* unless:

- (a) the parent has been notified by its *coordinator* that the *group* it heads is a financial conglomerate (~~in accordance with Article 4(2) of the Financial Groups Directive~~); and
  - (b) it has not been notified that the *coordinator* and the relevant competent authorities have agreed not to treat the group as a *financial conglomerate* in accordance with ~~Article 3(3) of the Financial Groups Directive~~ regulation 16 of the financial groups directive regulations.
- (2) A *firm* with an ultimate ~~non-EEA parent~~ non-UK parent may also be subject to the provisions in GENPRU 3.2.
  - (3) In the case where undertakings are linked to the domain of consolidation by a relationship within the meaning of article 12(1) of Directive (83/349/EEC) by a *consolidation article 12(1) relationship*, the *FCA* will determine how consolidation is to be carried out.

[*Editor’s note*: In due course, the text here shall be amended to reflect the appropriate provisions in the *financial groups directive regulations*, when the Financial Conglomerates and Other Financial Groups (Amendments etc.) (EU Exit) Regulations 2019 which amend these is published.]

...

## 14.5 Group financial resources requirement

...

14.5.2 R Financial resources requirements for individual entities in the group are:

- (1) for *firms* regulated by the *FCA*, their regulatory capital requirement under *FCA* rules;
- (2) ~~for entities regulated by an *EEA regulator* and which is subject to the local regulatory capital requirement of that regulator, that local regulatory capital requirement; [deleted]~~
- (2A) for entities that are *recognised third country credit institutions* or *recognised third country investment firms* and which is subject to the local regulatory capital requirement of that regulator, that local regulatory capital requirement;
- (2B) for entities not in (2A) that are regulated by a third country competent authority named in the table in BIPRU 8 Annex 3R and which is subject to the local regulatory capital requirement of that regulator, that local regulatory capital requirement; and
- (3) for other entities in the group, a notional financial resources requirement calculated as if the entity were regulated by the *FCA*.

...

**14 App 1 Interpretation**

App1.1 G Glossary of defined terms for Chapter 14

If a defined term does not appear in the IPRU(INV) 14 glossary below, the definition in the main Handbook *Glossary* applies.

...	
<i>EEA parent</i>	<del>a firm's direct or indirect parent which has its head office in the <i>EEA</i>.</del>
...	
<i>participation</i>	a participation within the meaning of <u>the <i>UK</i> provisions which implemented Article 17 of Directive 78/660/EEC 2, point (2) of the <i>Accounting Directive</i></u> or the ownership either direct or indirect of 20% or more of the voting rights or capital of another undertaking which is not a <i>subsidiary</i> .
...	
<i>UK parent</i>	<u>a firm's direct or indirect parent which has its head office in the <i>UK</i>.</u>

...

**Annex A Limited liability partnerships: Eligible members' capital**

**Annex A Introduction**

1

...

Purpose

Annex A G The purpose of this annex is to amplify *Principle 8* (Financial resources) 1.4 which requires a *firm* to maintain adequate financial resources to meet its investment business commitments and to withstand the risks to which its business is subject. This annex imposes various conditions that must be satisfied for members’ capital to count as “Tier 1” or equivalent grade capital in meeting the *limited liability partnership's* financial resources requirement. These conditions are made up of conditions specific to *limited liability partnerships* and ~~general conditions based for the most part on those set out in article 57 of the *Banking Consolidation Directive*.~~ This assists in the achievement of the *statutory objective* of consumer protection.

[Note: BCD Annex V Part 2 point 57]

...

**TP 1 Table: Transitional provisions applying to IPRU(INV)**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision : dates in force	(6) Handbook provision: coming into force
...					
3	<i>IPRU-INV</i> 9.2.5R and <i>IPRU-INV</i> 13.1.4(2)R(b)	R	<del>The new limits of indemnity apply to a professional indemnity policy or a comparable guarantee commenced, renewed or extended with effect from or after 1 March 2009. Any other existing non-annual arrangements must be aligned with the</del>	<del>1 March 2009 to 28 February 2010</del>	<del>1 March 2009</del>

			new limits of indemnity before 1 March 2010 [expired]		
4	13.1.21 and 13.1.23	R	The requirement to hold additional capital resources where a policy excludes business or activities that have been carried out by the <i>firm</i> in the past or will be carried out by the <i>firm</i> only apply to a <i>professional indemnity policy</i> taken out, renewed or extended with effect from 31 December 2009. [expired]	31 December 2009 to 31 December 2010	31 December 2009
...					
7	IPRU-INV 11	R	Where a <i>firm</i> falls within regulation 74(1) or 75(1) of the <i>AIFMD-UK regulation</i> it need not include <i>AIFs</i> managed by it that fall within those regulations in the calculation of its <i>funds under management requirement</i> , <i>professional negligence capital requirement</i> or <i>PH excess capital requirement</i> . [deleted]	From 22 July 2013	22 July 2013
...					

10	IPRU(INV) 12	R	IPRU(INV) 12 does not apply to a <i>firm</i> with an <i>interim permission</i> [deleted]	Indefinitely	<del>1 April 2014</del>
11	IPRU(INV) 12.2.6R(1)	R	The amount is replaced with £20,000 [expired]	From 1 April 2014 to 31 March 2017	1 April 2014
12	IPRU(INV) 12.3.5R	R	<del>b = items 1,4 and 5 in the Table of items which must be deducted in arriving at a <i>firm's</i> financial resources (see IPRU(INV) 12.3.3R)</del> [expired]	<del>1 April 2014 to 31 March 2017</del>	<del>1 April 2014</del>
13	<i>IPRU-INV</i> 13.1A.3R(2)	R	A <i>firm</i> applying (b) or (c) above must have <i>initial capital</i> of at least £15,000. [expired]	From 30 June 2016 to 29 June 2017	30 June 2016
14	<i>IPRU-INV</i> 13.1A.4R(2)	R	A <i>firm</i> applying (b) or (c) above must have <i>initial capital</i> of at least £15,000. [expired]	From 30 June 2016 to 29 June 2017	30 June 2016
15	<i>IPRU-INV</i> 13.13.2R(2)(a)	R	The <i>firm</i> must calculate its capital resources requirement as the higher of: (a) £15,000. [expired]	From 30 June 2016 to 29 June 2017	30 June 2016



16	<i>IPRU-INV</i> 13.13.3R(2)(a)	R	The <i>firm</i> must calculate its capital resources requirement as the higher of:  (a) £15,000. [expired]	From 30 June 2016 to 29 June 2017	30 June 2016
17	<i>IPRU-INV</i> 13.15.9R and <i>IPRU-INV</i> 13.15.10R	R	These <i>rules</i> do not apply to a <i>category B3 firm</i> which is not a <i>network</i> , has fewer than 26 <i>financial advisers</i> or <i>representatives</i> and is not permitted to:  (a) carry on discretionary portfolio management;  (b) <i>establish, operate or wind up a personal pension scheme</i> ; or  (c) delegate the activities in (a) or (b) to an <i>investment firm</i> . [expired]	From 30 June 2016 to 29 June 2017	30 June 2016
18	<i>IPRU(INV)</i> 5.4.3R(i)(ib)	R	A <i>depository</i> of a <i>UCITS scheme</i> appointed before 18 March 2016 need not calculate its <i>own funds requirement</i> under articles 315 or 317 of the <i>EU CRR</i> . [expired]	From 18 March 2016 until 18 March 2018	18 March 2016
19	<i>IPRU(INV)</i> 5.4.8R	R	A <i>depository</i> of a <i>UCITS scheme</i> appointed before 18 March 2016 need not comply with	From 18 March 2016 to	18 March 2016

			<del><i>IPRU(INV) 5.4.8R.</i></del> <u>[expired]</u>	<del>18 March</del> <del>2018</del>	
--	--	--	---	--	--

**EXITING THE EUROPEAN UNION: BUSINESS STANDARDS SOURCEBOOKS  
(AMENDMENTS) INSTRUMENT 2019**

**Powers exercised**

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

**Commencement**

- B. Annex E comes into force on 1 April 2019, immediately after the changes made by the Claims Management Instrument 2018 (FCA 2018/56) come into force.
- C. The remainder of this instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to the Handbook**

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

(1)	(2)
Conduct of Business sourcebook (COBS)	Annex A
Insurance: Conduct of Business sourcebook (ICOBS)	Annex B
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex C
Banking: Conduct of Business sourcebook (BCOBS)	Annex D
Claims Management: Conduct of Business sourcebook (CMCOB)	Annex E
Client Assets sourcebook (CASS)	Annex F
Market Conduct sourcebook (MAR)	Annex G
Product Intervention and Product Governance sourcebook (PROD)	Annex H

**Citation**

- D. This instrument may be cited as the Exiting the European Union: Business Standards Sourcebooks (Amendments) Instrument 2019.

By order of the Board  
[date]

**Editor's notes**

- (1) The near-final instrument relates to the statutory instruments set out in Annex 4 of the accompanying Policy Statement and other matters arising from the UK's withdrawal from the EU.
- (2) We will set out our approach in due course for any additional amendments which are required as a result of further statutory instruments.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 29 March 2019. This instrument also includes amendments to correct deficiencies implementing the new framework for Claims Management Companies, in force from 1 April 2019.

## Annex A

### Amendments to the Conduct of Business sourcebook (COBS)

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

## 1 Application

### 1.1 General application

...

Deposits (including structured deposits)

- 1.1.1A R This sourcebook applies to a *firm* with respect to activities carried on in relation to *deposits* from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom* only as follows:

	Section / chapter	Application in relation to deposits
(1)	<p><i>Rules</i> in this sourcebook which <del>implement</del> <u>implemented</u> articles 24, 25, 26, 28 and 30 of <i>MiFID</i> (and related provisions of the <i>MiFID Delegated Directive</i>) (see <i>COBS 1.1.1ADG</i>).</p>	<p>A <i>MiFID investment firm</i>, a <i>third country investment firm</i> and a <i>MiFID optional exemption firm</i> when selling, or advising a <i>client</i> in relation to, a <i>structured deposit</i>.</p>
...		

...

- 1.1.1A ~~EU~~  
B UK Article 1(2) of the *MiFID Org Regulation* specifies how its provisions should be read where they apply to firms selling, or advising on, *structured deposits*.

1(2) References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements ~~referred to in Article 1(3) and 1(4) of Directive 2014/65/EU and their implementing~~

~~provisions as set out under~~ (so far as relevant) in Chapters II to IV of this Regulation.

1.1.1A R C A *third country investment firm* and a *MiFID optional exemption firm* must also comply with the provisions of the *MiFID Org Regulation* which relate to the rules which implemented the articles of *MiFID* referred to in COBS 1.1.1AR(1), as modified by article 1(2) of the *MiFID Org Regulation*, when selling, or advising a *client* in relation to, a *structured deposit*.

1.1.1A G D The rules which implemented the provisions of *MiFID* and the *MiFID Delegated Directive* referred to in COBS 1.1.1AR(1) can be found in the chapters of *COBS* in the following table and are followed by a ‘Note:’.

...

...

#### ~~Auction regulation bidding~~

1.1.1C R ~~*COBS 5 (Distance communications)* applies to a *firm* in relation to its carrying on of *auction regulation bidding*. [deleted]~~

...

1.1.5 G *PERG 13* contains general *guidance* on the *persons* and *businesses* to which the *UK* provisions which implemented *MiFID* apply.

1.1.6 G *PERG 16* contains general *guidance* on the *businesses* to which the *UK* provisions which implemented *AIFMD* apply. *FUND 1* contains *guidance* on the types of *AIFM*.

## 1.2 Markets in Financial Instruments Directive

### References in COBS to the MiFID Org Regulation

1.2.1 G (1) This sourcebook contains a number of provisions which ~~transpose~~ transposed *MiFID*. A rule transposed a provision of *MiFID* if it is followed by a ‘Note:’ indicating the article of *MiFID* or the *MiFID Delegated Directive* which it transposed.

(2) In order to help *firms* which are subject to ~~the~~ those requirements of which implemented *MiFID* to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the ~~directly applicable~~ *MiFID Org Regulation*, marked with the status letters “EU” “UK”. The authentic

~~provisions of the *MiFID Org Regulation* are directly applicable to *firms* in relation to their *MiFID business*.~~

(3) This sourcebook does not reproduce the *MiFID Org Regulation* in its entirety. A *firm* to which provisions of the *MiFID Org Regulation* applies should refer to Commission Delegated Regulation (EU) 2017/565 as published in the electronic version of the Official Journal of the European Union for and as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

(a) ~~the authentic version of the applicable articles of the *MiFID Org Regulation*; and~~

(b) ~~a comprehensive statement of its obligations under the *MiFID Org Regulation*.~~

...

1.2.3 R ...

(2) In this sourcebook, a word or phrase found in a provision marked “EU” “UK” and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

(1)	(2)
...	
“derivative”	as defined in article 4(1)(49) of <i>MiFID</i> <u>those financial instruments referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the <i>Regulated Activities Order</i></u>
...	
“group”	as defined in article 4(1)(34) of <i>MiFID</i> <u>section 421 of the <i>Act</i></u>
...	
“professional client covered by <del>Section 1 of Annex II to Directive 2014/65/EU</del> Part 2 of	<i>per se professional client</i>

Schedule 1 to Regulation (EU) No 600/2014”	
“professional client in accordance with Section 2 of Annex II to Directive 2014/65/EU Part 3 of Schedule 1 to Regulation (EU) No 600/2014”	<i>elective professional client</i>
...	

...

- 1.2.4 G *Firms* to which provisions of the *MiFID Org Regulation* are applied as if they were *rules* should use the text of any preamble to the relevant provision marked “EU” “UK” to assist in interpreting any such references or cross-references.

Interpretation – “in good time”

- 1.2.5 G (1) Certain of the provisions in this sourcebook which ~~implement~~ implemented *MiFID* require *firms* to provide *clients* with information “in good time”.

...

ESMA Guidelines

[**Note:** *ESMA* has issued a number of guidelines under article 16(3) of the *ESMA* Regulation in relation to certain aspects of *MiFID*. These include:

guidelines on certain aspects of the *MiFID* suitability requirements which also include guidelines on conduct of business obligations, 28 May 2018/ESMA35-43-869 (EN). See

[[https://www.esma.europa.eu/system/files\\_force/library/esma35\\_43\\_869\\_fr\\_on\\_guidelines\\_on\\_suitability.pdf?download=1](https://www.esma.europa.eu/system/files_force/library/esma35_43_869_fr_on_guidelines_on_suitability.pdf?download=1)];

guidelines on cross-selling practices, 11 July 2016/ESMA/2016/574 (EN). See [[https://www.esma.europa.eu/sites/default/files/library/2016-574\\_en\\_guidelines\\_on\\_cross-selling\\_practices.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-574_en_guidelines_on_cross-selling_practices.pdf)]; and

guidelines on complex debt instruments and *structured deposits*, 4 February 2016/ESMA/2015/1787 (EN). See [[https://www.esma.europa.eu/sites/default/files/library/2015-1787-guidelines\\_on\\_complex\\_debt\\_instruments\\_and\\_structured\\_deposits.pdf](https://www.esma.europa.eu/sites/default/files/library/2015-1787-guidelines_on_complex_debt_instruments_and_structured_deposits.pdf)].



**1.3 Insurance distribution**

References in COBS to the IDD Regulation

- 1.3.1 G (1) This sourcebook contains a number of provisions which ~~transpose~~ transposed the *IDD*.
- (2) In order to help *firms* which are subject to ~~the~~ those requirements ~~of~~ which implemented the *IDD* to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the ~~directly applicable~~ *IDD Regulation*, marked with the status letters “EU” “UK”. ~~The authentic provisions of the *IDD Regulation* are directly applicable to *firms* carrying on *insurance distribution* in relation to *insurance-based investment products*.~~
- (3) This sourcebook does not reproduce the *IDD Regulation* in its entirety. A *firm* to which provisions of the *IDD Regulation* applies should refer to Commission Delegated Regulation (EU) 2017/2359 as published in the electronic version of the Official Journal of the European Union for, and as amended by the [Insurance Distribution (Amendment) (EU Exit) Regulations 2019].
- (a) ~~the authentic version of the applicable articles of the *IDD Regulation*; and~~
- (b) ~~a comprehensive statement of its obligations under the *IDD Regulation*.~~

...

1.3.3 R ...

- (2) In this sourcebook, a word or phrase found in a provision marked “EU” “UK” and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

(1)	(2)
...	

“article 20(1) of Directive (EU) 2016/97”	<del>COBS 9A.2.3AR</del> or <del>COBS 7.3.4R</del>
“article 30(1) of Directive (EU) 2016/97”	<del>COBS 9A.2.1R</del> and <del>COBS 9A.2.16R</del>
“article 30(2) of Directive (EU) 2016/97”	<del>COBS 10A.2.1R</del> and <del>COBS 10A.2.2R</del>
“article 30(3)(a) (ii) of Directive (EU) 2016/97”	<del>COBS 10A.4.1R(2A)</del>
“article 14(1) of this Regulation”	<del>COBS 9A.3.3AEU</del>
“article 185 of Directive 2009/138/EC”	relevant <i>rules</i> in <del>COBS 13</del> , <del>COBS 14</del> and <del>COBS 16.6</del> which are followed by a “ <b>Note:</b> ” referring to article 185 of Solvency II
...	
“Directive (EU) 2016/97”	<del>IDD</del>
...	

...

- 1.3.4 G *Firms* to which provisions of the *IDD Regulation* are applied as if they were *rules* should use the text of any preamble to the relevant provision marked “~~EU~~” “UK” to assist in interpreting any such references or cross-references.

Interpretation – “in good time”

- 1.3.5 G (1) Certain provisions in this sourcebook which ~~implement~~ implemented *IDD* require *firms* to provide *clients* with information “in good time”. There are also other provisions in this sourcebook which require information to be provided “in good time”, for example, *COBS 6.1ZA.19AR*.

...

...

**1**      **Application (see COBS 1.1.2R)**  
**Annex**  
**1**

Part 1: What?

Modifications to the general application of COBS according to activities

<b>1.</b>	<b>Eligible counterparty business</b>																	
1.1	R	The <i>COBS</i> provisions shown below do not apply to <i>eligible counterparty business</i> except, where the <i>eligible counterparty business</i> is in scope of the <i>IDD</i> , those provisions which <del>implement</del> <u>implemented</u> the <i>IDD</i> continue to apply.																
		<table border="1"> <thead> <tr> <th>COBS provision</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>...</td> <td></td> </tr> <tr> <td><i>COBS</i> 4 (other than <i>COBS</i> 4.2, <i>COBS</i> 4.4.1R, <i>COBS</i> 4.5A.9EU 4.5A.9UK and <i>COBS</i> 4.7.1AEU 4.7.-1AUK)</td> <td>Communicating with clients including financial promotions</td> </tr> <tr> <td>...</td> <td></td> </tr> <tr> <td><i>COBS</i> 8A (other than <i>COBS</i> 8A.1.5EU 8A.1.5UK to <i>COBS</i> 8A.1.8G)</td> <td>Client agreements (MiFID provisions)</td> </tr> <tr> <td>...</td> <td></td> </tr> <tr> <td><i>COBS</i> 12.2.18EU 12.2.18UK</td> <td>Labelling of non-independent research</td> </tr> <tr> <td>...</td> <td></td> </tr> </tbody> </table>	COBS provision	Description	...		<i>COBS</i> 4 (other than <i>COBS</i> 4.2, <i>COBS</i> 4.4.1R, <i>COBS</i> 4.5A.9EU 4.5A.9UK and <i>COBS</i> 4.7.1AEU 4.7.-1AUK)	Communicating with clients including financial promotions	...		<i>COBS</i> 8A (other than <i>COBS</i> 8A.1.5EU 8A.1.5UK to <i>COBS</i> 8A.1.8G)	Client agreements (MiFID provisions)	...		<i>COBS</i> 12.2.18EU 12.2.18UK	Labelling of non-independent research	...	
COBS provision	Description																	
...																		
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...																		
<i>COBS</i> 12.2.18EU 12.2.18UK	Labelling of non-independent research																	
...																		
...																		
<b>5.</b>	<b>Consumer credit products</b>																	
5.1	R	If a <i>firm</i> , in relation to its <i>MiFID business</i> , offers an <i>investment service</i> as part of a financial product that is subject to other provisions of <del>EU</del> <u>EU-derived</u> law																

		related to <i>credit institutions</i> and consumer credits with respect to information requirements, that service is not subject to the rules in this sourcebook that <del>implement</del> <u>implemented</u> articles 24(3), (4) and (5) of <i>MiFID</i> .
		[ <b>Note:</b> article 24(6) of <i>MiFID</i> ]
...		
<b>5A.</b>	<b>Mortgages and mortgage bonds</b>	
5A.1	R	The <i>rule</i> in paragraph 5A.2R applies in relation to an <i>MCD credit agreement</i> with a <i>consumer</i> which is subject to the provisions concerning the creditworthiness assessment of <i>consumers</i> in Chapter 6 of the <i>MCD</i> (as <u>which were</u> transposed in <i>MCOB 11</i> and <i>MCOB 11A</i> ).
5A.2	R	If an agreement with a <i>consumer</i> within paragraph 5A.1R has as a pre-requisite the provision to that same <i>consumer</i> of an <i>investment service</i> in relation to mortgage bonds satisfying the conditions in paragraph 5A.3R in order for the loan to be payable, refinanced or redeemed, that <i>investment service</i> is not subject to the <i>rules</i> in this sourcebook which <del>implement</del> <u>implemented</u> article 25 of <i>MiFID</i> .
...		
<b>8.</b>	<b>PRIIPs Regulation</b> <u>[deleted]</u>	
8.1	R	<del>The <i>general application rule</i> is modified so that a <i>firm</i> will not be subject to <i>COBS</i> to the extent that it would be contrary to the <i>United Kingdom's</i> obligations in respect of the <i>PRIIPs Regulation</i>.</del>

Part 2: Where?

Modifications to the general application according to location

<b>1.</b>	<b>EEA territorial scope rule: compatibility with European law</b> <u>[deleted]</u>		
1.1	R	(1)	<del>The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 3 for <i>guidance</i> on this).</del>
		(2)	<del>This <i>rule</i> overrides every other <i>rule</i> in this sourcebook.</del>

1.2	R	In addition to the <i>EEA territorial scope rule</i> , the effect of the <i>Electronic Commerce Directive</i> on territorial scope is applied in the fields covered by the 'derogations' in the Annex to that Directive other than the 'insurance derogation' in the fourth indent (see paragraph 7.3 of Part 3 for <i>guidance</i> on this).
		[ <del>Note: article 3(3) of, and Annex to, the Electronic Commerce Directive</del> ]
2.	<b>Business with UK clients from overseas establishments</b>	
...		
2.2	G	One of the effects of the <i>EEA territorial scope rule</i> is to override the application of this sourcebook to the overseas establishments of <i>EEA firms</i> in a number of cases, including circumstances covered by <i>MiFID</i> , the <i>Distance Marketing Directive</i> or the <i>Electronic Commerce Directive</i> . See Part 3 for <i>guidance</i> on this. [deleted]

## Part 3: Guidance

1.	<b>The main extensions, modifications and restrictions to the general application</b>	
...		
1.2	G	The provisions of the <i>Single Market Directives</i> and other directives also extensively modify the general application of this sourcebook, particularly in relation to territorial scope. [deleted]
1.3	G	In particular, certain <u>Certain</u> chapters of this sourcebook apply only to <i>firms</i> in relation to their <i>MiFID</i> , <i>equivalent third country</i> or <i>optional exemption business</i> and, in some of these chapters, specified <i>insurance distribution activities</i> (sometimes only in relation to <i>insurance-based investment products</i> ) while others apply only to <i>firms' designated investment business</i> which is not <i>MiFID</i> , <i>equivalent third country</i> or <i>optional exemption business</i> or, in some of these chapters, certain <i>insurance distribution activities</i> .
1.4	G	<i>COBS 18</i> (Specialist regimes) contains specialist regimes which modify the application of the provisions in this sourcebook for particular types of <i>firm</i> and business. To the extent that they are in conflict, the <i>rules</i> in <i>COBS 18</i> on the application of the provisions in this sourcebook should be understood as overriding any

		other provision (whether in <i>COBS</i> 1 or an individual chapter) on the application of <i>COBS</i> . For the avoidance of doubt, nothing in <i>COBS</i> 18 modifies the effect of the <i>EEA territorial scope rule</i> .
<b>2.</b>	<b>The Single Market Directives and other directives [deleted]</b>	
2.1	G	This <i>guidance</i> provides a general overview only and is not comprehensive.
2.2	G	When considering the impact of a directive on the territorial application of a <i>rule</i> , a <i>firm</i> will first need to consider whether the relevant situation involves a non- <i>UK</i> element. The <i>EEA territorial scope rule</i> is unlikely to apply if a <i>UK firm</i> is doing business in a <i>UK establishment</i> for a <i>client</i> located in the <i>United Kingdom</i> in relation to a <i>United Kingdom</i> product. However, if there is a non- <i>UK</i> element, the <i>firm</i> should consider whether:
		(1) it is subject to the directive (in general, directives only apply to <i>UK firms</i> and <i>EEA firms</i> , but the implementing provisions may not treat non- <i>EEA firms</i> more favourably than <i>EEA firms</i> );
		(2) the business it is performing is subject to the directive; and
		(3) the particular <i>rule</i> is within the scope of the directive.
		If the answer to all three questions is ‘yes’, the <i>EEA territorial scope rule</i> may change the general application of this sourcebook.
2.3	G	When considering a particular situation, a <i>firm</i> should also consider whether two or more directives apply.
<b>3.</b>	<b>MiFID: effect on territorial scope [deleted]</b>	
3.1	G	<i>PERG</i> 13 contains general <i>guidance</i> on the persons and businesses to which <i>MiFID</i> applies.
3.2	G	This <i>guidance</i> concerns the <i>rules</i> within the scope of <i>MiFID</i> including those <i>rules</i> which are in the same subject area as the implementing <i>rules</i> . A <i>rule</i> is within the scope of <i>MiFID</i> if it is followed by a ‘Note:’ indicating the article of <i>MiFID</i> or the <i>MiFID Delegated Directive</i> which it implements.

3.3	G	For a <i>UK MiFID investment firm</i> , rules in this sourcebook that are within the scope of <i>MiFID</i> generally apply to its <i>MiFID business</i> carried on from an establishment in the <i>United Kingdom</i> . They also generally apply to its <i>MiFID business</i> carried on from an establishment in another <i>EEA State</i> , but only where that business is not carried on within the territory of that State. (See articles 34(1), 35(1) and 35(8) of <i>MiFID</i> )
3.4	G	For an <i>EEA MiFID investment firm</i> , rules in this sourcebook that are within the scope of <i>MiFID</i> generally apply only to its <i>MiFID business</i> if that business is carried on from an establishment in, and within the territory of, the <i>United Kingdom</i> . (See article 35(1) and 35(8) of <i>MiFID</i> )
3.5	G	However, the rules on investment research and non-independent research ( <i>COBS 12.2</i> , except for <i>COBS 12.2.18EU</i> ) and the rules on personal transactions ( <i>COBS 11.7A</i> ) apply on a “home state” basis. This means that they apply to the establishments of a <i>UK MiFID investment firm</i> in the <i>United Kingdom</i> and another <i>EEA State</i> and do not apply to an <i>EEA MiFID investment firm</i> .
3.6	G	<i>Firms</i> to which <i>MiFID</i> applies or which are subject to requirements in <i>MiFID</i> (including <i>MiFID optional exemption firms</i> ) should also have regard to the rules and guidance in <i>COBS 1.2</i> .
4.	<b>Insurance Distribution Directive: effect on territorial scope</b> [deleted]	
4.1	G	The <i>IDD's</i> scope covers most <i>firms</i> carrying on most types of <i>insurance distribution</i> in relation to risks and commitments located in an <i>EEA State</i> .
4.1A	G	The rules in this sourcebook within the Directive's scope are those relating to <i>life policies</i> that implement the minimum requirements in articles 1(4), 17, 18, 19, 20, 21, 23, 24(1) to (3) and (6), 29, and 30 of the <i>IDD</i> are set out in:
		(1) <i>COBS 2.1.1R</i> , <i>COBS 2.2A</i> and <i>COBS 2.3A</i> (Conduct of business obligations);
		(2) <i>COBS 4</i> (Communicating with clients, including financial promotions);

		(3)	<del>COBS 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions));</del>
		(4)	<del>COBS 7 (Insurance distribution);</del>
		(5)	<del>COBS 8 (Client agreements);</del>
		(6)	<del>COBS 9 (Suitability (including basic advice) (other than MiFID and insurance based investment products provisions)) and COBS 9A (Suitability (MiFID and insurance based investment products provisions));</del>
		(7)	<del>COBS 10A (Appropriateness (for non advised services));</del>
		(8)	<del>COBS 14.2 (Providing product information to clients); and</del>
		(9)	<del>COBS 16A.2 (General client reporting and record keeping requirements).</del>
4.1B	G	A Member State is entitled to impose additional requirements within the <i>IDD</i> 's scope in the 'general good' (see recital 52 to, and article 22 of, the <i>IDD</i> ).	
4.2	G	The <i>IDD</i> places responsibility for requirements in this sourcebook within the Directive's scope (both minimum and additional requirements) on the <i>Home State</i> , except:	
		(1)	in relation to business conducted through a <i>branch</i> , in which case the responsibility rests with the <i>EEA State</i> in which the <i>branch</i> is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis) (see recital 22 to, and article 7(2) of, the <i>IDD</i> ). So <i>firms</i> operating under the freedom of establishment in the <i>UK</i> , must adhere to the requirements in the <i>UK</i> , regardless of the habitual residence of the customer (other than in the situations described in (2)); and
		(2)	where a Member State has:
		(a)	introduced the stricter requirements in article 29(3) of the <i>IDD</i> ; or



			(b)	introduced requirements which have not made use of the derogation in article 30(3) of the <i>IDD</i> to allow <i>firms</i> not to carry out an appropriateness assessment in relation to a non-advised sale of an <i>insurance based investment product</i> ,
				<i>firms</i> concluding contracts with customers having their habitual residence or establishment in that Member State must adhere to the more onerous requirements in (a) or (b) in force in that State.
4.3	G	Accordingly, the general rules on territorial scope are not modified by the <i>IDD</i> except:		
		(1)		for an <i>EEA firm</i> providing passported activities under the Directive in the <i>United Kingdom</i> , the additional <i>rules</i> within the Directive's scope have their unmodified territorial scope unless the <i>Home State</i> imposes measures of like effect.
		(2)		for <i>insurance distribution</i> business carried on by <i>insurers</i> :
			(a)	minimum and additional requirements apply to a <i>UK firm</i> unless responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the <i>firm's Host State regulator</i> ; and
			(b)	paragraphs (1), (3), (4) and 4.4G, below, apply in the same way unless the responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the <i>firm's Home State regulator</i> .
		(3)		for a <i>UK firm</i> concluding contracts with customers having their habitual residence or establishment another Member State, it must comply with the requirements of that Member State falling within 4.2G(2);
		(4)		for an <i>EEA firm</i> providing passported activities in the <i>United Kingdom</i> under the <i>IDD</i> the <i>rules</i> in <i>COBS</i> which give effect to article 29(3)

		apply, where the <i>client</i> has their habitual residence or establishment in the <i>UK</i> , when it is operating under the freedom to provide services.
4.4	G	An <i>EEA firm</i> acting as the principal of an <i>appointed representative</i> carrying on <i>insurance distribution activities</i> from an establishment in the <i>UK</i> is required to ensure that its <i>appointed representative</i> complies with this sourcebook.
<b>5.</b>	<b>Solvency II Directive: effect on territorial scope [deleted]</b>	
5.1	G	The <i>Solvency II Directive's</i> scope covers <i>long-term insurers</i> . The <i>rules</i> in this sourcebook within the <i>Solvency II Directive's</i> scope are the <i>cancellation rules (COBS 15)</i> and those <i>rules</i> requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the <i>contract of insurance</i> . The <i>Solvency II Directive</i> specifies minimum information and cancellation requirements and permits <i>EEA States</i> to adopt additional information requirements that are necessary for a proper understanding by the <i>policyholder</i> of the essential elements of the commitment.
5.2	G	If the <i>State of the commitment</i> is an <i>EEA State</i> , the <i>Solvency II Directive</i> provides that the applicable information rules and cancellation rules shall be laid down by that state. Accordingly, if the <i>State of the commitment</i> is the <i>United Kingdom</i> , the relevant <i>rules</i> in this sourcebook apply. Those <i>rules</i> do not apply if the <i>State of the commitment</i> is another <i>EEA State</i> . The territorial scope of other <i>rules</i> , in particular the <i>financial promotion rules</i> , is not affected since the <i>Solvency II Directive</i> explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the 'general good'. (See articles 156, 180, 185 and 186 of the <i>Solvency II Directive</i> )
<b>6.</b>	<b>Distance Marketing Directive: effect on territorial scope [deleted]</b>	
6.1	G	In broad terms, a <i>firm</i> is within the <i>Distance Marketing Directive's</i> scope when conducting an activity relating to a <i>distance contract</i> with a <i>consumer</i> . The <i>rules</i> in this sourcebook within the <i>Directive's</i> scope are those requiring the provision of pre-contract information, the cancellation rules ( <i>COBS 15</i> ) and the other specific

		<i>rules</i> implementing the Directive contained in <i>COBS 5</i> (Distance communications):
6.2	G	In the <i>FCA's</i> view, the Directive places responsibility for requirements within the Directive's scope on the <i>Home State</i> except in relation to business conducted through a branch, in which case the responsibility rests with the <i>EEA State</i> in which the branch is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis). (See article 16 of the <i>Distance Marketing Directive</i> )
6.3	G	This means that relevant <i>rules</i> in this sourcebook will, in general, apply to a <i>firm</i> conducting business within the Directive's scope from an establishment in the <i>United Kingdom</i> (whether the <i>firm</i> is a national of the <i>UK</i> or of any other <i>EEA</i> or non <i>EEA</i> state).
6.4	G	Conversely, the territorial scope of the relevant <i>rules</i> in this sourcebook is modified as necessary so that they do not apply to a <i>firm</i> conducting business within the Directive's scope from an establishment in another <i>EEA state</i> if the <i>firm</i> is a national of the <i>United Kingdom</i> or of any other <i>EEA state</i> .
6.5	G	In the <i>FCA's</i> view:
		(1) the 'country of origin' basis of the Directive is in line with that of the <i>Electronic Commerce Directive</i> and the <i>IDD</i> ; (See recital 6 of the <i>Distance Marketing Directive</i> )
		(2) for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Solvency II Directive</i> , the territorial application of the <i>Distance Marketing Directive</i> takes precedence; in other words, the <i>rules</i> requiring pre-contract information and cancellation rules ( <i>COBS 15</i> ) derived from the <i>Solvency II Directive</i> apply on a 'country of origin' basis rather than being based on the <i>State of the commitment</i> ; (See articles 4(1) and 16 of the <i>Distance Marketing Directive</i> )
7.	<b>Electronic Commerce Directive: effect on territorial scope</b> [deleted]	
7.1	G	The <i>Electronic Commerce Directive's</i> scope covers every <i>firm</i> carrying on an <i>electronic commerce activity</i> .

		Every <i>rule</i> in this sourcebook is within the Directive's scope.
7.2	G	A key element of the Directive is the ability of a <i>person</i> from one <i>EEA</i> state to carry on an <i>electronic commerce activity</i> freely into another <i>EEA</i> state. Accordingly, the territorial application of the <i>rules</i> in this sourcebook is modified so that they apply at least to a <i>firm</i> carrying on an <i>electronic commerce activity</i> from an <i>establishment</i> in the <i>United Kingdom</i> with or for a <i>person</i> in the <i>United Kingdom</i> or another <i>EEA</i> state. Conversely, a <i>firm</i> that is a national of the <i>UK</i> or another <i>EEA</i> State, carrying on an <i>electronic commerce activity</i> from an <i>establishment</i> in another <i>EEA</i> State with or for a <i>person</i> in the <i>United Kingdom</i> need not comply with the <i>rules</i> in this sourcebook. (See article 3(1) and (2) of the <i>Electronic Commerce Directive</i> )
7.3	G	The effect of the Directive on this sourcebook is subject to the 'insurance derogation', which is the only 'derogation' in the Directive that the <i>FCA</i> has adopted for this sourcebook. The derogation applies to an <i>insurer</i> that is authorised under and carrying on an <i>electronic commerce activity</i> within the scope of the <i>Solvency II Directive</i> and permits <i>EEA</i> States to continue to apply their advertising rules in the 'general good'. Where the derogation applies, the <i>financial promotion rules</i> continue to apply for incoming <i>electronic commerce activities</i> (unless the <i>firm's</i> 'country of origin' applies rules of like effect) but do not apply for outgoing <i>electronic commerce activities</i> . (See article 3(3) and Annex, fourth indent of the <i>Electronic Commerce Directive</i> ; Annex to European Commission Discussion Paper MARKT/2541/03)
7.4	G	In the <i>FCA's</i> view, the Directive's effect on the territorial scope of this sourcebook (including the use of the 'insurance derogation'):
		(1) is in line with the <i>Distance Marketing Directive</i> and the <i>IDD</i> ; and
		(2) overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.
7.5	G	The 'derogations' in the Directive may enable other <i>EEA</i> States to adopt a different approach to the <i>United Kingdom</i> in certain fields. (See recital 19 of the <i>IDD</i> ;

		recital 6 of the <i>Distance Marketing Directive</i> , article 3 and Annex of the <i>Electronic Commerce Directive</i> )	
<b>8.</b>	<b>Investor Compensation Directive [deleted]</b>		
8.1	G	(1)	The <i>Investor Compensation Directive</i> generally requires <i>MiFID investment firms</i> to belong to a compensation scheme established in accordance with the Directive. The rules in this sourcebook that implement the Directive are those (i) requiring <i>MiFID investment firms</i> , including their branches, to make available specified information about the compensation scheme to which they belong and specifying the language in which such information must be provided ( <i>COBS 6.1.16 R</i> ) and (ii) restricting mention of the compensation scheme in advertising to factual references ( <i>COBS 4.2.5G</i> ).
		(2)	In the <i>FCA's</i> view, these matters are a <i>Home State</i> responsibility although a <i>Host State</i> may continue to apply its own rules in the 'general good'. Accordingly, these rules apply to the establishments of a <i>UK MiFID investment firm</i> in the <i>United Kingdom</i> and another <i>EEA State</i> but also apply in accordance with their standard territorial scope to an <i>EEA MiFID investment firm</i> providing services in the <i>UK</i> unless its <i>Home State</i> applies rules of like effect.
<b>9.</b>	<b>UCITS Directive: effect on territorial scope [deleted]</b>		
9.1	G	The <i>UCITS Directive</i> covers undertakings for collective investment in transferable securities ( <i>UCITS</i> ) meeting the requirements of the Directive, and their <i>management companies</i> and <i>depositories</i> . The rules in this sourcebook within the Directive's scope (all of which will apply to a <i>management company</i> ) are those in:	
		(1)	<i>COBS 2.1</i> (Acting honestly, fairly and professionally);
		(2)	<i>COBS 2.3</i> (Inducements);
		(3)	<i>COBS 4.2.1R</i> (The fair, clear and not misleading rule);

		(4)	<i>COBS 4.3.1R (Financial promotions to be identifiable as such);</i>
		(5)	<i>COBS 4.13 (UCITS);</i>
		(6)	<i>COBS 11.2B (Best execution for UCITS management companies);</i>
		(7)	<i>COBS 11.3 (Client order handling);</i>
		(8)	<i>COBS 11.7 (Personal account dealing);</i>
		(9)	<i>COBS 14 (Providing product information to clients) relating to the provision of key investor information by the management company (in addition to applying to a management company, COBS 14.2 also applies to an ICVC that is a UCITS scheme); and</i>
		(10)	<i>COBS 16.2 (Occasional reporting).</i>
9.1A	G		The majority of the <i>COBS rules</i> referred to in paragraph 9.1 are rules of conduct which each <i>EEA State</i> must draw up under article 14.1 of the <i>UCITS Directive</i> which <i>management companies</i> authorised in that State must observe at all times. The exceptions are <i>COBS 4</i> and <i>COBS 14</i> in so far as they relate to a <i>UCITS scheme</i> , which form part of the <i>FCA's fund application rules</i> and which are the responsibility of the <i>UCITS Home State</i> (for a <i>UCITS scheme</i> , the <i>FCA</i> — see <i>COLL 12.3.5R (COLL fund rules under the management company passport: the fund application rules)</i> and article 19 of the <i>UCITS Directive</i> ).
9.1B	G		Where a <i>management company</i> is providing <i>collective portfolio management services</i> for a <i>UCITS</i> established in a different <i>EEA State</i> , responsibility for its compliance with the applicable rules of conduct drawn up under article 14 will generally be for the <i>management company's Home State</i> , but when a <i>branch</i> is established it will be the responsibility of the <i>Host Member State (UCITS Home State)</i> (see articles 17(4) and 17(5) of the <i>UCITS Directive</i> ).
9.1C	G		Under the <i>UCITS Directive</i> certain <i>Host State</i> marketing and <i>MiFID</i> specific rules might also apply to a <i>management company</i> providing <i>collective portfolio management services</i> for a <i>UCITS</i> established in a different <i>EEA State</i> . Consequently, an <i>EEA UCITS</i>

		<i>management company</i> should note that, under <i>COBS</i> , certain of the <i>FCA's rules</i> apply to it, including the <i>financial promotion rules</i> . <i>COBS 4.13 (UCITS)</i> is concerned with marketing communications for <i>UCITS schemes</i> and <i>EEA UCITS schemes</i> .
9.1D	G	<del><i>EEA UCITS management companies</i> should be aware that there is a special narrower application of <i>COBS</i> for <i>scheme management activity</i> provided for by <i>COBS 18.5B (UCITS management companies)</i>.</del>
9.2	G	[deleted]
9.3	G	The Directive does not affect the territorial scope of <i>rules</i> as they apply to an intermediary (that is not a <i>management company</i> ) selling <i>units</i> of a <i>UCITS</i> .
		[ <b>Note:</b> articles 12, 14, 17, 18, 19 and 94 of the <i>UCITS Directive</i> ]
<b>10.</b>	<b>AIFMD: effect on territorial scope</b> [deleted]	
10.1	G	<del><i>PERG 16</i> contains general <i>guidance</i> on the businesses to which <i>AIFMD</i> applies. <i>FUND 1</i> contains <i>guidance</i> on the types of <i>AIFM</i>.</del>
10.2	G	The only <i>rule</i> in this sourcebook which implements <i>AIFMD</i> is <i>COBS 2.1.4R</i> , which applies to:
		(1) a full scope <i>UK AIFM</i> operating from an establishment in the <i>UK</i> or a <i>branch</i> in another <i>EEA State</i> ; and
		(2) an <i>Incoming EEA AIFM branch</i> .
10.3	G	The other <i>rules</i> in <i>COBS</i> which apply to a <i>full scope UK AIFM</i> or <i>incoming EEA AIFM</i> (including an <i>AIFM qualifier</i> ) fall outside the scope of <i>AIFMD</i> and are, therefore, not affected by its territorial scope.
10.4	G	<i>Incoming EEA AIFM branches</i> should be aware that there is a special narrower application of <i>COBS</i> for <i>AIFM investment management functions</i> provided for by <i>COBS 18.5A (Full scope UK AIFMs and incoming EEA AIFM branches)</i> .

## 2 Conduct of business obligations

### 2.1 Acting honestly, fairly and professionally

## The client's best interests rule

2.1.1 R ...

- (3) For a *management company*, this rule applies in relation to any *UCITS scheme* ~~or *EEA UCITS scheme*~~ the *firm* manages.

[**Note:** article 24(1) of *MiFID*, article 17(1) of the *IDD* and article 14(1)(a) and (b) of the *UCITS Directive*]

...

## AIFMs' best interests rules

2.1.4 R ~~A full-scope UK AIFM and an incoming EEA AIFM branch~~ must, for all *AIFs* it manages:

...

[**Note:** article 12(1)(a), (b) and (f) and article 12(1) last paragraph of *AIFMD*]

...

## 2.3 Inducements relating to business other than MiFID, equivalent third country or optional exemption business and insurance-based investment products

...

## Rule on inducements

2.3.1 R *A firm* must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to *designated investment business* carried on for a *client* other than:

...

- (2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a *person* acting on behalf of a third party, if:

...

- (b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the *client*, in a manner that is comprehensive,



accurate and understandable, before the provision of the service;

- (i) this requirement only applies to business other than the carrying on by a *UK UCITS management company* ~~or *EEA UCITS management company*~~ of the *collective portfolio management* activities of investment management and administration for the relevant *scheme* if it includes:

...

- (ii) where this requirement applies to business other than the carrying on by a *UK UCITS management company* ~~or *EEA UCITS management company*~~ of the *collective portfolio management* activities of investment management and administration for the relevant *scheme*, a *firm* is not required to make a disclosure to the client in relation to a non-monetary benefit permitted under (a) and which falls within the table of reasonable non-monetary benefits in *COBS 2.3.15G* as though that table were part of this *rule* for this purpose only;

...

- (c) in relation to the carrying on by a *UK UCITS management company* ~~or *EEA UCITS management company*~~ of the *collective portfolio management* activities of investment management and administration for the relevant *scheme* or when carrying on a *regulated activity* in relation to a *retail investment product*, or when *advising on P2P agreements*, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the *client*; or

...

[**Note:** articles 29(1) and 29(2) of the *UCITS implementing Directive*]

2.3.1A R *COBS 2.3.1R applies to a UK UCITS management company and ~~EEA UCITS management company~~ when providing collective portfolio management services, as if references to a client, were references to any UCITS it manages.*

[**Note:** article 29(1) of the *UCITS implementing Directive*]

...

2.3.2A R *COBS 2.3.2R applies to a UK UCITS management company and ~~EEA UCITS management company~~ when providing collective portfolio management services, as if references to a client were references to a Unitholder of the scheme.*

[**Note:** article 29(2) of the *UCITS implementing Directive*]

...

**2.3A Inducements relating to MiFID, equivalent third country or optional exemption business and insurance-based investment products**

...

2.3A.6 R (1) *COBS 2.3A.5R does not apply to:*

(a) a fee, commission or non-monetary benefit which:

(i) is designed to enhance the quality of the relevant service to the *client* (see *COBS 2.3A.8R* and, also for an *insurance-based investment product*, ~~*COBS 2.3A.9AEU*~~ *2.3A.9AUK*); and

...

...

...

...

Additional requirements for the assessment of inducements: insurance-based investment products

2.3A.9 EU  
A UK

...

2.3A.9 R ~~*COBS 2.3A.9AEU*~~ *2.3A.9AUK* applies as if it was a *rule to firms* in relation to *insurance distribution activities* to which the *IDD Regulation* does not apply.

...

- 2.3A.1 R In implementing the requirements of *COBS* 2.3A.10R to *COBS*  
3 2.3A.12R, a *firm* must take into account the costs and charges  
*rules set out in*:
- (1) (for *MiFID*, equivalent third country or optional exemption business) ~~in article 24(4)(c) of *MiFID*~~ *COBS* 6.1ZA.11R and *COBS* 6.1ZA.12R and article 50 of the *MiFID Org Regulation* (see ~~*COBS* 6.1ZA.11R to *COBS* 6.1ZA.13R and *COBS* 6.1ZA.14EU~~ 6.1ZA.14UK); and
  - (2) (for insurance-based investment products) ~~in~~ *COBS* 6.1ZA.11R to *COBS* 6.1ZA.13R and *COBS* 6.1ZA.15AR.

[**Note:** article 11(5) of the *MiFID Delegated Directive*]

...

Acceptable minor non-monetary benefits

- 2.3A.1 R An acceptable minor non-monetary benefit is one which:  
9
- (1) is clearly disclosed prior to the provision of the relevant service to the *client*, which the *firm* may describe in a generic way (where applicable, in accordance with ~~article 11(5)(a) of the *MiFID Delegated Directive*~~ (see *COBS* 2.3A.10R));

...

...

## 2.3C Research and execution services

Application

- 2.3C.1 R This section applies to an *investment firm* providing execution services to:

...

- (2) an *investment firm* authorised under the UK provisions which implemented *MiFID* that is not within (1); or

...

- (7) ~~an incoming EEA AIFM branch; or~~ [deleted]

...

...

## 2.4 Agent as client and reliance on others

...

2.4.2 G This section is not relevant to, nor does it affect:

...

- (3) any obligation imposed on a *firm* by article 26 of *MiFIR* or ~~RTS 22~~ *MiFID RTS 22*.

...

### Reliance on other investment firms: MiFID and equivalent business

2.4.4 R (1) This *rule* applies if a *firm* (F1), in the course of performing *MiFID* or *equivalent third country business*, receives an instruction to provide an *investment* or *ancillary service* on behalf of a *client* (C) through another *firm* (F2), if F2 is:

...

- (b) an *investment firm* that is:
- (i) a *firm* ~~or authorised in another EEA State~~; and
  - (ii) subject to equivalent relevant requirements.

...

2.4.5 G (1) If F1 is required to perform a suitability assessment or an appropriateness assessment under *COBS 9A* or *COBS 10A*, it may rely upon a suitability assessment performed by F2, if F2 was subject to the requirements for assessing suitability in *COBS 9A* (excluding the *basic advice rules*) ~~or equivalent requirements in another EEA State~~ in performing that assessment.

(2) If F1 is required to perform an appropriateness assessment under *COBS 10A*, it may rely upon an appropriateness assessment performed by F2, if F2 was subject to the requirements for assessing appropriateness in *COBS 10A.2*, ~~or equivalent requirements in another EEA State~~ in performing that assessment.

## Reliance on other insurance distributors

2.4.5A R Where a *firm* carrying on *insurance distribution activities* in relation to an *insurance-based investment product* is required to perform an appropriateness assessment under *COBS 10A*, it may rely upon:

- (1) a suitability assessment performed by another *firm*, if that other *firm* was subject to the requirements for assessing suitability in *COBS 9A* ~~or equivalent requirements in another *EEA State*~~; or
- (2) an appropriateness assessment performed by another *firm*, if that other *firm* was subject to the requirements for assessing appropriateness in *COBS 10A.2* ~~or equivalent requirements in another *EEA State*~~,

in performing that assessment.

[**Note:** article 30(2) of the *IDD*]

...

### 3 Client categorisation

#### 3.1 Application

...

3.1.2A R Subject to *COBS 3.1.3R* and *COBS 3.6.4CR*, in this chapter provisions marked “~~EU~~” “UK” apply to a *firm*’s business other than *MiFID business* as if they were *rules*.

...

#### 3.2 Clients

##### General definition

3.2.1 R ...

- (4) A client of an *appointed representative* or, if applicable, a *tied agent* is a “client” of the *firm* for whom that *appointed representative*, or *tied agent*, acts or intends to act in the course of business for which that *firm* has accepted responsibility under the *Act* ~~or *MiFID*~~ (see sections 39 and 39A of the *Act* and ~~*SUP 12.3.5R*~~).

...

...

### 3.3 General notifications

- 3.3.1A ~~EU~~  
UK Articles 45(1) and (2) of the *MiFID Org Regulation* require *firms* to provide *clients* with specified information concerning *client* categorisation.

45(1) Investment firms shall notify new clients, and existing clients that the investment firm has newly categorised as required by ~~Directive 2014/65/EU~~ UK law on markets in financial instruments, of their categorisation as a retail client, a professional client or an eligible counterparty in accordance with that Directive.

...

- 3.3.1B R The information referred to in article 45(2) of the *MiFID Org Regulation* (as reproduced at ~~COBS 3.3.1A EU~~ 3.3.1A UK) must be provided to *clients* prior to any provision of services.

[**Note:** paragraph 2 of section I of annex II to *MiFID*]

...

### 3.5 Professional clients

...

Per se professional clients

- 3.5.2 R Each of the following is a *per se professional client* unless and to the extent it is an *eligible counterparty* or is given a different categorisation under this chapter:

- (1) an entity required to be authorised or regulated to operate in the financial markets. The following list includes all authorised entities carrying out the characteristic activities of the entities mentioned, whether authorised ~~by an EEA State~~ in the UK or a third country ~~and whether or not authorised by reference to a directive:~~

...

...

- 3.5.3E R (1) A *firm* may treat a non-UK local public authority or municipality as an *elective professional client* if it complies with *COBS* 3.5.3R(1) and *COBS* 3.5.3R(3) and, in addition, applies the ~~relevant~~ “quantitative test” ~~under paragraph (2)~~ that is applied in relation to *MiFID*

or equivalent third country business under COBS 3.5.3R(2).

- (2) The relevant “quantitative test” under this *rule* is either:
- (a) ~~where the local public authority or municipality is established in an *EEA State* and the *EEA State* has adopted alternative or additional criteria to those listed in the fifth paragraph to section II.1 of annex II to *MiFID*; those criteria as set out in the law or measures of that *EEA State*; or~~
  - (b) ~~in any other case the same “quantitative test” that is applied in relation to *MiFID* or *equivalent third country business* under *COBS 3.5.3R(2)*. [deleted]~~

...

- 3.5.5 G The fitness test applied to managers and directors of ~~entities licensed under directives in the financial field~~ relevant *firms* is an example of the assessment of expertise and knowledge involved in the qualitative test.

[**Note:** fourth paragraph of section II.1 of annex II to *MiFID*]

...

### 3.6 Eligible counterparties

...

Per se eligible counterparties

- 3.6.2 R Each of the following is a *per se eligible counterparty* (including an entity that is not from ~~an *EEA State*~~ the *UK* that is equivalent to any of the following) unless and to the extent it is given a different categorisation under this chapter:

...

- (4) a *collective investment scheme* authorised under the *UK provisions which implemented the UCITS Directive* or its management company;

...

- (6) another financial institution authorised or regulated ~~under *EU* legislation or the national law of an *EEA State*~~ under the law of the *United Kingdom*;

...

...

### Elective eligible counterparties

- 3.6.4 R A *firm* may treat a *client* as an *elective eligible counterparty* in relation to business other than *MiFID* or equivalent third country business if:

...

- (2) the *firm* adheres to the procedure set out at *COBS* ~~3.6.4BEU~~ 3.6.4BUK.

- 3.6.4A R Provided that it adheres to the procedure set out at *COBS* ~~3.6.4BEU~~ 3.6.4BUK, a *firm* may treat a *client* as an *elective eligible counterparty* in relation to *MiFID* or equivalent third country business if the *client*:

...

- 3.6.4B ~~EU~~  
UK Article 71(5) of the *MiFID Org Regulation* sets out the procedure to be followed where a *client* requests to be treated as an *eligible counterparty*.

71(5) Where a client requests to be treated as an eligible counterparty, in accordance with ~~Article 30(3) of Directive 2014/65/EU~~ [COBS 3.6.4AR], the following procedure shall be followed:

...

- 3.6.5 G The categories of *elective eligible counterparties* include an equivalent undertaking that is not from an ~~EEA State~~ the United Kingdom provided the above conditions and requirements are satisfied.

...

### Client and firm located in different jurisdictions

- 3.6.7 R ~~In the case of *MiFID* or equivalent third country business, in the event of a transaction where the prospective counterparties are located in different *EEA States*, the *firm* shall defer to the status of the other undertaking as determined by the law or measures of the *EEA State* in which that undertaking is established. [deleted]~~

[**Note:** first paragraph of article 30(3) of *MiFID*]

## 3.7 Providing clients with a higher level of protection



...

- 3.7.3A EU Article 45(3) of the *MiFID Org Regulation* sets out provisions in  
UK respect of giving *clients* a higher level of protection.

45(3) Investment firms may, either on their own initiative or at the request of the client concerned treat a client in the following manner:

(a) as a professional or retail client where that client might otherwise be classified as an eligible counterparty pursuant to ~~Article 30(2) of Directive 2014/65/EU~~ [COBS 3.6.2R];

(b) a retail client where that client that is considered a professional client pursuant to ~~Section I of Annex II to Directive 2014/65/EU Part 2 of Schedule 1 to Regulation (EU) No 600/2014.~~

- 3.7.3B EU Article 71(2) to (4) of the *MiFID Org Regulation* sets out  
UK provisions applying to *eligible counterparties* requesting a higher level of protection.

71(2) Where, pursuant to ~~the second subparagraph of Article 30(2) of that Directive 2014/65/EU~~ [COBS 3.7.1R], an eligible counterparty requests treatment as a client whose business with an investment firm is subject to ~~Articles 24, 25, 27 and 28 of that Directive~~ rules in the Conduct of Business; Market Conduct; Senior Management Arrangements, Systems and Controls and the Product Intervention and Product Governance sourcebooks which were relied on immediately before exit day to implement Articles 24, 25, 27 and 28 of Directive 2014/65/EU (“the relevant rules”), the request should be made in writing, and shall indicate whether the treatment as retail client or professional client refers to one or more investment services or transactions, or one or more types of transaction or product.

(3) Where an eligible counterparty requests treatment as a client whose business with an investment firm is subject to ~~Articles 24, 25, 27 and 28 of Directive 2014/65/EU~~ the relevant rules, but does not expressly request treatment as a retail client, the firm shall treat that eligible counterparty as a professional client.

(4) Where the eligible counterparty expressly requests treatment as a retail client, the investment firm shall treat the eligible counterparty as a retail client, applying the provisions in respect of requests of non-professional treatment specified in ~~the second, third and fourth sub-~~

paragraphs of Section I of Annex II to Directive 2014/65/EU paragraph 3(b), (c), (d) and 4 of Schedule 1 to Regulation (EU) No 600/2014.

...

## 4 Communicating with clients, including financial promotions

### 4.1 Application

...

Where? Modifications to comply with EU law

- 4.1.9 G (1) ~~The *EEA territorial scope rule* modifies the general territorial scope of the *rules* in this chapter to the extent necessary to be compatible with European law. This means that in a number of cases, the *rules* in this chapter will apply to *communications* made by *UK firms* to *persons* located outside the *United Kingdom* and will not apply to *communications* made to persons inside the *United Kingdom* by *EEA firms*. Further *guidance* on this is located in *COBS 1 Annex 1*.~~
- (2) ~~One effect of the *EEA territorial scope rule* is that the *rules* in this chapter will not generally apply to an *EEA key investor information document* but will, for example, apply to a *firm* (including an *EEA UCITS management company*) when *marketing* in the *United Kingdom* the *units* of an *EEA UCITS scheme* that is a *recognised scheme*.~~
- (3) ~~The *financial promotion rules* do not apply to incoming communications in relation to the *MiFID business* of an *investment firm* from another *EEA State* that are, in its *home member state*, regulated under *MiFID* other than to the extent *COBS 4.12 (Restrictions on the promotion of non-mainstream pooled investments)* applies.~~  
~~[deleted]~~

...

### 4.3 Financial promotions to be identifiable as such

#### 4.3.1 ...

- (4) In the case of a marketing communication that relates to:
- (a) a *UCITS scheme* ~~or an *EEA UCITS scheme*~~, or

...

(2) and (3) do not limit the application of this *rule*.

#### 4.4 Compensation information

- 4.4.1 R A *firm* must ensure that any reference in advertising to an investor compensation scheme ~~established under the *Investor Compensation Directive*~~ is limited to a factual reference to the scheme.

[**Note:** article 10(3) of the *Investor Compensation Directive*]

...

#### 4.5A Communicating with clients (including past, simulated past and future performance) (MiFID provisions)

...

- 4.5A.2 R Provisions in this section marked “EU” “UK” apply in relation to *MiFID optional exemption business* as if they were *rules* (see *COBS 1.2.2G*).

- 4.5A.2 G The effect of *GEN 2.2.22AR* is that provisions in this section  
A marked “EU” “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

##### General requirements

- 4.5A.3 EU ...  
UK

...

##### Comparative information

- 4.5A.7 EU ...  
UK

##### Referring to tax

- 4.5A.8 EU ...  
UK

##### Consistent financial promotions

- 4.5A.9 EU ...  
UK

##### Past performance

4.5A.1 0	<del>EU</del> <u>UK</u>	44(4)	<p>Where the information contains an indication of past performance of a financial instrument, a financial index or an investment service, investment firms shall ensure that the following conditions are satisfied:</p> <p>...</p> <p>(e) where the indication relies on figures denominated in a currency other than <del>that of the Member State in which the retail client or potential retail client is resident</del> <u>pounds sterling</u>, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;</p> <p>...</p>
-------------	----------------------------	-------	---

[**Note:** article 44(4) of the *MiFID Org Regulation*]

...

#### Simulated past performance

4.5A.1 2	<del>EU</del> <u>UK</u>	...	
4.5A.1 3	G	For the purposes of <del>COBS 4.5A.12EU 4.5A.12UK</del> , the conditions referred to in article 44(5)(b) can be found reproduced in <del>COBS 4.5A.10EU 4.5A.10UK</del> .	

#### Future performance

4.5A.1 4	<del>EU</del> <u>UK</u>	...	
4.5A.1 5	G	A <i>firm</i> should not provide information on future performance if it is not able to obtain the objective data needed to comply with the requirements regarding information on the future performance in <del>COBS 4.5A.14EU 4.5A.14UK</del> . For example, objective data in relation to <i>EIS shares</i> may be difficult to obtain.	

#### Information that uses the name of any competent authority

4.5A.1 6	<del>EU</del> <u>UK</u>	...	
-------------	----------------------------	-----	--

#### 4.6 Past, simulated past and future performance (non-MiFID provisions)

...

## Past performance

- 4.6.2 R A *firm* must ensure that information that contains an indication of past performance of *relevant business*, a *relevant investment* or a financial index, satisfies the following conditions:

...

- (5) if the indication relies on figures denominated in a currency other than ~~that of the EEA State in which the retail client is resident~~ pounds sterling, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;

...

...

**4.7 Direct offer financial promotions**

## Application

- 4.7.-1 G (1) ~~COBS 4.7.-1AEU~~ 4.7.-1AUK to COBS 4.7.1R contain provisions on the communication of *direct offer financial promotions*.

- (2) In broad terms:

- (a) ~~COBS 4.7.-1AEU~~ 4.7.-1AUK is relevant to a *firm* communicating a *direct offer financial promotion* in relation to its *MiFID*, *equivalent third country* or *optional exemption business*; and

- (b) ...

- (3) However, a *MiFID investment firm*, *third country investment firm* or *MiFID optional exemption firm* which is subject to the requirements in ~~COBS 4.7.-1AEU~~ 4.7.-1AUK may be subject to the *rule* in COBS 4.7.1R to the extent that it communicates a *direct offer financial promotion*:

...

Direct offer financial promotions relating to MiFID, equivalent third country or optional exemption business

- 4.7.-1A EU 46(6) ...  
UK

Effect of provisions marked “~~EU~~” “UK” for third country investment firms and MiFID optional exemptions firms

4.7.-1B R Provisions in this section marked “~~EU~~” “UK” apply in relation to *MiFID optional exemption business* as if they were *rules* (see *COBS 1.2.2G*).

4.7.-1C G The effect of *GEN 2.2.22AR* is that provisions in this section marked “~~EU~~” “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

4.7.-1D G For the purposes of *COBS 4.7.-1A~~EU~~ 4.7.-1AUK*, the provisions of articles 47 to 50 of the *MiFID Org Regulation* can be found reproduced in *COBS 6.1ZA* and *COBS 14.3A*.

...

4.7.5A G *COBS 4.13.2R* (Marketing communications relating to UCITS schemes ~~or EEA UCITS schemes~~) and *COBS 4.13.3R* (Marketing communications relating to feeder UCITS) contain additional disclosure requirements for *firms* in relation to marketing communications (other than *key investor information*) that concern particular investment strategies of a *UCITS scheme* ~~or EEA UCITS scheme~~.

...

#### 4.12 Restrictions on the promotion of non-mainstream pooled investments

...

Exemptions from the restrictions on the promotion of non-mainstream pooled investments

4.12.4 R ...

(5)

Title of Exemption	Promotion to:	Promotion of a non-mainstream pooled investment which is:
...		
3. Enterprise and charitable funds	A person who is eligible to participate or invest in an arrangement constituted under:	Any non-mainstream pooled investment which is such an arrangement.

	<p>...</p> <p>(4) the Regulation on European Venture Capital Funds ('EuVECA') or the <i>RVECA Regulation</i> ('RVECAS'); or</p> <p>(5) the Regulation on European Social Entrepreneurship Funds ('EuSEFs') or the <i>SEF Regulation</i> ('SEFs').</p>	
...		
12. Non-recognised UCITS [deleted]	<del>Any person.</del>	<p><del>Any EEA UCITS scheme which is not a recognised scheme, provided the following requirements are met:</del></p> <p><del>(1) the firm considers it is likely to be suitable for that client based on a preliminary assessment of the client's profile and objectives; and</del></p> <p><del>(2) the firm provides that client with the same product information as it would be required to provide by COBS 14.2 if the scheme was a recognised scheme.</del></p>

		[See <del>COBS 4.12.5G (2).</del> ]
--	--	-------------------------------------

...

Advice and preliminary assessment of suitability

4.12.5 G ...

- (2) (a) A *firm* which wishes to rely on exemptions 2 (certified high net worth investors), ~~or 9 (self-certified sophisticated investors) or 12 (non-recognised UCITS)~~, as provided under *COBS 4.12.4R (5)*, should note that these exemptions require a preliminary assessment of suitability before promotion of the *non-mainstream pooled investment* to clients (in addition to other requirements).

...

...

**4.13 UCITS**

Application

- 4.13.1 R (1) This section applies to a *firm* in relation to a communication to a *client*, including an *excluded communication*, that is a marketing communication within the meaning of the *UCITS Directive*.
- (2) This section does not apply to:
- (a) *image advertising*; or
- (b) the *instrument constituting the fund*, the *prospectus*, the *key investor information* or the periodic reports and accounts of ~~either a UCITS scheme or an EEA UCITS scheme~~.

[**Note:** recital (58) of the *UCITS Directive*]Marketing communications relating to UCITS schemes ~~or EEA UCITS schemes~~

- 4.13.2 R (1) A *firm* must ensure that a marketing communication that comprises an invitation to purchase *units in a UCITS scheme* ~~or EEA UCITS scheme~~ and that contains specific information about the *scheme*:



- (a) makes no statement that contradicts or diminishes the significance of the information contained in the *prospectus* and the *key investor information document* ~~or EEA key investor information document~~ for the scheme;
- (b) indicates that a *prospectus* exists for the *scheme* and that the *key investor information document* ~~or EEA key investor information document~~ is available; and
- (c) specifies where and in which language such information or documents may be obtained by investors or potential investors or how they may obtain access to them.
- (2) Where a *UCITS scheme* ~~or an EEA UCITS scheme~~ may invest more than 35% of its *scheme property* in *transferable securities* and money market instruments issued or guaranteed by the United Kingdom or an EEA State, one or more of its local authorities, a third country or a public international body to which the United Kingdom or one or more EEA States belong, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to the investment policy and indicating the particular ~~EEA States~~ states, local authorities, ~~third countries~~ or public international bodies in the *securities* of which the *scheme* intends to invest or has invested more than 35% of its *scheme property*.
- (3) Where a *UCITS scheme* ~~or EEA UCITS scheme~~ invests principally in *units in collective investment schemes*, *deposits* or *derivatives*, or replicates a stock or debt securities index in accordance with COLL 5.2.31R (Schemes replicating an index) ~~or equivalent national measures implementing article 53 of the UCITS Directive~~, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to the investment policy.
- (4) Where the net asset value of a *UCITS scheme* ~~or EEA UCITS scheme~~ has, or is likely to have, high volatility owing to its portfolio composition or the portfolio management techniques that are or may be used, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to that characteristic.

[**Note:** articles 54(3), 70(2), 70(3) and 77 of the *UCITS Directive*]

Marketing communications relating to a feeder UCITS

- 4.13.3 R A *firm* must ensure that a marketing communication (other than a *key investor information document* ~~or *EEA key investor information document*~~) relating to a *feeder UCITS* contains a statement that the *feeder UCITS* permanently invests at least 85% in value of its assets in *units* of its *master UCITS*.

[**Note:** article 63(4) of the *UCITS Directive*]

## 5 Distance communications

### 5.1 The distance marketing disclosure rules

Application

- 5.1.-1 R (1) This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* ~~or another *EEA State*~~.

...

...

- 5.1.17 R If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the ~~*EEA*~~ *United Kingdom*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of ~~one or more *EEA States*~~ *the United Kingdom*.

[**Note:** articles 12 and 16 of the *Distance Marketing Directive*]

### 5.2 E-Commerce

Application

- 5.2.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom*, with or for a *person* in the *United Kingdom* ~~or another *EEA State*~~.

Information about the firm and its products or services

- 5.2.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

...

(5) if it is a *professional firm*, or a *person* regulated by the equivalent of a *designated professional body* in another *EEA State*:

...

(b) the professional title and the *EEA State* where it was granted;

(c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and

...

...

5.2.5 R An unsolicited commercial communication sent by e-mail by a *firm established in the United Kingdom* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[**Note:** article 7(1) of the *E-Commerce Directive*]

...

**5 Distance marketing information**  
**Annex**  
**1R**

This Annex belongs to *COBS 5.1.1R* (The distance marketing disclosure rules)

Information about the firm

...	
(2)	Where the <i>firm</i> has a representative established in the <i>consumer's EEA State of residence United Kingdom</i> , the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with that representative.
...	
Information about the contract	
...	
(16)	<del>The <i>EEA State</i> or States whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> prior to the conclusion of the contract. [deleted]</del>

...	
-----	--

...

## 6 Information about the firm, its services and remuneration

### 6.1 Information about the firm and compensation information (non-MiFID and non-insurance distribution provisions)

...

#### Information about a firm and its services

6.1.4 R A *firm* must provide a *client* with the following general information, if relevant:

...

- (4) a statement of the fact that the *firm* is authorised ~~and the name of the competent authority that has authorised it~~ by the FCA or the PRA, as applicable;

...

...

#### Information concerning safeguarding of designated investments belonging to clients and client money

6.1.7 R (1) A *firm* that holds *designated investments* or *client money* for a *client* subject to the *custody chapter* or the *client money chapter* must provide that *client* with the following information:

...

- (d) if applicable, that accounts that contain *designated investments* or *client money* belonging to that *client* are or will be subject to the law of a jurisdiction other than that of a ~~EEA State~~ the United Kingdom, an indication that the rights of the *client* relating to those instruments or money may differ accordingly;
- (e) a summary description of the steps which it takes to ensure the protection of any *designated investments* belonging to the *client* or *client money* it holds, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to

the *firm* by virtue of its activities in an ~~EEA State~~ the United Kingdom.

...

#### Compensation information

- 6.1.16 R (1) A *firm* must make available to a *client*, who has used or intends to use the *firm*'s services, information necessary for the identification of the *compensation scheme* ~~or any other investor compensation scheme of which~~ if the *firm* is a *participant firm* member (including, if relevant, membership through a *branch*) or any alternative arrangement provided for in accordance with the *Investor Compensation Directive*.
- (2) The information under (1) must include the amount and scope of the cover offered by the ~~compensation scheme and any rules laid down by the EEA State pursuant to article 2 (3) of the Investor Compensation Directive~~ compensation scheme.
- (3) ...
- (4) The information provided for in this *rule* must be made available in a *durable medium*, or via a website if the *website conditions* are satisfied, in the official language or languages of the ~~EEA State~~ United Kingdom.
- [**Note:** article 10(1) and (2) of the *Investor Compensation Directive*]

...

#### **6.1ZA Information about the firm and compensation information (MiFID and insurance distribution provisions)**

##### Application

- 6.1ZA. R ...  
1
- (3) Where a *firm* is carrying on *insurance distribution activities* for a *professional client* only those *rules* which ~~implement~~ implemented the requirements of the *IDD* apply.
- 6.1ZA. G For the purposes of *COBS* 6.1ZA.1R(3) if a *rule* ~~implements~~  
1A implemented a requirement of the *IDD*, a note (“**Note:**”) follows the *rule* indicating which provision is was being implemented.

...

Effect of provisions marked “EU” “UK” for third country investment firms and MiFID optional exemption firms

6.1ZA. R Provisions in this section marked “EU” “UK” apply in relation to  
3 *MiFID optional exemption business* as if they were *rules* (see *COBS 1.2.2G*).

6.1ZA. G The effect of *GEN 2.2.22AR* is that provisions in this section  
4 marked “EU” “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

[**Note:** ESMA has issued guidelines under article 16(3) of the ESMA Regulation on cross-selling practices, 11 July 2016/ESMA/2016/574 (EN). See [https://www.esma.europa.eu/sites/default/files/library/2016-574\\_en\\_guidelines\\_on\\_cross-selling\\_practices.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-574_en_guidelines_on_cross-selling_practices.pdf)]

Information about a firm and its services: MiFID business

6.1ZA. 5	<u>EU</u> <u>UK</u>	47(1)	<p>Investment firms shall provide clients or potential clients with the following general information, where relevant:</p> <p>...</p> <p>(e) where the investment firm is acting through a tied agent, a statement of this fact <del>specifying the Member State in which that agent is registered;</del></p> <p>(f) the nature, frequency and timing of the reports on the performance of the service to be provided by the investment firm to the client in accordance with <del>Article 25(6) of Directive 2014/65/EU</del> [<i>COBS 9A.3.2R</i> and <i>COBS 16A.2.1R</i>];</p> <p>(g) where the investment firm holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the firm by virtue of its activities in a <del>Member State</del> <u>the United Kingdom</u>;</p> <p>...</p>
-------------	------------------------	-------	--

6.1ZA. G Reference in *COBS* 6.1ZA.5EU to “Article 25(6) of Directive  
6 2014/65/EU” is to the requirements in *COBS* 16A.2.1R. [deleted]

...

Information about a firm and its services: insurance distribution

6.1ZA. R A firm carrying on *insurance distribution activities* must provide  
7A a *retail client* with the following general information, if relevant:

...

(4) if the *firm* is acting through an *appointed representative* a statement of this fact ~~specifying the *EEA State* in which that *appointed representative* is registered;~~

...

(6) (a) a description, which may be provided in summary form, of (as applicable) the *conflicts of interest policy*, ~~*SYSC* 3.3.1EU~~ 3.3.1UK (applied by *SYSC* 3.3.3R) or the policy required by article 4(1) of the *IDD Regulation*; and

...

...

...

Information about a firm’s portfolio management service: MiFID business

6.1ZA. EU ...  
8 UK

Information concerning safeguarding of financial instruments belonging to clients and client money: MiFID business

6.1ZA. EU ...  
9 UK

49(5) The investment firm shall inform the client or potential client where accounts that contain financial instruments or funds belonging to that client or potential client are or will be subject to the law of a jurisdiction other than that of a ~~Member State~~ the United Kingdom and shall indicate that the rights of the client or potential client relating to those financial instruments or funds may differ accordingly.

...

...

Information concerning safeguarding of client money: insurance distribution

- 6.1ZA. R (1) Where a *firm* doing *insurance distribution* activities holds *client money* for a *retail client* and has elected to comply with the *client money chapter*, it must provide that *client* with the information specified in:
- 10A
- ...
- (b) (if it is a *firm* doing *MiFID*, *equivalent third country* or *optional exemption business*) *COBS 6.1ZA.9EU* *6.1ZA.9UK* and *COBS 6.1.7R(1)(e)*;
- in relation to that *client money*.

...

...

Costs and associated charges disclosure: MiFID

- 6.1ZA. EU 50(1) For the purposes of providing information to clients on all costs and charges pursuant to ~~Article 24(4) of Directive 2014/65/EU~~ [*COBS 6.1ZA.11R*] (“the relevant rule”), investment firms shall comply with the detailed requirements in paragraphs 2 to 10.
- 14 UK
- Without prejudice to the obligations set out in ~~Article 24(4) of Directive 2014/65/EU~~ the relevant rule, investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements set out in this Article with these clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.
- Without prejudice to the obligations set out in ~~Article 24(4) of Directive 2014/65/EU~~ the relevant rule, investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this Article, except when, irrespective of the investment service provided, the financial instruments



concerned embed a derivative and the eligible counterparty intends to offer them to its clients.

...

...

50(5) The obligation to provide in good time a full ex-ante disclosure of information about the aggregated costs and charges related to the financial instrument and to the investment or ancillary service provided shall apply to investment firms in the following situations:

(a) ...

(b) where the investment firm providing any investment services is required to provide clients with a UCITS KIID or PRIIPs KID in relation to the relevant financial instruments, ~~in accordance with relevant Union legislation.~~

50(6) Investment firms that do not recommend or market a financial instrument to the client or are not obliged to provide the client with a KID/KIID ~~in accordance with relevant Union legislation~~ shall inform their clients about all costs and charges relating to the investment and/or ancillary service provided.

...

...

Timing of disclosure: MiFID business

6.1ZA. EU  
17 UK

...

6.1ZA. G  
18 The following provisions of *COBS* reproduce the information requirements contained in Articles 47 to 50 of the *MiFID Org Regulation*: *COBS* ~~6.1ZA.5EU~~ 6.1ZA.5UK, *COBS* ~~6.1ZA.8EU~~ 6.1ZA.8UK, *COBS* ~~6.1ZA.9EU~~ 6.1ZA.9UK, *COBS* ~~6.1ZA.14EU~~ 6.1ZA.14UK, and *COBS* ~~14.3A.5EU~~ 14.3A.5UK.

Medium of disclosure: MiFID business

6.1ZA. EU  
19 UK

...

...

Keeping the client up to date: MiFID business

6.1ZA. EU ...  
20 UK

...

#### Compensation information: MiFID business

- 6.1ZA. R (1) A *firm* must make available to a *client*, who has used or intends to use a *firm*'s services, information necessary for the identification of the *compensation scheme* ~~or any other investor compensation scheme of which~~ if the *firm* is a *participant firm* member (including, if relevant, membership through a *branch*) or any alternative arrangement provided for in accordance with the *Investor Compensation Directive*.
- (2) The information under (1) must include the amount and scope of the cover offered by the ~~compensation scheme and any rules laid down by the *EEA State* pursuant to article 2 (3) of the *Investor Compensation Directive*~~ *compensation scheme*.
- (3) ...
- (4) The information provided for in this *rule* must be made available in a *durable medium*, or via a website if the *website conditions* are satisfied, in the official language or languages of the ~~*EEA State*~~ *United Kingdom*.
- [**Note:** article 10(1) and (2) of the *Investor Compensation Directive*]

...

## 6.2B Describing advice services

...

### Introduction

- 6.2B.5 G This section ~~transposes~~ transposed provisions in *MiFID* on describing advice services relating to *financial instruments* and *structured deposits* for all *clients* and reproduces a number of provisions of the ~~directly applicable~~ *MiFID Org Regulation* as explained in *COBS* 1.2. The requirements apply in relation to *MiFID*, *equivalent third country* or *optional exemption business*. The requirements are extended to apply to other *investment advice* and cover other *retail investment products* when the *client* is a *retail client* in the *United Kingdom*.

...

Interpretation of ~~EU~~ provisions marked “UK”: MiFID business

- 6.2B.7 R A *firm* must treat obligations in relation to *financial instruments* as extending to other *retail investment products* when complying with the provisions in this section marked ~~“EU”~~ “UK” in the course of *MiFID business* with a *retail client* in the *United Kingdom*.
- 6.2B.8 G References to *financial instruments* include *structured deposits* (but not other *retail investment products*) when a *firm* is complying with the provisions in this section marked ~~“EU”~~ “UK” in the course of *MiFID business* with a *retail client* outside the *United Kingdom* or with a *professional client*.

[**Note:** article 1(2) of the *MiFID Org Regulation*]

Interpretation of ~~EU~~ provisions marked “UK”: non-MiFID business

- 6.2B.9 R In relation to business that is not *MiFID business*, a *firm* must comply with provisions in this section marked ~~“EU”~~ “UK” as if they were *rules* but:
- (1) ...
- (2) (for business that is not *equivalent business of a third country investment firm* or *MiFID optional exemption business*) the *firm* need not comply with the following provisions of the *MiFID Org Regulation*:
- (a) the requirement in paragraph 2 of article 52(1) of the *MiFID Org Regulation* (reproduced in ~~COBS 6.2B.32EU~~ 6.2B.32UK) not to give undue prominence to their *independent advice* services;
- (b) the requirement in article 52(4) of the *MiFID Org Regulation* (reproduced in ~~COBS 6.2B.36EU~~ 6.2B.36UK) to distinguish the range of *financial instruments* issued or provided by entities not being closely linked with the *firm*; and
- (c) the requirement in article 53(3)(c) of the *MiFID Org Regulation* (reproduced in ~~COBS 6.2B.29EU~~ 6.2B.29UK) that a *firm* does not allow a natural person to provide both *independent advice* and *restricted advice*.

...

6.2B.1 EU  
5 UK

...

6.2B.1 G  
6

- (1) ~~COBS 6.2B.15EU~~ 6.2B.15UK means that a *firm* providing *independent advice* need not provide advice on all relevant products. A *firm* may market itself as, for example, an independent stockbroker that provides *independent advice* on *shares* only. A *firm* might alternatively market itself on the basis of providing *independent advice* on a particular product market such as ethical and socially responsible investments. The requirements in ~~COBS 6.2B.15EU~~ 6.2B.15UK apply to ensure that *clients* of a *firm* that provides *independent advice* on a focused basis properly understand the nature of the advice that they will receive and that the service is appropriate.

...

Sufficient range

6.2B.1 G  
7

The extent of the assessment which a *firm* is required to undertake in order to meet the requirement to assess a sufficient range of relevant products will depend on:

- (1) the nature of the *independent advice* service provided by the *firm* (general or focused) for the purposes of ~~COBS 6.2B.15EU~~ 6.2B.15UK;

...

6.2B.1 EU  
8 UK

53(1) Investment firms providing investment advice on an independent basis shall define and implement a selection process to assess and compare a sufficient range of financial instruments available on the market in accordance with Article 24(7)(a) of Directive 2014/65/EU [~~COBS 6.2B.11R~~]. The selection process shall include the following elements:

...

6.2B.1 G  
9

- (1) ...
- (2) Notwithstanding (1), since the assessment conducted by the *firm* must be such as to ensure the *client's* investment objectives can be suitably met, a *firm* providing *independent advice* should be in a position to advise on all types of relevant product within the scope of the market (for the purposes of ~~COBS 6.2B.15EU~~ 6.2B.15UK) on which it provides advice. When the

*client is a retail client in the United Kingdom, this means being in a position to advise on all types of financial instrument, structured deposit and other retail investment products.*

...

...

6.2B.2 G The fact that a *firm* is owned by, or owns, in whole or in part, the issuer or provider of relevant products does not prevent that *firm* from providing *independent advice*, provided that the *firm*'s assessment of relevant products is:

...

(3) not biased (~~COBS 6.2B.18EU~~ 6.2B.18UK).

...

Requirements for firms providing both independent and restricted advice

6.2B.2 9	<del>EU</del> <u>UK</u>	53(3)	<p>An investment firm offering investment advice on both an independent basis and on a non-independent basis shall comply with the following obligations:</p> <p>(a) in good time before the provision of its services, the investment firm has informed its clients, in a durable medium, whether the advice will be independent or non-independent in accordance with <del>Article 24(4)(a) of Directive 2014/65/EU</del> [<u>COBS 6.2B.33R</u>] and the relevant implementing measures;</p>
-------------	----------------------------	-------	--

...

...

6.2B.3 2	<del>EU</del> <u>UK</u>	...
-------------	----------------------------	-----

...

6.2B.3 5	<del>EU</del> <u>UK</u>	...
-------------	----------------------------	-----

6.2B.3 6	<del>EU</del> <u>UK</u>	...
-------------	----------------------------	-----

...

**6.4 Disclosure of charges, remuneration and commission**

...

- 6.4.2 G Under the territorial application *rules* in *COBS* 1, the *rules* in this section apply to:
- (1) ~~a UK firm's business carried on from an establishment in an EEA State other than the United Kingdom for a retail client in the United Kingdom unless, if the office from which the activity is carried on were a separate person, the activity:~~
    - (a) ~~would fall within the overseas persons exclusion in article 72 of the Regulated Activities Order; or~~
    - (b) ~~would not be regarded as carried on in the United Kingdom.~~
  - (2) ~~a firm's business carried on from an establishment in the United Kingdom carried on for a client in an other EEA State. [deleted]~~

Disclosure of commission (or equivalent) for packaged products

- 6.4.3 R ...
- (4) This *rule* does not apply if:
    - ...
    - (b) the *retail client* is not present in the *EEA United Kingdom* at the time of the transaction; or
    - ...
  - ...

...

## 7 Insurance distribution

### 7.1 Application

- 7.1.1 R This chapter applies to a *firm* carrying on *insurance distribution activities* in relation to a *life policy*, but only if the *State of the commitment* is ~~an EEA State~~ the United Kingdom.

[**Note:** articles 1, 20(1) and 23 of the *IDD*]

...

**8A Client agreements (MiFID provisions)****8A.1 Client agreements (MiFID, equivalent third country or optional exemption business)**

...

8A.1.2 R Provisions in this chapter marked “EU” “UK” apply to *MiFID optional exemption firms* as if they were *rules*.

...

Providing a client agreement: retail and professional clients

8A.1.4 EU 58 Investment firms providing any investment service or the ancillary service referred to in ~~Section B(1) of Annex I to Directive 2014/65/EC~~ paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order to a client after the date of application of this Regulation shall enter into a written basic agreement with the client, in paper or another durable medium, with the client setting out the essential rights and obligations of the firm and the client. Investment firms providing investment advice shall comply with this obligation only where a periodic assessment of the suitability of the financial instruments or services recommended is performed.

UK

...

(c) a description of the main features of any services referred to in ~~Section B(1) of Annex I to Directive 2014/65/EC~~ paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order to be provided, including where applicable the role of the firm with respect to corporate actions relating to client instruments and the terms on which securities financing transactions involving client securities will generate a return for the client.

[**Note:** article 58 of the *MiFID Org Regulation*]

General requirement for information to clients

8A.1.5 EU ...  
UK

8A.1.6 EU ...  
UK

8A.1.7 EU ...

	<u>UK</u>	
...		
8A.1.1	<u>EU</u>	...
0	<u>UK</u>	
...		
<b>9</b>		<b>Suitability (including basic advice) (other than MiFID and insurance-based investment products)</b>
<b>9.1</b>		<b>Application and purpose provisions</b>
...		
		Life policies for professional clients
9.1.5	R	If the <i>firm</i> makes a <i>personal recommendation</i> to a <i>professional client</i> to take out a <i>life policy</i> which is not an <i>insurance-based investment product</i> , this chapter applies, but only those <i>rules</i> which <del>implement</del> <u>implemented</u> the requirements of the <i>IDD</i> .
9.1.6	G	If a <i>rule</i> <del>implements</del> <u>implemented</u> a requirement of the <i>IDD</i> , a Note (“ <b>Note:</b> ”) follows the <i>rule</i> indicating which provision <del>is</del> <u>was</u> being implemented. <i>COBS 2.1</i> (acting honestly fairly and professionally), <i>COBS 2.6</i> (additional insurance distribution obligations), <i>COBS 4</i> (communicating with clients), <i>COBS 6</i> (information about the firm, its services and remuneration) and <i>COBS 14</i> (product information) contain further <i>rules</i> <del>implementing</del> <u>which implemented</u> the <i>IDD</i> .
...		
<b>9.4</b>		<b>Suitability reports</b>
...		
9.4.3	R	The obligation to provide a <i>suitability report</i> does not apply:
	(1)	...
	(2)	if the <i>client</i> is habitually resident outside the <del>EEA</del> <u>United Kingdom</u> and the <i>client</i> is not present in the <i>United Kingdom</i> at the time of acknowledging consent to the proposal form to which the <i>personal recommendation</i> relates;
	...	
...		



## 9A Suitability (MiFID and insurance-based investment products provisions)

### 9A.1 Application and purpose

**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation on certain aspects of the MiFID suitability requirements, 28 May 2018/ESMA-35-43-869 (EN). See [https://www.esma.europa.eu/system/files\\_force/library/esma35-43-869-fr\\_on\\_guidelines\\_on\\_suitability.pdf?download=1](https://www.esma.europa.eu/system/files_force/library/esma35-43-869-fr_on_guidelines_on_suitability.pdf?download=1).

...

Effect of provisions marked “EU” “UK” for third country investment firms and MiFID optional exemption firms

9A.1.2 R Provisions in this chapter marked “EU” “UK” apply in relation to *MiFID optional exemption business* as if they were *rules*.

9A.1.3 G The effect of *GEN 2.2.22AR* is that provisions in this chapter marked “EU” “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

Effect of provisions marked “EU” “UK” for the firms distributing insurance-based investment products

9A.1.4 R Provisions in this chapter marked “EU” “UK” and including a Note (‘**Note:**’) referring to the *IDD Regulation* apply as if they were *rules* in relation to *insurance distribution activities* to which the *IDD Regulation* does not apply.

### 9A.2 Assessing suitability: the obligations

...

Assessing the extent of the information required: MiFID business

9A.2.4 EU ...

Assessing the extent of the information required: insurance-based investment products

9A.2.4 EU 9(1) For the purposes of providing advice on an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97 [*COBS 9A.2.1R and COBS 9A.2.16R*], insurance intermediaries or insurance undertakings shall determine the extent of the information to be collected from the customer or potential customer in light of all the features of the

advice to be provided to the customer or potential customer.

9(2) Without prejudice to the fact that, in accordance with ~~Article 20(1) of Directive (EU) 2016/97~~ [COBS 9A.2.3AR, COBS 9A.3.2R and COBS 9A.3.2AR], any contract proposed shall be consistent with the customer's demands and needs, insurance intermediaries or insurance undertakings shall obtain from customers or potential customers such information as is necessary for them to understand the essential facts about the customer or potential customer and to have a reasonable basis for determining that their personal recommendation to the customer or potential customer satisfies all of the following criteria:

...

17(3) Where information required for the purposes of ~~Article 30(1) or (2) of Directive (EU) 2016/97~~ [COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R] has already been obtained pursuant to ~~Article 20 of Directive (EU) 2016/97~~ [COBS 9A.2.3AR, COBS 9A.3.2R and COBS 9A.3.2AR], insurance intermediaries and insurance undertakings shall not request it anew from the customer.

[**Note:** articles 9(1) and (2) and 17(3) of the *IDD Regulation*]

Professional clients: MiFID business

9A.2.5	EU	54(3)	...
	<u>UK</u>		Where that investment service consists in the provision of investment advice to a professional client covered by <del>Section 1 of Annex II to Directive 2014/65/EU Part 2 of Schedule 1 to Regulation (EU) No 600/2014</del> , the investment firm shall be entitled to assume for the purposes of point (b) of paragraph 2 that the client is able financially to bear any related investment risks consistent with the investment objectives of that client.

[**Note:** article 54(3) of the *MiFID Org Regulation*]

Obtaining information about knowledge and experience: MiFID business

9A.2.6	EU	...
	<u>UK</u>	

Obtaining information about knowledge and experience: insurance-based investment products

9A.2.6 ~~EU~~ 17(1) For the purposes of ~~Article 30(1) and (2) of Directive (EU) 2016/97~~ [*COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R*], the necessary information to be obtained by insurance intermediaries and insurance undertakings with regard to the customer's or potential customer's knowledge and experience in the relevant investment field shall include, where relevant, the following, to the extent appropriate to the nature of the customer, and the nature and type of product or service offered or demanded, including their complexity and the risks involved:

...

[**Note:** article 17(1) of the *IDD Regulation*]

Obtaining information about a client's financial situation: MiFID business

9A.2.7 ~~EU~~ ...  
UK

Obtaining information about a client's financial situation: insurance-based investment products

9A.2.7 ~~EU~~ ...  
UK

Obtaining information about a client's investment objectives: MiFID business

9A.2.8 ~~EU~~ ...  
UK

Obtaining information about a client's investment objectives: insurance-based investment products

9A.2.8 ~~EU~~ ...  
UK

Reliability of information: MiFID business

9A.2.9 ~~EU~~ ...  
UK

Reliability of information: insurance-based investment products

9A.2.9 ~~EU~~ ...  
UK

Maintaining adequate and up-to-date information: MiFID business

9A.2.1 EU ...  
0 UK

Discouraging the provision of information: MiFID business

9A.2.1 EU 55(2) An investment firm shall not discourage a client or  
1 UK potential client from providing information required for  
the purposes of ~~Article 25(2) and (3) of Directive~~  
~~2014/65/EU~~ [COBS 9A.2.1R and COBS 10A.2.1R].

Discouraging the provision of information: insurance-based investment products

9A.2.1 EU 17(2) The insurance intermediary or insurance undertaking  
1A UK shall not discourage a customer or potential customer  
from providing information required for the purposes of  
~~Article 30(1) and (2) of Directive (EU) 2016/97~~ [COBS  
9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS  
10A.2.2R].

[**Note:** article 17(2) of the *IDD Regulation*]

Reliance on information: MiFID business

9A.2.1 EU ...  
2 UK

Reliance on information: insurance-based investment products

9A.2.1 EU ...  
2A UK

Insufficient information: MiFID business

9A.2.1 EU 54(8) Where, when providing the investment service of  
3 UK investment advice or portfolio management, an  
investment firm does not obtain the information  
required under ~~Article 25(2) of Directive 2014/65/EU~~  
[COBS 9A.2.1R], the firm shall not recommend  
investment services or financial instruments to the  
client or potential client.

[**Note:** article 54(8) of the *MiFID Org Regulation*]

Insufficient information: insurance-based investment products

9A.2.1 EU 9(5) Where the insurance intermediary or insurance  
3A UK undertaking does not obtain the information required  
under ~~Article 30(1) of Directive (EU) 2016/97~~ [COBS  
9A.2.1R and COBS 9A.2.16R], the insurance  
intermediary or insurance undertaking shall not provide

advice on insurance-based investment products to the customer or potential customer.

[**Note:** article 9(5) of the *IDD Regulation*]

...

Identifying the subject of a suitability assessment: MiFID business

9A.2.1  
5

~~EU~~  
UK

54(6)

...

Where a natural person is represented by another natural person or where a legal person having requested treatment as professional client in accordance with ~~Section 2 of Annex II to Directive 2014/65/EU~~ Part 3 of Schedule 1 to Regulation (EU) No 600/2014 is to be considered for the suitability assessment, the financial situation and investment objectives shall be those of the legal person or, in relation to the natural person, the underlying client rather than of the representative. The knowledge and experience shall be that of the representative of the natural person or the person authorised to carry out transactions on behalf of the underlying client.

[**Note:** article 54(6) of the *MiFID Org Regulation*]

Identifying the subject of a suitability assessment: insurance-based investment products

9A.2.1  
5A

~~EU~~  
UK

...

...

Switching: MiFID business

9A.2.1  
8

~~EU~~  
UK

...

Switching: insurance-based investment products

9A.2.1  
8A

~~EU~~  
UK

...

Adequate policies and procedures: MiFID business

9A.2.1  
9

~~EU~~  
UK

...

Unsuitability: MiFID business

9A.2.2 EU ...  
0 UK

Unsuitability: insurance-based investment products

9A.2.2 EU 9(6) When providing advice on an insurance-based  
0A UK investment product in accordance with ~~Article 30(1) of Directive (EU) 2016/97~~ [COBS 9A.2.1R and COBS 9A.2.16R], an insurance intermediary or insurance undertaking shall not make a recommendation where none of the products are suitable for the customer or potential customer.

[**Note:** article 9(6) of the *IDD Regulation*]

...

Automated or semi-automated systems: MiFID business

9A.2.2 EU ...  
3 UK

Automated or semi-automated systems: insurance-based investment products

9A.2.2 EU 12 The insurance intermediary's or insurance  
4 UK undertaking's responsibility to perform the suitability assessment in accordance with ~~Article 30(1) of Directive (EU) 2016/97~~ [COBS 9A.2.1R and COBS 9A.2.16R] shall not be reduced due to the fact that advice on insurance-based investment products is provided in whole or in part through an automated or semi-automated system.

[**Note:** article 12 of the *IDD Regulation*]

### 9A.3 Information to be provided to the client

Explaining the reasons for assessing suitability

9A.3.1 EU 54(1) Investment firms shall not create any ambiguity or  
UK confusion about their responsibilities in the process when assessing the suitability of investment services or financial instruments in accordance with ~~Article 25(2) of Directive 2014/65/EU~~ [COBS 9A.2.1R]. When undertaking the suitability assessment, the firm shall inform clients or potential clients, clearly and simply, that the reason for assessing suitability is to enable the firm to act in the client's best interest.

[**Note:** first paragraph of article 54(1) of the *MiFID Org Regulation*]

Explaining the reasons for assessing suitability: insurance-based investment products

9A.3.1	<del>EU</del> <u>UK</u>	11	Insurance intermediaries and insurance undertakings shall not create any ambiguity or confusion about their responsibilities in the process of assessing the suitability of insurance-based investment products in accordance with <del>Article 30(1) of Directive (EU) 2016/97</del> [ <i>COBS 9A.2.1R and COBS 9A.2.16R</i> ]. Insurance intermediaries and insurance undertakings shall inform customers, clearly and simply, that the reason for assessing suitability is to enable them to act in the customer's best interest.
--------	----------------------------	----	--

[**Note:** article 11 of the *IDD Regulation*]

...

Providing a suitability report: MiFID business

9A.3.3	<del>EU</del> <u>UK</u>	...
--------	----------------------------	-----

Providing a suitability report: insurance-based investment products

9A.3.3	<del>EU</del> <u>UK</u>	14(1)	When providing advice on the suitability of an insurance-based investment product in accordance with <del>Article 30(1) of Directive (EU) 2016/97</del> [ <i>COBS 9A.2.1R and COBS 9A.2.16R</i> ], insurance intermediaries and insurance undertakings shall provide a statement to the customer (suitability statement) that includes the following:  ...  ...
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[**Note:** article 14(1) to (3) of the *IDD Regulation*]

...

Periodic assessments: MiFID business

9A.3.8	<del>EU</del> <u>UK</u>	...
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9A.3.9	<del>EU</del>	...
--------	---------------	-----

UK

Periodic assessments: insurance-based investment products

9A.3.1 EU ...  
0 UK**9A.4 Record keeping and retention periods for suitability records**

...

Retention of records: insurance-based investment products

9A.4.3 EU 19(1) Without prejudice to the application of Regulation  
UK (EU) 2016/679 of the European Parliament and of the Council, insurance intermediaries and insurance undertakings shall maintain records of the assessment of suitability or appropriateness undertaken in accordance with ~~Article 30(1) and (2) of Directive (EU) 2016/97~~ [COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R]. The records shall include the information obtained from the customer and any documents agreed with the customer, including documents that set out the rights of the parties and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. Such records shall be retained for at least the duration of the relationship between the insurance intermediary or insurance undertaking and the customer.

[**Note:** article 19(1) of the *IDD Regulation*]

Record-keeping obligations for the assessment of suitability: insurance-based investment products

9A.4.4 EU 19(2) In the case of an assessment of suitability undertaken in  
UK accordance with ~~Article 30(1) of Directive (EU) 2016/97~~ [COBS 9A.2.1R and COBS 9A.2.16R], the record shall further include the following:  
...

[**Note:** article 19(2) of the *IDD Regulation*]**10 Appropriateness (for non-MiFID and non-insurance-based investment products non-advised services) (non-MiFID and non-insurance-based investment products provisions)**

...



## 10.5 Assessing appropriateness: guidance

...

Independent valuation systems

- 10.5.5 G The circumstances in which valuation systems will be independent of the issuer (see *COBS* 10.4.1R(3)(b)) include where they are overseen by a depository that is regulated as a provider of depository services in a ~~EEA State~~ the United Kingdom.

...

## 10A Appropriateness (for non-advised services) (MiFID and insurance-based investment products provisions)

### 10A.1 Application

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation on complex debt instruments and structured deposits, 4 February 2016/ESMA/2015/1787 (EN). See ~~[[https://www.esma.europa.eu/sites/default/files/library/2015-1787-guidelines\\_on\\_complex\\_debt\\_instruments\\_and\\_structured\\_deposits.pdf](https://www.esma.europa.eu/sites/default/files/library/2015-1787-guidelines_on_complex_debt_instruments_and_structured_deposits.pdf)]~~

...

Effect of provisions marked ~~EU~~ “UK”

- 10A.1. R The effect of *GEN* 2.2.22AR is that provisions in this chapter marked ~~“EU”~~ “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.
- 3
- 10A.1. R Provisions in this chapter marked ~~“EU”~~ “UK” and including a Note (**Note:**) referring to the *IDD Regulation* apply as if they were *rules* to *firms*, to whom the *IDD Regulation* does not apply, when doing *insurance distribution*.
- 4

### 10A.2 Assessing appropriateness: the obligations

...

Assessing a client’s knowledge and experience: MiFID business

- 10A.2. ~~EU~~ 56(1) Investment firms, shall determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded when assessing whether an investment service as referred to in ~~Article 25(3) of Directive 2014/65/EU~~ [*COBS* 10A.1.1R] is appropriate for a client.
- 3 UK

...

Assessing a client's knowledge and experience: insurance-based investment product

10A.2. 3A	<del>EU</del> <u>UK</u>	15	Without prejudice to the fact that, in accordance with <del>Article 20(1) of Directive (EU) 2016/97</del> [ <u>COBS 9A.2.3AR, COBS 9A.3.2R and COBS 9A.3.2AR</u> ], any contract proposed shall be consistent with the customer's demands and needs, insurance intermediaries or insurance undertakings shall determine whether the customer has the necessary knowledge and experience in order to understand the risks involved in relation to the service or product proposed or demanded when assessing whether an insurance service or product distributed in accordance with <del>Article 30(2) of Directive (EU) 2016/97</del> [ <u>COBS 10A.2.1R and COBS 10A.2.2R</u> ] is appropriate for the customer.
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[**Note:** article 15 of the *IDD Regulation*]

Information regarding a client's knowledge and experience: MiFID business

10A.2. 4	<del>EU</del> <u>UK</u>	...
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Information regarding a client's knowledge and experience: insurance-based investment products

10A.2. 4A	<del>EU</del> <u>UK</u>	17(1)	For the purposes of <del>Article 30(1) and (2) of Directive (EU) 2016/97</del> [ <u>COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R</u> ], the necessary information to be obtained by insurance intermediaries and insurance undertakings with regard to the customer's or potential customer's knowledge and experience in the relevant investment field shall include, where relevant, the following, to the extent appropriate to the nature of the customer, and the nature and type of product or service offered or demanded, including their complexity and the risks involved:  ...
		17(3)	Where information required for the purposes of <del>Article 30(1) or (2) of Directive (EU) 2016/97</del> [ <u>COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R</u> ] has already been obtained pursuant to <del>Article 20 of Directive (EU) 2016/97</del> [ <u>COBS 9A.2.3AR, COBS 9A.3.2R and COBS 9A.3.2AR</u> ],

insurance intermediaries and insurance undertakings shall not request it anew from the customer.

[**Note:** article 17(1) and (3) of the *IDD Regulation*]

#### Discouraging the provision of information

10A.2. 5	EU <u>UK</u>	55(2)	An investment firm shall not discourage a client or potential client from providing information required for the purposes of <del>Article 25(2) and (3) of Directive 2014/65/EU</del> <u>[COBS 9A.2.1R and COBS 10A.2.1R]</u> .
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[**Note:** article 55(2) of the *MiFID Org Regulation*]

#### Discouraging the provision of information: insurance-based investment products

10A.2. 5A	EU <u>UK</u>	17(2)	The insurance intermediary or insurance undertaking shall not discourage a customer or potential customer from providing information required for the purposes of <del>Article 30(1) and (2) of Directive (EU) 2016/97</del> <u>[COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R]</u> .
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[**Note:** article 17(2) of the *IDD Regulation*]

#### Reliance on information: MiFID business

10A.2. 6	EU <u>UK</u>	...
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#### Reliance on information: insurance-based investment products

10A.2. 6A	EU <u>UK</u>	...
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...

#### **10A.4 Assessing appropriateness: when it need not be done due to type of investment**

10A.4. 1	R	(1)	A <i>firm</i> is not required to ask its <i>client</i> to provide information or assess appropriateness if either (a) or (aa), and both (b) and (c), are met:
		(a)	the service:
		(i)	...
		(ii)	relates to particular <i>financial instruments</i> (see paragraph (2)); and

(iii) ...

...

(2) The *financial instruments* referred to in (1)(a)(ii) are any of the following:

(a) shares in companies admitted to trading on:

(i) a *regulated market* or an EU regulated market;  
or

...

except shares that embed a derivative and *units* in a collective investment undertaking that is not a *UCITS*;  
or

(b) bonds or other forms of securitised debt admitted to trading on:

(i) a *regulated market* or an EU regulated market;  
or

...

except those that embed a derivative or incorporate a structure which makes it difficult for the *client* to understand the risk involved; or

...

(3) For the purposes of this *rule*, a third country market is considered to be equivalent to a *regulated market* if it is a market in relation to which ~~the Commission~~ the Treasury has, ~~at the request of a competent authority~~, adopted an affirmative equivalence decision in accordance with the requirements and procedure in ~~article 25(4) of MiFID~~ paragraph 8 of Part 1 of Schedule 3 to MiFIR.

[**Note:** article 25(4) of *MIFID*, article 30(3) of the *IDD*]

[**Note:** ESMA has published guidelines which specify criteria for the assessment of (i) debt instruments incorporating a structure which makes it difficult for the client to understand the risk involved, and (ii) structured deposits incorporating a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term (see ESMA/2015/1787 (EN), 4 February 2016). ~~The guidelines can be found here: [https://www.esma.europa.eu/sites/default/files/library/2015-1787-~~

~~guidelines\_on\_complex\_debt\_instruments\_and\_structured\_deposits.pdf]~~  
]

[**Note:** EIOPA has published guidelines under the *IDD* which specify criteria for the assessment of insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risk involved (see EIOPA-17/651, 4 October 2017). ~~The guidelines can be found here:~~  
[https://eiopa.europa.eu/Publications/Guidelines/EIOPA-17-651-IDD\\_guidelines\\_execution\\_only\\_EN.pdf](https://eiopa.europa.eu/Publications/Guidelines/EIOPA-17-651-IDD_guidelines_execution_only_EN.pdf).]

Other non-complex financial instruments

10A.4. 2	EU <u>UK</u>	57	<p>A financial instrument which is not explicitly specified in <del>Article 25(4)(a) of Directive 2014/65/EU</del> [<u>COBS 10A.4.1R(2)</u>] shall be considered as non-complex for the purposes of <del>Article 25(4)(a)(vi) of Directive 2014/65/EU paragraph (2)(f) of that rule</del> if it satisfies the following criteria:</p> <p>(a) <del>it does not fall within Article 4(1)(44)(e) of, or points (4) to (11) of Section C of Annex I to Directive 2014/65/EU it does not fall within Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order;</del></p> <p>...</p>
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Other non-complex insurance-based investment products

10A.4. 3	EU <u>UK</u>	16	<p>An insurance-based investment product shall be considered as non-complex for the purposes of <del>Article 30(3)(a)(ii) of Directive (EU) 2016/97</del> [<u>COBS 10A.4.1R</u>] where it satisfies all of the following criteria:</p> <p>...</p>
-------------	-----------------	----	---

[**Note:** article 16 of the *IDD Regulation*]

...

**10A.7 Record keeping and retention periods for appropriateness records**

...

10A.7. 2	EU <u>UK</u>	...	
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Record keeping: insurance-based investment products

10A.7. 2A	<del>EU</del> <u>UK</u>	19(1)	Without prejudice to the application of Regulation (EU) 2016/679 of the European Parliament and of the Council, insurance intermediaries and insurance undertakings shall maintain records of the assessment of suitability or appropriateness undertaken in accordance with <del>Article 30(1) and (2) of Directive (EU) 2016/97</del> [ <u>COBS 9A.2.1R, COBS 9A.2.16R, COBS 10A.2.1R and COBS 10A.2.2R</u> ]. The records shall include the information obtained from the customer and any documents agreed with the customer, including documents that set out the rights of the parties and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. Such records shall be retained for at least the duration of the relationship between the insurance intermediary or insurance undertaking and the customer.
		19(3)	In the case of an assessment of appropriateness undertaken in accordance with <del>Article 30(2) of Directive (EU) 2016/97</del> [ <u>COBS 10A.2.1R and COBS 10A.2.2R</u> ], the record shall further include the following:  ...

[**Note:** article 19(1) and (3) of the *IDD Regulation*]

...

## 11 Dealing and managing

### 11.1 Application

General application

...

11.1.2 R Save as may be provided in the relevant sections, in this chapter, provisions marked “~~EU~~” “UK” apply to a *firm* which is not a *MiFID investment firm* as if they were *rules*.

...

11.1.5 G ~~The *EEA territorial scope rule* modifies the default territorial scope of the section on personal account dealing (see *COBS 11.7* and *COBS 11.7A*) to the extent necessary to be compatible with European law (see paragraph 1.1G5 of Part 3 of *COBS 1 Annex 1*). This means that the section on personal account dealing also applies to passported activities carried on by a *UK MiFID investment firm* or a *UK UCITS management company* from a~~

~~branch in another EEA state, but does not apply to the UK branch of an EEA MiFID investment firm in relation to its MiFID business or of an EEA UCITS management company in relation to activities it is entitled to carry on in the United Kingdom under the UCITS Directive. [deleted]~~

...

## 11.2 Best execution for AIFMs and residual CIS operators

### Application

11.2-7 G This section applies to:

- (1) a small authorised UK AIFM and a residual CIS operator in accordance with COBS 18.5.2R; and
- (2) a full-scope UK AIFM and an incoming EEA AIFM branch, in accordance with COBS 18.5A.3R.

...

11.2-5 G In accordance with COBS 18.5A.8R, only the following provisions of this section apply to a full-scope UK AIFM and an incoming EEA AIFM branch:

...

...

### Obligation to execute orders on terms most favourable to the client

11.2.1 R A firm must take all reasonable steps to obtain, when executing orders, the best possible result for its clients taking into account the execution factors.

[**Note:** The Committee of European Securities Regulators (CESR) has issued a Question and Answer paper on best execution under the first Markets in Financial Instruments Directive (MiFID I, 2004/39/EU). This paper also incorporates the European Commission's response to CESR's questions regarding the scope of the best execution obligations under MiFID I. The paper can be found at: <https://www.esma.europa.eu/sites/default/files/library/2015/11/07-320.pdf> See 'CESR Questions & Answers: Best Execution under MiFID', May 2007, Ref: CESR/07-320]

...

11.2.23 R A full-scope UK AIFM and an incoming EEA AIFM branch must  
A make available appropriate information on its execution policy required under article 27(3) of the AIFMD level 2 regulation

(Execution of decisions to deal on behalf of the managed AIF) and on any material changes to that policy to the investors in of each *AIF* it manages.

...

## 11.2A Best execution – MiFID provisions

11.2A. R (1) Subject to (2) to (4), the following provisions apply to a firm's business other than *MiFID business* as if they were *rules*:

(a) provisions within this chapter marked “EU” “UK”; and

(b) ~~COBS 11 Annex 1EU~~ COBS 11 Annex 1UK (Regulatory Technical Standard (RTS 28)).

(2) The following provisions do not apply to *MiFID optional exemption firm's business*:

(a) the part of the first sub-paragraph of article 65(6) to the *MiFID Org Regulation* (reproduced at ~~COBS 11.2A.34EU~~ COBS 11.2A.34UK) that reads:

“In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the ~~technical standards developed under Article 27(10)(b) of Directive 2014/65/EU~~ Commission Delegated Regulation (EU) 2017/576 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, or any technical standards made by the Financial Conduct Authority under paragraph 27(b) of Schedule 1 to Regulation (EU) 2014/600.”; and



(b) ~~COBS 11 Annex 1~~EU COBS 11 Annex 1UK  
(Regulatory Technical Standard (RTS 28)).

(3) This chapter does not apply (but *COBS 11.2B* applies) to *UCITS management companies* when carrying on *scheme management activity*.

(4) This chapter does not apply (but *COBS 11.2* applies) to *AIFMs* when carrying on *AIFM investment management functions* and *residual CIS operators*.

...

#### Best execution criteria

11.2A. EU ~~Article 64 of the MiFID Org Regulation sets out best execution~~  
8 UK ~~criteria.~~

64 (1) When executing client orders, investment firms shall take into account the following criteria for determining the relative importance of the factors referred to in ~~Article 27(1) of Directive 2014/65/EU~~ [COBS 11.2A.2R]:

...

(2) An investment firm satisfies its obligation under ~~Article 27(1) of Directive 2014/65/EU~~ [COBS 11.2A.2R, COBS 11.2A.3G, COBS 11.2A.9R, COBS 11.2A.12R and COBS 11.2A.15R] to take all sufficient steps to obtain the best possible result for a client to the extent that it executes an order or a specific aspect of an order following specific instructions from the client relating to the order or the specific aspect of the order.

...

#### Execution policies

11.2A. EU ~~Article 66 of the MiFID Org Regulation sets out requirements~~  
25 UK ~~concerning execution policies.~~

66 (1) Investment firms shall review, at least on an annual basis execution policy established pursuant to ~~Article 27(4) of Directive 2014/65/EU~~ [COBS 11.2A.20R], as well as their order execution arrangements.

...

(3) Investment firms shall provide clients with the following details on their execution policy in good time prior to the provision of the service:

(a) an account of the relative importance the investment firm assigns, in accordance with the criteria specified in Article 59(1), to the factors referred to in ~~Article 27(1) of Directive 2014/65/EU~~

[COBS 11.2A.2R], or the process by which the firm determines the relative importance of those factors.

...

(6) Investment firms shall only receive third-party payments that comply with ~~Article 24(9) of Directive 2014/65/EU~~ [COBS 2.3A.5R, COBS 2.3A.6R and COBS 2.3A.7E] and shall inform clients about the inducements that the firm may receive from the execution venues. The information shall specify the fees charged by the investment firm to all counterparties involved in the transaction, and where the fees vary depending on the client, the information shall indicate the maximum fees or range of the fees that may be payable.

(7) Where an investment firm charges more than one participant in a transaction, in compliance with ~~Article 24(9) of Directive 2014/65/EU and its implementing measures~~ [COBS 2.3A.5R, COBS 2.3A.6R and COBS 2.3A.7E], the firm shall inform its client of the value of any monetary or non-monetary benefits received by the firm.

...

(9) Where an investment firm executes orders for retail clients, it shall provide those clients with a summary of the relevant policy, focused on the total cost they incur. The summary shall also provide a link to the most recent execution quality data published in accordance with ~~Article 27(3) of Directive 2014/65/EU~~ [COBS 11.2C.1R, MAR 5.3.1AR(5), MAR 5A.4.2R(3) and MAR 6.3A.1R] and paragraph 4C of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 for each execution venue listed by the investment firm in its execution policy.

...

Duty of portfolio managers, receivers and transmitters to act in client's best interest

11.2A. EU ~~Article 65 of the MiFID Org Regulation sets out the duty of firms~~  
34 UK ~~carrying out certain activities to act in the best interests of the~~  
~~client.~~

65 (1) Investment firms, when providing portfolio management, shall comply with the obligation under ~~Article 24(1) of Directive 2014/65/EU~~ [COBS 2.1.1R] to act in accordance with the best interests of their clients when placing orders with other entities for execution that result from decisions by the investment firm to deal in financial instruments on behalf of its client.

(2) Investment firms, when providing the service of reception and transmission of orders, shall comply with the obligation under

Article 24(1) of Directive 2014/65/EU [*COBS* 2.1.1R] to act in accordance with the best interests of their clients when transmitting client orders to other entities for execution.

...

(6) Investment firms shall provide information to their clients on the policy established in accordance with paragraph 5 and paragraphs 2 to 9 of Article 66. Investment firms shall provide clients with appropriate information about the firm and its services and the entities chosen for execution. In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the ~~technical standards developed under Article 27(10)(b) of Directive 2014/65/EU~~ Commission Delegated Regulation (EU) 2017/576 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, or any technical standards made by the Financial Conduct Authority under paragraph 20(b) of Schedule 3 to Regulation (EU) 600/2014.

...

(8) This Article shall not apply where the investment firm that provides the service of portfolio management or reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases, ~~Article 27 of Directive 2014/65/EU~~ Articles 64 and 66 of this Regulation, technical standards made under Article 27(10) of Directive 2014/65/EC and rules in [*COBS*] which were relied on immediately before exit to implement Article 27 of Directive 2014/65/EU shall apply.

...

## 11.2B Best execution for UCITS management companies

...

11.2B. G 3 References in this chapter to a *scheme* are to a *UCITS scheme* ~~or an EEA UCITS scheme.~~

...

11.2B. R 26 (1) A management company of an ICVC that is a *UCITS scheme*, ~~or an EEA UCITS scheme~~ that is structured as an investment company, must obtain the prior consent

of the *ICVC* or investment company to the execution policy.

...

...

11.2B. R ...  
36

- (2) The information must be consistent with the information published in accordance with ~~COBS 11 Annex 1EU~~ COBS 11 Annex 1UK (Regulatory technical standard 28) (which applies as *rules* in accordance with *COBS 18.5B.2R*).

...

### 11.2C Quality of execution

...

11.2C. R ...  
2

[**Note:** article 27(3) of *MiFID* and *MiFID RTS 27*]

### 11.3 Client order handling

General principles

11.3.1 R ...

- (3) A *UCITS management company* providing *collective portfolio management* services, must establish and implement procedures and arrangements in respect of all *client orders* it carries out which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the *UCITS scheme* ~~or EEA~~ *UCITS scheme* it manages.

...

11.3.1 R (1) Subject to (2) and (3) in this chapter provisions marked  
A ~~“EU”~~ “UK” apply to a *firm*’s business other than *MiFID business* as if they were *rules*.

- (2) Provisions marked ~~“EU”~~ which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to all *firms* as guidance.

- (3) ~~COBS 11.3.4AEU~~ COBS 11.3.4AUK, which reproduces article 67(2) of the *MiFID Org Regulation*, does not apply to a *UCITS management company*.

...

#### Carrying out client orders

- 11.3.2 EU ~~Article 67(1) of the *MiFID Org Regulation* requires firms to satisfy conditions when carrying out *client orders*.~~  
A UK

...

...

#### Settlement of executed orders

- 11.3.4 EU ~~Article 67(2) of the *MiFID Org Regulation* places requirements on firms which are responsible for overseeing and arranging the settlement of an executed order.~~  
A UK

...

...

#### Use of information relating to pending client orders

- 11.3.5 EU ~~Article 67(3) of the *MiFID Org Regulation* sets out requirements concerning the use of information relating to pending *client orders*.~~  
A UK

...

...

#### Aggregation and allocation of orders

...

- 11.3.7 EU ~~Article 68(1) of the *MiFID Org Regulation* sets out requirements to be met where a firm carries out a *client order* or a transaction for own account in aggregation with another *client order*.~~  
A UK

...

- 11.3.7 R A *management company* must ensure that the order allocation policy referred to in article 68(1)(c) of the *MiFID Org Regulation*, reproduced at ~~COBS 11.3.7AEU~~ COBS 11.3.7AUK, is in sufficiently precise terms.  
B

...

#### Partial execution of aggregated client orders

11.3.8 EU ~~Article 68(2) of the *MiFID Org Regulation* sets out requirements~~  
A UK ~~concerning partial execution of aggregated *client* orders.~~

...

Aggregation and allocation of transactions for own account

...

11.3.9 EU ~~Article 69(1) of the *MiFID Org Regulation* sets out requirements~~  
A UK ~~concerning aggregated transactions.~~

...

...

11.3.10 EU ~~Article 69(2) of the *MiFID Org Regulation* sets out allocation~~  
A UK ~~priorities where a *firm* aggregates a *client* order in accordance with~~  
its allocation policy referred to in article 68(1)(c) (see *COBS*  
11.3.7AEU).

...

...

11.3.11 EU ~~Article 69(3) of the *MiFID Org Regulation* introduces requirements~~  
A UK ~~for order allocation policy, referred to in article 68(1)(c) (see *COBS*~~  
11.3.7AEU), where transactions for own account are executed in  
combination with *client* orders.

...

...

Provisions which implemented the ~~Transposition~~ of client order handling  
provisions in the UCITS Implementing Directive

11.3.14 G ...

(3) Some of these provisions ~~have been~~ were used to  
transpose provisions of the *UCITS implementing*  
*Directive*, as set out in the table below:

MiFID Org Regulation Provision	COBS 11.3 provision	UCITS implementing Directive transposition
article 67(1)	<del>COBS</del> 11.3.2AEU <u>COBS</u> 11.3.2AUK	article 27(1) second paragraph

article 67(3)	<del>COBS</del> <del>11.3.5AEU</del> <u>COBS</u> <u>11.3.5AUK</u>	article 27(2)
article 68(1)	<del>COBS</del> <del>11.3.7AEU</del> <u>COBS</u> <u>11.3.7AUK</u> , as modified by <del>COBS</del> 11.3.7BR	article 28(1)
article 68(2)	<del>COBS</del> <del>11.3.8AEU</del> <u>COBS</u> <u>11.3.8AUK</u>	article 28(2)
article 69(1)	<del>COBS</del> <del>11.3.9AEU</del> <u>COBS</u> <u>11.3.9AUK</u>	article 28(3)
article 69(2)	<del>COBS</del> <del>11.3.10AEU</del> <u>COBS</u> <u>11.3.10AUK</u>	article 28(4)

## 11.4 Client limit orders

Obligation to make unexecuted client limit orders public

- 11.4-1 R In this chapter provisions marked “EU” “UK” apply to a *firm’s* business other than *MiFID business* as if they were *rules*.

...

How client limit orders may be made public

- 11.4.3A EU ~~Article 70(1) of the *MiFID Org Regulation* provides when *client limit orders* shall be considered as being available to the public.~~  
UK
- 70 (1) A client limit order in respect of shares admitted to trading on a regulated market or traded on a trading venue which have not been immediately executed under prevailing market condition as referred to in ~~Article 28(2) of Directive 2014/65/EU~~ [COBS 11.4.1R] shall be considered available to the public when the investment firm has submitted the order for execution to a regulated market or a MTF or the order has been published by a ~~data reporting services provider located in one Member State a~~ person authorised to provide data reporting services under the

Data Reporting Services Regulations 2017 and can be easily executed as soon as market conditions allow.

...

Orders that are large in scale

- 11.4.5 R The obligation in *COBS* 11.4.1R to make public a *limit order* is disapplied in respect of transactions that are large in scale compared with normal market as determined under article 4 of *MiFIR*.

...

...

### 11.5A Record keeping: client orders and transactions

- 11.5A.1 R (1) Subject to (2), in this chapter provisions marked “EU” “UK” apply to a *firm*’s business other than *MiFID business* as if they were *rules*.
- (2) Provisions in this chapter which are marked “EU” “UK” do not apply to *corporate finance business* carried on by a *firm* which is not a *MiFID investment firm*.

#### Recording initial orders received from clients

- 11.5A.2 EU ~~Article 74 of the *MiFID Org Regulation*, together with Section 1 of Annex IV to that Regulation which is reproduced at *COBS* 11.5A.4EU, makes provision for record keeping of initial orders from *clients*.~~

74 An investment firm shall, in relation to every initial order received from a client and in relation to every initial decision to deal taken, immediately record and keep at the disposal of the competent authority at least the details set out in Section 1 of Annex IV [reproduced below at ~~COBS 11.5A.4EU~~ *COBS* 11.5A.4UK] to this Regulation to the extent they are applicable to the order or decision to deal in question.

Where the details set out in Section 1 of Annex IV to this Regulation are also prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014, these details should be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014.

#### Record keeping in relation to transactions and order processing

- 11.5A.3 EU ~~Article 75 of the *MiFID Org Regulation*, together with Section 2 of Annex IV to that Regulation which is reproduced at *COBS*~~



~~11.5A.5EU , makes provision for record keeping in relation to transactions and order processing.~~

75 Investment firms shall, immediately after receiving a client order or making a decision to deal to the extent they are applicable to the order or decision to deal in question, record and keep at the disposal of the competent authority at least the details set out in Section 2 of Annex IV [reproduced below at ~~COBS 11.5A.5EU~~ COBS 11.5A.5UK].

Where the details set out in Section 2 of Annex IV are also prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014, they shall be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation (EU) No 600/2014.

Minimum details to be recorded in relation to client orders and decisions to deal

11.5A.4 EU ~~Annex IV Section 1 of the *MiFID Org Regulation* makes provision for record keeping of *client* orders and decisions to deal.~~  
UK

...

16. The date and exact time of the receipt of the order or the date and exact time of when the decision to deal was made. The exact time must be measured according to the methodology prescribed ~~under the standards on clock synchronisation under Article 50(2) Directive 2014/65/EU in Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical standards made by the Financial Conduct Authority under paragraph 33 of Schedule 1.~~

Minimum details to be recorded in relation to transactions and order processing

11.5A.5 EU ~~Annex IV Section 2 of the *MiFID Org Regulation* makes provision for record keeping of transactions and order processing.~~  
UK

...

32. The date and exact time of submission of the order or decision to deal. The exact time must be measured according to the methodology prescribed ~~under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU in Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in~~

technical standards made by the Financial Conduct Authority under paragraph 26 of Schedule 3.

...

34. The date and exact time any message that is transmitted to and received from another investment firm in relation to events affecting an order. The exact time must be measured according to the methodology prescribed ~~under the standards on clock synchronisation~~ under Article 50(2) of Directive 2014/65/EU in Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical standards made by the Financial Conduct Authority under paragraph 26 of Schedule 3.

...

## 11.7 Personal account dealing

...

- 11.7.3 G For the purposes of *COBS* 11.7.1R (1)(c), any other obligation of the *firm* under the UK provisions which implemented *MiFID* refers to a *firm's* obligations under the *regulatory system* that are not owed to a *customer* ~~and any of the *firm's* obligations under another *EEA States'* implementation of *MiFID* where it operates a *branch* in the *EEA*.~~

...

### 11.7A Personal account dealing relating to MiFID, equivalent third country or optional exemption business

...

- 11.7A.2 R (1) Subject to (2), in this chapter provisions marked “EU” “UK” apply to a *firm* in relation to its equivalent third country or optional exemption business as if they were *rules*.
- (2) In this chapter, provisions ~~marked “EU”~~ which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to a *firm* in relation to its business which is the *equivalent business of a third country investment firm* or *MiFID optional exemption business* as guidance.

...

Scope of personal transactions

11.7A.4 EU ~~EU Article 28 of the *MiFID Org Regulation* sets out the scope of~~  
 UK ~~personal transactions.~~

...

Requirements relating to personal transactions

11.7A.5 EU ~~Article 29 of the *MiFID Org Regulation* sets out detailed~~  
 UK ~~provision concerning personal transactions.~~

...

(2) Investment firms shall ensure that relevant persons do not enter into a personal transaction which meets at least one of the following criteria:

(a) that person is prohibited from entering into it under Regulation (EU) No 596/2014;

(b) it involves the misuse or improper disclosure of that confidential information;

(c) it conflicts or is likely to conflict with an obligation of the investment firm under ~~Directive 2014/65/EU~~ UK law on markets in financial instruments.

...

(6) Paragraphs 1 to 5 shall not apply to the following personal transactions:

...

(b) personal transactions in undertakings for collective investments in transferable securities (UCITS) or AIFs that are subject to supervision under the law of ~~a Member State~~ the United Kingdom which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

...

**11** EU **Regulatory Technical Standard 28 (RTS 28)**  
**Annex** UK  
**1**

**COMMISSION DELEGATED REGULATION (EU) ~~...~~**  
**~~2017/...~~ 576 of 8.6. June 2016 supplementing Directive**  
**2014/65/EU of the European Parliament and of the Council**  
**with regard to regulatory technical standards for the annual**  
**publication by investment firms of information on the**  
**identity of execution venues and on the quality of execution**  
**(Text with EEA relevance)**

...

HAS ADOPTED THIS REGULATION

*Article -3 Definitions*

**‘Exit Day’ has the meaning given in the European Union (Withdrawal) Act 2018.**

*Article -2 Application*

**This Regulation applies to a MiFID investment firm and a UK RIE.**

*Article -1 Interpretation*

**(1) Where a term is defined in Article 4 of Directive 2014/65/EU, the same definition applies for this Regulation except where it is defined in Article 2 Regulation 600/2014/EU, as amended by the [Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], in which case that definition applies;**

**(2) Article 2(1)(62) and (63) of Regulation 600/2014/EU applies for the purposes of this Regulation; and**

**(3) References to ‘tick size bands’ are to those in Commission Delegated Regulation 2017/588, as amended at Exit Day.**

**(4) ‘MiFID investment firm’ and ‘UK RIE’ are defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority, immediately after Exit Day.**

...

*Article 3 Information on the top five execution venues and quality of execution obtained*

**3. Investment firms shall publish for each class of financial instruments, a summary of the analysis and conclusions they draw from their detailed monitoring of the quality of execution venues where they executed all client orders in the previous year. The information shall include:**

...

**(h) where applicable, an explanation of how the investment firm has used output of a consolidated tape provider ~~established under Article 65 of Directive 2014/65/EU~~**

**authorised in accordance with the Data Reporting Services Regulations 2017.**

...

**~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~**

...

## 11A Underwriting and placing

### 11A.1 Underwriting and placing

General application

- 11A.1. R (1) This chapter applies only to *MiFID* or *equivalent third country business*.
- 1 (2) Subject to (3), in this chapter provisions marked “EU” “UK” apply to the *equivalent business of a third country investment* as if they were *rules*.
- (3) In this chapter, provisions ~~marked “EU”~~ which derive from recitals to *MiFID* or the *MiFID Org Regulation* apply to the *equivalent business of a third country investment firm as guidance*.

Requirements to provide specific information to issuer clients

- 11A.1. EU ~~Article 38(1) of the *MiFID Org Regulation* sets out requirements for firms to provide specified information to issuer *clients* before accepting a mandate to manage an offering.~~
- 2 UK
- 38 (1) Investment firms which provide advice on corporate finance strategy, as set out in Section B(3) of Annex I Paragraph 3 of Part 3A of Schedule 2 to the Regulated Activities Order, and provide the service of underwriting or placing of financial instruments, shall, before accepting a mandate to manage the offering, have arrangements in place to inform the issuer client of the following:
- ...

Requirements to identify underwriting and placing operations and to ensure that adequate controls are in place to manage conflicts of interest

- 11A.1. EU ~~Article 38(2) and (3) of the *MiFID Org Regulation* sets out requirements to identify all underwriting and placing operations of a *firm* and to ensure that adequate controls are in place to manage any potential conflicts of interest.~~
- 3 UK

...

Additional requirements in relation to pricings of offerings in relation to the issuance of financial instruments

- 11A.1. EU ~~Article 39(1) of the *MiFID Org Regulation* sets out additional~~  
4 UK ~~requirements in relation to pricing of offerings in relation to~~  
~~issuance of *financial instruments*.~~

...

...

Further requirements concerning the provision of information

- 11A.1. EU ~~Article 39(2) of the *MiFID Org Regulation* sets out additional~~  
5 UK ~~requirements concerning the provision of information.~~

...

Further requirements in relation to placing

- 11A.1. EU ~~Article 40 of the *MiFID Org Regulation* sets out additional~~  
6 UK ~~requirements in relation to placing.~~

...

(3) Investment firms shall not accept any third-party payments or benefits unless such payments or benefits comply with ~~the inducements requirements~~ rules made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 which were relied on before exit day to implement requirements laid down in Article 24 of Directive 2014/65/EU. In particular, the following practices shall be considered not compliant with those requirements and shall therefore be considered not acceptable:

...

Further requirements in relation to advice, distribution and self-placement

- 11A.1. EU ~~Article 41 of the *MiFID Org Regulation* sets out additional~~  
7 UK ~~requirements in relation to advice, distribution and self placement.~~

41 (1) Investment firms shall have in place systems, controls and procedures to identify and manage the conflicts of interest that arise when providing investment service to an investment client to participate in a new issue, where the investment firm receives commissions, fees or any monetary or non-monetary benefits in relation to arranging the issuance. Any commissions, fees or monetary or non-monetary benefits shall comply with the requirements in ~~Article 24(7), 24(8) and 24(9) of Directive 2014/65/EU~~ [COBS 2.3A.5R to COBS 2.3A.7E, COBS 2.3A.15R, COBS 2.3A.16R, COBS 2.3A.19R and COBS 6.2B.11R] and be

documented in the investment firm's conflicts of interest policies and reflected in the firm's inducements arrangements.

...

(4) Investment firms which offer financial instruments issued that are by themselves or other group entities to their clients and that are included in the calculation of prudential requirements specified in Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>1</sup>, the law of the United Kingdom or any part of the United Kingdom ("UK law") which was relied on before exit day to implement Directive 2013/36/EU of the European Parliament and of the Council<sup>2</sup> or Directive 2014/59/EU of the European Parliament and of the Council<sup>3</sup>, shall provide those clients with additional information explaining the differences between the financial instrument and bank deposits in terms of yield, risk, liquidity and any protection provided in accordance with UK law which was relied on before exit day to implement Directive 2014/49/EU of the European Parliament and of the Council.

...

Further requirements in relation to lending on provision of credit in the context of underwriting or placement

- 11A.1. EU ~~Article 42 of the MiFID Org Regulation sets out additional~~  
8 UK ~~requirements in relation to lending on provision of credit in the~~  
~~context of underwriting or placement.~~

...

Record keeping requirements in relation to underwriting or placing

- 11A.1. EU ~~Article 43 of the MiFID Org Regulation sets out record keeping~~  
9 UK ~~requirements in relation to underwriting or placing.~~

...

**12 Investment research**

**12.1 Purpose and application**

...

Application: Where?

- 12.1.3 G ~~The EEA territorial scope rule modifies the general rule of application to the extent necessary to be compatible with European law (see paragraph 1.1 of Part 2 of COBS 1 Annex 1). This means that COBS 12.2 also applies to passported activities carried on by a UK MiFID investment firm from a branch in another EEA state, but does not apply to the United Kingdom branch of an EEA MiFID investment firm in relation to its MiFID business. [deleted]~~

## 12.2 Investment research and non-independent research

...

- 12.2.15 R Where this section applies to a *firm* in relation to business other than its *MiFID business*, provisions in this ~~section marked “EU”~~ section marked “UK” shall apply as if they were *rules*, other than those that copy out recitals, which shall apply as if they were *guidance*.

...

### Investment research and non-independent research

- 12.2.17 ~~EU~~ UK ~~Article 36(1) of the *MiFID Org Regulation* defines *investment research*.~~

36(1) For the purposes of Article 37 investment research shall be research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:

...

(b) if the recommendation in question were made by an investment firm to a client, it would not constitute the provision of investment advice for the purposes of ~~Directive 2014/65/EU~~ UK law on markets in financial instruments.

### Non-independent research with reference to investment recommendations as defined in the Market Abuse Regulation

- 12.2.18 ~~EU~~ UK ~~Article 36(2) of the *MiFID Org Regulation* deals with the treatment of *non-independent research with reference to investment recommendations as defined in the Market Abuse Regulation* (see *COBS 12.4*) and in contrast to *investment research as defined in article 36(1)* (see *COBS 12.2.17EU*).~~

36(2) A recommendation of the type covered by point (35) of Article 3(1) of Regulation (EU) 596/2014 that does not meet the conditions set out in paragraph 1 shall be treated as a marketing communication for the purposes of ~~Directive 2014/65/EU~~ UK law on markets in financial instruments and investment firms that produce or disseminate that recommendation shall ensure that it is clearly identified as such.

...



## Conflicts of interest

- 12.2.19 EU ~~Article 37(1) of the *MiFID Org Regulation* requires firms to apply the conflicts requirements set out in article 34(3) of the *MiFID Org Regulation* to persons involved in the production of *investment research* and *non-independent research*. Recitals 51, 52 and 55 to the *MiFID Org Regulation* relate to the required measures and arrangements.~~  
UK ...
- 12.2.20 G ...
- (2) ~~COBS 12.2.19EU~~ 12.2.19UK relates to the management of conflicts of interest in relation to *investment research*.
- ...

## Measures and arrangements required for investment research

- 12.2.21 EU ~~Article 37(2) of the *MiFID Org Regulation* requires firms to put arrangements in place around the production of *investment research* to ensure the conditions set out in that article are satisfied. Recitals 53, 54 and 56 relate to those arrangements and the article 37(2) conditions.~~  
UK ...
- Recital 54
- Fees, commissions, monetary or non-monetary benefits received by the firm providing investment research from any third party should only be acceptable when they are provided in accordance with requirements specified in Article 24(9) of Directive 2014/65/EU and Article 13 of Commission Delegated Directive (EU) ~~2017 / 593~~ [to be inserted before adoption] of XXX supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.
- ...

Exemptions from article 37(1) of the MiFID Org Regulation

- 12.2.22 EU ~~Article 37(3) of the *MiFID Org Regulation* provides for exemptions from article 37(1) of the *MiFID Org Regulation* (*COBS 12.2.19EU*).~~  
UK
- 37(3) Investment firms which disseminate investment research produced by another person to the public or to clients shall be

exempt from complying with paragraph 1 if the following criteria are met:

...

...

## 12.4 Investment recommendations

...

12.4.1 ~~EU~~ [article 20 of the *Market Abuse Regulation*]  
A UK

...

12.4.4 ~~EU~~ [article 20(1) of the *Market Abuse Regulation*]  
A UK

...

## 13 Preparing product information

### 13.1 The obligation to prepare product information

...

#### PRIIPs

13.1.1 G (1) The *PRIIPs Regulation* requires the manufacturer of a *PRIIP*  
A to draw up a *key information document* in accordance with the *PRIIPs Regulation* before that *PRIIP* is made available to retail investors (as defined in the *PRIIPs Regulation*) in the United Kingdom.

[**Note:** article 5 of the *PRIIPs Regulation*]

(2) Since the *PRIIPs Regulation* imposes ~~directly applicable~~ requirements in relation to the preparation of product information for *PRIIPs*, the rules in *COBS* 13.1 to *COBS* 13.4 do not apply to a *firm* in relation to the manufacture of a *PRIIP* (except where applicable to *Solvency II Directive information*). *COBS* 13.5 and *COBS* 13.6 continue to apply where relevant.

#### Application of the *PRIIPs* regulation to funds

13.1.1 G (1) A *UCITS management company* is exempt from the *PRIIPs*  
B *Regulation* until 31 December 2019 (see article 32(1) of the *PRIIPs Regulation*). These *firms* should continue to publish a

*key investor information document* until that date (see *COLL* 4.7).

- (2) (a) A manager of a *fund* offered to retail investors in the *United Kingdom*, other than a *UCITS*, is able to benefit from this exemption where a ~~Member State~~ the *United Kingdom* applies rules on the format and content of the *key investor information document* ~~in~~ which implemented articles 78 to 81 of the *UCITS Directive* to that *fund* (see article 32(2) of the *PRIPs Regulation*).

...

- (c) An *authorised fund manager* of a *non-UCITS retail scheme* offered to *retail clients* in the *United Kingdom* may, until 31 December 2019, draw up either:

...

...

#### 13.4 Contents of a key features illustration

...

- 13.4.5 G Although there may be no obligation to include a *projection* in a *key features illustration*, where a *firm* chooses to include one, the *projection* should:

...

- (2) Where the *projection* relates to a *financial instrument*, the *firm* should comply with either:
- (a) the requirements in article 44(6) of the *MiFID Org Regulation* (see ~~*COBS 4.5A.14EU*~~ *4.5A.14UK*) where the *firm* is carrying on *MiFID, equivalent third country or optional exemption business*); or

...

#### 13.5 Preparing product information: other projections

...

- 13.5.2 G Where a *firm* communicates a *projection* for a *packaged product* that is a *financial instrument*, the following future performance requirements are likely to apply:
- B

- (1) article 44(6) of the *MiFID Org Regulation* (see *COBS 4.5A.14EU 4.5A.14UK*) where the *firm* is carrying on *MiFID, equivalent third country or optional exemption business*; or

...

Exceptions to the projection rules: projections for more than one product

- 13.5.3 R A *firm* that communicates a *projection* of benefits for a *packaged product* which is not a *financial instrument*, as part of a combined *projection* where other benefits being projected include those for a *financial instrument* or *structured deposit*, is not required to comply with the projection rules in *COBS 13.4*, *COBS 13.5* and *COBS 13 Annex 2* to the extent that the combined *projection* complies with the future performance requirements in either:

- (1) article 44(6) of the *MiFID Org Regulation* (see *COBS 4.5A.14EU 4.5A.14UK*) where the *firm* is carrying on *MiFID, equivalent third country or optional exemption business*; or

...

- 13.5.4 G The general requirement that communications be fair, clear and not misleading will nevertheless mean that a *firm* that elects to comply with the future performance rule in *COBS 4.6.7R*, or, if applicable, the requirement in article 44(6) of the *MiFID Org Regulation* (see *COBS 4.5A.14EU 4.5A.14UK*), will need to explain how the combined *projection* differs from other information that has been or could be provided to the client, including a *projection* provided under the *projection rules* in *COBS 13.4*, *COBS 13.5* and *COBS 13 Annex 2*. In particular, the *firm* should identify where a *projection* in real terms is required under *COBS 13*.

...

## 13 Solvency II Directive Information

### Annex 1

This annex belongs to *COBS 13.1.2R* (The Solvency II Directive information)

Information about the firm

...

- (2) The name of the ~~EEA State~~ state in which the head office and, where appropriate, agency or branch concluding the contract is situated;

...

...

## 14 Providing product information to clients

...

### 14.2 Providing product information to clients

Providing information about PRIIPs

- 14.2.-1 G (1) The *PRIIPs Regulation* requires a *person* who advises on, or sells, a *PRIIP* to provide a retail investor (as defined in the *PRIIPs Regulation*) in the United Kingdom with the *key information document* for that *PRIIP*.

[**Note:** article 13 of the *PRIIPs Regulation*]

- (2) Since the *PRIIPs Regulation* imposes ~~directly applicable~~ requirements in relation to the provision of information about *PRIIPs*, this chapter does not apply to a *firm* when it is advising on, or selling, a *PRIIP* (except where applicable to *Solvency II Directive information*).

...

The provision rules for products other than PRIIPs

- 14.2.1 R A *firm* that sells:

...

- (5A) a *unit* in a *KII-compliant NURS* must provide the following to a *retail client*:

...

- (b) if that *client* is present in the ~~EEA~~ United Kingdom, enough information for the *client* to be able to make an informed decision about whether to hold the *units* in a *wrapper* (if the *units* will, or may, be held in that way);

...

- (7) a *unit* in a *UCITS scheme*, or in an *EEA UCITS scheme* which is a *recognised scheme*, to a *client*, must:

...

- (b) where the *client* is a *retail client*, provide separately (unless already provided) the information required by COBS 13.3.1R (2) (General requirements) and, if that *client* is present in the ~~EEA~~ *United Kingdom*, the information required by (5A)(b).

...

...

Exception to the provision rules: key features documents and key investor information documents

14.2.5 R A *firm* is not required to provide:

...

- (2) ~~a key features document or key features illustration, if another person is required to provide the distance marketing information by the rules of another EEA State; [deleted]~~

- (3) ~~the Solvency II Directive information, if another person is required to provide that information by the rules of another EEA State. [deleted]~~

...

...

Exception to the provision rules: key features documents and key features illustrations

14.2.7 R A *firm* is not required to provide a *key features document* or a *key features illustration* for:

- (2) a *life policy* if:

- (a) ~~the *firm* is operating from an establishment in another EEA State and the sale is by distance contract; or [deleted]~~

...

...

...

Exception to the provision rules: key features documents, key features illustrations, key investor information documents and NURS-KII documents

14.2.9 R A *firm* is not required to provide a *key features document* or a *key features illustration* if:

- (1) the *client* is habitually resident outside the ~~EEA~~ United Kingdom and not present in the ~~EEA~~ United Kingdom when the relevant application is signed; or

...

...

Providing additional information to the client

14.2.18 G ...

- (2) When a *firm* provides additional information it should:

...

- (b) consider whether any other *rules* or requirements in any ~~directly applicable EU~~ EU-derived regulations apply to the communication of that additional information. For example, for marketing communications relating to a *UCITS scheme* ~~or EEA UCITS scheme~~ see *COBS 4.13.2R*; and

...

### 14.3 Information about designated investments (non-MiFID provisions)

...

14.3.3 R If a *firm* provides a *retail client* with information about a *designated investment* that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with ~~the Prospectus Directive~~ Part VI of the Act, that *firm* must inform the *retail client* where that prospectus is made available to the public.

...

Information about UCITS schemes

14.3.11 R If a *firm* provides a *client* with a *key investor information document* or *EEA key investor information document* that meets all of the requirements of articles 78 and 79 of the UCITS Directive (see *COLL 4.7 (Key investor information and marketing communications)*) and the *KII Regulation* applying in relation to that document, it will have provided appropriate information for the purpose of the requirement to disclose information on:

- (1) *designated investments* and investment strategies (*COBS 2.2.1R(1)(b)*); and
- (2) costs and associated charges (*COBS 2.2.1R(1)(d)* and *COBS 6.1.9R*);

in relation to the costs and associated charges in respect of the *UCITS scheme* itself, including the exit and entry commissions.

...

**14.3A Information about financial instruments (MiFID provisions)**

...

Effect of provisions marked “EU” “UK” for third country investment firms and MiFID optional exemption firms

- 14.3A. R Provisions in this section marked “EU” “UK” apply in relation to  
2 *MiFID optional exemption business* as if they were *rules* (see *COBS 1.2.2G*).
- 14.3A. G The effect of *GEN 2.2.22AR* is that provisions in this section  
2A marked “EU” “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

...

14.3A. EU  
5 UK

48(3) Where an investment firm provides a retail client or potential retail client with information about a financial instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the law of the United Kingdom which was relied on immediately before exit day to implement Directive 2003/71/EC, as that law is amended from time to time, that firm shall in good time before the provision of investment services or ancillary services to clients or potential clients inform the client or potential client where that prospectus is made available to the public.

...

...

Timing of disclosure



14.3A. EU ...  
7 UK

14.3A. G The provisions in *COBS* that reproduce the information  
8 requirements contained in articles 47 to 50 of the *MiFID Org Regulation* are: *COBS 6.1ZA.5EU 6.1ZA.5UK, COBS 6.1ZA.8EU 6.1ZA.8UK, COBS 6.1ZA.9EU 6.1ZA.9UK, COBS 6.1ZA.14EU 6.1ZA.14UK* and *COBS 14.3A.5EU 14.3A.5UK*.

Medium of disclosure

14.3A. EU ...  
9 UK

Keeping the client up-to-date

14.3A. EU ...  
10 UK

Information provided in accordance with the ~~UCITS Directive and the PRIIPs Regulation~~ relation to units in collective investment undertakings or PRIIPs

14.3A. EU ...  
11 UK

...

## 14 Lifetime ISA information

### Annex 1

This Annex belongs to *COBS 13.3.1R(3)* and *COBS 14.2.1R(4A)*.

Information which comprises the following:

...

#### 4 Projections

4.1 R Where a *firm* chooses to provide a *projection*, including a *personal projection*, in relation to investing in a *lifetime ISA* in addition to the information in *COBS 14 Annex 1 3* (Example outcome of retirement saving by a retail client in a lifetime ISA), a *firm* must ensure that:

...

- (2) where a *firm* that communicates a *projection* for a *lifetime ISA* in relation to its *MiFID* or *equivalent third country business*, the *projection* complies with the future

performance requirements in article 44(6) of the *MiFID Org Regulation* (see ~~COBS 4.5A.14EU~~ 4.5A.14UK); and

...

**15 Cancellation**

...

**15 Exemptions from the right to cancel**

**Annex  
1**

Exemptions for life policies and pension contracts (non-distance)			
1.1	R	There is no right to cancel a non- <i>distance contract</i> that is a <i>life policy</i> or a <i>pension contract</i> :	
		...	
		(5)	if the <i>consumer</i> , at the time he signs the application, is <i>habitually resident</i> :
		(a)	<del>in an EEA State other than the UK (but that state's rules may apply); or</del>
		(b)	outside the <del>EEA</del> <u>UK</u> and is not present in the <i>UK</i> .
...			

**16 Reporting information to clients (non-MiFID provisions)**

...

**16.2 Occasional reporting**

Execution of orders other than when managing investments

16.2.1 R ...

(6) In relation to subscription and *redemption* orders for *units* in a *UCITS scheme* ~~or EEA UCITS scheme~~ executed by an *authorised fund manager*, paragraphs (1), (3) and (5) of this *rule* apply as if references to:

(a) a *client* and to a *retail client* were references to a *Unitholder* in the *scheme*; and

(b) *trade confirmation information* in paragraphs (1)(b) and (5)(b) were to the information in paragraph (7).

- (7) The notice referred to in paragraph (1)(b) must, where applicable, for subscription and *redemption* orders for *units* in a *UCITS scheme* ~~or *EEA UCITS scheme*~~ executed by an *authorised fund manager*, include the following information:

...

- (e) the identification of the *UCITS scheme* ~~or *EEA UCITS scheme*~~;

...

...

...

## 16.6 Communication to clients – life insurance, long-term care insurance and income withdrawals

Disclosure for life insurance contracts: information to be provided during the term of the contract

- 16.6.1 R (1) This section applies to a *long-term insurer*, unless, at the time of application, the *client*, other than an *EEA ECA recipient*, was *habitually resident*:

(a) ~~in an *EEA State* other than the *United Kingdom*; or~~

(b) outside the *EEA United Kingdom* and he was not present in the *United Kingdom*.

...

...

## 16A Reporting information to clients (MiFID and insurance-based investment products provisions)

### 16A.1 Application

...

Effect of provisions marked “~~EU~~” “UK” for third country investment firms and MiFID optional exemption firms

- 16A.1. R Provisions in this chapter marked “~~EU~~” “UK” apply in relation to  
2 *MiFID optional exemption business* as if they were *rules* (see *COBS 1.2.2G*).

16A.1. G The effect of *GEN 2.2.22AR* is that provisions in this chapter  
2A marked “EU” “UK” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

Effect of provisions marked “EU” “UK” for firms distributing insurance-based investment products

16A.1. R Provisions in this chapter marked “EU” “UK” and including a  
3 Note (“**Note:**”) referring to the *IDD Regulation* apply as if they were *rules to firms* to whom the *IDD Regulation* does not apply, when doing *insurance distribution*.

...

### 16A.3 Occasional reporting: MiFID business

Execution of orders other than when undertaking portfolio management

16A.3. EU ...  
1 UK

...

Reporting obligations in respect of eligible counterparties

16A.3. EU ...  
5 UK

### 16A.4 Periodic reporting

Provision by a firm and contents: MiFID business

16A.4. EU ...  
1 UK

60(3)

...  
The exception provided for in point (b) shall not apply in the case of transactions in financial instruments covered by Article 4(1)(44)(c) of, or any of points 4 to 11 of Section C in Annex I to Directive 2014/65/EU Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order.

...

16A.4. G In accordance with *COBS 2.4.9R*, a *firm* may dispatch a *periodic statement* (as required by article 60(1) of the *MiFID Org Regulation*, see *COBS 16A.4.1EU 16A.4.1UK*) to an agent, other

than the *firm* or an associate of the *firm*, nominated by the *client* in writing.

Provision by a firm and contents: insurance-based investment products

16A.4. 2A	<del>EU</del> <u>UK</u>	18(1)	<p>Without prejudice to <del>Article 185 of Directive 2009/138/EC of the European Parliament and of the Council</del> [<u>COBS 13.1.2R, COBS 13.3.2R, COBS 14.2.11R, COBS 14.2.5R, COBS 14.2.7R, COBS 16.6.3R, COBS 16.6.3AR and COBS 20.4.7R, and COBS 13 Annexes 1 and 2</u>], the insurance intermediary or insurance undertaking shall provide the customer with a periodic report, on a durable medium, of the services provided to and transactions undertaken on behalf of the customer.</p> <p>...</p>
--------------	----------------------------	-------	--

Additional reporting obligations for portfolio management or contingent liability transactions

16A.4. 3	<del>EU</del> <u>UK</u>	...
-------------	----------------------------	-----

...

**16A.5 Statements of client financial instruments or client funds**

16A.5. 1	<del>EU</del> <u>UK</u>	63(1)	<p>Investment firms that hold client financial instruments or client funds shall send at least on a quarterly basis, to each client for whom they hold financial instruments or funds, a statement in a durable medium of those financial instruments or funds unless such a statement has been provided in any other periodic statement. Upon client request, firms shall provide such statement more frequently at a commercial cost.</p> <p>The first subparagraph shall not apply to a credit institution <del>authorised under Directive 2000/12/EC of the European Parliament and of the Council</del> <u>that is a CRR firm as defined in Article 4(1)(2A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms</u> in respect of deposits within the meaning of <del>that Directive</del> <u>Article 2(1)(23A) of Regulation (EU) No 600/2014</u> held by that institution.</p>
-------------	----------------------------	-------	---

63(2) The statement of client assets referred to in paragraph 1 shall include the following information:

...

(d) a clear indication of the assets or funds which are subject to the rules of ~~Directive 2014/65/EU and its implementing measures~~ the UK law on markets in financial instruments and those that are not, such as those that are subject to Title Transfer Collateral Agreement;

...

...

...

## 18 Specialist Regimes

...

### 18.5 Residual CIS operators and small authorised UK AIFMs

...

#### Distance marketing

18.5.5 G *Firms* should also be aware that if they are carrying on distance marketing activity from an establishment in the *UK*, with or for a consumer in the *UK* ~~or another EEA State~~, *COBS* 5.1 applies specific requirements for that activity.

A

...

#### Exceptions from the requirement to provide a periodic statement

18.5.13 R ...

(2) ~~For a firm acting as an outgoing ECA provider, the exemption for retail client investors ordinarily resident outside the United Kingdom applies only to an investor in the fund who is a retail client ordinarily resident outside the EEA. [deleted]~~

...

18.5.15 E Table: Periodic statements

This table belongs to *COBS* 18.5.12E

<b>Periodic statements</b>
----------------------------

...				
Adequate information	(2)	(a)	A <i>periodic statement</i> should contain:	
			...	
		(ii)	such information as an investor who is a <i>retail client</i> ordinarily resident outside the <i>United Kingdom</i> , or a <i>professional client</i> , has on his own initiative agreed with the <i>firm</i> as adequate.	
		(b)	For a <i>firm</i> acting as an <i>outgoing ECA provider</i> , the words ' <i>United Kingdom</i> ' is replaced by ' <i>EEA</i> ' [deleted]	

...

## 18.5A Full-scope UK AIFMs and incoming ~~EEA~~ AIFM branches

### Application

- 18.5A.1 R Subject to *COBS* 18.5A.2R, this section applies to a *firm* which is:
- (1) a *full-scope UK AIFM* of:
    - (a) a *UK AIF*; and
    - (b) ~~an *EEA AIF*~~; and [deleted]
    - (c) a ~~*non-EEA AIF*~~ non-UK AIF; ~~or~~
  - (2) ~~an *incoming EEA AIFM branch*~~. [deleted]
- 18.5A.2 R The adequate information provisions in *COBS* 18.5A.11R do not apply to a *full-scope UK AIFM* of:
- (1) a ~~*UK ELTIF*~~ or an ~~*EEA ELTIF*~~ an *LTIF*; or
  - (2) an *unauthorised AIF* which is not a *collective investment scheme*.

### Application or modification of general COBS rules

18.5A.3 R A firm when it is carrying on AIFM investment management functions:

- (1) must comply with the *COBS rules* specified in the table, as modified by this section; and
- (2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

<b>Chapter, section, rule</b>	<b>Full-scope UK AIFM</b>	<b>Incoming EEA AIFM branch</b>
1 (Application)	Applies	<del>Applies</del>
2.1.4R (AIFMs best interest rule)	Applies	<del>Applies</del>
2.3B (Inducements and research)	Applies, as modified by <i>COBS</i> 18 Annex 1	<del>Applies, as modified by <i>COBS</i> 18 Annex 1</del>
4.2.1R, 4.2.2G and 4.2.3G (The fair, clear and not misleading rule)	Applies	<del>Applies</del>
5.2 (E-commerce)	Applies	<del>Applies</del>
11.2 (Best execution for AIFMs and residual CIS operators)	Applies as modified by <i>COBS</i> 18.5A.8R	<del>Applies as modified by <i>COBS</i> 18.5A.8R</del>
18.5A ( <i>Full-scope AIFMs and incoming EEA AIFM branches</i> )	Applies as modified by <i>COBS</i> 18.5A.2R	<del>Applies</del>
18 Annex 1 (Research and inducements for collective portfolio managers)	Applies (subject to <i>COBS</i> 18.5A.7R)	<del>Applies (subject to <i>COBS</i> 18.5A.7R)</del>

...



## Distance marketing

- 18.5A.1 R *Firms* should also be aware that if they are carrying on distance  
0 marketing activity from an establishment in the *UK*, with or for a  
*consumer* in the *UK* or another ~~EEA State~~, *COBS* 5.1 applies  
specific requirements for that activity.

...

**18.5B UCITS management companies**

...

## Distance marketing

- 18.5B.7 G *Firms* should also be aware that if they are carrying on distance  
marketing activity from an establishment in the *UK*, with or for a  
*consumer* in the *UK* or another ~~EEA State~~, *COBS* 5.1 applies  
specific requirements for that activity.

...

**18.8A OPS firms**

...

## Interpretation and general modifications

- 18.8A.2 R Where a *COBS rule* specified in this section applies to an *OPS*  
*firm*, the following modifications apply:

...

- (3) subject to the modifications in *COBS* 18.8A.6R, *COBS*  
18.8A.15R(4) and *COBS* 18.8A.16R(4), *COBS* 1.2.3R  
(References in *COBS* to the MiFID Org Regulation) applies  
where a *COBS* provision marked "~~EU~~" "UK" applies to an  
*OPS firm*.

...

- 18.8A.1 R The provisions in *COBS* 11.2A (Best execution – MiFID  
4 provisions) marked "~~EU~~" "UK" and *COBS* 11 Annex 1~~EU~~UK  
(Regulatory Technical Standard 28) apply to an *OPS firm* to  
which (1) applies as if they were *rules*.

## Modification of best execution rules

- 18.8A.1 R ...  
5

- (2) The requirement in *COBS* ~~11.2A.34EU~~ 11.2A.34UK (see article 65(6) of the *MiFID Org Regulation*) to make public for each class of *financial instruments*:

...

...

- (4) In *COBS* 11.2A, a reference to:

...

- (b) “*portfolio management*” in *COBS* ~~11.2A.34EU~~ 11.2A.34UK (see article 65(1) of the *MiFID Org Regulation*) is to be construed as a reference to *OPS activity* falling within the scope of *COBS* 18.8A.13R and which involves the *OPS firm* placing orders with other entities for execution that result from decisions by the *OPS firm* to deal in *financial instruments* on behalf of its *client*; and

...

#### Client order handling

18.8A.1 R ...  
6

- (2) The provisions in *COBS* 11.3 (Client order handling) marked “~~EU~~” “UK” apply to an *OPS firm* as if they were *rules*.

...

...

#### 18.9 ICVCs

...

18.9.2 G *Firms* should note that the *operator* of an *ICVC* when it is undertaking *scheme management activity* will be subject to:

- (1) ...
- (2) *COBS* 18.5A.3R if the *operator* is a *full-scope UK AIFM* ~~or an incoming EEA AIFM branch~~; or
- (3) ...

**18.10 UCITS ~~qualifiers~~, AIFM ~~qualifiers~~ and service Service companies**

18.10.1 R The *COBS* provisions in the table apply to a ~~UCITS qualifier~~ and a *service company*:

...

18.10.2 R ~~COBS 4 and COBS 12.4~~ apply to an ~~AIFM qualifier~~. [deleted]

**18.11 Authorised professional firms**

...

18.11.2 *COBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except that:

...

- (3) the *rules* in the following parts of *COBS* which ~~implement~~ implemented the *IDD* apply in relation to *insurance distribution activities*:

...

but only if the *designated professional body* of the *firm* does not have rules approved by the *FCA* under section 332(5) of the *Act* that ~~implement~~ implemented articles 1(4), 17, 18, 19, 20, 23, 24(1) to (4) and (6), 29, and 30 of the *IDD* and that apply to the *firm*;

...

18.11.2 G For *COBS* 18.11.2R(3) if a *rule* ~~implements~~ implemented a requirement of the *IDD*, a note (“**Note:**”) follows the *rule* indicating which provision is was being implemented.

A

...

**18 Research and inducements for collective portfolio managers  
Annex 1**

1 Application

1.1 G This section applies to:

...

...

- (2) a *full-scope UK AIFM* and an ~~incoming EEA AIFM branch~~, in accordance with *COBS* 18.5A.3R;

...

...

2.4 G A *firm* may inform investors in the *fund* about the fees, commissions or monetary benefits transferred to them through:

...

- (2) the annual reports provided on request to investors, for a *small authorised UK AIFM* in relation to an *authorised AIF*, a *full-scope UK AIFM*, ~~an *incoming EEA AIFM branch*~~ or a *UCITS management company*.

...

4.3 R Where *COBS 2.3B* applies to a *firm*, the following modifications apply:

...

- (5) in *COBS 2.3B.24G*, the reference to *COBS 11.2A* is to be construed as a reference to:
- (a) *COBS 11.2* for *small authorised UK AIFMs*, *residual CIS operators*, and *full-scope UK AIFMs* ~~and *incoming EEA AIFM branches*~~; and

...

...

## 20 With-profits

### 20.1 Application

...

20.1.3 R ~~For an *EEA insurer*:~~

- (1) (a) ~~the *rules and guidance on the with-profits fund* (*COBS 20.1A*), on treating *with-profits policyholders* fairly (*COBS 20.2.1G* to *COBS 20.2.41G* and *COBS 20.2.53R* to *COBS 20.2.60G*), and the governance provisions in *COBS 20.5*. apply only in so far as responsibility for the matter in question has not been reserved to the *firm's Home State regulator* by an *EU instrument*;~~

~~notwithstanding the above:~~

- (b) ~~*COBS 20.2.26AR* (financial penalties and the *with-profits fund*) applies;~~

- (e) ~~the rules and guidance on the notification of policyholders where there is a change in the percentage allocation of distributions (COBS 20.2.19AR to COBS 20.2.19CG) apply but only to the extent that the UK is the State of the commitment;~~
- (2) ~~COBS 20.3 (Principles and Practices of Financial Management) does not apply;~~
- (3) ~~the rule on providing information to with-profits policyholders where the United Kingdom is the State of the commitment (COBS 20.4.4R) applies, but the rest of COBS 20.4 (Communications with with-profits policyholders) does not; and~~
- (4) ~~[deleted]~~
- (5) ~~references in COBS 20 to a with-profits fund or to terms derived from the Solvency II Directive requiring transposition in the Home State, apply as if they were references to the relevant fund or terms established in accordance with the requirements of the Home State. [deleted]~~

...

## 20.4 Communications with with-profits policyholders

...

### Requirements on EEA insurers

- 20.4.4 R ~~In relation to any with-profits policyholder where the state of the commitment is the United Kingdom, an EEA insurer must:~~
- (1) ~~provide the information necessary to enable that policyholder properly to understand the insurer's commitment under the policy;~~
  - (2) ~~ensure that the information provided is not narrower in scope or less detailed in content than the information required to be provided in the PPFM produced by a firm subject to COBS 20.3; and~~
  - (3) ~~send the policyholder who is affected by any information being changed written notice, setting out:~~
    - (a) ~~any proposed changes to information that is equivalent to the with-profits principles, three months in advance of the effective date; and~~

- (b) ~~any changes to information that is equivalent to the *with-profits practices*, within a reasonable time.~~  
[deleted]

...

## 21 Permitted Links

### 21.1 Application

21.1.1 R The *rules* in this section apply on an ongoing basis to *insurers who effect linked long-term contracts*, ~~that are effected by:~~

- (1) ~~*insurers other than EEA insurers*~~; and  
 (2) ~~*EEA insurers in the United Kingdom*~~.

...

### 21.2 Rules for firms engaged in linked long-term insurance business

...

21.2.1B R ~~*Insurers other than EEA insurers*~~ effecting *linked long-term contracts* of insurance are obliged to comply with the requirements on investments in the PRA Rulebook Solvency II Firms Investments.

...

### 21.3 Further rules for firms engaged in linked long-term insurance business

...

21.3.8 G A *firm* should assess the liquidity of a *money-market instrument* in accordance with *CESR's UCITS eligible assets guidelines*, with respect to *UK provisions which implemented* article 4(1) of the *UCITS eligible assets Directive*.

...

Stock lending: requirements

21.3.11 R (1) The *stock lending* arrangement is of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), and:

(a) all the terms of the agreement under which *securities* are to be reacquired by the *firm* for the account of the unit-linked fund are in a form which is acceptable to the *firm* and in accordance with good market practice;

- (b) the counterparty is:
  - (i) an *authorised person*; or
  - (ii) a *person* authorised by a Home State regulator in an *EEA State*; or
- ...

...

...

**22 Restrictions on the distribution of certain regulatory capital instruments**

...

**22.2 Restrictions on the retail distribution of mutual society shares**

22.2.1 R (1) The requirements in this section apply to a *firm* when dealing in or arranging a deal in a *mutual society share* with or for a *retail client* in the ~~EEA~~ United Kingdom where the *retail client* is to enter into the *deal* as buyer.

...

22.2.4 R ...

Title	Type of retail client	Additional conditions
<i>Certified high net worth investor</i>	... <del>(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.6R; or</del> <del>(c) (b) a person (or persons) legally empowered to make investment decisions on behalf of an individual who meets the earnings or net asset requirements in (a) or (b) above.</del>	...
<i>Certified sophisticated investor</i>	... <del>(b) an individual in an EEA State other than the UK who meets requirements which are</del>	...

	<p><del>broadly equivalent to those set out in COBS 4.12.7R; or</del></p> <p><del>(e)</del> (b) an individual who meets the requirements for either (a) <del>or (b)</del> above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the <i>firm's</i> client.</p>	
<p><i>Self-certified sophisticated investor</i></p>	<p>...</p> <p><del>(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.8R; or</del></p> <p><del>(e)</del> (b) an individual who meets the requirements for either (a) <del>or (b)</del> above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another <i>person</i> who is the <i>firm's</i> client.</p>	<p>...</p>

...

**22.3 Restrictions on the retail distribution of contingent convertible instruments and CoCo funds**

Restrictions

22.3.1 R (1) ...

(2) A *firm* must not:

- (a) *sell* an *investment* to a *retail client* in the EEA United Kingdom; or
- (b) communicate or approve an invitation or inducement to participate in, acquire or underwrite an *investment* where that invitation or inducement is addressed to or disseminated in such a way that it is likely to be received by a *retail client* in the EEA United Kingdom.

...

Exemptions



22.3.2 R ...

Title	Type of retail client	Additional conditions
<i>Certified high net worth investor</i>	<p>...</p> <p><del>(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.6R; or</del></p> <p><del>(e) (b) a person (or persons) legally empowered to make investment decisions on behalf of an individual who meets the earnings or net asset requirements in (a) or (b) above.</del></p>	...
<i>Certified sophisticated investor</i>	<p>...</p> <p><del>(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.7R; or</del></p> <p><del>(e) (b) an individual who meets the requirements for either (a) or (b) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the firm's client.</del></p>	...
<i>Self-certified sophisticated investor</i>	<p>...</p> <p><del>(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.8R; or</del></p> <p><del>(e) (b) an individual who meets the requirements for either (a) or (b) above and who is legally empowered (solely or jointly with others) to make investment decisions</del></p>	...

	on behalf of another <i>person</i> who is the <i>firm's</i> client.	
...		

...

**Sch 1 Record keeping requirements**

...

Sch 1.3G

Handbook reference	Subject of record	Content of record	When record must be made	Retention period
...				
<i>COBS</i> <u>9A.4.3EU</u> <u>9A.4.3UK</u>	Suitability (insurance-based investment products)	<i>Client</i> information for <i>suitability report</i> - details in <i>COBS</i> <u>9A.4.3EU</u> <u>9A.4.3UK</u> and <i>COBS</i> <u>9A.4.4EU</u> <u>9A.4.4UK</u>	From date of <i>suitability report</i>	For whichever is the longer of 5 years or the duration of the relationship with the <i>client</i>
...				
<i>COBS</i> <u>10A.7.2EU</u> <u>10A.7.2UK</u>	Appropriateness (MiFID provisions)	...		
<i>COBS</i> <u>10A.7.2AEU</u> <u>10A.7.2AUK</u>	Appropriateness (insurance-based investment products)	...		
<i>COBS</i> <u>11.5A.4EU</u> <u>11.5A.4UK</u>	<i>Client</i> orders	...		

<i>COBS</i> <del>11.5A.5EU</del> <u>11.5A.5UK</u>	<i>Client orders</i>	...		
...				
<i>COBS</i> <del>11.7A.5EU</del> <u>11.7A.5UK</u>	Personal account dealing (MiFID provisions)	...		
...				
<i>COBS</i> <del>11A.1.9EU</del> <u>11A.1.9UK</u>	Underwriting and placing	...		
...				
<i>COBS</i> <del>16A.3.1EU</del> <u>16A.3.1UK</u>	Confirmation to <i>clients</i> (MiFID provisions)	...		
<i>COBS</i> <del>16A.4.1EU</del> <u>16A.4.1UK</u>	<i>Periodic statements</i> (MiFID provisions)	...		
<i>COBS</i> <del>16A.4.2EU</del> <u>16A.4.2UK</u>	<i>Periodic statements</i> (insurance-based investment products)			
...				

...

## Annex B

## Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

## 1 Annex Application (see ICOBS 1.1.2R)

1

Part 1: Who?		
Modifications to the general rule according to type of firm		
...		
3	Authorised professional firms	
3.1	R	This sourcebook (except for ICOBS 4.6) does not apply to an <i>authorised professional firm</i> with respect to its <i>non-mainstream regulated activities</i> except for:
		...
		(4) <u>the UK provisions implementing which implemented</u> articles 1(4), 17, 18, 19, 20, 23, and 24 of the <i>IDD</i> (see <i>ICOBS 2.2.2R</i> (communication to customers and financial promotions), <i>ICOBS 2.2.2AR</i> (marketing communications), <i>ICOBS 2.5.-1R</i> (the customer's best interests rule), <i>ICOBS 2.6</i> (Distribution of connected contracts through exempt persons), <i>ICOBS 4.1</i> (Information about the firm, its services and remuneration), <i>ICOBS 4.1A</i> (Means of communicating to customers), <i>ICOBS 4.3</i> (remuneration disclosure), <i>ICOBS 5.2</i> (Demands and needs), <i>ICOBS 5.3.3R</i> (Advice on the basis of a fair analysis), <i>ICOBS 5.3.4R</i> (Personalised explanation), <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision) and <i>ICOBS 6A.3</i> (Cross-selling)), except to the extent that the <i>firm</i> is subject to equivalent rules of its <i>designated professional body</i> approved by the <i>FCA</i> .
3.2	G	Compliance with <u>the UK provisions of which implemented</u> the <i>Distance Marketing Directive</i> is dealt with in the Professional Firms sourcebook (see <i>PROF 5.4</i> ).
...		
6	Lloyd's	
6.1	R	<del>The Society must ensure that no member carries on motor vehicle liability insurance business at Lloyd's unless a claims</del>

		representative has been appointed to act for that member in each <i>EEA State</i> other than the <i>United Kingdom</i> , with responsibility for handling and settling a claim by an <i>injured party</i> . Otherwise, this <u>This</u> sourcebook does not apply to the <i>Society</i> .
--	--	---

Part 2: What?		
Modifications to the general application rule according to activities		
...		
2		Contracts of large risks
2.1	R	Subject to Part 3 of this Annex:
		(1) this sourcebook does not apply to a <i>firm</i> distributing a <i>contract of large risks</i> where the risk is located outside the <i>European Economic Area United Kingdom</i> ;
		(2) only <i>ICOBS 2</i> (General matters) and <i>ICOBS 6A.3</i> (Cross-selling) apply to a <i>firm</i> distributing a <i>contract of large risks</i> for a <i>commercial customer</i> where the risk is located within the <i>European Economic Area United Kingdom</i> ; and
		(3) ...
		...
...		

Part 3: Where?		
Modifications to the general rule of application according to location		
1		EEA territorial scope rule: compatibility with European law <u>[deleted]</u>
1.1	R	(1) <del>The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 4 for <i>guidance</i> on this).</del>
		(2) <del>This rule overrides any other rule in this sourcebook.</del>
1.2	R	<del>In addition to the <i>EEA territorial scope rule</i>, the effect of the <i>E-Commerce Directive</i> on territorial scope is applied in the fields covered by the ‘derogations’ in the Annex to that Directive other than the ‘insurance derogation’ in the fourth indent (see paragraph 8 of Part 4 for <i>guidance</i> on this).</del>

		[ <del>Note: article 3(3) of, and Annex to, the <i>E-Commerce Directive</i></del> ]	
2	Exemption for insurers: business with <del>non-EEA</del> <u>non-UK</u> customers via non-UK intermediaries		
2.1	R	This sourcebook does not apply to an <i>insurer</i> if:	
		(1)	the intermediary (whether or not an <i>insurance intermediary</i> ) in contact with the customer is not established in the <i>United Kingdom</i> ; and
		(2)	the <i>customer</i> is not <i>habitually resident</i> in, and, if applicable, the <i>State of the risk</i> is outside, <del>an EEA State</del> <u>the <i>United Kingdom</i></u> .
3	Exemption for insurers: business with non-UK EEA customers [ <del>deleted</del> ]		
3.1	R	<del>A rule in this sourcebook which goes beyond the minimum required by EU legislation does not apply to an insurer if the customer is habitually resident in (and, if applicable, the State of the risk is) an EEA State other than the United Kingdom, to the extent that the EEA State in question imposes measures of like effect.</del>	

Part 4: Guidance [ <del>deleted</del> ]			
1	The main extensions and restrictions to the general application rule		
1.1	G	The general application <i>rule</i> is modified in Parts 1 to 3 of this Annex and in certain chapters of this sourcebook.	
1.2	G	The provisions of the <i>Single Market Directives</i> and other directives also extensively modify the general application <i>rule</i> , particularly in relation to territorial scope. However, for the majority of circumstances, the general application <i>rule</i> is likely to apply.	
2	The <i>Single Market Directives</i> and other directives		
2.1	G	This <i>guidance</i> provides a general overview only and is not comprehensive.	
2.2	G	When considering the impact of a directive on the territorial application of a <i>rule</i> , a <i>firm</i> will first need to consider whether the relevant situation involves a non- <i>UK</i> element. The <i>EEA</i> territorial scope <i>rule</i> is unlikely to apply if a <i>UK firm</i> is doing business from a <i>UK establishment</i> for a <i>client</i> located in the <i>United Kingdom</i> in	

		relation to a <i>UK</i> product. However, if there is a non- <i>UK</i> element, the <i>firm</i> should consider whether:
		(1) it is subject to the directive;
		(2) the business it is performing is subject to the directive; and
		(3) the particular <i>rule</i> is within the scope of the directive.
		If the answer to all three questions is ‘yes’, the <i>EEA</i> territorial scope <i>rule</i> may change the effect of the general application <i>rule</i> .
2.3	G	When considering a particular situation, a <i>firm</i> should also consider whether two or more directives apply.
3		Insurance Distribution Directive: effect on territorial scope
3.1	G	The <i>IDD</i> ’s scope covers most <i>firms</i> carrying on most types of <i>insurance distribution</i> .
3.2	G	The <i>rules</i> in this sourcebook within the Directive’s scope are those implementing the minimum requirements in articles 1(4), 17, 18, 19, 20, 23 and 24(1) to (3) and (6) of the <i>IDD</i> set out in:
		(1) <i>ICOBS</i> 2.2.2R (communication to customers and financial promotions), <i>ICOBS</i> 2.2.2AR (marketing communications), <i>ICOBS</i> 2.5. 1R (the customer’s best interests rule), <i>ICOBS</i> 2.6 (Distribution of connected contracts through exempt persons);
		(2) <i>ICOBS</i> 4.1 (General requirements for insurance intermediaries and insurers), <i>ICOBS</i> 4.1A (Means of communicating to customers), <i>ICOBS</i> 4.3 (Remuneration disclosure);
		(3) <i>ICOBS</i> 5.2 (Demands and needs), <i>ICOBS</i> 5.3.4R (Personalised explanation), <i>ICOBS</i> 5.3.3R (Advice on the basis of a fair analysis); and
		(4) <i>ICOBS</i> 6.1 (Providing product information to customers: general) and <i>ICOBS</i> 6 Annex 3R (Providing product information by way of a standardised insurance information document); and
		(5) <i>ICOBS</i> 6A.1.4R (Ensuring the customer can make an informed decision) and <i>ICOBS</i> 6A.3 (Cross-selling).
3.2A	G	A Member State is entitled to impose additional requirements within the Directive’s scope in the ‘general good’. (See recital 52 to, and article 22 of, the <i>IDD</i> ).”

3.2B	G	The additional requirements within the scope of the <i>IDD</i> and found in this sourcebook are those that:	
		(1)	deal with communication to <i>customers</i> and <i>financial promotions</i> , the <i>customer's best interests rule</i> and additional responsibilities of <i>insurance distributors</i> (see <i>ICOBS 2.2.2R</i> , <i>ICOBS 2.2.2AR</i> , <i>ICOBS 2.5.1R</i> and <i>ICOBS 2.6</i> ); and
		(2)	require the provision of pre-contract information or the provision of advice on the basis of a fair and personal analysis (see <i>ICOBS 4</i> (Information about the firm, its services and remuneration), <i>ICOBS 5.2</i> (Demands and needs), <i>ICOBS 5.3.3R</i> (Advice on the basis of a fair analysis), <i>ICOBS 6.1A.5R</i> (Responsibility for producing the standardised insurance product information document), <i>ICOBS 6.1</i> (Providing product information to customers: general); <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision) and <i>ICOBS 6A.3</i> (Cross-selling)).
3.3	G	The <i>IDD</i> places responsibility for requirements in this sourcebook within the Directive's scope (both minimum and additional requirements) on the <i>Home State</i> , except in relation to business conducted through a <i>branch</i> , in which case the responsibility rests with the <i>EEA State</i> in which the <i>branch</i> is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis) (see recital 22 to, and article 7(2) of, the <i>IDD</i> ). Accordingly the general rules on territorial scope are not modified by the <i>IDD</i> except:	
		(1)	for an <i>EEA firm</i> providing <i>passport activities</i> under the Directive in the <i>United Kingdom</i> , additional rules within the Directive's scope have their unmodified territorial scope unless the <i>Home State</i> imposes measures of like effect; and
		(2)	for <i>insurance distribution</i> business carried on by <i>insurers</i> :
		(a)	minimum and additional requirements apply to a <i>UK firm</i> unless responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the <i>firm's Host State</i> regulator; and
		(b)	paragraph (1), and 3.3AG, below, apply in the same way unless the responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the <i>firm's Home State</i> regulator.
3.3A	G	An <i>EEA firm</i> acting as the principal of an <i>appointed representative</i> carrying on <i>insurance distribution activities</i> from an establishment in the <i>United Kingdom</i> is required to ensure that its <i>appointed representative</i> complies with this sourcebook.	



4	Solvency II Directive non-life business: effect on territorial scope	
4.1	G	The <i>Solvency II Directive's</i> scope covers <i>insurers</i> authorised under that Directive conducting <i>general insurance business</i> .
4.2	G	The rules in this sourcebook within the <i>Solvency II Directive's</i> scope are those requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the insurance contract (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision) and <i>ICOBS 8</i> (Claims handling) except those parts of <i>ICOBS 8.2</i> (Motor vehicle liability insurers) implementing the <i>Consolidated Motor Insurance Directive</i> .
4.3	G	The <i>Solvency II Directive</i> specifies minimum information requirements and permits <i>EEA States</i> to adopt additional mandatory rules. (See articles 178, 180, 183, 184 of the <i>Solvency II Directive</i> .)
4.4	G	If the <i>State of the risk</i> is an <i>EEA State</i> , the <i>Solvency II Directive</i> provides that the applicable information rules shall be determined by that state. Accordingly, if the <i>State of the risk</i> is the <i>United Kingdom</i> , the relevant rules in this sourcebook apply. Those rules do not apply if the <i>State of the risk</i> is another <i>EEA State</i> . The territorial scope of other rules, in particular the <i>financial promotion rules</i> , is not affected since the <i>Solvency II Directive</i> explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the 'general good'. (See articles 156 and 180 of the <i>Solvency II Directive</i> .)
5	Solvency II Directive life business: effect on territorial scope	
5.1	G	The <i>Solvency II Directive's</i> scope covers <i>long-term insurers</i> which are <i>Solvency II firms</i> conducting <i>long-term insurance business</i> .
5.2	G	The rules in this sourcebook within the Directive's scope are the cancellation rules (see <i>ICOBS 7</i> ) and those rules requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the <i>contract of insurance</i> (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <i>ICOBS 6</i> (Product information) and <i>ICOBS 8</i> (Claims handling) except <i>ICOBS 8.2</i> (Motor vehicle liability insurers)).
5.3	G	The Directive specifies minimum information and cancellation requirements and permits <i>EEA States</i> to adopt additional information requirements that are necessary for a proper understanding by the <i>policyholder</i> of the essential elements of the commitment.

5.4	G	If the <i>State of the commitment</i> is an <i>EEA State</i> , the Directive provides that the applicable information rules and cancellation rules shall be laid down by that state. Accordingly, if the <i>State of the commitment</i> is the <i>United Kingdom</i> , the relevant rules in this sourcebook apply. Those rules do not apply if the <i>State of the commitment</i> is another <i>EEA State</i> . The territorial scope of other rules, in particular the <i>financial promotion rules</i> , is not affected since the Directive explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the ‘general good’. (See articles 156, 180, 185 and 186 of the <i>Solvency II Directive</i> .)
6	Motor Insurance Directives: effect on territorial scope	
6.1	G	The scope of the <i>Consolidated Motor Insurance Directive</i> covers insurers conducting <i>motor vehicle liability insurance business</i> . The rules in this sourcebook within the Directive’s scope are those regarding the appointment of claims representatives and handling of claims by <i>injured parties</i> (see <i>ICOBS 8.2</i> ).
6.2	G	The Directive requires a <i>motor vehicle liability insurer</i> to appoint a claims representative in each <i>EEA State</i> other than its <i>Home State</i> . It specifies minimum requirements regarding function and powers of claims representatives in handling claims and regarding the settlement of claims by <i>injured parties</i> .
6.3	G	The Directive’s provisions apply to <i>motor vehicle liability insurers</i> for which the <i>United Kingdom</i> is the <i>Home State</i> . (See articles 21 and 22 of the <i>Consolidated Motor Insurance Directive</i> ).
7	Distance Marketing Directive: effect on territorial scope	
7.1	G	In broad terms, a <i>firm</i> is within the <i>Distance Marketing Directive</i> ’s scope when conducting an activity relating to a <i>distance contract</i> with a <i>consumer</i> . The rules in this sourcebook within the Directive’s scope are those requiring the provision of pre-contract information (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <i>ICOBS 4</i> (Information about the firm, its services and remuneration), <i>ICOBS 6</i> (Product information), and <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision)), the cancellation rules (see <i>ICOBS 7</i> ) and the other specific rules implementing the Directive (see <i>ICOBS 3.1</i> .)
7.2	G	In the <i>FCA</i> ’s view, the Directive places responsibility for requirements within the Directive’s scope on the <i>Home State</i> except in relation to business conducted through a <i>branch</i> , in which case the responsibility rests with the <i>EEA State</i> in which the <i>branch</i> is located (this is sometimes referred to as a ‘country of origin’ or ‘country of establishment’ basis). (See article 16 of the <i>Distance Marketing Directive</i> .)

7.3	G	This means that relevant <i>rules</i> in this sourcebook will, in general, apply to a <i>firm</i> conducting business within the Directive's scope from an establishment in the <i>United Kingdom</i> (whether the <i>firm</i> is a national of the <i>United Kingdom</i> or of any other <i>EEA State</i> or <i>non-EEA state</i> ).	
7.4	G	Conversely, the territorial scope of the relevant <i>rules</i> in this sourcebook is modified as necessary so that they do not apply to a <i>firm</i> conducting business within the Directive's scope from an establishment in another <i>EEA State</i> if the <i>firm</i> is a national of the <i>United Kingdom</i> or of any other <i>EEA State</i> .	
7.5	G	In the <i>FCA's</i> view:	
		(1)	the 'country of origin' basis of the Directive is in line with that of the <i>E-Commerce Directive</i> and the <i>IDD</i> ; (See recital 6 to the <i>Distance Marketing Directive</i> .)
		(2)	for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Solvency II Directive</i> , the territorial application of the <i>Distance Marketing Directive</i> takes precedence; in other words, the <i>rules</i> requiring pre-contract information and cancellation rules derived from the <i>Solvency II Directive</i> apply on a 'country of origin' basis rather than being based on the <i>State of the commitment</i> (See articles 4(1) and 16 of the <i>Distance Marketing Directive</i> ).
8	Electronic Commerce Directive: effect on territorial scope		
8.1	G	The <i>E-Commerce Directive's</i> scope covers every firm carrying on an electronic commerce activity. Every rule in this sourcebook is within the Directive's scope.	
8.2	G	A key element of the Directive is the ability of a <i>person</i> from one <i>EEA State</i> to carry on an <i>electronic commerce activity</i> freely into another <i>EEA State</i> . Accordingly, the territorial application of the <i>rules</i> in this sourcebook is modified so that they apply at least to a <i>firm</i> carrying on an <i>electronic commerce activity</i> from an establishment in the <i>United Kingdom</i> with or for a <i>person</i> in the <i>United Kingdom</i> or another <i>EEA State</i> .	
8.3	G	Conversely, a <i>firm</i> that is a national of the <i>United Kingdom</i> or another <i>EEA State</i> , carrying on an <i>electronic commerce activity</i> from an establishment in another <i>EEA State</i> with or for a <i>person</i> in the <i>United Kingdom</i> , need not comply with the <i>rules</i> in this sourcebook. (See article 3(1) and (2) of the <i>E-Commerce Directive</i> .)	
8.4	G	The effect of the Directive on this sourcebook is subject to the 'insurance derogation', which is the only 'derogation' in the	

		Directive that the <i>FCA</i> has adopted for this sourcebook. The derogation applies to an <i>insurer</i> that is authorised under, and carrying on an <i>electronic commerce activity</i> within, the scope of the <i>Solvency II Directive</i> and permits <i>EEA States</i> to continue to apply their advertising rules in the ‘general good’.	
8.5	G	Where the derogation applies, the <i>rules on financial promotion</i> continue to apply for incoming <i>electronic commerce activities</i> (unless the <i>firm’s</i> ‘country of origin’ applies rules of like effect), but do not apply for outgoing <i>electronic commerce activities</i> . (See article 3(3) and Annex, fourth indent of the <i>E-Commerce Directive</i> ; Annex to European Commission Discussion Paper MARKT/2541/03.)	
8.6	G	In the <i>FCA’s</i> view, the Directive’s effect on the territorial scope of this sourcebook (including the use of the ‘insurance derogation’):	
		(1)	is in line with the <i>Distance Marketing Directive</i> and the <i>IDD</i> ;
		(2)	overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.
8.7	G	The ‘derogations’ in the Directive may enable other <i>EEA States</i> to adopt a different approach to the <i>United Kingdom</i> in certain fields. (See recital 52 to the <i>IDD</i> , recital 6 to the <i>Distance Marketing Directive</i> , article 3 of, and the Annex to, the <i>E-Commerce Directive</i> .)	

...

### 3 Distance communications

#### 3.1 Distance marketing

##### Application

- 3.1.1 R This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* or another *EEA State*.

...

- 3.1.19 R If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *EEA United Kingdom*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of one or more *EEA States* the *United Kingdom*.

...

### 3.2 E-Commerce

#### Application

- 3.2.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an establishment in the *United Kingdom*, with or for a *person* in the *United Kingdom* ~~or another EEA State~~.

#### Information about the firm and its products or services

- 3.2.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

...

- (5) if it is a *professional firm*, ~~or a person regulated by the equivalent of a designated professional body in another EEA State~~:

(a) ...

(b) the professional title ~~and the EEA State where it was granted~~;

(c) a reference to the applicable professional rules ~~in the EEA State of establishment~~ and the means to access them; and

...

...

- 3.2.5 R An unsolicited commercial communication sent by e-mail by a *firm* ~~established in the United Kingdom~~ must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

...

...

### 3 Annex 1G **Guidance on the UK provisions which implemented the Distance Marketing Directive**

...

Q7. How ~~does~~ do the UK provisions which implemented the Directive apply to insurance intermediaries' services?

The *FCA* expects the UK provisions which implemented the *Distance Marketing Directive* to apply to *insurance intermediaries'* services only in the small minority of cases where:

- the *firm* concludes a *distance contract* with a *consumer* covering its *insurance distribution activities* which is additional to any insurance contract which it is marketing; and
- that *distance contract* is concluded other than merely as a stage in the *effecting* or *carrying out* of an insurance contract by the *firm* or another *person*: in other words it has some continuity independent of an insurance contract, as opposed, for example, to being concluded as part of marketing an insurance contract.

Q8. Can you give examples of when the UK provisions which implemented the Directive would and would not apply to insurance intermediaries' services?

The rules implementing which implemented the Distance Marketing Directive will not apply in the typical case where an *insurance intermediary* sells an insurance contract to a *consumer* on a one-off basis, even if the *insurance intermediary* is involved in the *renewal* of that contract and handling claims under it.

Nor will the UK provisions which implemented the Directive apply if an *insurance intermediary*, in its terms of business, makes clear that it does not, in conducting *insurance distribution activities*, act contractually on behalf of, or for, the *consumer*.

An example of when the UK provisions which implemented the Distance Marketing Directive would apply would be a *distance contract* under which an *insurance intermediary* agrees to provide advice on a *consumer's* insurance needs as and when they arise.

...

**3 Annex 2R Distance marketing information**

...

Distance marketing information	
The firm	
...	
(2)	Where the <i>firm</i> has a representative established in the <del><i>consumer's EEA State of residence</i></del> <i>United Kingdom</i> , the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with the representative.
...	
The distance contract	
...	

(16)	The <i>EEA State</i> or <i>States</i> whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> prior to the conclusion of the contract. <u>[deleted]</u>
...	

...

#### 4 Information about the firm, its services and remuneration

...

##### 4.1A Means of communication to customers

...

Means of communication to customers; non-telephone sales

4.1A.2 R ...

(2) The *firm* must communicate the information in (1):

...

(b) in an official language of the *State of the risk* United Kingdom where the *State of the risk* is the United Kingdom, or in any other language agreed by the parties; and

...

...

...

#### 6 Product information

...

##### 6.2 Pre-contract information: general insurance contracts

...

Solvency II Directive derived disclosure requirements

...

6.2.3 R (1) ~~An EEA firm~~ A firm which has its head office in the European Economic Area must inform a *customer*, before any commitment is entered into, of the ~~EEA State~~ state in which the head office or, where appropriate, the branch with which the contract is to be concluded, is situated.

- (2) Any documents issued to the *customer* must convey the information required by this *rule*.

...

6.2.4 R ~~An EEA firm~~ A firm which has its head office in the *European Economic Area* must ensure that the contract or any other document granting cover, together with the insurance proposal where it is binding upon the *customer*, states the address of the head office, or, where appropriate, of the branch of the *firm* which grants the cover.

...

...

### 6.3 Pre- and post-contract information: pure protection contracts

Solvency II Directive derived disclosure requirements

6.3.1 R ...

Information to be communicated before conclusion	
...	
(2)	The name of the <del>EEA State</del> state in which the head office and, where appropriate, the agency or branch concluding the contract is situated.
...	

...

### 6 Annex 1R Responsibilities of insurers and insurance intermediaries in certain situations

...

	Situation	Insurance intermediary's responsibility	Insurer's responsibility
...			
(2)	Insurance intermediary does not operate from UK establishment, is not authorised, is selling connected contracts or is authorised professional firm	None	Production and providing (but for pure protection contracts no policy summary is required unless the



	<p>carrying on <i>non-mainstream regulated activities</i></p> <p><i>Insurer operates from UK establishment</i></p> <p><i>Customer habitually resident in the <del>EEA</del> <u>United Kingdom</u></i></p>		<p><i>insurance intermediary does not operate from a UK establishment)</i></p>
(3)	<p>As (2) but <i>customer habitually resident outside the <del>EEA</del> <u>United Kingdom</u> and insurer not in contact with the customer</i></p>	None	None
(4)	<p>As (2) but <i>customer habitually resident outside the <del>EEA</del> <u>United Kingdom</u> and insurer in contact with the customer</i></p>	None	Production and providing
...			

...

**6 Annex 3 Providing product information by way of a standardised insurance information document:**

[**Note:** the *IDD IPID Regulation* is ~~directly~~ applicable to *IDD insurance intermediaries, IDD insurance undertakings and IDD ancillary insurance intermediaries.*]

This annex belongs to *ICOBS* 6.1.10AR.

1 Effect of provisions marked ‘~~EU~~’ ‘UK’

1.1 R (1) Provisions in this section marked “~~EU~~” “UK” apply in relation to a firm to which the *IPID Regulation* is ~~not directly applicable~~ does not apply, as if they were *rules*.

(2) In this annex, a word or phrase found in a provision marked “~~EU~~” “UK” and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

...

...

Name and company logo of the manufacturer

2.4 ~~EU~~  
UK 1(1) The name of the manufacturer of the non-life insurance product, ~~the Member State where that manufacturer is registered~~, its

- regulatory status, and, where relevant, its authorisation number shall immediately follow the title 'insurance product information document' at the top of the first page.
- 2.5 EU 1(2) The manufacturer may insert its company logo to the right of the  
UK title.

...

#### Reference to complete pre-contractual and contractual information

- 2.6 EU 2 The insurance product information document shall state  
UK prominently that complete pre-contractual and contractual information about the non-life insurance product is provided to the customer in other documents. That statement shall be placed immediately below the name of the manufacturer of the non-life insurance product.

...

#### 3 How must the IPID be presented and formatted?

- 3.1 R The *IPID* must:

...

- (4) be written in the official languages, or in one of the official languages, used in the part of the ~~Member State~~ state where the *policy* is offered or, if agreed by the *consumer* and the *insurance distributor*, in another language;

...

#### Length

- 3.2 EU 3 The insurance product information document shall be set out on  
UK two sides of A4-sized paper when printed. Exceptionally, if more space is needed, the insurance product information document may be set out on a maximum of three sides of A4-sized paper when printed. Where a manufacturer uses three sides of A4-sized paper, it shall, upon request by the ~~competent authority~~ Financial Conduct Authority, be able to demonstrate that more space was needed.

...

#### Presentation and order of content

- 3.3 EU 4(1) The information of the insurance product information document  
UK listed in ~~in~~ Article 20(8) of Directive (EU) 2016/97 shall be presented in different sections and in accordance with the structure, lay-out, headings and sequence as set out in the

- standardised presentation format in the Annex to this Regulation, using a font size with an x-height of at least 1,2 mm.
- 3.4 EU 4(2) The length of the sections may vary, depending on the amount of  
UK information that is to be included in each section. Information about add-ons and optional covers shall not be preceded by ticks, crosses or exclamation marks.
- 3.5 EU 4(3) Where the insurance product information document is presented  
UK using a durable medium other than paper, the size of the components in the layout may be changed, provided that the layout, headings and sequence of the standardised presentation format, as well as the relative prominence and size of the different elements, are retained.
- 3.6 EU 4(4) Where the dimensions of the durable medium other than paper are  
UK such that a layout using two columns is not feasible, a presentation using a single column may be used, provided that the sequence of the sections is as follows:
- ...
- 3.7 EU 4(5) The use of digital tools, including layering and pop-ups shall be  
UK permitted, provided that all the information referred to in Article 20(8) of Directive (EU) 2016/97 is provided in the main body of the insurance product information document and that the use of such tools does not distract the customer's attention from the content of the main document.
- Information provided through layering and pop-ups shall not include marketing or advertising material.

...

#### Plain language

- 3.8 EU 5 The insurance product information document shall be drafted in  
UK plain language, facilitating the customer's understanding of the content of that document, and shall focus on key information which the customer needs to make an informed decision. Jargon shall be avoided.

...

#### Headings and information thereunder

- 3.9 EU 6(1) The sections of the insurance product information document shall  
UK have the following headings and the following information thereunder:
- (a) the information on the type of insurance referred to in Article 20(8)(a) of Directive (EU) 2016/97 shall be included

under the heading ‘What is this type of insurance?’, at the top of the document;

- (b) the information on the main risks insured referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘What is insured?’. Each piece of information listed in this section shall be preceded by a green ‘tick’ symbol;
- (c) the information on the insured sum referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘What is insured?’;
- (d) the information on geographical scope, where applicable, referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘Where am I covered?’. Each piece of information listed in this section shall be preceded by a blue ‘tick’ symbol;
- (e) the information on a summary of the excluded risks referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘What is not insured?’. Each piece of information in this section shall be preceded by a red ‘X’ symbol;
- (f) the information on the main exclusions referred to in Article 20(8)(d) of Directive (EU) 2016/97 shall be included under the heading ‘Are there any restrictions on cover?’. Each piece of information listed in this section shall be preceded by an orange exclamation mark symbol;
- (g) the information on the relevant obligations referred to in points (e), (f) and (g) of Article 20(8) of Directive (EU) 2016/97 shall be included under the heading ‘What are my obligations?’;
- (h) the information on the means and duration of payment of premiums referred to in Article 20(8)(c) of Directive (EU) 2016/97 shall be included under the heading ‘When and how do I pay?’;
- (i) the information on the term of the contract referred to in Article 20(8)(h) of Directive (EU) 2016/97 shall be included under the heading ‘When does the cover start and end?’;
- (j) the information on the means of terminating the contract referred to in Article 20(8)(i) of Directive (EU) 2016/97 shall be included under the heading ‘How do I cancel the contract?’.

...

...

## Use of icons

3.10

EU  
UK

- 7(1) Each section shall further be headed by icons that visually represent the content of the respective section heading, as follows:
- (a) the information on the main risks insured referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of an umbrella, which shall be white on a green background or green on a white background;
  - (b) the information on the geographical scope of the insurance cover referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of a globe, which shall be white on a blue background or blue on a white background;
  - (c) the information on excluded risks referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of an X symbol within a triangle, which shall be white on a red background or red on a white background;
  - (d) the information on the main exclusions referred to in Article 20(8)(d) of Directive (EU) 2016/97 shall be headed by an exclamation mark (!) within a triangle, which shall be white on an orange background or orange on a white background;
  - (e) the information on the obligations at the start of the contract, during the term of the contract and in the event that a claim is made, referred to in points (e), (f) and (g) of 20(8) of Directive (EU) 2016/97, respectively, shall be headed by an icon of a handshake, which shall be white on a green background or green on a white background;
  - (f) the information on the means and duration of payments referred to in Article 20(8)(c) of Directive (EU) 2016/97 shall be headed by an icon of coins, which shall be white on a yellow background or yellow on a white background;
  - (g) the information on the term of the contract referred to in Article 20(8)(h) of Directive (EU) 2016/97 shall be headed by an icon of an hourglass, which shall be white on a blue background or blue on a white background;
  - (h) the information on the means of terminating the contract referred to in Article 20(8)(i) of Directive (EU) 2016/97 shall be headed by an icon of a hand with an open palm on a shield, which shall be white on a black background, or black on a white background.

- 3.11 ~~EU~~  
UK 7(2) All icons shall be displayed in a manner consistent with the standardised presentation format in the Annex.
- 3.12 ~~EU~~  
UK 7(3) The icons referred to in paragraphs 1 and 2 may be presented in black and white where the insurance product information document is printed or photocopied in black and white.

...

...

## 8 Claims handling

...

### 8.2 Motor vehicle liability insurers

Application: who? what?

- 8.2.1 R (1) ...
- (2) The *rules* in this section relating to the appointment of claims representatives apply:
- (a) ~~in relation to claims by injured parties resulting from accidents occurring in an EEA State other than the injured party's EEA State of residence which are caused by the use of vehicles insured through an establishment in, and normally based in, an EEA State other than the injured party's EEA State of residence; and [deleted]~~
- (b) in relation to claims arising out of events occurring, and risks situated, in the *United Kingdom*, and covered by ~~an incoming EEA firm on a services basis~~ a firm operating from an establishment in the European Economic Area.
- (3) ...
- ...
- ...
- 8.2.2A R ~~A person carrying on, or seeking to carry on, motor vehicle liability insurance business must have a claims representative in each EEA state other than the United Kingdom. [deleted]~~
- 8.2.2B R ~~An incoming EEA firm~~ A firm operating from an establishment in the European Economic Area carrying on motor vehicle liability insurance business and covering *UK risks* ~~on a services basis~~ must have a claims representative in the *United Kingdom* to deal with claims arising out of events occurring in the *United Kingdom*.

...

Conditions for appointing claims representatives

- 8.2.3 R A *firm* must ensure that each claims representative:
- ...
- (2) is resident or established in the ~~EEA State where it is appointed~~ United Kingdom;
- ...
- (5) is capable of examining cases in the official language(s) of the ~~EEA State of residence of the injured party~~ United Kingdom.
- ...

...

Notifying the appointment of claims representatives

- 8.2.5 R (1) A *firm* must notify to the ~~information centres of all EEA States~~ Motor Insurers' Information Centre:
- (a) the name and address of the claims representative which they have appointed in ~~each of the EEA States~~ the United Kingdom;
- ...
- ...
- ...

...

**8.4 Employers' Liability Insurance**

Application

- 8.4.1 R ...
- (2) This section applies to:
- ...
- in relation to *general insurance contracts* and, in either case, including business accepted under *reinsurance* to close;

- (b) ~~all incoming EEA firms or incoming Treaty firms falling within (a) including those providing cross border services.~~  
[deleted]

...

...



## Annex C

## Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

### 1 Application and purpose

...

### 1.3 General application: where?

Location of the customer

1.3.1 R Except as set out in this section, *MCOB* applies if the *customer* of a *firm* carrying on *home finance activities* is resident in:

- (1) the *United Kingdom*; ~~or~~
- (2) another *EEA State* where the activity is carried on from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*;

at the time that the *home finance activity* is carried on.

1.3.1A R (1) ~~The provisions of *MCOB* listed in *MCOB* 1.3.1AR(2) apply to a *UK firm* where it carries on *MCD credit intermediation activity* for a *customer* who is resident in another *EEA State* through an establishment maintained by the *firm* in that State.~~

(2) ~~The provisions mentioned in *MCOB* 1.3.1AR(1) are:~~

- (a) *MCOB* 2A.1.1R(2);
- (b) *MCOB* 2A.1.4R;
- (c) *MCOB* 2A.2.1R and 2A.2.2G; and
- (d) *MCOB* 7.6.28R. [deleted]

~~[Note: article 34(2) of the *MCD*]~~

~~Incoming *EEA credit intermediaries*~~

1.3.1B R (1) ~~The application of *MCOB* to an *incoming EEA firm* that is an *MCD credit intermediary* is modified to the extent necessary to be compatible with European law.~~

~~(2) MCOB 1.3.1BR(1) overrides every other rule in this sourcebook.  
[deleted]~~

~~[Note: article 34(2) of the MCD]~~

1.3.1C G ~~Guidance on MCOB 1.3.1AR and MCOB 1.3.1BR is in MCOB 1 Annex 5. For applicable rules in relation to knowledge and competence requirements for staff, incoming EEA firms should also refer to TC 2.1.5AR to TC 2.1.5FG and to the territorial application rules in TC Appendices 1 and 2.  
[deleted]~~

...

~~Electronic commerce activities and communications~~

1.3.3 R ~~This sourcebook does not apply to an incoming ECA provider acting as such. [deleted]~~

~~Distance contracts entered into from an establishment in another EEA State~~

1.3.4 R (1) ~~The rules in (2) do not apply to a firm with respect to a regulated mortgage activity or a home purchase activity exclusively concerning a distance contract if the following conditions are satisfied:~~

~~(a) the firm carries on the activity from an establishment maintained by the firm in an EEA State other than the United Kingdom; and~~

~~(b) either the EEA State:~~

~~(i) has implemented the Distance Marketing Directive; or~~

~~(ii) has obligations in its domestic law corresponding to those provided for by the Distance Marketing Directive;~~

~~and, in either case, with the result that the obligations provided for by the Distance Marketing Directive (or corresponding obligations) are applied by that State when the firm carries on that activity; and~~

~~(c) the firm is a national of an EEA State or a company or firm mentioned in article 54 of the Treaty.~~

~~(2) The rules which do not apply are:~~

~~(a) initial disclosure requirements in MCOB 4.4A (in respect of regulated mortgage contracts) and MCOB 4.10 (in respect of home purchase plans);~~

- (b) ~~MCOB 4.5 (Additional disclosure for distance mortgage mediation contracts and distance home purchase mediation contracts with consumers);~~
- (c) ~~MCOB 4.6 (Cancellation of distance mortgage mediation contracts) and distance home purchase mediation contracts);~~
- (d) ~~MCOB 5 (Pre-application disclosure);~~
- (e) ~~MCOB 6 (Disclosure at offer stage);~~
- (f) ~~MCOB 7.6.7R to MCOB 7.6.17R (Further advances);~~
- (g) ~~MCOB 8.3 (Application of rules in MCOB 4) to the extent that it applies MCOB 4.4A to MCOB 4.6;~~
- (h) ~~[deleted]~~
- (i) ~~MCOB 9.3 (Pre-application disclosure);~~
- (j) ~~MCOB 9.4 (Content of illustrations); and~~
- (k) ~~MCOB 9.5 (Disclosure at offer stage for equity release transactions). [deleted]~~

#### Distance contracts with retail customers

1.3.5 G ...

(1) *Consumer*

The rules which implemented the *Distance Marketing Directive* ~~applies~~ apply for distance contracts with ‘any natural person who is acting for purposes which are outside his trade, business or profession’, for which the term ‘consumer’ has been adopted. ...

(2) *Distance contract*

...

- (a) ... If a *firm* normally operates face-to-face and has no facilities in place enabling a *customer* to deal with it customarily by distance means, the rules which implemented the *Distance Marketing Directive* will not apply. ...

...

...

MCOB 1 Annex 5 (Guidance on the application of MCOB for incoming EEA MCD credit intermediaries and for UK firms carrying out MCD credit intermediation activities in another

EEA State) is deleted in its entirety. The deleted text is not shown but the Annex is marked [deleted] as shown below.

**1 Annex 5G Guidance on the application of MCOB for incoming EEA MCD credit intermediaries and for UK firms carrying out MCD credit intermediation activities in another EEA State [deleted]**

**2 Conduct of business standards: general**

...

**2.7A E-Commerce**

Application

2.7A.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an establishment in the *United Kingdom*, with or for a person in the *United Kingdom* ~~or another EEA state~~, in relation to a *home finance transaction*.

Information about the firm and its products or services

2.7A.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

...

(5) if it is a *professional firm*, ~~or a person regulated by the equivalent of a designated professional body in another EEA State~~:

...

(b) the professional title ~~and the EEA State where the professional title was granted~~;

(c) a reference to the applicable professional rules ~~in the EEA State of establishment~~ and the means to access them; and

...

...

2.7A.5 R An unsolicited commercial communication sent by e-mail by a *firm* ~~established in the United Kingdom~~ must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[**Note:** article 7(1) of the *E-Commerce Directive*]

**2A Mortgage Credit Directive**

...

**2A.3 Foreign currency loans**

...

2A.3.3 R Where:

- (1) an *MCD regulated mortgage contract* is denominated in ~~the currency of the EEA State in which the consumer is resident~~ pound sterling (“currency A”); and

...

2A.3.4 R The alternative currency referred to in *MCOB 2A.3.1R(1)* must be either:

...

- (2) ~~the currency of the EEA State in which the consumer either was resident at the time that the MCD regulated mortgage contract was entered into or is currently resident~~ pound sterling.

...

...

**3A Financial promotions and communications with customers****3A.1 Application and purpose**

...

3A.1.13 R This chapter applies to a *firm* in relation to:

...

- (3) the approval of a *non-real time financial promotion of qualifying credit, a home reversion plan or a regulated sale and rent back agreement for communication to a person in the United Kingdom*;
- (4) ~~the communication or approval for communication of a financial promotion that is an electronic commerce communication to a person in an EEA State other than in the United Kingdom~~; and [deleted]
- (5) ~~the communication or approval for communication of a financial promotion in relation to an MCD regulated mortgage contract to a person in an EEA State other than in the United Kingdom~~. [deleted]

...

Exceptions to territorial scope: financial promotions of qualifying credit relating to distance contracts

- 3A.1.16 R (1) ~~Notwithstanding MCOB 3A.1.13R and MCOB 3A.1.15R, where a firm which satisfies the conditions in (2) communicates a financial promotion of qualifying credit, the rules in (3) do not apply.~~
- (2) The conditions are that:
- (a) ~~the firm communicates the financial promotion of qualifying credit from an establishment maintained by the firm in an EEA State other than the United Kingdom, and not from an establishment maintained by the firm in the United Kingdom or outside the EEA;~~
- (b) either that ~~EEA State~~:
- (i) ~~has implemented the Distance Marketing Directive;~~  
or
- (ii) ~~has obligations in its domestic law corresponding to those provided for by the Distance Marketing Directive;~~
- (c) ~~the financial promotion of qualifying credit relates, exclusively, to a distance contract, for the conclusion of which the obligations provided for by the Distance Marketing Directive (or corresponding obligations) are applied by that state; and~~
- (d) ~~the firm is a national of an EEA State or a company or firm mentioned in article 54 of the Treaty.~~
- (3) The ~~rules~~ which do not apply are:
- (a) ~~MCOB 3A.3.2R (Name and contact point); and~~
- (b) ~~MCOB 3A.4.1R(1) and (2) (Real time qualifying credit promotions). [deleted]~~

...

### 3B MCD general information

#### 3B.1 Provision of general information

...

- 3B.1.2 R A firm must make available clear and comprehensible information about MCD regulated mortgage contracts at all times on paper, or on another durable medium or in electronic form, that includes:

...

- (3) the forms of security, ~~including, where applicable, the possibility for it to be located in a different EEA State;~~

...

...

**4 Advising and selling standards**

...

**4.5 Additional disclosure for distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with retail customers**

- 4.5.1 G (1) There are certain additional disclosure requirements laid down by the rules which implemented the Distance Marketing Directive that will have to be provided by a *mortgage intermediary*, a *home purchase intermediary* and a *SRB intermediary* to a *consumer* prior to the conclusion of a *distance mortgage mediation contract*, a *distance home purchase mediation contract* or a *distance regulated sale and rent back mediation contract*. ...

...

...

**4 Annex 3R Additional information requirements in respect of distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with consumers**

...

<b>Additional information for distance contracts with retail customers consumers</b>	
All the contractual terms and conditions on which the service will be provided including, in particular, the following information:	
(1)	where the <i>firm</i> has a representative established in the <del><i>consumer's EEA State or other country of residence</i></del> <i>United Kingdom</i> , the identity of that representative and the geographical address relevant to the <i>consumer's</i> relations with him;
...	
(6)	details of:
(a)	<del>the EEA State or States whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>customer</i></del>

		<p>prior to the conclusion of the <i>regulated mortgage contract, home purchase plan or regulated sale and rent back agreement</i>;</p> <p>[deleted]</p>
	...	

...

**5A MCD Pre-application disclosure**

...

**5A European Standardised Information Sheet (ESIS)**

**Annex  
1R**

...

Introduction
...
3. Main features of the loan
<p>Amount and currency of the loan to be granted: [value][currency]</p> <p>(Where applicable) This loan is not in <del>{national currency of the borrower}</del> pound sterling.</p> <p>(Where applicable) The value of your loan in <del>{national currency of the borrower}</del> sterling could change.</p> <p>(Where applicable) For example, if the value of <del>{national currency of the borrower}</del> sterling fell by 20% relative to [credit currency], the value of your loan would increase to [insert amount in national currency of the borrower sterling]. However, it could be more than this if the value of <del>{national currency of the borrower}</del> sterling falls by more than 20%.</p> <p>(Where applicable) The maximum value of your loan will be [insert amount in national currency of the borrower sterling]. (Where applicable) You will receive a warning if the credit amount reaches [insert amount in national currency of the borrower sterling]. (Where applicable) You will have the opportunity to [insert right to renegotiate foreign currency loan or right to convert loan into [relevant currency] and conditions].</p> <p>...</p>
6. Amount of each instalment
<p>...</p> <p>(Where applicable) The value of the amount you have to pay in <del>{national currency of the borrower}</del> sterling each [frequency of instalment] could change. (Where</p>



<p>applicable) Your payments could increase to [insert maximum amount in <del>national currency of the borrower</del> sterling] each [insert period]. (Where applicable) For example, if the value of [<del>national currency of the borrower</del> sterling] fell by 20% relative to [credit currency], you would have to pay an extra [insert amount in <del>national currency of the borrower</del> sterling] each [insert period]. Your payments could increase by more than this.</p> <p>(Where applicable) The exchange rate used for converting your repayment in [credit currency] to [<del>national currency of the borrower</del> sterling] will be the rate published by [name of institution publishing exchange rate] on [date] or will be calculated on [date] using [insert name of benchmark or method of calculation].</p> <p>...</p>
12. Complaints
<p>...</p> <p>(Where applicable) or you can contact FIN-NET for details of the equivalent body in your own country.</p>
...

**5A Instructions to complete the ESIS**  
**Annex 2**

...

...				
3	Section '1. Lender'			
...				
3.3	R	Where the <del>MCD-regulated mortgage contract</del> is offered at a distance, the <del>firm must, where applicable, provide the name and geographical address of the MCD mortgage lender's representative in the EEA State where the consumer is resident.</del> [deleted]		
...				
6	Section '4. Interest rate' and other costs			
...				
6.6	R	...		
		(3)	Where there is no cap, the example required by (1) must illustrate the <i>APRC</i> at the highest <i>borrowing rate</i> in at least the last 20 years. Or, where the underlying data for the calculation of the <i>borrowing rate</i> is available for a period of less than 20 years, the longest period for	

			which such data is available, based on the highest value of any external reference rate used in calculating the borrowing rate, where applicable, or the highest value of a benchmark rate specified by the <del>FCA or another competent authority or the European Banking Authority</del> where the <i>MCD mortgage lender</i> does not use an external reference rate.	
...				
8	Section '6. Amount of each instalment'			
...				
8.5	R	...		
		(3)	Where there is no cap, the illustration under (1) must illustrate the level of instalments at the highest <i>borrowing rate</i> in the last 20 years, or where the underlying data for the calculation of the <i>borrowing rate</i> is available for a period of less than 20 years, the longest period for which such data is available, based on:	
			(a)	...
			(b)	or the highest value of a benchmark rate specified by:
			(i)	the <i>FCA</i> in <i>MCOB 5A Annex 2, 6.8R to 6.10G</i> ;
			(ii)	<del>another competent authority; or</del>
			(iii)	<del>the European Banking Authority</del>
				where the <i>MCD mortgage lender</i> does not use an external reference rate.
		...		
...				
14	Section '12. Complaints'			
...				
14.3	R	<del>In the case of an <i>MCD regulated mortgage contract</i> with a <i>consumer</i> who is resident in another <i>EEA State</i>, the <i>firm</i> must refer to the existence of FIN-NET (<a href="http://ec.europa.eu/internal_market/fin-net/">http://ec.europa.eu/internal_market/fin-net/</a>) [deleted]</del>		
...				

## 6 Disclosure at the offer stage

...

**6.5 Mortgages: information to be provided in the offer document or separately**

...

Distance contracts with retail customers

6.5.6 R If a *firm* makes an offer to a *consumer* with a view to entering into a *regulated mortgage contract* which is a *distance contract*, it must provide the *consumer* with the following information with the *offer document*:

- (1) ~~the *EEA State* or States whose laws are taken by the *firm* as a basis for the establishment of relations with the *customer* prior to the conclusion of the *regulated mortgage contract*;~~

[deleted]

...

...

**6 Annex 1 Distance home purchase plans: information to be provided to retail customers**

...

1.1	R	Distance home purchase plans: information to be provided to retail customers	
		...	
		(2)	the identity of the representative of the <i>home purchase provider</i> established in the <del><i>consumer's EEA State</i></del> of residence <u>UK</u> and the geographical address relevant for the customer's relations with the representative, if such a representative exists;
		...	
		(11)	<del>the <i>EEA State</i> or States whose laws are taken by the <i>home purchase provider</i> as a basis for the establishment of relations with the <i>retail customer</i> prior to the conclusion of the <i>distance contract</i>;</del> [deleted]
		...	

...

**6A MCD disclosure at the offer stage**

...

**6A.5 MCD distance contracts with retail customers**

6A.5.1 R If a *firm* makes an offer to a *consumer* with a view to entering into or varying an *MCD regulated mortgage contract* which is a *distance contract*, it must provide the *consumer* with the following information with the *offer document*:

- (1) ~~the *EEA State* or states whose laws are taken by the *firm* as a basis for the establishment of relations with the *consumer* prior to the conclusion of the *MCD regulated mortgage contract*;~~

[deleted]

...

...

**7A Additional MCD disclosure: start of contract and after sale**

...

**7A.4 Foreign currency loans and significant exchange-rate movement disclosure**

7A.4.1 R (1) A *firm* must warn any *consumer* with a *foreign currency loan*, on a regular basis, where the value of either:

- (a) the *total amount payable* by the *consumer* which remains outstanding; or
- (b) the regular instalments;

varies by more than 20% from what it would be if the exchange rate between the currency of the *MCD regulated mortgage contract* and the other currency, applicable at the time of the conclusion of the *MCD regulated mortgage contract*, were applied.

...

...

**8 Equity release: advising and selling standard**

...

**8.2 Purpose**

...

8.2.2 G ...

- (3) This chapter also ~~implements~~ implemented certain requirements of the *Distance Marketing Directive* in relation to *distance mortgage mediation contracts*.

...

## 10A MCD Annual Percentage Rate of Charge

...

### 10A.3 APCR: additional assumptions

#### 10A.3.1 R ...

- (12) In the case of a *shared equity credit agreement*:

(a) ...

(b) percentage increases in value of the immovable property which secures the *shared equity credit agreement*, and the rate of any inflation index referred to in the agreement, must be assumed to be:

(i) a percentage equal to the higher of:

(aa) ...

(bb) the level of inflation in the ~~EEA State~~ state where the immovable property is located at the time that the *MCD regulated mortgage contract* is entered into; or

...

...

10A.3.2 G ~~Articles 17(1) to (5), (7) and (8) and Annex I of the MCD, which MCOB 10A transpose, are subject to maximum harmonisation. [deleted]~~

~~[Note: article 2(2) of the MCD]~~

...

## 14 MCD article 3(1)(b) credit agreements

### 14.1 Handbook provisions which apply in respect of MCD article 3(1)(b) credit agreements

...

14.1.8 G *CONC* 1.2.10R(1)(a) relates to high net worth borrowers; the purpose of *MCOB* 14.1.7R is to enable a high net worth borrower under an *MCD article 3(1)(b) credit agreement* to waive the protections and remedies applicable to

*regulated credit agreements*, except for those that ~~implement~~ implemented the *MCD*.

...

## Annex D

### Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

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

#### 1 Application

##### 1.1 General application

...

1.1.4 R ...

- (3) ~~A firm will not be subject to BCOBS to the extent that it would be contrary to the United Kingdom's obligations under an EU instrument.~~ [deleted]

...

#### 3 Distance communications

##### 3.1 Distance marketing

Application

3.1.1 R This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* ~~or another EEA State~~.

...

Contracts governed by law of a third party state

3.1.17 R If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the ~~EEA~~ United Kingdom, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this chapter if the *distance contract* has a close link with the ~~territory of one or more EEA States~~ United Kingdom.

[**Note:** articles 12 and 16 of the *Distance Marketing Directive*]

##### 3.2 E Commerce

Application

3.2.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom* with or for a *person* in the *United Kingdom* ~~or another EEA State~~.

Information about the firm and its products or services

3.2.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

...

(5) if it is a *professional firm*, or a person regulated by the equivalent of a ~~designated professional body in another EEA State~~:

...

(b) the professional title ~~and the EEA State where it was granted~~;

(c) a reference to the applicable professional rules ~~in the EEA State of establishment~~ and the means to access them; and

(d) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[**Note:** article 5(1) of the *E-Commerce Directive*]

...

3.2.5 R An unsolicited commercial communication sent by e-mail by a *firm* ~~established in the United Kingdom~~ must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[**Note:** article 7(1) of the *E-Commerce Directive*]

**3 Annex Distance marketing information  
1R**

This Annex belongs to *BCOBS 3.1.2R* (The distance marketing disclosure rules)

Information about the firm	
...	
(2)	Where the <i>firm</i> has a representative established in the <del>consumer's EEA State of residence</del> <u>United Kingdom</u> , the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with that representative.
...	
Information about the contract	



...	
(16)	<del>The <i>EEA State</i> or <i>States</i> whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> prior to the conclusion of the contract. [deleted]</del>
...	

...

#### 4 Information to be communicated to banking customers

...

##### 4.3 Information to be provided by a non ring-fenced body to individual account holders

...

- 4.3.3 G A *non ring-fenced body* is a *firm* which has a *Part 4A permission* to carry on the *regulated activity* of *accepting deposits* and which is neither a *ring-fenced body* nor an institution which is exempt from the definition of a ring-fenced body. Section 142A(1) of the *Act* defines a ring-fenced body as a UK institution which carries out one or more core activities under section 142B of the *Act* for which it has a *Part 4A permission*. Section 142A(2) of the *Act* and the Ring-fenced Bodies and Core Activities Order 2014 provide that a *building society* and certain other classes of UK institution are exempt from this definition. Further, *firms* do not fall within the definition unless they hold *deposits* in *UK accounts* or *EEA accounts*.

To whom must information be provided?

- 4.3.4 R (1) ...
- (2) A *firm* that is a *non ring-fenced body* must provide the information specified in *BCOBS* 4.3.6R to:
- (a) any individual that has applied to open a *UK account* or an *EEA account* for the purpose of making one or more *deposits* (including a joint account) with that *firm*; and
  - (b) any individual who holds a *UK account* or an *EEA account* for that purpose (including a joint account) with that *firm*,

except where the *firm* has already provided that information to the individual on a previous occasion.

- 4.3.5 G A request made by an individual to switch to a *UK account* or an *EEA account* with a *firm* is to be regarded as an application to open a *UK account* or an *EEA account* with that *firm* (it is immaterial if the switch is from an account held with a *ring-fenced body* in the same group as the

*firm* or whether the existing account will be closed when the switch is complete).

...

### TP 1 Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provisions applies		Transitional provision	Transitional provisions: dates in force	Handbook provisions: coming into force
...					
8	BCOBS 5.1.10BG	R	A <i>firm</i> need not have regard to the guidance referred to in column (2) in interpreting and applying BCOBS 5.1.10AR until <del>18 months after the date on which the regulatory technical standards adopted under article 98 of the Payment Services Directive come into force</del> <u>14 September 2019</u> .	13 January 2018 until <del>the date specified in column (4)</del> <u>14 September 2019</u>	13 January 2018
...					

## Annex E

### Amendments to the Claims Management: Conduct of Business sourcebook (CMCOB)

**Comes into force on 1 April 2019, immediately after the changes made by the Claims Management Instrument 2018 (FCA 2018/56) come into force**

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

## 2            **Conduct of business**

...

### 2.2           **Generating, obtaining and passing on leads**

...

#### 2.2.3        G    ...    ...

- (4) *Firms* are reminded that, under *data protection legislation*, they must have consent from the *customer* to process the *customer's* personal data, for example to contact the *customer* or to pass their details on to a third party, unless one of the other conditions which renders the processing of that data lawful is satisfied. In this context, the *FCA* would normally expect *firms* to obtain consent and would only expect *firms* to be able to rely on the legitimate interests condition (under article 6(1)(f) of the ~~General Data Protection Regulation (EU) No 2016/679~~ General data protection regulation very occasionally. Where the *firm* relies on consent which has been obtained by a *lead generator*, the *firm* should satisfy itself that the consent was properly obtained, and clearly covers both the *firm* and the use that the *firm* intends to make of the *customer's* personal data. In relation to consent, *firms* are also reminded of the requirements in article 7(2) of the ~~General Data Protection Regulation (EU) No 2016/679~~ General data protection regulation.

## Annex F

## Amendments to the Client Assets sourcebook (CASS)

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

## 1 Application and general provisions

...

### 1.2 General application: who? what?

...

1.2.3 R CASS does not apply to: an ICVC.

(1) ~~an ICVC; or~~

(2) ~~an incoming EEA firm other than an insurer, with respect to its passported activities; or~~

(3) ~~a UCITS qualifier.~~

...

### 1.3 General application: where?

...

~~UK firms: passported activities from EEA branches~~

1.3.3 R ~~CASS applies to every UK firm, other than an insurer, in relation to passported activities carried on by it from a branch in another EEA State.~~  
[deleted]

1.3.4 R ~~CASS does not apply to an incoming ECA provider acting as such.~~  
[deleted]

...

## 3 Collateral

### 3.1 Application and Purpose

...

3.1.2 R ~~Firms are reminded that this chapter does not apply to an incoming EEA firm, other than an insurer, with respect to its passported activities. The~~ the application of this chapter is also dependent on the location from which the activity is undertaken (see CASS 1.3.2R and CASS 1.3.3R).

...

## 5 Client money: insurance distribution activity

...

### 5.5 Segregation and the operation of client money accounts

...

- 5.5.46 G A *firm* will be expected to perform due diligence when opening a *client bank account* with a bank that is authorised ~~by an EEA regulator~~ in the United Kingdom. Any continuing assessment of that bank may be restricted to verification that it remains authorised ~~by an EEA regulator~~ in the United Kingdom.

...

### 5.6 Client money distribution

#### Application

...

- 5.6.2 G (1) The *client money (insurance) distribution rules* have force and effect on any *firm* that holds *client money* in accordance with CASS 5.3 or CASS 5.4. Therefore, they may apply to a *UK branch* of a ~~non-EEA firm~~ an overseas firm. In this case, the *UK branch* of the *firm* may be treated as if the *branch* itself is a free-standing entity subject to the *client money (insurance) distribution rules*.

...

## 6 Custody rules

### 6.1 Application

...

- 6.1.24 G The *custody rules* also, where relevant, ~~implement~~ implemented the provisions of *MiFID* which ~~regulate~~ regulated the obligations of a *firm* when it ~~holds~~ held *financial instruments* belonging to a *client* in the course of its *MiFID business*.

...

## 7 Client money rules

...

### 7.11 Treatment of client money

...

- 7.11.15 G ~~The exclusion from the *client money rules* for delivery versus payment transactions under CASS 7.11.14R is an example of an exclusion from the *client money rules* which is permissible by virtue of recital 51 to MiFID. [deleted]~~

...

## 8 Mandates

### 8.1 Application

...

- 8.1.3 G ~~*Firms* are reminded that the *mandate rules* do not apply to an *incoming EEA firm*, other than an *insurer*, with respect to its *passport activities*. The application of the *mandate rules* is also dependent on the location from which the activity is undertaken (see CASS 1.3). [deleted]~~

...

## 10 CASS resolution pack

### 10.1 Application, purpose and general provisions

...

#### Purpose

- 10.1.2 G The purpose of the *CASS resolution pack* is to ensure that a *firm* maintains and is able to retrieve information that would:
- (1) ...
  - (2) in the event of its or another *firm's* resolution, assist the Bank of England ~~in its capacity as resolution authority under the RRD~~; and
  - (3) ...

...

## Annex G

### Amendments to the Market Conduct sourcebook (MAR)

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

#### 1 Market Abuse

##### 1.1 Application and interpretation

...

1.1.6 G This chapter does not exhaustively describe all types of behaviour that may indicate *market abuse*. In particular, the descriptions of behaviour should be read in the light of:

...

- (3) any provisions ~~specified in any Commission legislative text made pursuant to the *Market Abuse Regulation* in the *MAR Level 2 Regulations*~~, and any applicable guidelines made by *ESMA* in force before *exit day*.

...

1.1.9 G References are made in this chapter to provisions in the *Market Abuse Regulation* and ~~other *EU* legislation made pursuant to the *Market Abuse Regulation*~~ provisions in the *MAR Level 2 Regulations* to assist readers. The fact that other provisions of the *Market Abuse Regulation* and other ~~*EU* legislation made pursuant to the *Market Abuse Regulation*~~ provisions in the *MAR Level 2 Regulations* have not been referred to does not mean that they would not also assist readers or that they have a different status.

...

##### 1.2 Market Abuse: general

...

1.2.2-A ~~EU~~ UK [article 2, article 14 and article 15 of the *Market Abuse Regulation*]

...

1.2.7-A ~~EU~~ UK [article 8(4) of the *Market Abuse Regulation*]

...

Inside information: factors to be taken into account

1.2.10A EU [article 7 of the *Market Abuse Regulation*]  
UK

...

1.2.15B EU [article 7(1)(d) of the *Market Abuse Regulation*]  
UK

...

Inside information: commodity derivatives

1.2.18A EU [article 7(1)(b) of the *Market Abuse Regulation*]  
UK

...

1.2.19A G *ESMA* has issued guidelines under article 7(5) of the *Market Abuse Regulation* which relate to the definition of *inside information* in the context of commodity derivatives.

[~~Note: the guidelines are available at <https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives>. ESMA guidelines: Information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives, 17 January 2017/ESMA/2016/1480 (EN)~~]

...

### 1.3 Insider dealing

...

1.3.1A EU [article 8 of the *Market Abuse Regulation*]  
UK

...

1.3.23 G The following connected descriptions are intended to assist in understanding certain behaviours which may constitute *insider dealing* under the *Market Abuse Regulation* and concern the differences in the definition of *inside information* for commodity derivatives and for other *financial instruments*.

- (1) A person deals, on a *trading venue*, in the equities of XYZ plc, a commodity producer, based on *inside information* concerning that company.
- (2) A person deals, in a commodity futures contract traded on a *trading venue*, based on the same information, provided that the information is reasonably expected to be disclosed or is required to be disclosed



in accordance with legal or regulatory provisions at the national, *EU* or ~~national~~ Member State level, market rules, contract, practice or custom, on the relevant commodity futures market.

- 1.3.24 G *ESMA* has issued guidelines under article 7(5) of the *Market Abuse Regulation* which relate to the definition of *inside information* in the context of commodity derivatives.

[~~Note: the guidelines are available at~~  
~~<https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives>~~ ESMA guidelines: Information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives, 17 January 2017/ESMA/2016/1480 (EN).]

#### 1.4 Unlawful disclosure

...

- 1.4.1A ~~EU~~ [article 10 of the *Market Abuse Regulation*]  
UK

...

#### 1.6 Manipulating transactions

...

- 1.6.1-A ~~EU~~ [article 12(1)(b) of the *Market Abuse Regulation*]  
UK

...

#### 1.7 Manipulating devices

...

- 1.7.1-A ~~EU~~ [article 12(1)(b) of the *Market Abuse Regulation*]  
UK

...

#### 1.8 Dissemination

...

- 1.8.1A ~~EU~~ [article 12(1)(c) of the *Market Abuse Regulation*]  
UK

...

#### 1.9 Misleading behaviour & distortion

...

1.9.1-A ~~EU~~ [article 12(1)(c) of the *Market Abuse Regulation*]  
UK

...

## 1.10 Statutory exceptions

Behaviour that does not amount to market abuse

1.10.1 G (1) *Behaviour* which conforms with article 5 of the *Market Abuse Regulation* or with a ~~directly applicable EU regulation made under article 5 of the *Market Abuse Regulation*~~ the *Buy-back and Stabilisation Regulation* will not amount to *market abuse*.

...

...

## 1 Annex Accepted Market Practices 2

~~EU~~ [article 13 of the *Market Abuse Regulation*]  
UK

...

## 4 Support of the Takeover Panel's Functions

...

### 4.4 Exceptions

4.4.1 R This chapter is subject to the following exceptions:

...

(4) ~~this chapter does not apply to:~~

(a) ~~a UCITS qualifier; or~~

(b) ~~an incoming EEA firm which has permission only for cross border services and which does not carry on regulated activities in the United Kingdom. [deleted]~~

...

## 5 Multilateral trading facilities (MTFs)

...

**5.3A Systems and controls for algorithmic trading**

...

- 5.3A.8 R A *firm* must have systems and procedures to notify the *FCA* if:
- (1) an *MTF* operated by the *firm* is material in terms of the liquidity of trading of a *financial instrument* ~~in the EEA~~; and

...

Direct electronic access

- 5.3A.9 R A *firm* which permits *direct electronic access* to an *MTF* it operates must:
- (1) not permit members or participants of the *MTF* to provide such services unless they are:
    - (a) *MiFID* investment firms ~~authorised under *MiFID*~~; or
    - ...
    - (g) *firms* that come within ~~article 2.1(a), (e), (i), or (j) of *MiFID*~~ regulation 30(1A) of the *MiFI Regulations* and have a *Part 4A* *permission* relating to *investment services or activities*;

...

...

- 5.3A.14 R A *firm* must adopt tick size regimes in:
- ...
  - (2) any other *financial instrument* which is traded on that *trading venue*, as required by a regulatory technical standard made under ~~article 49.3 or 49.4 of *MiFID*~~ powers conferred by *MiFIR*.

...

...

- 5.3A.16 G Nothing in *MAR* 5.3A.14R or *MAR* 5.3A.15R requires a *firm* to act inconsistently with *MiFID RTS 11* or any regulatory technical standards made under ~~article 49.3 or 49.4 of *MiFID*~~ powers conferred by *MiFIR*.

...

...

5.3A.18 G For the purpose of MAR 5.3A.17R, ~~the regulatory technical standards made under article 50 of MiFID~~ MiFID RTS 25 ~~provide~~ provides further requirements.

...

## 5.7 Pre- and post-trade transparency requirements for equity and non-equity instruments: form of waiver and deferral

...

5.7.1B G ~~According to article 4(7) of MiFIR, waivers granted by competent authorities in accordance with articles 29(2) and 44(2) of Directive 2004/39/EC and articles 18, 19 and 20 of Regulation (EC) No 1287/2006 before 3 January 2018 shall be reviewed by ESMA by 3 January 2020. ESMA shall issue an opinion to the competent authority, assessing the continued compatibility of those waivers with the requirements established in MiFIR and any regulations made pursuant to it. The FCA will cooperate with ESMA in relation to the continued effect of existing waivers. [deleted]~~

...

## 5A Organised trading facilities (OTFs)

...

### 5A.3 Specific requirements for OTFs

...

5A.3.2 R The discretion which the *firm* must exercise in executing a *client* order must be either, or both, of the following:

...

- (2) the second discretion is whether to match a specific *client* order with other orders available on the *OTF* at a given time, provided the exercise of such discretion is in compliance with specific instructions received from the *client* and in accordance with the *firm's* obligations under ~~article 27 of MiFID~~ COBS 11.2A (Best execution – MiFID provisions).

...

...

## 5A.5 Systems and controls for algorithmic trading

...

- 5A.5.8 R A *firm* must have systems and procedures to notify the *FCA* if:
- (1) an *OTF* operated by it is material in terms of the liquidity of trading of a *financial instrument* ~~in the EEA~~; and

...

Direct electronic access

- 5A.5.9 R A *firm* which permits *direct electronic access* to an *OTF* it operates must:
- (1) not permit members or participants of the *OTF* to provide such services unless they are:

(a) *MiFID* investment firms ~~authorised under *MiFID*~~; or

...

(g) *firms* that come within ~~article 2.1(a), (e), (i), or (j) of *MiFID*~~ regulation 30(1A) of the *MiFI Regulations* and have a *Part 4A* *permission* relating to *investment services or activities*;

...

...

- 5A.5.14 R The *firm* must adopt tick size regimes for *financial instruments* as required by a regulatory technical standard made under ~~article 49.3 or 49.4 of *MiFID*~~ powers conferred by *MiFIR*.

...

...

- 5A.5.16 G Nothing in *MAR* 5A.5.14R or *MAR* 5A.5.15R requires a *firm* to act inconsistently with any regulatory technical standards made under ~~article 49.3 or 49.4 of *MiFID*~~ powers conferred by *MiFIR*.

...

...

- 5A.5.18 R For the purpose of *MAR* 5A.5.17R, ~~the regulatory technical standards made under article 50 of *MiFID*~~ *MiFID RTS 25* provide provides further requirements.

...

## 7A Algorithmic trading

...

### 7A.3 Requirements for algorithmic trading

...

#### Notifications

7A.3.6 R A *firm* which is a member or participant of a *trading venue* must immediately notify the following FCA if it is engaging in *algorithmic trading* in the UK or in an EEA State.:

- (1) ~~the FCA; and~~
- (2) ~~any competent authority of a trading venue in another EEA State where the firm engages in algorithmic trading.~~

...

...

### 7A.4 Requirements when providing direct electronic access

...

#### Notifications

7A.4.4 R A *firm* must immediately notify the following FCA if it is providing *DEA* services.:

- (1) ~~the FCA; and~~
- (2) ~~the competent authority of an trading venue in the EEA to which the firm provides DEA services.~~

...

...

## 8 Benchmarks

### 8.1 Application and purpose

...

#### Purpose

8.1.2 G The purpose of this chapter is to set out the requirements that apply to *firms* involved in the provision of, or contribution to, benchmarks, as follows:

- (1) *MAR 8.4* (Third country benchmark contributors) sets out the requirements that apply to *third country benchmark contributors* that are not *supervised entities*, but would be if they were *located* in the EU UK. These *rules* apply requirements mirroring those which apply

to *benchmark contributors* that are in scope of the *benchmarks regulation*.

...

...

## 8.4 Third country benchmark contributors

Application

- 8.4.1 R (1) Subject to (2), this section applies to a *third country benchmark contributor* that:
- (a) is not a *supervised entity*; and
  - (b) would be a *supervised entity* if it were *located* in the ~~EU~~ UK.

...

## 8.5 Regulated benchmark administrators

...

Notifications about suspected benchmark manipulation

- 8.5.7 G ...
- (2) Article 14(1) of the *benchmarks regulation* requires a *regulated benchmark administrator* to establish adequate systems and effective controls to ensure the integrity of input data in order to be able to identify and report to ~~its competent authority~~ the FCA any conduct that may involve manipulation or attempted manipulation of a benchmark, under the *Market Abuse Regulation*.

...

...

## 8.7 Procedures for exercising powers in relation to critical benchmarks

...

Compulsion powers under the benchmarks regulation

- 8.7.3 G ...
- (2) The *benchmarks regulation* confers various directly applicable powers on ~~competent authorities~~ the FCA in relation to *critical benchmarks*. In particular:
- (a) article 21(3) of the *benchmarks regulation* gives ~~a competent authority~~ the FCA the power to compel the administrator of a

*critical benchmark* to continue publishing the *critical benchmark* for up to 24 months; and

- (b) article 23(6) of the *benchmarks regulation* gives ~~a competent authority~~ the FCA the power to take various steps where it considers that the representativeness of a *critical benchmark* is put at risk. That includes the power to require *supervised entities* to contribute input data to the administrator of a *critical benchmark* for up to 24 months.

...

Exercise of compulsion powers: general

- 8.7.4 G (1) Articles 21 and 23 of the *benchmarks regulation* set out the circumstances in which ~~competent authorities~~ the FCA may exercise the compulsion powers.
- (2) In some cases, the ~~competent authority~~ FCA may only have a short period in which to decide whether to exercise a compulsion power.
- ...
- (4) The *benchmarks regulation* does not require ~~a competent authority~~ the FCA to consult on the use of compulsion powers (~~save that competent authorities must consult the college established under article 46 of the benchmarks regulation when exercising the compulsion power in article 23~~).

...

...

## 9 Data reporting service

### 9.1 Application, introduction, approach and structure

Application

- 9.1.1 G This chapter applies to:
- ...
- (2) A ~~UK~~ UK branch of a *third country person* seeking authorisation to provide a *data reporting service*;
- (3) a ~~UK~~ MiFID investment firm operating a *trading venue* seeking verification of its rights to provide a *data reporting service* under regulation 5(b) or (c) of the *DRS Regulations*;

...



## Introduction

- 9.1.2 G The original purpose of this chapter was to implement Title V of *MiFID* which sets out harmonised market data services authorisation and supervision requirements. These are designed to ensure a necessary level of quality of trading activity information across *EU* financial markets for users, and for ~~competent authorities~~ the regulator to receive accurate and comprehensive information on relevant transactions. These requirements provide for:

...

Approach to ~~transposition~~ onshoring

- 9.1.3 G The market data services authorisation and supervision requirements in Title V of *MiFID* are ~~implemented in the UK~~ onshored through a combination of:

(1) ...

- (b) the *MiFI Regulations* which set out additional provisions addressing requirements imposed by *MiFIR* and ~~EU regulations~~ onshored regulations;

...

(3) ~~EU regulations~~ onshored regulations including:

...

- 9.1.3A G See M2G for further guidance on how the measures referred to in MAR 9.1.13G have been amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 and FCA instruments made pursuant to the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.

...

**9.2 Authorisation and verification**

## Application form and notification form for members of the management body

- 9.2.1 D (1) Each of the following must complete the forms in (2):

...

- (b) a ~~UK~~ *MiFID investment firm* operating a *trading venue* seeking verification of its rights to provide a *data reporting service* under regulation 5(b) and (c) of the *DRS Regulations*; and

...

...

...

## 9.5 Frequently Asked Questions

9.5.1 G ~~Q. Are there any grandfathering arrangements for ARMs or trade data monitors operating prior to MiFID?~~

~~A. No. Persons wishing to provide a data reporting service must apply to be authorised as a data reporting services provider. [deleted]~~

9.5.2 G Q. We are a trading venue operator. Can you please clarify how we can provide a data reporting service under the derogation from needing authorisation in ~~article 59(2) of MiFID~~ regulation 5(b) to (d) of the DRS Regulations?

A.

- (1) The derogation (or exception) in article 59(2) of *MiFID* allows allowed Member States to allow a trading venue operator to provide a data reporting service without prior authorisation, if the operator ~~has~~ verified that they ~~comply~~ complied with Title V of *MiFID*.
- (2) The *United Kingdom* ~~has~~ adopted this derogation in regulation 5(b) to (d) of the *DRS Regulations*.

...

...

9.5.6 G Q. Does an investment firm need to be authorised as an ARM to send transaction reports to the FCA?

A. No. If you are a *MiFID* investment firm that wishes to send transaction reports to us to satisfy your own transaction reporting obligations under *MiFIR* or a third country investment firm subject to a similar obligation pursuant to GEN 2.2.22AR, you do not need to become authorised as an ARM. You are permitted to connect directly to us although there will be a requirement to sign a *MIS confidentiality agreement* with us, to satisfy connectivity requirements and to undertake testing associated with connecting to our systems. For the associated costs please see *FEES* 3.2.7R for relevant on-boarding costs. If you want to connect to us to send reports on behalf of other investment firms then you must become authorised as an ARM.

9.5.7 G Q. Where can I find a list of data reporting services providers?

A. ~~Article 59(3) of MiFID requires ESMA to establish a list of all data reporting services providers. Further, regulation~~ Regulation 6 of the *DRS Regulations* requires the FCA to maintain a register of data reporting services providers.

...

## 10 Commodity derivative position limits and controls, and position reporting

### 10.1 Application

#### Introduction

10.1.1 G ...

(2) In particular, this chapter sets out the *FCA*'s requirements in respect of provisions derived from:

(a) articles 57(1) and 57(6) of *MiFID*, which require ~~it~~ *competent authorities or central competent authorities* to establish limits, on the basis of a methodology determined by *ESMA*, on the size of a net position which a *person* can hold, together with those held on the *person's* behalf at an aggregate group level, at all times, in *commodity derivatives* traded on *trading venues* and *economically equivalent OTC contracts* to those *commodity derivatives*;

...

(d) article 58(2) of *MiFID*, which requires *investment firms* trading in *commodity derivatives* or *emission allowances* outside a *trading venue* to provide the *competent authority* ~~or central competent authority~~ with reports containing a complete breakdown of their positions held through such contracts traded on a *trading venue* and *economically equivalent OTC contracts*, as well as of those of their *clients* and the clients of those clients until the end client is reached.

...

#### Scope and territoriality

10.1.2 G ...

(2) In respect of position management controls requirements:

(a) the requirements contained or referred to in *MAR* 10.3 apply to *persons* operating a *trading venue* which trades *commodity derivatives* in respect of which the *FCA* is the ~~Home State~~ *competent authority*; and

...

(3) In respect of position reporting requirements:

(a) the position reporting requirements in *MAR* 10.4 apply to:

- (i) a ~~UK~~ regulated market; and

...

...

## 10.2 Position limit requirements

Establishing, applying and resetting position limits

- 10.2.1 G (1) The following provisions of the *MiFI Regulations* regulate the establishment, application and resetting of position limits:

...

- (h) ~~Regulation 20(2) imposes an obligation on the FCA, where it receives an ESMA opinion stating that the establishment of a position limit would be, or is, incompatible with that opinion, to modify the position limit in accordance with ESMA's opinion or to notify ESMA as to why amendment to the limit is considered to be unnecessary; [deleted]~~
- (i) ~~Regulation 21(1) imposes an obligation on the FCA to not establish a position limit in respect of a commodity derivative traded on trading venues in the United Kingdom, where there is a central competent authority for that commodity derivative other than the FCA; [deleted]~~

...

- (k) Regulation 25(1) prohibits the FCA from establishing position limits which are more restrictive than permitted under ~~ESMA's methodology~~ *MiFID RTS 21*, unless in exceptional cases where more restrictive position limits are objectively justified and proportionate;
- (l) Regulation 25(2) to Regulation 25(5) impose obligations on the FCA where it establishes position limits which are more restrictive than permitted under ~~ESMA's methodology~~ *MiFID RTS 21* in accordance with Regulation 25(1) of the *MiFI Regulations*. The obligations are that the FCA must publish that position limit on its website, and not apply that position limit for more than six months from the date of publication unless further subsequent six-month application periods for that limit are objectively justified and proportionate, ~~and must notify ESMA of the position limit and the justification for establishing it; and~~ and

- (m) ~~Regulation 20(5) and Regulation 25(6) impose obligations on the FCA to publish a notice on its website explaining the reasons for its decision when, under Regulation 20(2) and Regulation 25(5) of the MiFI Regulations respectively, it does not modify a position limit following an ESMA opinion incompatible with the limit; and [deleted]~~

...

...

Application of position limits

10.2.2 D ...

- (2) A direction made under (1) applies where a *commodity derivative* is traded on a *trading venue* in the *United Kingdom*, ~~provided that there is not a *central competent authority* established in an *EEA State* other than the *United Kingdom*.~~

...

...

10.2.5 G ~~Where a position limit is established by a *competent authority* or *central competent authority* other than the *FCA*, a *non-financial entity* should submit its application for exemption, in relation to the position limit, to that *competent authority* or *central competent authority* in the manner it specifies. [deleted]~~

~~[Note: article 8 of MiFID RTS 21]~~

...

**10.4 Position reporting**

Application

10.4.1 G The application of this section is set out in the following table:

Type of firm	Applicable provisions
<i>UK regulated market Regulated market</i>	MAR 10.4.2G
...	
<del><i>UK MiFID investment firm</i></del>	MAR 10.4.7D to MAR 10.4.9D and MAR 10.4.11G
...	

<del>EEA MiFID investment firm who is a member, participant or a client of a UK trading venue</del>	MAR 10.4.10D to MAR 10.4.11G
---	------------------------------

...

## Position reporting by UK regulated markets

- 10.4.2 G A ~~UK~~ regulated market which trades *commodity derivatives* or *emission allowances* must provide position reports in accordance with paragraph 7BB of the Schedule to the *Recognition Requirements Regulations*, as inserted by the *MiFI Regulations*.

[Note: article 58(1) of *MiFID*]

## Position reporting by UK firms and UK branches of third country investment firms operating an MTF or OTF: Reports

- 10.4.3 R ...

- (2) A firm must make public and provide to the *FCA* and ~~*ESMA*~~ a weekly report with the aggregate positions held by the different categories of *persons* for the different *commodity derivatives* or *emission allowances* traded on the *trading venue*, where those instruments meet the criteria of article 83 of the *MiFID Org Regulation*, specifying:

...

...

[Note: article 58(1) of *MiFID*, *MiFID ITS 4* on position reporting and *MiFID ITS 5* on the format and timing of weekly position reports to ~~*ESMA*~~]

## Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Procedure for reporting to the FCA

- 10.4.5 D ...

- (2) A firm shall report to the *FCA*:
- (a) (where it meets the minimum threshold as specified in article 83 of the *MiFID Org Regulation*) the weekly report referred to in MAR 10.4.3R(2), by using the form set out in Annex I of *MiFID ITS 4*, and publish it on its website and provide the report to ~~*ESMA*~~; and

...

Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Duplication of reporting

- 10.4.6 G For the purposes of making the weekly report referred to under *MAR* 10.4.3R(2), the *FCA* will accept an email containing a link to the report, as published on the *firm's* website. Emails should be sent to the *FCA* at *COT\_reports@fca.org.uk*. ~~This guidance does not affect the separate obligation for a firm to make the weekly report to ESMA.~~

Position reporting by members, participants or clients of UK trading venues: trading venue participant reporting

- 10.4.7 D ...
- (3) ~~Paragraph (2) above does not apply to a member, participant or a client of a trading venue that is an EEA person. [deleted]~~

...

~~UK MiFID investment firms and UK branches of third country investment firms: OTC reporting to the FCA~~

- 10.4.8 D (1) This direction applies to:
- (a) a ~~UK MiFID investment firm~~; and

...

...

~~UK MiFID investment firms and UK branches of third country investment firms: OTC reporting to EEA competent authorities other than the FCA~~

- 10.4.9 D (1) ~~This direction applies to:~~
- (a) a ~~UK MiFID investment firm~~; and
- (b) a ~~UK branch of a third country investment firm.~~
- (2) ~~An investment firm in (1) trading in a commodity derivative or emission allowance outside a trading venue must, where an EEA competent authority other than the FCA is the competent authority of the trading venue where that commodity derivative or emission allowance is traded, or the central competent authority for the purposes of that commodity derivative, provide that EEA competent authority with a report containing a complete breakdown of:~~
- (a) ~~their positions taken in those commodity derivatives or emission allowances traded on a trading venue;~~
- (b) ~~economically equivalent OTC contracts; and~~

(e) ~~the positions of their clients and the clients of those clients until the end client is reached, in accordance with article 26 of *MiFIR*.~~

(3) ~~The report in (2) must be submitted to the relevant *EEA competent authority*, for each *business day*, using the form set out in Annex II of *MiFID ITS 4*, by the time specified by that *EEA competent authority*.~~

(4) ~~The obligation in (2) does not apply where the *FCA* is the *central competent authority* for that *commodity derivative*. [deleted]~~

[**Note:** 58(2) of *MiFID*, and *MiFID ITS 4* on position reporting]

~~EEA MiFID investment firms who are members, participants or clients of UK trading venues: trading venue participant reporting and OTC reporting to the FCA~~

- 10.4.10 D (1) ~~This direction applies to an *EEA MiFID investment firm* which is a member, participant or a *client* of a *UK trading venue*.~~
- (2) ~~*MAR 10.4.7D* applies to an *EEA MiFID investment firm* under (1), as if it were a *UK MiFID investment firm*.~~
- (3) ~~*MAR 10.4.8D* applies to an *EEA MiFID investment firm* under (1), as if it were a *UK MiFID investment firm*, where the *EEA MiFID investment firm* trades in a *commodity derivative* or *emission allowance* outside a *trading venue*, and the *FCA* is the *competent authority* of the *trading venue* where that *commodity derivative* or *emission allowance* is traded, or the *central competent authority* for the purposes of that *commodity derivative*.~~
- (4) ~~Paragraphs (2) and (3) above only apply where the *EEA MiFID investment firm* is not subject to a corresponding rule or other requirement imposed by its *Home State competent authority*. [deleted]~~
- 10.4.11 G (1) This guidance applies to persons subject to *MAR 10.4.8D(2)* ~~or *MAR 10.4.10D(3)*~~.
- (2) A firm subject to *MAR 10.4.8D(2)* ~~or *MAR 10.4.10D(3)*~~ may use a third party technology provider to submit to the *FCA* the report referred to in *MAR 10.4.8D(2)* provided that it does so in a manner consistent with *MiFID*. It will retain responsibility for the completeness, accuracy and timely submission of the report and should populate field 5 of *MiFID ITS 4* Annex II with its own reporting entity identification. It should be the applicant for, and should complete and sign, the *FCA MDP on-boarding application form*.

...



- (4) A *firm* subject to MAR 10.4.8D(2) ~~or MAR 10.4.10D(3)~~ may arrange for the *trading venue* where that *commodity derivative* or *emission allowance* is traded to provide the *FCA* with the report provided that it does so in a manner consistent with *MiFID*. The *firm* will retain responsibility for the completeness, accuracy and timely submission of the report, submitted on its behalf. The *firm* should populate field 5 of *MiFID ITS 4 Annex II* with its own reporting entity identification.

## 10.5 Other reporting, notifications and information requirements

...

### Power to intervene

- 10.5.2 G The following provisions of the *MiFI Regulations* regulate the power of the *FCA* to intervene in respect of position limits:

- (1) Regulation 28 provides that the *FCA* may, if it considers necessary, limit the ability of any *person* to enter into a contract for a *commodity derivative*, restrict the size of positions a *person* may hold in such a contract, or require any *person* to reduce the size of a position held, notwithstanding that the restriction or reduction would be more restrictive than the position limit established by the *FCA* ~~or another competent authority~~ in accordance with article 57 of *MiFID* to which the contract relates; and

...

...

### Breaches of MAR 10 by unauthorised persons

- 10.5.4 G (1)

...

- (b) a breach of a directly applicable provision imposed by *MiFIR* or any ~~EU regulation~~ onshored regulation adopted under *MiFID* or *MiFIR*; and

...

### Breaches of MAR 10 by authorised persons

- 10.5.6 G ...

- (2) a breach of a directly applicable provision imposed by *MiFIR* or ~~EU regulation~~ onshored regulation adopted under *MiFID* or *MiFIR*; and

...

Territoriality

- 10.5.7 G The powers of the *FCA* referred to in *MAR 10.5.1G* to *MAR 10.5.3G* can be applied to a *person* regardless of whether the *person* is situated or operating in the *UK* or abroad, where the relevant position relates to a *commodity derivative* or *emission allowance* ~~of~~ for which the *FCA* is ~~the competent authority or central competent authority~~ responsible for setting a position limit, or *economically equivalent OTC contracts*.

...

## Annex H

## Amendments to the Product Intervention and Product Governance sourcebook (PROD)

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

## 1 Product Intervention and Product Governance Sourcebook (PROD)

...

### 1.3 Application of PROD 3

...

~~EEA territorial scope rule: compatibility with European law~~

- 1.3.6 R (1) ~~The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see PROD 1.3.7G to PROD 1.3.10G for guidance on this).~~
- (2) ~~This rule overrides every other rule in this sourcebook. [deleted]~~

~~Effects of the EEA territorial scope rule~~

- 1.3.7 G ~~One of the effects of PROD 1.3.6R is the override the application of this sourcebook to the overseas establishments of EEA firms in circumstances covered by MiFID. [deleted]~~
- 1.3.8 G ~~The guidance in this chapter provides a general overview only and is not comprehensive. [deleted]~~
- 1.3.9 G ~~When considering the impact of a directive on the territorial application of a rule, a firm will first need to consider whether the relevant situation involves a non-UK element. PROD 1.3.6R is unlikely to apply if a UK firm is doing business in a UK establishment for a client located in the United Kingdom in relation to a UK product, in other words PROD 3 will apply to the UK firm. However, if there is a non-UK element, the firm should consider whether:~~
- (1) ~~It is subject to the directive (in general, directives only apply to UK firms and EEA firms, but the implementing provisions may not treat non-EEA firms more favourably than EEA firms);~~
- (2) ~~the business it is performing is subject to the directive; and~~
- (3) ~~the particular rule is within the scope of the directive.~~

~~If the answer to all three questions is 'yes', PROD 1.3.6R may change the application of the rules in this sourcebook. [deleted]~~

- 1.3.10 G ~~When considering a particular situation, a firm should also consider whether two or more directives apply. [deleted]~~

~~MiFID: effect on territorial scope~~

- 1.3.11 G *PERG* 13 contains general *guidance* on the *persons* and businesses to which the UK provisions which implemented MiFID apply.
- 1.3.12 G For a *UK MiFID investment firm*, ~~rules in this sourcebook that are within the scope of MiFID generally apply to its MiFID business carried on from an establishment in the United Kingdom. They also generally apply to its MiFID business carried on from an establishment in another EEA State, although in the case of rules that implement article 24(2) MiFID only where that business is not carried on within the territory of that EEA State. Where a MiFID investment firm carries on MiFID business from a branch in another EEA State, organisational requirements, including rules implementing product manufacture obligations under article 16 MiFID are home state requirements and therefore FCA responsibility (see SUP 13A Annex 1G). [deleted]~~
- [~~Note: see articles 34(1) and 35(1) and (8) of MiFID~~]
- 1.3.13 G For an *EEA MiFID investment firm*, ~~rules in this sourcebook that are within the scope of MiFID generally apply only to its MiFID business if that business is carried on from an establishment in, and within the territory of, the United Kingdom and only to the extent that the rules implement article 24(2) of MiFID. [deleted]~~
- [~~Note: see articles 35(1) and (8) of MiFID~~]

~~Electronic Commerce Directive: effect on territorial scope~~

- 1.3.14 G The ~~guidance on the Electronic Directive in COBS 1 Annex 1, Part 3, paragraph 7 applies equally in relation to the rules in PROD 3. [deleted]~~

...

**1.4 Application of PROD 4**

...

## When an intermediary may be considered to be manufacturing

- 1.4.4 EU  
UK 3(1) For the purposes of ~~Article 25(1) of Directive (EU) 2016/97~~ [PROD 4.2.1R, PROD 4.2.2R, PROD 4.2.29R, PROD 4.2.34R, PROD 4.3.1R and PROD 4.3.2R], insurance intermediaries shall be considered manufacturers where an overall analysis of their activity shows that they have a decision-making role in designing and developing an insurance product for the market.

...

[~~Note: article 3 of the IDD POG Regulation~~]

- 1.4.5 G The effect of *PROD 1.4.3EUUK* and *PROD 1.4.6R* is that an *insurance intermediary* needs to consider if it is *manufacturing* an insurance product

and, if so, should comply with *PROD* 4.2 (Manufacture of insurance products).

Effect of provisions marked “~~EU~~” “UK”

- 1.4.6 R (1) Subject to (2) and *PROD* 1.4.3R, provisions in this section and in *PROD* 4 marked “~~EU~~ UK” apply to *firms manufacturing or distributing* insurance products, but to whom the *IDD POG Regulation* does not apply, as if they were *rules*.
- (2) For the purposes of (1), a word or phrase used in the *IDD POG Regulation* and referred to in column (A) has the meaning indicated in Column (B) of the table below:

(a)	(b)
“Article 17(1) of Directive (EU) 2016/97”	<i>ICOBS 2.5. 1R, in relation to a non-investment insurance contract, or COBS 2.1.1R, in relation to a life policy</i>
“Article 25(1) of Directive (EU) 2016/97”	<i>PROD 4.2.1R and PROD 4.2.2R</i>
“Article 8(2)”	<i>PROD 4.2.30<del>EU</del><u>UK</u></i>
“competent authorities”	<i>FCA</i>
“customer” and “potential customer”	<i>Customer</i>
“Directive (EU) 2016/97”	<i>IDD</i>
“insurance-based investment products”	<i>insurance-based investment products</i>
“insurance distribution activities” and “distribution activities”	<i>insurance distribution activities</i>
“insurance distributor”	<i>Distributor</i>
“insurance intermediary”	<i>insurance intermediary</i>
“insurance undertaking”	<i>Insurer</i>
“manufacturer” and “manufacturers within the meaning of Article 2 of this Delegated Regulation”	<i>Manufacturer</i>
“manufacturing”	<i>Manufacturing</i>

“shall”	Must
---------	------

...

~~EEA territorial scope rule: compatibility with European law~~

- 1.4.8 R (1) ~~The territorial scope of *PROD 4* is modified to the extent necessary to be compatible with European law.~~
- (2) ~~This rule overrides every other rule in this sourcebook. [deleted]~~

~~Electronic Commerce Directive: effect on territorial scope~~

- 1.4.9 G ~~The rules and guidance on the *E-Commerce Directive* in *ICOBS 1 Annex 1*, Part 3, paragraph 1.2R and Part 4 paragraph 8, and in *COBS 1 Annex 1*, Part 2, paragraph 1.2R and Part 3, paragraph 7, apply equally in relation to the rules in *PROD 4*. [deleted]~~

...

## 1.5 Application of PROD 5

...

~~EEA territorial scope rules: compatibility with European law~~

- 1.5.4 R (1) ~~The territorial scope of *PROD 5* is modified to the extent necessary to make it compatible with European law (see *PROD 1.5.5G* to *PROD 1.5.7G* for guidance on this).~~
- (2) ~~This rule overrides every other rule in *PROD 5*. [deleted]~~

~~Effects of the EEA territorial scope rule~~

- 1.5.5 G ~~The guidance in paragraph 2 Part 4 of *ICOBS 1 Annex 1* applies equally to the rules in *PROD 5*. [deleted]~~

~~IDD, Solvency II, DMD: effect on territorial scope~~

- 1.5.6 G ~~The guidance on the *IDD*, *Solvency II* and *Distance Marketing Directive* in *ICOBS 1 Annex 1* in relation to *ICOBS 6A.1.4R* applies equally to *PROD 5.1.1R* (to the extent that the *extended warranty* is a *contract of insurance*). [deleted]~~

~~Electronic Commerce Directive: effect on territorial scope~~

- 1.5.7 G ~~The guidance on the *Electronic Commerce Directive* in *ICOBS 1 Annex 1*, Part 4, paragraph 8 applies equally in relation to *PROD 5*. [deleted]~~

...

## 2 Statement of policy with respect to the making of temporary product intervention rules

...

### 2.6 General considerations for product intervention rules

...

2.6.2 G The *FCA* will also take into account general considerations that include, but are not limited to, whether the proposed *rules* are:

...

(7) compatible (where relevant) with other applicable law, ~~for example~~ *EU* law.

...

## 3 Product governance: MiFID

### 3.1 General

[Note: ESMA has also issued guidelines ~~under article 16(1) of the ESMA Regulation covering: “MiFID II product governance requirements”, dated 5 February 2018. See [https://www.esma.europa.eu/sites/default/files/library/esma35-43-620\\_guidelines\\_on\\_mifid\\_ii\\_product\\_governance\\_requirements\\_0.pdf](https://www.esma.europa.eu/sites/default/files/library/esma35-43-620_guidelines_on_mifid_ii_product_governance_requirements_0.pdf)]; Guidelines on MiFID II product governance requirements, 05/02/2018, ESMA35-43-620]~~

...

### 3.2 Manufacture of products

...

3.2.24 R When a crucial event affecting the potential risk or return expectation of the *financial instrument* occurs, a *manufacturer* must take appropriate action, which may consist of:

...

(8) informing the ~~relevant competent authority~~ *FCA*.

...

3.2.36 R *Manufacturers* must make the compliance reports available to ~~their~~ *competent authority* the FCA on request.

[**Note:** article 9(6) *MiFID Delegated Directive*]

...

### 3.3 Distribution of products and investment services

...

Obtaining information from manufacturers

- 3.3.3 R *Distributors* must obtain from ~~MiFID~~ manufacturers subject to PROD 3.2 information to gain the necessary understanding and knowledge of the *financial instruments* they intend to *distribute* in order to ensure that the *financial instruments* will be *distributed* in accordance with the needs, characteristics and objectives of the target market.

[**Note:** article 16(3) *MiFID* and article 10(2) *MiFID Delegated Directive*]

...

Distributing financial instruments manufactured by ~~non-MiFID~~ firms to whom PROD 3.2 does not apply, including third country firms

- 3.3.5 R (1) *Distributors* must take all reasonable steps to comply with *PROD 3.3* when *distributing financial instruments* manufactured by any *firm* to which ~~MiFID manufacturer~~ product governance requirements in (PROD 3.2 or equivalent requirements of another EEA State) do not apply.

...

- 3.3.25 R A *distributor* shall make the compliance reports available to ~~competent authorities~~ the FCA on request.

[**Note:** article 10(8) of the *MiFID Delegated Directive*]

...

## 4 Product governance: IDD

...

### 4.2 Manufacture of insurance products

...

Product approval process

- 4.2.5 ~~EU~~ 4(1) ...  
UK

[**Note:** article 4(1) of the *IDD POG Regulation*]

- 4.2.6 ~~EU~~ 4(2) ...  
UK



[Note: article 4 (2) of the *IDD POG Regulation*]

- 4.2.7 EU 9 Relevant actions taken by manufacturers in relation to their product  
UK approval process shall be duly documented, kept for audit purposes  
and made available to the ~~competent authorities~~ Financial Conduct  
Authority upon request.

[Note: article 9 of the *IDD POG Regulation*]

- 4.2.8 EU 4(3) ...  
UK

[Note: article 4(3) of the *IDD POG Regulation*]

- 4.2.9 UK 4(4) ...

[Note: article 4(4) of the *IDD POG Regulation*]

- 4.2.10 EU 5(4) ...  
UK

[Note: article 5(4) of the *IDD POG Regulation*]

- 4.2.11 EU 4(5) ...  
UK

[Note: article 4(5) of the *IDD POG Regulation*]

- 4.2.12 EU 4(6) ...  
UK

[Note: article 4(6) of the *IDD POG Regulation*]

#### Manufacture by more than one firm

- 4.2.13 EU 3(4) An insurance intermediary and an insurance undertaking that are  
UK both manufacturers within the meaning of Article 2 of this  
Delegated Regulation, shall sign a written agreement which  
specifies their collaboration to comply with the requirements for  
manufacturers referred to in ~~Article 25(1) of Directive (EU) 2016/97~~  
[PROD 4.2.1R, PROD 4.2.2R, PROD 4.2.29R, PROD 4.2.33R and  
PROD 4.2.34R] the procedures through which they shall agree on  
the identification of the target market and their respective roles in  
the product approval process.

[Note: article 3(4) of the *IDD POG Regulation*]

- 4.2.14 R In circumstances other than *PROD 4.2.13*EUUK, when *firms* collaborate to  
*manufacture* an insurance product, they must outline their mutual  
responsibilities in a written agreement.

...

4.2.16 ~~EU~~  
UK

5(1) ...

[**Note:** article 5(1) of the *IDD POG Regulation*]

4.2.17 ~~EU~~  
UK

5(2) ...

[**Note:** article 5(2) of the *IDD POG Regulation*]

4.2.18 ~~EU~~  
UK

5(3) ...

[**Note:** article 5(3) of the *IDD POG Regulation*]

...

Product testing

4.2.22 ~~EU~~  
UK

6(1) ...

[**Note:** article 6(1) of the *IDD POG Regulation*]

4.2.23 G

For the purposes of *PROD 4.2.22*~~EU~~UK, *manufacturers* should include assessments of the performance and risk/reward profile of their insurance product where appropriate.

[**Note:** recital 8 to the *IDD POG Regulation*]

4.2.24 ~~EU~~  
UK

6(2) ...

[**Note:** article 6(2) of the *IDD POG Regulation*]

...

Distribution channels and information disclosure to distributors

4.2.27 ~~EU~~  
UK

8(1) ...

[**Note:** article 8(1) of the *IDD POG Regulation*]

...

4.2.30 ~~EU~~  
UK

8(2) ...

[**Note:** article 8(2) of the *IDD POG Regulation*]

- 4.2.31 EU 8(3) The information referred to in paragraph 2 shall enable the insurance  
UK distributors to:
- ...
- (d) carry out distribution activities for the relevant insurance products in accordance with the best interests of their customers as prescribed in ~~Article 17(1) of Directive (EU) 2016/97~~ [*ICOB*S 2.5-1R and *COBS* 2.1.1R].

[**Note:** article 8(3) of the *IDD POG Regulation*]

...

- 4.2.35 EU 7(1) ...  
UK

[**Note:** article 7(1) of the *IDD POG Regulation*]

- 4.2.36 EU 7(2) ...  
UK

[**Note:** article 7(2) of the *IDD POG Regulation*]

- 4.2.37 EU 7(3) ...  
UK

[**Note:** article 7(3) of the *IDD POG Regulation*]

- 4.2.38 EU 8(4) ...  
UK

[**Note:** article 8(4) of the *IDD POG Regulation*]

- 4.2.39 EU 8(5) ...  
UK

[**Note:** article 8(5) of the *IDD POG Regulation*]

### 4.3 Distribution of insurance products

...

- 4.3.3 R A distributor must take all reasonable steps to obtain the information in *PROD* 4.2.29R when distributing insurance products manufactured by any person to which ~~*IDD* manufacturer~~ product governance requirements in in ~~(*PROD* 4.2, (or equivalent requirements of another EEA State or directly applicable requirements of the *IDD POG Regulation*)~~ do not apply.

...

4.3.5 EU 10(1) ...  
UK

[**Note:** first sub-paragraph of article 10(1) of the *IDD POG Regulation*]

4.3.6 EU 10(2) ...  
UK

[**Note:** article 10(2) of the *IDD POG Regulation*]

4.3.7 EU 10(3) ...  
UK

[**Note:** article 10(3) of the *IDD POG Regulation*]

4.3.8 EU 10(4) ...  
UK

[**Note:** article 10(4) of the *IDD POG Regulation*]

4.3.9 EU 10(5) ...  
UK

[**Note:** article 10(5) of the *IDD POG Regulation*]

4.3.10 EU 10(6) ...  
UK

[**Note:** article 10(6) of the *IDD POG Regulation*]

4.3.11 EU 11 ...  
UK

[**Note:** article 11 of the *IDD POG Regulation*]

...

4.3.13 EU 12 Relevant actions taken by insurance distributors in relation to their  
UK product distribution arrangements shall be duly documented, kept  
for audit purposes and made available to the ~~competent authorities~~  
Financial Conduct Authority upon request.

[**Note:** article 12 of the *IDD POG Regulation*]

4.3.14 EU 10(1) ...  
UK

[**Note:** second sub-paragraph of article 10(1) of the *IDD POG Regulation*]

**EXITING THE EUROPEAN UNION: REGULATORY PROCESSES  
SOURCEBOOKS (AMENDMENTS) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) regulation 3 of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;
  - (2) the following powers and related provisions in or under the Financial Services and Markets Act 2000:
    - (a) section 139A (Power of the FCA to give guidance);
    - (b) section 395 (The [FCA’s and PRA’s] Procedures); and
  - (3) regulation 120 (guidance) of the Payment Services Regulations 2017.

**Commencement**

- B. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to the Handbook**

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

**Citation**

- E. This instrument may be cited as the Exiting the European Union: Regulatory Processes Sourcebooks (Amendments) Instrument 2019.

By order of the Board  
[date]

**Editor's notes**

- (1) The near-final instrument relates to the statutory instruments set out in Annex 4 of the accompanying Policy Statement and other matters arising from the UK's withdrawal from the EU.
- (2) We will set out our approach in due course for any additional amendments which are required as a result of further statutory instruments.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 29 March 2019.

## Annex A

### Amendments to the Supervision manual (SUP)

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

#### 1A The FCA’s approach to supervision

##### 1A.1 Application and purpose

...

###### Purpose

- 1A.1.2 G The *Act* (section 1L) requires the *FCA* to “maintain arrangements for supervising authorised persons”. Section 1K of the *Act* also requires the *FCA* to provide general *guidance* about how it intends to advance its operational objectives in discharging its general functions in relation to different categories of *authorised person* or *regulated activity*. One purpose of this *guidance* is to discharge the duties of the *FCA* set out in sections 1L and 1K of the *Act*. The *FCA*’s approach to supervision is also designed to enable it to meet its supervisory obligations in accordance with ~~EU legislation, where applicable, including in relation to requirements arising otherwise than under the *Act* (for example, directly applicable EU regulations~~ *onshored regulations*).

...

##### 1A.2 Introduction

...

- 1A.2.2 G For a *firm* which undertakes business internationally (or is part of a *group* which does), the *FCA* will have regard to the context in which it operates, including the nature and scope of the regulation to which it is subject in jurisdictions other than the *United Kingdom*. For a *firm* with its head office outside the *United Kingdom*, the regulation in the jurisdiction where the head office is located will be particularly relevant. As part of its supervision of such a *firm*, the *FCA* will usually seek to cooperate with relevant *overseas regulators*, including exchanging information on the *firm*. ~~Different arrangements apply for an *incoming EEA firm*, an *incoming Treaty firm* and a *UCITS qualifier*. The arrangements applying for an *incoming EEA firm* and an *incoming Treaty firm* are addressed in SYSC Appendix 1. For *UCITS qualifiers* see also COLLG.~~

...

#### 3 Auditors

**3.1 Application**

...

**Incoming firms**

3.1.3 R ~~This chapter applies to an *incoming EEA firm* (and the auditor of such a *firm*) only if it has a *top-up permission*. [deleted]~~

3.1.4 G ~~The application of SUP 3.10 to the auditor of an *incoming EEA firm* with a *top-up permission* is qualified in SUP 3.10.3R. [deleted]~~

3.1.5 R ~~This chapter does not apply to an *incoming Treaty firm*, which:~~  
 (1) ~~does not have a *top-up permission*; and~~  
 (2) ~~is not required to comply with the *client asset rules*. [deleted]~~

3.1.6 G ~~The application of SUP 3.7 to an *incoming Treaty firm* or an auditor of such a *firm* is further qualified in SUP 3.7.1G. [deleted]~~

...

**3.7 Notification of matters raised by auditor**

**Application**

3.7.1 G ~~SUP 3.7 does not apply to an *incoming Treaty firm* which does not have a *top-up permission*. [deleted]~~

...

**3.10 Duties of auditors: notification and report on client assets**

...

3.10.3 R ~~SUP 3.10.5R(3) does not apply to an auditor of a *lead regulated firm* or an *incoming EEA firm*. [deleted]~~

...

**4 Actuaries**

**4.1 Application**

...

4.1.3 R Applicable sections

(1)	Category of firm	(2) Applicable sections or rules



(1)	A long-term insurer, other than:		SUP 4.1, SUP 4.2, SUP 4.3 and SUP 4.5
	(a)	...	
	(b)	an <i>incorporated friendly society</i> that is a <i>flat rate benefits business friendly society</i> ; <u>and</u>	
	(c)	an <i>incoming EEA firm</i> ; and <u>[deleted]</u>	
	(d)	...	
...			

...

## 6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements

### 6.1 Application, interpretation and purpose

...

- 6.1.3 G This chapter applies to an *incoming firm* or a *UCITS qualifier* only in respect of a *top-up permission*. An *incoming firm* or a *UCITS qualifier* should refer to SUP 14 (Variation of passport rights by incoming EEA firms and ending authorisation) for the procedures for changes to *permission* granted under Schedules 3, 4 or 5 of the Act. [deleted]

...

### 6.2 Introduction

...

#### UK firms exercising EEA or Treaty rights

- 6.2.12 G A *UK firm* should assess the effect of any change to its *Part 4A permission*, or any *requirements*, on its ability to continue to exercise any *EEA right* or *Treaty right* and discuss any concerns with its appropriate supervisory contact(s). This may also change the *applicable provisions* with which it is required to comply by a *Host State*. [deleted]
- 6.2.13 G A *UK firm* which, as well as applying to vary or cancel its *Part 4A permission*, wishes to vary or terminate any business which it is carrying on in another *EEA State* under one of the *Single Market Directives*, should follow the procedures in SUP 13 (Exercise of passport rights by UK firms) on varying or terminating its *branch* or *cross border services* business. [deleted]

...

### 6.3 Applications for variation of permission and/or imposition, variation or cancellation of requirements

...

- 6.3.3 G In applying for a variation of *Part 4A permission*, a branch of a *firm* from outside the ~~EEA~~ UK should be mindful of any continuing requirements referred to in the rest of the *Handbook*.

...

- 6.3.6 G If a *firm* is seeking a variation of *Part 4A permission* to add categories of *regulated activities*, it should be mindful of the ~~directive~~ requirements referred to at *SUP 6.3.42G* relating to the need to commence new activities within 12 months.

...

## 7 Individual requirements

### 7.1 Application and purpose

Application

...

- 7.1.2 R ~~The application of this chapter to an *incoming EEA firm*, *incoming Treaty firm* or *UCITS qualifier* with a *Part 4A permission* (a "*top-up permission*") is limited as explained in *SUP 7.2.4G*. [deleted]~~

...

### 7.2 The FCA's powers to set individual requirements and limitations on its own initiative

...

- 7.2.4 G The *FCA* may use its *own-initiative powers* only in respect of a *firm's Part 4A permission*; that is, a *permission* granted to a *firm* under sections 55E or 55F of the *Act* (Giving permission) or having effect as if so given. ~~In respect of an *incoming EEA firm*, an *incoming Treaty firm*, or a *UCITS qualifier*, this power applies only in relation to any *top-up permission* that it has. There are similar but more limited powers under Part XIII of the *Act* in relation to the *permission of an incoming EEA firm* or *incoming Treaty firm* under Schedules 3 or 4 to the *Act* (see *EG 8.26* to *EG 8.27*).~~

...

## 11 Controllers and close links

## 11.1 Application

Application to firms

- 11.1.1 R This chapter applies to every *firm* except:
- (1) an *ICVC*;
  - (2) ~~an *incoming EEA firm*; [deleted]~~
  - (3) ~~an *incoming Treaty firm*; [deleted]~~
  - (5) a *sole trader*;
  - (6) ~~a *UCITS qualifier*; [deleted]~~
  - (7) a *UK ISPV*;
  - (8) a *firm* which only has *permission for administering a benchmark*,
- as set out in the table in *SUP* 11.1.2R.

...

## 11.2 Purpose

...

- 11.2.7 G The requirements in *SUP* 11 ~~implement~~ implemented certain provisions relating to changes in *control* and *close links* which were required under the *Single Market Directives*.

...

## 11.3 Requirements on controllers or proposed controllers under the Act

...

- 11.3.14 G ~~Pursuant to section 188 of the Act (Assessment: consultation with EC competent authorities), the *appropriate regulator* is obliged to consult any appropriate *Home State regulator* before making a determination under section 185 of the Act (Assessment: general). [deleted]~~

...

## 11.5 Notifications by firms

...

- 11.5.4 G *Firms* are reminded that a change in *control* may give rise to a change in the *group companies* to which the *appropriate regulator's* consolidated financial supervision requirements apply. Also, the *firm* may for the first time become subject to the *appropriate regulator's* requirements on

consolidated financial supervision ~~(or equivalent requirements imposed by another EEA State)~~. This may apply, for example, if the *controller* is itself an authorised *undertaking*. The *appropriate regulator* may therefore request such a *firm*, *controller* or proposed *controller* to provide evidence that, following the change in *control*, the *firm* will meet the requirements of these *rules*, if appropriate.

...

## 11.7 Acquisition or increase of control: assessment process and criteria

...

- 11.7.13 G Before making a determination under section 185 or giving a *warning notice* under section 191A, the *appropriate regulator* must comply with the requirements as to consultation ~~with EC competent authorities set out in section 188 of the Act~~ and with the other regulator set out in sections 187A, 187B and 191A of the *Act*, as applicable.

...

## 11.8 Changes in the circumstances of existing controllers

- 11.8.1 R A *firm* must notify the *appropriate regulator* immediately it becomes aware of any of the following matters in respect of one or more of its *controllers*:

...

- (3) if a corporate *controller* undergoes a substantial changes or series of changes in its governing body;
- (4) ~~if a *controller*, who is authorised in another EEA State as a *MiFID investment firm*, *CRD credit institution* or *UCITS management company* or under the *Solvency II Directive* or the *IDD*, ceases to be so authorised (registered in the case of an *IDD insurance intermediary*).~~ ~~[deleted]~~

...

## 12 Appointed representatives

### 12.1 Application and purpose

General application

- 12.1.1 R ...

- (1A) This chapter applies to a ~~UK *MiFID investment firm*~~ *MiFID investment firm* which is considering appointing, has decided to appoint or has appointed an ~~*EEA tied agent*~~ *FCA registered tied agent*.

...

- (2) This chapter does not apply to a *UCITS qualifier*. ~~[deleted]~~
- (3) This chapter does not apply in relation to a *tied agent* acting on behalf of an *EEA MiFID investment firm* unless that *tied agent* is established in the *UK*. ~~[deleted]~~

Territorial application: compatibility with EU law

- 12.1.1A R (1) ~~The territorial scope of SUP 12 is modified to the extent necessary to be compatible with EU law (see SUP 12.1.1BG and 12.1.1CG for guidance on this). [deleted]~~
- 12.1.1A R (2) ~~This rule overrides every other rule in this chapter. [deleted]~~
- 12.1.1B G ~~For a UK MiFID investment firm, in our view, rules in this chapter that are within the scope of MiFID apply to its MiFID business carried on from an establishment in the United Kingdom or another EEA State. [deleted]~~  
~~[Note: articles 34(1) and 35(1) and (8) of MiFID]~~
- 12.1.1C G ~~For an EEA MiFID investment firm, in our view, rules in this chapter that are within the scope of MiFID apply only to its MiFID business to the extent they relate to the knowledge and competence of one or more of its UK tied agents. An EEA MiFID investment firm should complete the Appointed representative appointment form in SUP 12 Annex 3R when appointing a UK tied agent to carry on MiFID business on its behalf. [deleted]~~  
~~[Note: article 29(3) of MiFID]~~

Interaction of SUP 12 and other modules in relation to MiFID business

- 12.1.1D G In addition to those rules in SUP 12 relating to the *MiFID business* of *appointed representatives* and *tied agents*, there are other *MiFID* obligations derived from *MiFID* in the *Handbook* relevant to the knowledge and competence of *tied agents* and related compliance obligations (see SYSC 5.1, *TC* and *FIT* (in respect of *appointed representatives* that are *approved persons*)). These provisions are subject to the territorial application requirements in their respective chapters.

...

- 12.1.5 G This chapter also sets out:
  - (1) *guidance* about section 39A of the *Act*, which is relevant to a *UK MiFID investment firm* *MiFID investment firm* that is considering appointing an *FCA registered tied agent*; and
  - (2) the *FCA's rules*, and *guidance* on those *rules*, in relation to the appointment of:

- (a) an ~~EEA tied agent~~ FCA registered tied agent by a ~~UK MiFID investment firm~~ MiFID investment firm;

...

## 12.2 Introduction

...

Business for which an appointed representative is exempt

- 12.2.7 G (1) The *Appointed Representatives Regulations* are made by the Treasury under sections 39(1), (1C) and (1E) of the *Act*. These regulations describe, among other things, the business for which an *appointed representative* may be exempt or to which sections 20(1) and (1A) and 23(1A) of the *Act* may not apply, which is business which comprises any of:

...

- (aa) ~~bidding in emissions auctions (article 24A of the Regulated Activities Order) where that activity does not consist either of dealing on own account or the execution of orders on behalf of clients;~~ [deleted]

...

...

...

What is a tied agent?

- 12.2.16 G ...

- (3) This chapter sets out the provisions which apply to *tied agents*:
  - (a) ~~established in the UK;~~ or
  - (b) ~~established in another EEA State and appointed by a UK MiFID investment firm~~ MiFID investment firm.
- (4) ~~A tied agent appointed by a firm to carry on investment services and activities or ancillary services on its behalf may not provide cross border services or establish a branch in another EEA State in its own right. This is because tied agents do not have passporting rights. The tied agent of a MiFID investment firm may, however, provide cross border services or establish a branch in another EEA State by availing itself of the appointing firm's passport. MiFID investment firms may also appoint tied agents established in different EEA States.~~ [deleted]

- (5) ~~A tied agent will not be an appointed representative if it does not and is not likely to conduct any business as a tied agent in the UK. If such~~ Such a tied agent is appointed by a UK MiFID investment firm it will be an EEA tied agent FCA registered tied agent. EEA tied agents are either FCA registered tied agents or EEA registered tied agents.

...

- (7) ~~Under MiFID, a tied agent must be registered with the competent authority of the EEA State in which it is established. A UK MiFID investment firm~~ MiFID investment firm may appoint a tied agent established in the UK but that does not, and is not likely to, conduct any business as a tied agent in the UK. That tied agent must be registered with the FCA. ~~Such an EEA tied agent~~ a tied agent is referred to in the Handbook as an FCA registered tied agent.

- (8) ~~If a UK MiFID investment firm appoints a tied agent established in an EEA State other than the UK, the tied agent must be registered with the competent authority of the EEA State in which it is established. Such an EEA tied agent is referred to in the Handbook as an EEA registered tied agent. [deleted]~~

What is a MiFID optional exemption appointed representative?

12.2.17 G ...

- (3) The *rules* in this chapter which apply with respect to ~~UK~~ *tied agents* appointed by ~~UK~~ *firms* also apply to a *firm* that appoints a *MiFID optional exemption appointed representative*.

What is a structured deposit appointed representative?

12.2.18 G (1) If a *MiFID investment firm* or a *third country investment firm* appoints a *person* to act under its full and unconditional responsibility but only for the purpose of selling, or advising *clients* in relation to, *structured deposits* (and not any of the activities within ~~article 4(1)(29) of MiFID~~ section 39(7) of the Act), that *person* will not be a *tied agent* in respect of that activity.

...

- (3) The *rules* in this chapter which apply with respect to ~~UK~~ *tied agents* appointed by ~~UK~~ *firms* also apply to a *firm* that appoints a *structured deposit appointed representative*.

### 12.3 What responsibility does a firm have for its appointed representatives or EEA FCA registered tied agents?

Responsibility for appointed representatives

12.3.1 G In determining whether a *firm* has complied with:

...

(3) any qualifying *EU* provision specified, or of a description specified, for the purpose of section 39(4) of the *Act* by the Treasury by order,

anything that an *appointed representative* has done or omitted to do as respects the business for which the *firm* has accepted responsibility will be treated as having been done or omitted to be done by the *firm* (section 39(4) of the *Act* and article 17 of the *MCD Order*).

...

Responsibility for ~~EEA~~ FCA registered tied agents

12.3.5 R ~~A UK MiFID investment firm must not appoint an EEA registered tied agent or allow such an agent to continue to act for it unless it accepts or has accepted responsibility in writing for the agent's activities in acting as its EEA registered tied agent. [deleted]~~

[~~Note: paragraph 1 of article 29(2) of MiFID~~]

12.3.6 G The effect of section 39A(6)(b) of the *Act* is to prohibit a ~~UK MiFID investment firm~~ MiFID investment firm from appointing an *FCA registered tied agent* unless it has accepted responsibility in writing for the agent's activities in acting as a *tied agent*.

**12.4 What must a firm do when it appoints an appointed representative or an EEA FCA registered tied agent?**

...

Appointment of an FCA registered tied agent

12.4.11 R If a ~~UK MiFID investment firm~~ MiFID investment firm appoints an *FCA registered tied agent*, SUP 12.4.2R and SUP 12.4.2AR apply to that *firm* as though the *FCA registered tied agent* were an *appointed representative*.

[~~Note: paragraphs 2 and 3 of article 29(3) of MiFID~~]

Tied agents

12.4.12 G (1) A *tied agent* that is an *appointed representative* may not start to act as a *tied agent* until it is included on the applicable register (section 39(1A) of the *Act*). ~~If the tied agent is established in the UK, the~~ The register maintained by the *FCA* is the applicable register for these purposes. ~~If the tied agent is established in another EEA State, the applicable register is that maintained by the competent authority in the EEA State in which the tied agent is established.~~



- (2) ~~A UK MiFID investment firm~~ MiFID investment firm that appoints an *FCA registered tied agent* who is not registered with the *FCA* will, subject to certain conditions, be taken to have contravened a requirement imposed on it by or under the *Act* (see section 39A(6)(c) and (d) of the *Act*).
- (3) ~~A UK MiFID investment firm that appoints an EEA registered tied agent will be required to register that agent with the competent authority of the EEA State in which it is established. This requirement will be imposed by the rules of that EEA State.~~ [deleted]
- (4) ~~If the tied agent is not established in the UK and is appointed by an EEA MiFID investment firm, it cannot commence acting as a tied agent until it is included on the public register of tied agents in the EEA State in which it is established.~~ [deleted]

...

...

## 12.5 Contracts: required terms

...

12.5.2 G ...

- (1A) ~~The requirement described in paragraph (1) does not apply if the firm is an EEA MiFID investment firm.~~ [deleted]

...

12.5.2A G If:

- (1) ~~a UK MiFID investment firm~~ MiFID investment firm or a *third country investment firm* appoints an *appointed representative* that is a *tied agent* or a *MiFID optional exemption appointed representative*, regulation 3(6) of the *Appointed Representatives Regulations* requires the contract between the *firm* and the *appointed representative* to contain a provision that the representative is only permitted to provide the services and carry on the activities referred to in ~~article 4(1)(29) of MiFID~~ section 39(7) of the Act while entered on the Register.

...

...

Required contract terms for ~~EEA~~ FCA registered tied agents

12.5.8 R If a ~~UK MiFID investment firm~~ MiFID investment firm appoints an ~~EEA tied agent~~ FCA registered tied agent, SUP 12.5.6AR(1A) applies to that *firm* as

though the ~~EEA tied agent~~ FCA registered tied agent were an *appointed representative*.

[**Note:** articles 4(1)(29) and 29(1) of *MiFID*]

Required contract terms for FCA registered tied agents

- 12.5.9 G Under section 39A(6)(a) of the *Act* a ~~UK MiFID investment firm~~ MiFID investment firm must ensure that the contract it uses to appoint an *FCA registered tied agent* complies with the requirements that would apply under the *Appointed Representatives Regulations* if it were appointing an *appointed representative*.

...

## 12.6 **Continuing obligations of firms with appointed representatives or ~~EEA~~ FCA registered tied agents**

...

- 12.6.1A R A *firm* that is a *principal* of a *tied agent* that is an *appointed representative* must monitor the activities of that *tied agent* so as to ensure the *firm* complies with obligations ~~imposed under~~ derived from *MiFID* (or equivalent obligations relating to the *equivalent business of a third country investment firm*) when acting through that *tied agent*.

[**Note:** paragraph 3 of article 29(2) of *MiFID*]

- 12.6.1B R A *firm* that is a *principal* of an *appointed representative* that carries on *MCD credit intermediation activity* must monitor the activities of that *appointed representative* to ensure compliance with obligations ~~imposed under~~ derived from the *MCD* (including those in *MCOB* and *TC*).

[**Note:** article 31(3) of the *MCD*]

...

Continuing obligations of firms with ~~EEA~~ FCA registered tied agents

- 12.6.15 R If a ~~UK MiFID investment firm~~ MiFID investment firm appoints an ~~EEA tied agent~~ FCA registered tied agent, *SUP* 12.6.1R, *SUP* 12.6.1AR, *SUP* 12.6.5R and *SUP* 12.6.11AR apply to that *firm* as though the ~~EEA tied agent~~ FCA registered tied agent were an *appointed representative*.

Continuing obligations of firms with *MiFID* optional exemption appointed representatives or structured deposit appointed representatives

- 12.6.15 R If a *firm* appoints a *MiFID optional exemption appointed representative* or a  
A *structured deposit appointed representative*, that *firm* must:
- (1) monitor the activities of the *appointed representative* to ensure that the *firm* complies with those obligations which ~~implement~~

implemented provisions of *MiFID* and to which it is subject when acting through its *appointed representative*;

...

12.6.15 G In *SUP* 12.6.15AR(1), the obligations which ~~implement~~ implemented  
B relevant provisions of *MiFID* to which a *firm* is subject include:

- (1) in the case of a *MiFID optional exemption firm* appointing a *MiFID optional exemption appointed representative*, those conduct requirements which are ~~imposed pursuant to~~ derived from article 3(2) of *MiFID*; and
- (2) in the case of a *firm* appointing a *structured deposit appointed representative*, those requirements which are ~~imposed pursuant to~~ derived from article 1(4) of *MiFID*.

...

## 12.7 Notification requirements

...

Notifications relating to ~~EEA~~ FCA registered tied agents

12.7.9 R If a ~~UK MiFID investment firm~~ MiFID investment firm appoints an ~~EEA tied agent~~ FCA registered tied agent this section applies to that *firm* as though the ~~EEA tied agent~~ FCA registered tied agent were an *appointed representative*.

...

## 12.8 Termination of a relationship with an appointed representative or ~~EEA~~ FCA registered tied agent

...

Termination of a ~~UK~~ MiFID investment firm's relationship with an ~~EEA~~ FCA registered tied agent

12.8.6 R If a ~~UK MiFID investment firm~~ MiFID investment firm has appointed an ~~EEA tied agent~~ FCA registered tied agent this section applies to that *firm* as though the ~~EEA tied agent~~ FCA registered tied agent were an *appointed representative*.

## 12.9 Record keeping

...

Record keeping in relation to ~~EEA~~ FCA registered tied agents

- 12.9.5 R If a ~~UK MiFID investment firm~~ MiFID investment firm appoints an ~~EEA-tied agent~~ FCA registered tied agent this section applies to that *firm* as though the ~~EEA-tied agent~~ FCA registered tied agent were an *appointed representative*.

...

SUP 13 and the Annexes to SUP 13 are deleted in their entirety. The deleted text is not shown but is marked deleted as shown below.

### **13 Exercise of passport rights by UK firms** [deleted]

SUP 13A and the Annexes to SUP 13A are deleted in their entirety. The deleted text is not shown but the chapter is marked deleted as shown below.

#### **13A Qualifying for authorisation under the Act** [deleted]

SUP 14 is deleted in its entirety. The deleted text is not shown but the chapter is marked deleted as shown below.

### **14 Incoming EEA firms changing details, and cancelling qualification for authorisation** [deleted]

Amend the following as shown.

## **15 Notifications to the FCA**

### **15.1 Application**

Who?

- 15.1.1 G This chapter applies to every *firm* except that:
- (1) only SUP 15.10 applies to an *ICVC* ~~or a UCITS~~ qualifier; and

...

- 15.1.2 R ~~The application of this chapter to an incoming EEA firm or an incoming Treaty firm is set out in SUP 15 Annex 1.~~ [deleted]

...

- 15.1.6 R ~~This chapter does not apply to an incoming ECA provider acting as such.~~ [deleted]

...

### 15.3 General notification requirements

...

15.3.8 G Compliance with *Principle 11* includes, but is not limited to, giving the *FCA* notice of:

- (1) any proposed restructuring, reorganisation or business expansion which could have a significant impact on the *firm's* risk profile or resources, including, but not limited to:

...

- (f) a substantial change or a series of changes in the *governing body* of an *overseas firm* (~~other than an *incoming firm*~~); or

...

...

Breaches of rules and other requirements in or under the Act or the CCA

15.3.11 R (1) A *firm* must notify the *FCA* of:

...

- (d) a breach of a ~~directly~~ an applicable provision imposed by *MiFIR* or any *onshored regulations* which were previously *EU regulation* regulations adopted under *MiFID* or *MiFIR*; or

- (da) a breach of a ~~directly~~ an applicable provision in the ~~*EU CRR*~~ *UK CRR* or any ~~directly applicable~~ regulations *onshored regulations* which were previously *EU Regulations* made adopted under *CRD* or the *EU CRR*; or

...

- (ea) a ~~breach of a directly applicable provision in the *auction regulation*~~; or [deleted]

...

- (h) a breach of any ~~directly~~ applicable *onshored regulations* which were previously *EU regulation* regulations made adopted under *AIFMD*; or

- (ha) a breach of the *benchmarks regulation* (apart from Annex II to that regulation) or of any ~~directly applicable~~ regulations *onshored regulations* or requirements which were previously

EU regulations made or imposed under the EU benchmarks regulation; or

- (i) a breach of a any directly applicable onshored regulations which were previously ~~EU regulation made~~ EU regulations adopted under the IDD;

...

...

15.3.29 R

...

- (2) ...

- (b) the AIF is a ~~EuSEF SEF~~ SEF or ~~EuVECA RVECA~~ (see SUP 15.3.31G).

15.3.30 D

- (1) ...

- (b)

...

- (ii) the AIF is a ~~EuSEF SEF~~ SEF or ~~EuVECA RVECA~~ (see SUP 15.3.31G);

15.3.31 G

A ~~EuSEF SEF~~ SEF manager or a ~~EuVECA RVECA~~ RVECA manager should notify the FCA of the following changes in the following manner:

...

- (2) for changes to the jurisdiction in which its ~~EuSEF SEF~~ SEF or ~~EuVECA RVECA~~ RVECA is marketed or to *market* a new ~~EuSEF SEF~~ SEF or ~~EuVECA RVECA~~ RVECA, by using the form in SUP 15 Annex 6FG

...

15.3.35 G

...

- (2) Notification under SUP 15.3.32R is not sufficient to constitute an application for leniency or immunity from penalty in any subsequent investigation under Chapter 1 of the Competition Act 1998 ~~or article 101 of the Treaty~~.

## 15.4 Notified persons

15.4.1 R

- (1) An ~~overseas firm, which is not an incoming firm~~, must notify the FCA within 30 *business days* of any *person* taking up or ceasing to hold the following positions:

...

...

**15.6 Inaccurate, false or misleading information**

...

15.6.1A R *SUP* 15.6.1R also applies to all information given, or to be given, by a *firm* in accordance with any of the following:

- (1) ~~a directly~~ an applicable provision imposed by *MiFIR* or any *onshored regulations* which were previously or any *EU regulation regulations* adopted under *MiFID* or *MiFIR*; or

...

...

**15.9 Notifications by members of financial conglomerates**

...

15.9.4 R A *firm* does not have to give notice to the *FCA* under *SUP* 15.9.1R if it or another member of the *consolidation group* has already given notice of the relevant fact to:

...

- (3) (in the case of a *financial conglomerate* that does not yet have a *co-ordinator*) the *competent authority* who would be *co-ordinator* under Article 10(2) of the *Financial Groups Directive* (~~Competent authority responsible for exercising supplementary supervision (the *co-ordinator*)~~) Regulation 1(2) of the *Financial Groups Directive Regulations*.

- 15.9.5 R (1) A *firm* must, at the level of the ~~*EEA*~~ *financial conglomerate in the United Kingdom*, regularly provide the *FCA* with details on the *financial conglomerate's* legal structure and governance and organisational structure, including all *regulated entities*, and non-regulated subsidiaries, ~~and significant *branches*.~~
- (2) A *firm* must disclose publicly, at the level of the ~~*EEA*~~ *financial conglomerate in the United Kingdom*, on an annual basis, either in full or by way of references to equivalent information, a description of the *financial conglomerate's* legal structure and governance and organisational structure.
- (3) For the purposes of (1) and (2), where a *firm* is a member of ~~an *EEA*~~ a *financial conglomerate in the United Kingdom* which is part of a wider ~~*UK-regulated EEA*~~ *financial conglomerate*, reporting applies only at the level of the ~~*EEA*~~ *parent mixed financial holding company* or ~~*ultimate EEA*~~ *mixed financial holding company*.

...

**15.14 Notifications under the Payment Services Regulations**

...

15.14.20 D *Payment service providers* must comply with the *EBA's* Guidelines on incident reporting under the *Payment Services Directive* as issued on 27 July 2017 (EBA/GL/2017/10) where they are addressed to *payment service providers*.

15.14.21 D ...

(1) within the timescales and at the frequencies specified in the *EBA's* Guidelines on incident reporting under the *Payment Services Directive* (EBA/GL/2017/10);

...

15.14.22 ~~*Payment service providers* should note that article 16(3) of Regulation (EU) No 1093/2010 also requires them to make every effort to comply with the *EBA's* Guidelines on incident reporting under the *Payment Services Directive*. [deleted]~~

SUP 15 Annex 1R is deleted in its entirety. The deleted text is not shown but the annex is marked deleted as shown below.

**15  
Annex  
1R**      **Application of SUP 15 to incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions** [deleted]

Amend the following as shown.

**15A Applications and notifications under EMIR****15A.1 Application and notifications under EMIR**

...

15A.1.3 G Where a *person* intends to rely on article 11(~~6~~), (~~7~~), (8), or (9) ~~or (10)~~ for an exemption from the obligation to implement risk management procedures set out in article 11(3) of *EMIR*, the *person* should make their application or notification to the *FCA* in accordance with *EMIR requirements*, including (where relevant) those set out in the *EMIR technical standards on*



*OTC derivatives and Part 5 (Transitional Provisions: Intragroup Transactions) of the Trade Repositories (EU Exit) Regulations.*

...

**15B Applications and notifications under the benchmarks regulation and powers over Miscellaneous BM persons**

...

**15B.3 Applications to endorse a third country benchmark**

- 15B.3.1 G (1) Article 33 of the *benchmarks regulation* provides that a *supervised entity* may apply to the *FCA* to endorse a benchmark or a family of benchmarks provided in a *third country* for their use in the ~~EU~~ UK.

...

**15B.4 Applications for recognition of third country administrators**

- 15B.4.1 G (1) Article 32 of the *benchmarks regulation* provides that a benchmark administrator *located* in a *third country* may apply to ~~a competent authority~~ the FCA for prior recognition.

...

...

**16 Reporting requirements**

**16.1 Application**

...

- 16.1.2 G The only ~~categories~~ category of *firm* to which no section of this chapter applies ~~are~~ is:

- (1) an *ICVC*;
- (2) ~~an incoming EEA firm or incoming Treaty firm, unless it is:~~
  - (a) a *firm* of a type listed in *SUP 16.1.3 R* as a type of *firm* to which *SUP 16.6*, *SUP 16.7A*, *SUP 16.9*, *SUP 16.12*, *SUP 16.14*, or *SUP 16.23A* applies; or
  - (b) an *insurer* with *permission* to effect or carry out life policies; or
  - (c) a *firm* with *permission* to establish, operate or wind up a *personal pension scheme* or a *stakeholder pension scheme*; or
  - (d) a *payment service provider* to which *SUP 16.22* applies  
[deleted]

(3) a *UCITS* *qualifier*: [deleted]

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16 and SUP 16.17) and SUP 16.22)

(1) Section(s)	(2) Categories of firm to which section applies		(3) Applicable rules and guidance
SUP 16.1, SUP 16.2 and SUP 16.3	All categories of <i>firm</i> except:		Entire sections
	...		
	(b)	an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> , which is not: [deleted]	
		(i) a <i>firm</i> of a type to which SUP 16.6 or SUP 16.12 applies; or	
		(ii) an <i>insurer</i> with <i>permission</i> to effect or carry out <i>life policies</i> ; or	
		(iii) a <i>firm</i> with <i>permission</i> to establish, operate or wind up a <i>personal pension scheme</i> or a <i>stakeholder pension scheme</i> ; or	
		(iv) a <i>payment service provider</i> to which SUP 16.22 applies	
	(c)	a <i>UCITS</i> <i>qualifier</i> : [deleted]	

SUP 16.4 and SUP 16.5	All categories of <i>firm</i> except:		Entire sections
	...		
	(b)	<del>an incoming EEA firm;</del> [deleted]	
	(c)	<del>an incoming Treaty firm;</del> [deleted]	
	...		
	(h)	<del>a UCITS qualifier</del> [deleted]	
	...		
...			
SUP 16.10	All categories of <i>firm</i> except:		Entire section
	(a)	an ICVC; <u>and</u>	
	(b)	<del>a UCITS qualifier;</del> <u>and</u> [deleted]	
	...		
...			
SUP 16.23A	A <i>firm</i> undertaking the regulated activities in SUP 16.23A.1R, <del>including all incoming EEA firms or incoming Treaty firms (including those providing cross border services and undertaking the same activities)</del>		Entire section
...			

16.1.4 G ...

(3) Requirements for individual *firms* reflect:

...

- (c) whether a *firm* has its registered office (or if it does not have a registered office, its head office) in the *United Kingdom*; and
- (d) ~~whether a *firm* is an *incoming EEA firm* or *incoming Treaty firm*; and~~ [deleted]

...

...

### 16.3 General provisions on reporting

Application

16.3.1 G ...

- (1) an *ICVC*;
- (2) ~~an *incoming EEA firm* or *incoming Treaty firm*, which is not~~ [deleted]
  - (a) a *firm* of a type listed in *SUP 16.1.3R* as a *firm* to which section *SUP 16.6* or *SUP 16.12* applies;
  - (b) an *insurer* with *permission* to effect or carry out *life policies*;
- (3) a ~~*UCITS qualifier*~~. [deleted]

...

### 16.5 Annual Close Links Reports

...

Purpose

16.5.2 G ...

- (3) if the *person* is subject to the laws, regulations or administrative provisions of a territory which is not an ~~*EEA State*~~ the *United Kingdom*, whether those foreign provisions, or any deficiency in their enforcement, would prevent the *appropriate regulator's* effective supervision of the *firm*.

...

### 16.7A Annual report and accounts

Application

16.7A.1 R This section applies to every *firm* in the *regulatory activity group (RAG)* set out in column (1), which is a type of *firm* in column (2), of the tables in *SUP 16.7A.3R* and *SUP 16.7A.5R*, except:

(1) ~~an incoming EEA firm with permission for cross-border services only; [deleted]~~

(2) ~~an incoming EEA firm in relation to its carrying on of bidding in emissions auctions; [deleted]~~

...

...

Requirement to submit annual report and accounts

16.7A.3 R A firm in the RAG in column (1) and which is a type of firm in column (2) must submit its *annual report and accounts* to the FCA annually on a single entity basis.

(1)	(2)
RAG	Firm type
1	...
	...
	<del>Non-EEA bank</del> <u>A non-UK bank.</u>
...	

...

Time period for firms submitting their annual report and accounts

16.7A.8 R Firms must submit their *annual report and accounts* in accordance with SUP 16.7A.3R within the following deadlines:

(1) for a ~~non-EEA bank~~ non-UK bank, within 7 months of the accounting reference date;

...

...

**16.12 Integrated Regulatory Reporting**

Application

16.12.1 G The effect of SUP 16.1.1R is that this section applies to every firm carrying on business set out in column (1) of SUP 16.12.4R except:

(1) ~~an incoming EEA firm with permission for cross-border services only; [deleted]~~

(1A) ~~an incoming EEA firm in relation to its carrying on of bidding in emissions auctions; [deleted]~~

...

...

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

(1)		(2)	(3)	(4)
<i>RAG number</i>	<i>Regulated Activities</i>	<b>Provisions containing:</b>		
		<b>applicable data items</b>	<b>reporting frequency/ period</b>	<b>due date</b>
...				
<i>RAG 11</i> [deleted]	<i>bidding in emissions auctions</i>	<i>SUP</i> <del>16.12.29AR</del>	<i>SUP</i> <del>16.12.29AR</del>	<del><i>SUP 16.12.29AR</i></del>
...				

...

16.12.11 R The applicable *data items* referred to in *SUP 16.12.4R* are set out according to *firm* type in the table below:

<i>Description of data item</i>	Firms' prudential category and applicable <i>data items</i> (note 1) ...
...	
<del>Non-EEA sub-group</del> <del>Non-UK sub-group</del>	
...	
Note 1	All firms, except <i>IFPRU investment firms</i> in relation to <i>data items</i> reported under the <del><i>EU-CRR</i></del> <i>UK CRR</i> , when submitting the completed <i>data item</i> required, a <i>firm</i> must use the format of the <i>data item</i> set out in <i>SUP 16 Annex 24</i> . Guidance notes

	for completion of the data items are contained in <i>SUP 16 Annex 25</i> .
...	

...

16.12.15 R ...

Description of <i>data item</i>	<i>Firms' prudential category and applicable data items (note 1)</i>
	...
	...
<del>Non-EEA sub-group</del> <u>Non-UK sub-group</u>	
...	
Note 34	Requirements under COREP and FINREP should be determined with reference to the <del>EU CRR</del> <u>UK CRR</u> and applicable technical standards.

...

16.12.22 R ...  
A

Description of <i>Data item</i>	<i>Firms' prudential category and applicable data item (note 1)</i>
...	
<del>Non-EEA sub-group</del> <u>Non-UK sub-group</u>	
...	
Note 29	Requirements under COREP and FINREP should be determined with reference to the <del>EU CRR</del> <u>UK CRR</u> and applicable technical standards.

...

16.12.25 R ...  
A

Description of data item	<i>Firms' prudential category and applicable data item (note 1)</i> ...
...	
<del>Non-EEA sub-group</del> <u>Non-UK sub-group</u>	
...	
Note 30	Requirements under COREP and FINREP should be determined with reference to the <del>EU CRR</del> <u>UK CRR</u> and applicable technical standards.

...

**Regulated Activity Group 11**

- 16.12.29 R A firm must submit the form contained in SUP 16 Annex 32R (Bidding in emissions auctions return) annually within 30 business days from its accounting reference date unless the firm did not carry on any auction regulation bidding during the year to which that form relates. [deleted]

**16.13 Reporting under the Payment Services Regulations**

...

## Purpose

- 16.3.2 G ...
- (4) give directions to ~~EEA authorised payment institutions~~ under regulation 30(4) of the *Payment Services Regulations* in relation to:
- (a) the information that they must provide to the FCA in respect of the *payment services* they carry on in the *United Kingdom* in exercise of passport rights; and
- (b) the time at which and the form in which they must provide that information and the manner in which it must be verified. [deleted]

...

## Reporting requirement

- 16.13.3 D (1) An authorised payment institution, a small payment institution, ~~an EEA authorised payment institution~~ or a registered account information service provider must submit to the FCA the duly



completed return applicable to it as set out in column (2) of the table in *SUP* 16.13.4D.

...

16.13.3 D *SUP* 16.3.11R (Complete reporting) and *SUP* 16.3.13R (Timely reporting) also apply to *authorised payment institutions, small payment institutions, EEA authorised payment institutions* and *registered account information service providers* as if a reference to *firm* in these rules were a reference to these categories of *payment service provider*.

A

...

16.13.4 D The table below sets out the format, reporting frequency and due date for submission in relation to regulatory returns that apply to *authorised payment institutions, small payment institutions, EEA authorised payment institutions* and *registered account information service providers*.

...

16.13.11 G The *EBA* issued Guidelines on 12 December 2017 on the security measures for operational and security risks of payment services under the *Payment Services Directive* ([EBA/GL/2017/17](#)). The Guidelines specify requirements for the establishment, implementation and monitoring of the security measures that *payment service providers* must take to manage operational and security risks relating to the *payment services* they provide.

[**Note:** see ~~<https://www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/guidelines-on-security-measures-for-operational-and-security-risks-under-the-psd2>~~ [EBA guidelines: Guidelines on the security measures for operational and security risks of payment services, 12 December 2017/EBA/GL/2017/17.](#)]

16.13.12 D *Payment service providers* must comply with the *EBA*'s Guidelines on the security measures for operational and security risks of payment services ([EBA/GL/2017/17](#)) as issued on 12 December 2017 where they are addressed to *payment service providers*.

...

16.13.17 G ~~*Payment service providers* should note that article 16(3) of Regulation (EU) No. 1093/2010 also requires them to make every effort to comply with the *EBA*'s Guidelines on security measures for operational and security risks of payment services. [deleted]~~

...

## 16.15 Reporting under the Electronic Money Regulations

...

16.15.8 D The table below sets out the format, reporting frequency and due date for submission in relation to regulatory returns that apply to *electronic money issuers* that are not *credit institutions*.

(1) Type of <i>electronic money issuer</i>	(2) Return	(3) Format	(4) Reporting Frequency	(5) Due date (Note 4)
...				
(a) the Post Office Limited (b) the Bank of England, <del>the ECB and the national central banks of EEA States other than the United Kingdom</del> (c) Government departments and local authorities (d) <i>credit unions</i> (e) municipal banks (f) the National Savings Bank	<i>Average outstanding electronic money</i>	No standard format	Annual (Note 6)	30 <i>business days</i>

...

**16.17 Remuneration reporting**

...

Interpretation

16.17.2 R In this section “UK lead regulated group” means an *FCA consolidation group* that is headed by ~~an *EEA parent institution*~~ a *UK parent institution*, ~~an *EEA parent financial holding company*~~ a *UK parent financial holding company* or ~~an *EEA parent mixed financial holding company*~~ a *UK parent mixed financial holding company*.

...

16.17.3 R ...

(5) The *firm* must complete the Remuneration Benchmarking Information Report using accounting year-end amounts in euros determined, if necessary, by reference to the exchange rate used by the European Commission for financial programming and the budget for December of the reported year.

(6) This *rule* applies to:

(a) an *IFPRU investment firm*; and

(b) an *overseas firm* that:

(i) ~~is not an EEA firm; [deleted]~~

(ii) ~~has its head office outside the EEA; and [deleted]~~

(iii) would be an *IFPRU investment firm*, if it had been a *UK domestic firm*, had carried on all of its business in the *United Kingdom* and had obtained whatever authorisations for doing so as are required under the *Act*;

that:

(c) is not, and does not have, ~~an EEA a UK parent institution, an EEA a UK parent financial holding company or an EEA a UK parent mixed financial holding company~~, and that had total assets equal to or greater than £50 billion on an unconsolidated basis on the accounting reference date immediately prior to the *firm's* last complete financial year.

(7) This *rule* also applies to:

(a) an *IFPRU investment firm*; and

(b) an *overseas firm* that

(i) ~~is not an EEA firm; [deleted]~~

(ii) ~~has its head office outside the EEA; and [deleted]~~

(iii) would be an *IFPRU investment firm*, if it had been a *UK domestic firm*, had carried on all of its business in the *United Kingdom* and had obtained whatever authorisations for doing so as are required under the *Act*;

that:

(c) is part of a UK lead regulated group, and that had total assets equal to or greater than £50 billion on an unconsolidated basis on the accounting reference date immediately prior to the *firm's* last complete financial year.

- (8) In this rule “total assets” means:
- (a) in relation to an *IFPRU investment firm*, its total assets as set out in its balance sheet on the relevant *accounting reference date*; and
  - (b) in relation to an overseas firm in (76)(b) and (87)(b), the total assets of the *overseas firm* as set out in its balance sheet on the relevant *accounting reference date* that cover the activities of the branch operation in the *United Kingdom*.

...

#### High Earners Reporting Requirements

- 16.17.4 R (1) A *firm* to which this *rule* applies must submit a High Earners Report to the *FCA* annually.
- (2) The *firm* must submit that report to the *FCA* within four months of the end of the *firm's accounting reference date*.
- (3) A *firm* that is not part of a UK lead regulated group must complete that report on an unconsolidated basis in respect of *remuneration* awarded in the last completed financial year to all *high earners* of the *firm* who mainly undertook their professional activities within the ~~EEA~~ United Kingdom.
- (4) A *firm* that is part of a UK lead regulated group must not complete that report on either a solo consolidation basis or an unconsolidated basis. The *firm* must complete that report on a consolidated basis in respect of *remuneration* awarded in the last completed financial year to all *high earners* who mainly undertook their professional activities within the ~~EEA~~ United Kingdom at:
- (a) the ~~EEA parent institution, EEA parent financial holding company or EEA parent mixed financial holding company~~ UK parent institution, UK parent financial holding company or UK parent mixed financial holding company of the UK lead regulated group;
  - (b) each *subsidiary* of the UK lead regulated group that has its registered office (or, if it has no registered office, its head office) in an ~~EEA State~~ the United Kingdom; and
  - (c) each *branch* of the UK lead regulated group that is established or operating in an ~~EEA State~~ the United Kingdom.
- (5) (a) The *firm* must complete a ~~separate~~ template, in the format set out in SUP 16 Annex 34A, for each ~~EEA State in which~~ where there is a *high earner*, and for each payment bracket of EUR 1

million. Those templates together form the High Earners Report.

- (b) The number of *high earners* must be reported as the number of natural persons, independent of the number of working hours on which their contract is based.
- (9) The information in the High Earners Report must be denominated in Euros determined, if necessary, by reference to the exchange rate used by the European Commission for financial programming and the budget for December of the reported year.
- (10) This rule applies to an *IFPRU investment firm* that is not, and does not have, ~~an EEA parent institution, an EEA parent financial holding company or an EEA parent mixed financial holding company~~ a UK parent institution, a UK parent financial holding company or a UK parent mixed financial holding company.
- (11) This rule also applies to an *IFPRU investment firm* that is part of a UK lead regulated group.
- (12) This rule also applies to a *BIPRU firm*, an *exempt CAD firm*, a *local firm*, or any other *firm* that is not a *bank*, a *building society* or an *IFPRU investment firm*:
- (a) that is part of a UK lead regulated group; and
- (b) where that UK lead regulated group contains either:
- (i) a *bank*, *building society* or an *IFPRU investment firm*; or
- (ii) an *overseas firm* that;
- (A) ~~is not an EEA firm;~~ [deleted]
- (B) ~~has its head office outside the EEA; and~~ [deleted]
- (C) would be a *bank*, *building society* or an *IFPRU investment firm*, if it had been a *UK domestic firm*, had carried on all of its business in the *UK* and had obtained whatever authorisations for doing so as are required under the *Act*.
- (13) This rule also applies to an *overseas firm* that:
- (a) ~~is not an EEA firm;~~ [deleted]
- (b) ~~has its head office outside the EEA;~~ [deleted]
- (c) would be an *IFPRU investment firm*, if it had been a *UK domestic firm*, had carried on all of its business in the *UK* and

had obtained whatever authorisations for doing so as are required under the *Act*;

and either:

- (d) is not, and does not have, ~~an EEA parent institution, an EEA parent financial holding company or an EEA parent mixed financial holding company~~ a UK parent institution, a UK parent financial holding company or a UK parent mixed financial holding company; or
- (e) is part of a UK lead regulated group.

...

**16.18 AIFMD reporting**

Application

16.18.1 G This section applies to the following types of *AIFM* in line with *SUP* 16.18.2G:

- (1) a *full-scope UK AIFM*;
- (2) a *small authorised UK AIFM*;
- (3) a *small registered UK AIFM*;
- (4) an ~~above-threshold non-EEA AIFM~~ above-threshold non-UK AIFM marketing in the UK; and
- (5) a ~~small non-EEA AIFM~~ small non-UK AIFM marketing in the UK.

16.18.2 G

Type of AIFM	Rules	Directions	Guidance	AIFMD level 2 regulation
<i>full-scope UK AIFM</i>	<i>FUND</i> 3.4 (Reporting obligation to the FCA) and <i>SUP</i> 16.18.5R			Article 110 (Reporting to competent authorities) (as replicated in <i>SUP</i> <del>16.18.4EU</del> <u>16.18.4UK</u> )
<i>small authorised UK AIFM</i>	<i>SUP</i> 16.18.6R			Article 110 (Reporting to competent authorities) (as replicated in <i>SUP</i> <del>16.18.4EU</del> <u>16.18.4UK</u> )

<i>small registered UK AIFM</i>		<i>SUP</i> 16.18.7D		Article 110 (Reporting to competent authorities) (as replicated in <i>SUP</i> <del>16.18.4EU</del> <u>16.18.4UK</u> )
<del><i>above-threshold non-EEA AIFM</i></del> <u><i>above-threshold non-UK AIFM marketing in the UK</i></u>			<i>SUP</i> 16.18.8G	Article 110 (Reporting to competent authorities) (as replicated in <i>SUP</i> <del>16.18.4EU</del> <u>16.18.4UK</u> )
<del><i>small non-EEA AIFM</i></del> <u><i>small non-UK AIFM marketing in the UK</i></u>		<i>SUP</i> 16.18.9D		Article 110 (Reporting to competent authorities) (as replicated in <i>SUP</i> <del>16.18.4EU</del> <u>16.18.4UK</u> )

Purpose

- 16.18.3 G This section specifies the end dates for reporting periods for *AIFMs* and the reporting period for *small AIFMs* for the types of *AIFM* to whom this section applies. Although article 110 of the *AIFMD level 2 regulations* (Reporting to competent authorities) (as replicated in ~~*SUP* 16.18.4EU~~ *SUP* 16.18.4UK) applies certain reporting requirements directly to *AIFMs*, it does not specify the end dates for reporting periods for an *AIFM* and, for *small AIFMs*, it does not specify the reporting period. Therefore, *competent authorities* are required to specify these requirements.

Article 110 of the *AIFMD level 2 regulation*

16.18.4

~~EU~~  
UK

Reporting to <del>competent authorities</del> <u>the FCA</u>	
1.	In order to comply with the requirements of <del>the second subparagraph of Article 24(1) and of point (d) of Article 3(3) of Directive 2011/61/EU</del> [ <i>FUND</i> 3.4.2R] and directions given by the FCA under regulation 21(2) of the <i>AIFM Regulations 2013</i> , an <i>AIFM</i> shall provide the following information when reporting to <del>competent authorities</del> <u>the FCA</u> :

(a)	the main instruments in which it is trading, including a breakdown of financial instruments and other assets, including the AIF's investment strategies and their geographical and sectoral investment focus;
(b)	the markets of which it is a member or where it actively trades;
(c)	the diversification of the AIF's portfolio, including, but not limited to, its principal exposures and most important concentrations.
<p>The information shall be provided as soon as possible and not later than one month after the end of the period referred to in paragraph 3. Where the AIF is a fund of funds this period may be extended by the AIFM by 15 days.</p>	
2.	<p>For each of the EU AIFs they manage and for each of the AIFs they market in the <u>United Kingdom or the Union</u>, AIFMs shall provide to <del>the competent authorities of their home Member State</del> <u>the FCA</u> the following information in accordance with <del>Article 24(2) of Directive 2011/61/EU</del> <u>[FUND 3.4.3R]</u>:</p>
(a)	the percentage of the AIF's assets which are subject to special arrangements as defined in Article 1(5) of this Regulation arising from their illiquid nature as referred to in <del>point (a) of Article 23(4) of Directive 2011/61/EU</del> <u>[FUND 3.2.5R(1)]</u> ;
(b)	any new arrangements for managing the liquidity of the AIF;
(c)	the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;
(d)	the current risk profile of the AIF, including:
(i)	the market risk profile of the investments of the AIF, including the expected return and volatility of the AIF in normal market conditions;
(ii)	the liquidity profile of the investments of the AIF, including the liquidity profile of the AIF's assets, the profile of redemption terms and the terms of financing provided by counterparties to the AIF;
(e)	information on the main categories of assets in which the AIF invested including the corresponding short market value and long market value, the turnover and performance during the reporting period; and
(f)	the results of periodic stress tests, under normal and exceptional circumstances, performed in accordance with <del>point (b) of</del>



	<del>Article 15(3) and the second subparagraph of Article 16(1) of Directive 2011/61/EU [FUND 3.6.3R(2) and 3.7.5R(2)(b)].</del>
3.	The information referred to in paragraphs 1 and 2 shall be reported as follows: <ul style="list-style-type: none"> <li>(a) on a half-yearly basis by AIFMs managing portfolios of AIFs whose assets under management calculated in accordance with Article 2 in total exceed the threshold of either EUR 100 million or EUR 500 million laid down in <del>points (a) and (b) respectively of Article 3(2) of Directive 2011/61/EU sub-paragraphs (b) and (a) respectively of regulation 9(1) of the AIFM Regulations 2013</del> but do not exceed EUR 1 billion, for each of the <u>UK and EU</u> AIFs they manage and for each of the AIFs they market <u>in the United Kingdom or the Union</u>;</li> <li>(b) on a quarterly basis by AIFMs managing portfolios of AIFs whose assets under management calculated in accordance with Article 2 in total exceed EUR 1 billion, for each of the <u>UK and EU</u> AIFs they manage, and for each of the AIFs they market <u>in the United Kingdom or in the Union</u>;</li> <li>(c) on a quarterly basis by AIFMs which are subject to the requirements referred to in point (a) of this paragraph, for each AIF whose assets under management, including any assets acquired through use of leverage, in total exceed EUR 500 million, in respect of that AIF;</li> <li>(d) on an annual basis by AIFMs in respect of each unleveraged AIF under their management which, in accordance with its core investment policy, invests in non-listed companies and issuers in order to acquire control.</li> </ul>
4.	<del>By way of derogation from paragraph 3, the competent authority of the home Member State of the AIFM</del> <u>FCA</u> may deem it appropriate and necessary for the exercise of its function to require all or part of the information to be reported on a more frequent basis.
5.	AIFMs managing one or more AIFs which they have assessed to be employing leverage on a substantial basis in accordance with Article 111 of this Regulation shall provide the information required under <del>Article 24(4) of Directive 2011/61/EU [FUND 3.4.5R]</del> at the same time as that required under paragraph 2 of this Article.
6.	AIFMs shall provide the information specified under paragraphs 1, 2 and 5 in accordance with the pro-forma reporting template set out in the Annex IV.
7.	<del>In accordance with point (a) of Article 42(1) of Directive 2011/61/EU, for non-EU AIFMs, any reference to the competent</del>

	authorities of the home Member State shall mean the competent authority of the Member State of reference. [deleted]
[Note: Article 110 of the AIFMD level 2 regulation]	

...

Guidelines

- 16.18.11 G ESMA’s guidelines on reporting obligations under articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD ([http://www.esma.europa.eu/system/files/2013-1339\\_final\\_report\\_on\\_esma\\_guidelines\\_on\\_aifmd\\_reporting\\_for\\_publication\\_revised.pdf](http://www.esma.europa.eu/system/files/2013-1339_final_report_on_esma_guidelines_on_aifmd_reporting_for_publication_revised.pdf)), 8 August 2014 (ESMA/2014/869EN), provide further details in relation to the requirements in this section.

...

**16.23 Annual Financial Crime Report**

...

- 16.23.2 R Unless a *firm* is listed in the table below, this section does not apply to it where both of the following conditions are satisfied:

...

Table: Firms to which the exclusion in SUP 16.23.2R does not apply

a <i>UK bank</i> ;
a <i>building society</i> ;
a <i>EEA bank</i> ;
a <i>non-EEA bank</i> ;
a <u><i>non-UK bank</i></u> ;
a <i>mortgage lender</i> ;
a <i>mortgage administrator</i> ; or
a <i>firm</i> offering <i>life and annuity</i> insurance products.

...

**16.23A Employers’ Liability Register compliance reporting**

Application

- 16.23A.1 R (1) This section applies to any *firm* required to produce an employers’ liability register in compliance with the requirements in *ICOBS* 8.4.4R, which is: a *firm carrying out contracts of insurance*, or a

~~*managing agent managing insurance business, including in either case business accepted under reinsurance to close, which includes UK commercial lines employers' liability insurance.*~~

- (a) ~~*a firm carrying out contracts of insurance, or a managing agent managing insurance business, including in either case business accepted under reinsurance to close, which includes United Kingdom commercial lines employers' liability insurance; and*~~
- (b) ~~*an incoming EEA firm or incoming Treaty firm falling within (a), including those providing cross border services.*~~

...

...

## 16.24 Retirement income data reporting

Application

16.24.1 R This section applies to:

- (1) (a) ~~*a firm with permission to establish, operate or wind up a personal pension scheme or a stakeholder pension scheme; and*~~
- (b) ~~*a firm with permission to effect or carry out contracts of insurance in relation to life and annuity contracts of insurance.*~~
- (2) ~~*This rule does not apply to an incoming firm:*~~
- (a) ~~*in respect of that part of its business that was carried on as an electronic commerce activity; or*~~
- (b) ~~*if the customer is habitually resident in (and, if applicable, the State of the risk is) an EEA State other than the United Kingdom, to the extent that the EEA State in question imposes measures of like effect. [deleted]*~~

...

SUP 16 Annex 32R is deleted in its entirety. The deleted text is not shown but the annex is marked deleted as shown below.

## 16 Bidding in emissions auctions return [deleted] Annex 32R

Amend the following as shown.

## 18 Transfers of business

...

## 18.2 Insurance business transfers

...

Consultation with EEA regulators and/or other foreign regulators

- 18.2.23 G Under the terms of the Memorandum of Understanding, the *PRA* will lead when carrying out consultation with *EEA regulators* and/or other foreign regulators.  
A
- 18.2.24 G ~~The guidance set out in SUP 18.2.25G to SUP 18.2.30G derives from the requirements of the *Solvency II Directive* and the associated agreements between *EEA regulators*. Schedule 12 of the Act implements some of these requirements. [deleted]~~
- 18.2.25 G (1) ~~If the transferee is (or will be) an *EEA firm* (authorised in its *Home State* to carry on insurance business under the *Solvency II Directive*) or a *Swiss general insurance company*, then the *appropriate regulator* has to consult the transferee's *Home State regulator*, who has 3 months to respond. It will be necessary for the *appropriate regulator* to obtain from the transferee's *Home State regulator* a certificate confirming that the transferee will meet the *Home State's* solvency margin requirements (if any) after the transfer. [deleted]~~
- (1) If the transferee is (or will be) an *EEA firm* (authorised in its *Home State* to carry on insurance business under the *Reinsurance Directive*) it will be necessary for the *appropriate regulator* to obtain from the transferee's *Home State regulator* a certificate confirming that the transferee will meet the *Home State's* solvency margin requirements (if any) after the transfer. [deleted]
- (2) If the transferee is authorised in the *United Kingdom*, the *The appropriate regulator* will need to certify that the transferee will meet its solvency margin requirements after the transfer. If the *appropriate regulator* has required of a *UK firm* a “recovery plan” of the kind mentioned in the *PRA Rulebook: Solvency II firms: Undertakings in Difficulty*, the *appropriate regulator* will not issue a certificate for so long as it considers that *policyholders'* rights are threatened within the meaning of these paragraphs.
- 18.2.26 G ~~The transferor will need to provide the *appropriate regulator* with the information that the *Home State regulator* requires from the *appropriate regulator*. This information includes:~~
- (1) ~~the transfer agreement or a draft, with:~~
- (a) ~~the names and addresses of the transferor and transferee; and~~

- (b) ~~the classes of insurance business and details of the nature of the risks or commitments to be transferred;~~
  - (2) ~~for the business to be transferred (both before and after reinsurance):~~
    - (a) ~~the amount of technical provisions;~~
    - (b) ~~the amount of premiums (in the most recent financial period); and~~
    - (c) ~~for general insurance business, the claims incurred (in the most recent financial period);~~
  - (3) ~~details of assets to be transferred;~~
  - (4) ~~details of any guarantees (including reinsurance arrangements), whether provided by the transferor or a third party, to protect the provisions for the business transferred against deterioration; and~~
  - (5) ~~the states of the risks or the states of the commitments of the business being transferred. [deleted]~~
- 18.2.27 G If the transferee is not (and will not be) *authorised* and will not be ~~neither an EEA firm nor a Swiss general insurance company~~, then the *appropriate regulator* will need to consult the transferee's insurance supervisor in the place where the business is to be transferred. The *appropriate regulator* will need confirmation from this supervisor that the transferee will meet his solvency margin requirements there (if any) after the transfer.
- 18.2.28 G ~~If the transferor is a UK insurer (other than a pure reinsurer) and the business to be transferred includes business carried on from a branch in another EEA State, then the appropriate regulator has to consult the Host State regulator, who has 3 months to respond. The appropriate regulator will need to be given the information that the Host State regulator requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information, and describe arrangements for settling claims if the branch is to be closed. [deleted]~~
- 18.2.29 G ~~If the transferor is a UK insurer and the business to be transferred includes a long-term insurance contract (other than reinsurance) for which the state of the commitment is an EEA state other than the United Kingdom, then the appropriate regulator has to consult the Host State regulator. If the transferor is a UK insurer and the business to be transferred includes a general insurance contract (other than reinsurance) for which the state of the risk is an EEA state other than the United Kingdom, then the appropriate regulator must consult the Host State regulator. The appropriate regulator will need to be given the information that the Host State regulator requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information. It would be~~

helpful (especially for *long-term insurance business*) if a draft of the *scheme report* was also available. The *appropriate regulator* will also need to have sufficient information about the business proposed to be transferred to be satisfied that the applicants have undertaken sufficient steps to identify the *state of the risk* or the *state of the commitment*, as the case may be. The consent of the *Host State regulator* to the transfer is required, unless he does not respond within 3 months. [deleted]

- 18.2.30 G Where the transferor is a *UK deposit insurer* and, following the transfer, it will no longer be carrying on *insurance business* in the *United Kingdom*, the *appropriate regulator* will need to collaborate with *regulatory bodies* in the other *EEA States* in which it is carrying on business to ensure that effective supervision of the business carried on in the *EEA* continues. The transferor should cooperate with the *appropriate regulator* and the other *regulatory bodies* in this process and demonstrate that it will meet the requirements of its regulators following the transfer. [deleted]

...

- 18.2.47 G As the consent (or presumed consent) of the *Host State* is required for a transfer covering contracts for which another *EEA State* is the *state of the risk* (for *general insurance business*) or the *state of the commitment* (for *long-term insurance business*), it is advisable to obtain the consent of *regulatory body* in the *Host State* to any waiver of publication in that state. The approval of the court will still be required. [deleted]

...

#### Post-transfer advertising

- 18.2.61 G Under section 114 of the Act the court must direct that notice of the transfer be published by the transferee in any *EEA State* other than the *United Kingdom* which is the *state of the commitment* or the *state of the risk* as regards any policy included in the transfer which evidences a contract of insurance (other than a contract of reinsurance). The regulators would expect the transferee to publish notice in at least one national newspaper in each relevant *EEA State*. Such publication should include the notification of the transfer to the policyholders in the *state of the commitment* or the *state of the risk*. The parties should also be mindful of relevant provisions of the national laws of the relevant *state of the commitment* or the *state of the risk*. [deleted]

- 18.2.62 G Under section 114A of the Act the court may direct that notice of a transfer be published by the transferee in any *EEA State* which is the *state of the commitment* or the *state of the risk* as regards any policy included in the transfer which evidences a contract of *reinsurance*. [deleted]

...

### 18.3 Insurance business transfers outside the United Kingdom

## Purpose

18.3.1 G Under section 115 of the *Act*, the *appropriate regulator* has the power to give a certificate confirming that a *firm* possesses any necessary margin of solvency, to facilitate an *insurance business* transfer to the *firm* under overseas legislation ~~from a *firm* authorised in another *EEA State* or from a *Swiss general insurance company*~~. This section provides *guidance* on how the *appropriate regulator* would exercise this power and on related matters.

...

18.3.2 G ~~Under cooperation agreements between *EEA regulators*, if it has serious concerns about the proposed transferee, the *appropriate regulator* should inform the *regulatory body* of the transferor within 3 months of the original request from that *regulatory body*. The *appropriate regulator* is not obliged to reply, but if it does not, its opinion is taken to be favourable. Although the protocol does not apply to Switzerland, the *appropriate regulator* is required to cooperate with the Swiss *regulatory body* and would apply similar principles to~~ If it has serious concerns about a proposed transfer from a *Swiss general insurance company*, the *appropriate regulator* should inform the Swiss *regulatory body*.

...

#### 18.4 Friendly Society transfers and amalgamations

...

18.4.2 G *Friendly societies* are encouraged to discuss a proposed transfer or amalgamation with the appropriate authority, at an early stage to help ensure that a workable timetable is developed. This is particularly important where there are notification requirements for supervisory authorities in ~~*EEA States*~~ states other than the *United Kingdom*, or for an amalgamation where additional procedures are required

...

18.4.9 G For an amalgamation the successor society, and for a transfer the transferee, may need to apply for *permission*, or to vary its *permission*, under Part 4A of the *Act*. The regulators will need sufficient time before a transfer is confirmed to consider whether any necessary *permission* or variation should be given. If the transferee is ~~an *EEA firm* or a *Swiss general insurance company*~~, then confirmation will be needed from its ~~*Home State regulator*~~ regulator that it meets ~~the *Home State*'s~~ relevant solvency margin requirements (see *SUP* 18.4.25G(3)).

...

18.4.24 G ~~For a *directive friendly society*, if the transfer or amalgamation includes *policies* where the *state of the risk* or the *state of the commitment* is an *EEA State* other than the *United Kingdom*, consultation with the *Host State*~~

~~regulator is required and SUP 18.2.25G to SUP 18.2.29G apply (for an amalgamation they apply as if the business of the amalgamating societies is to be transferred to the successor society). Paragraph 6(1) of Schedule 15 to the Friendly Societies Act 1992 requires publication of the application to the appropriate authority for confirmation of an amalgamation or transfer and the appropriate authority may require the notice of the application to be published in two national newspapers in the *Host State*. [deleted]~~

- 18.4.25 G The criteria that the appropriate authority must use in determining whether to confirm a proposed amalgamation or transfer are set out in schedule 15 to the Friendly Societies Act 1992. These criteria include that:

...

- (2) the appropriate authority must be satisfied that:

...

- (c) ~~for a *directive friendly society* where a transfer includes *policies* where the *state of the risk* or the *state of the commitment* is an *EEA State* other than the *United Kingdom*, the *Host State regulator* has been notified of the transfer and has consented or has not refused consent to the transfer; and [deleted]~~

- (3) for a transfer, the transferee possesses the necessary margin of solvency after taking the proposed transfer into account or, where it is not required to maintain a necessary margin of solvency, possesses an excess of assets over liabilities (for a transferee that is a *Swiss general insurance company* ~~or an *EEA firm*~~, this is evidenced by a certificate from its ~~*home state regulator*~~ regulator).

...

## **App 2 Insurers: Regulatory intervention points and run-off plans**

### **App 2.1 Application**

- 2.1.1 R Subject to SUP App 2.1.6R, SUP App 2.1 to 2.15 apply to an *insurer*, unless it is:

- (1) ~~a *Swiss general insurer*; or~~
- (2) ~~an *EEA deposit insurer*; or~~
- (3) ~~an *incoming EEA firm*; or~~
- (4) ~~an *incoming Treaty firm*.~~

...

### **App 2.10 Grant or variation of permission**



2.10.1 The *PRA* will ask *Solvency II firms* seeking a grant or variation of *permission* to provide a *scheme of operations* as part of the application process (see the UK provisions which implemented article 18 of the *Solvency II Directive*). It may make a similar request to other *firms* (see *SUP* 6.3.25G). *Firms* which have submitted such a *scheme of operations* are not required to submit to the *PRA* a further *scheme of operations* under this appendix unless *SUP* App 2.8 or the relevant parts of *PRA* Rulebook: Non-Solvency II firms: Run Off Operations or *PRA* Rulebook: Solvency II firms: Run Off Operations apply. *SUP* 6 Annex 4 does, however, apply to such a *firm*.

...

**App 2.15**      **Run-off plans for closed with-profits funds**

...

2.15.8B Delegated acts or implementing technical standards may be adopted under the UK provisions which implemented article 35(6) and (7) of the *Solvency II Directive* in relation, among other things, to run-off plans. In that event *Solvency II firms* should comply with those acts and standards to the extent that they supersede *SUP* App 2.15.8A G.

...

*SUP* Appendix 3 is deleted in its entirety. The deleted text is not shown but the appendix is marked deleted as shown below.

**App 3**      **Guidance on passporting issues [deleted]**

Amend the following as shown.

**TP 10**      **Benchmarks Regulation Transitional Provisions**

...

10.2      Overview

10.2.1      G      (1)      The *EU benchmarks regulation* applied from 1 January 2018. The *benchmarks regulation* is the *UK* version of, and replacement for, this *EU regulation* and applies from 1 January 2018 *exit day*.

...

Insert the following new TP 12 after *SUP* TP 11 (Bank of England and Financial Services Act 2016: Approved persons in insurers). The text is not underlined.

**TP 12 Transitional provisions relating to tied agents**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
12.1	SUP 12	R	<p>(1) This <i>rule</i> applies to a <i>MiFID investment firm</i> in respect of a <i>tied agent</i> that is not an <i>appointed representative</i> and is not an <i>FCA registered tied agent</i> because it is established in an <i>EEA State</i>.</p> <p>(2) A <i>MiFID investment firm</i> must not appoint a <i>tied agent</i> referred to in (1), or allow such an agent to continue to act for it, unless it accepts, or has accepted, responsibility in writing for the agent's activities in acting as its <i>tied agent</i>.</p>	Three years starting with the first day after <i>exit day</i>	<i>exit day</i>
12.2	SUP 12.5.8R, SUP 12.6.15R, SUP 12.7.9R,	R	(1) This <i>rule</i> applies to a <i>MiFID</i>	Three years starting with	<i>exit day</i>

	<i>SUP 12.8.6R and SUP 12.9.5R</i>		<p><i>investment firm in respect of a tied agent that is not an appointed representative and is not an FCA registered tied agent because it is established in an EEA State.</i></p> <p><i>(2) The rules in column (2) apply to the appointment referred to in (1) as if the reference in those rules to an FCA registered tied agent included reference to a tied agent of the type referred to in (1).</i></p>	the first day after <i>exit day</i>	
12.3	<i>SUP 12</i>	G	The transitional provisions in (1) and (2) above reflect the three-year transitional period provided by Regulation 13(8) - (10) of the Financial Services and Markets Act 2000 (Amendment	Three years starting with the first day after <i>exit day</i>	<i>exit day</i>

			) (EU Exit) Regulations 2019.		
--	--	--	-------------------------------------	--	--

Sch 1 Record keeping requirements

...

Sch 1.2G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<i>SUP 12.9.5R</i>	<i><u>EEA tied agents FCA registered tied agents</u></i>	If a <i>UK MiFID investment firm</i> appoints an <i>EEA tied agent FCA registered tied agent</i> the record keeping requirements in <i>SUP 12.9</i> applies to that <i>firm</i> as though the <i>EEA tied agent FCA registered tied agent</i> were an <i>appointed representative</i> .		
<del><i>SUP 13.11</i></del>	<del><i>UK firm exercising EEA right</i></del>	<del>(a) the services or activities it carries on from a <i>branch</i> in, or provide <i>cross border services</i> into, another <i>EEA State</i> under that <i>EEA right</i>; and the <i>requisite details</i> or relevant details relating to those services or activities (if applicable)</del>	Not specified	Three years from the earlier of the date on which: (a) it was superseded by a more up to date record; or
				<del>(a) the <i>UK firm</i> ceased to have a <i>branch</i> in, or</del>

				carry <i>cross border services</i> into, any <i>EEA State</i> under an <i>EEA right</i>
<i>SUP 13.11.1R</i>	Exercise of passport rights by <i>UK firms</i>	(1) Services or activities carried on from a <i>branch</i> in, or provided cross-border into, another <i>EEA State</i> under an <i>EEA right</i> .  (2) The details relating to those services or activities (as set out in <i>SUP 13.6</i> and <i>SUP 13.7</i> ).	Not specified	Five years (for <i>firms</i> passporting under <i>MiFID</i> ) or three years (for other <i>firms</i> ) from earlier of:  (1) record being superseded;  (2) <i>firm</i> ceasing to have any <i>EEA branches</i> or <i>cross border services</i> .
...				

...

**Sch 4 Powers exercised**

Sch 4.1G

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FCA</i> to make the <i>rules</i> in <i>SUP</i> :	
	...
	<b>Paragraphs 19 (Establishment) and 20 (Services) of Schedule 3 (EEA Passport Rights)</b>
	...

...

Sch 4.3G

The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FCA</i> in <i>SUP</i> to direct, require or specify:	
	...

	Paragraph 5(4) (Notice to UK Regulator) of Schedule 4 (Treaty Rights)
	...

## Annex B

### Amendments to the Decision Procedure and Penalties manual (DEPP)

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

#### 1 Application and Purpose

##### 1.1 Application and Purpose

###### Application

1.1.1 G This manual (*DEPP*) is relevant to *firms, approved persons* and other *persons*, whether or not they are regulated by the *FCA*. It sets out:

....

- (3) the *FCA*'s policy with respect to the conduct of interviews by investigators appointed in response to a request from an overseas regulator ~~or an *EEA regulator* (*DEPP* 7)~~;

...

#### 2 Statutory notices and the allocation of decision making

...

##### 2.5 Provision for certain categories of decision

...

###### Decisions relating to applications for FCA authorisation or approval

2.5.3 G *FCA* staff under *executive procedures* will take the decision to give a *warning notice* if the *FCA* proposes to:

...

- (6) ~~refuse an application for variation or rescission of a requirement imposed on an *incoming EEA firm*. [deleted]~~

...

2.5.16 G ~~A notice under paragraph 15A(4) of Schedule 3 to the *Act* relating to the application by an *EEA firm* for approval to manage a *UCITS scheme* is not a *warning notice*, but the *FCA* will operate a procedure for this notice which will be similar to the procedure for a *warning notice*. [deleted]~~

...



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

Note: Third party rights and access to *FCA* material apply to the powers listed in this Annex where indicated by an asterisk \* (see *DEPP* 2.4)

Section of the Act	Description	Handbook reference	Decision maker
...			
192L(1) 192L(4)	when the <i>FCA</i> is proposing or deciding to take action against a qualifying parent undertaking by exercising the disciplinary powers conferred by section 192K*		<i>RDC</i>
200(4)/(5)	<del>when the <i>FCA</i> is proposing or deciding to refuse an application for variation or rescission of a requirement imposed on an <i>EEA</i> incoming firm</del> [deleted]		<i>RDC</i> or <i>executive procedures</i> See <i>DEPP</i> 2.5.6G
...			
269(1)/(2)	<del>when the <i>FCA</i>, on an application under section 267(4) or (5) by an operator of a section 264 recognised scheme to revoke or vary a direction that the promotion of the scheme be suspended, proposes or decides to refuse the application or to vary the direction otherwise than in accordance with the application</del> [deleted]		<i>RDC</i>
...			
Paragraph 15A(4) of	when the <i>FCA</i> is notifying an <i>EEA</i> firm wishing to	<i>SUP</i> 13A	<i>Executive procedures</i>

Schedule 3	<del>manage a <i>UCITS scheme</i> and its <i>Home State regulator</i> that the <i>EEA firm</i> does not comply with the <i>fund application rules</i>, or is not authorised by its <i>Home State regulator</i> to manage the type of <i>collective investment scheme</i> for which <i>authorisation</i> is required, or has not provided the documentation required under article 20(1) of the <i>UCITS Directive</i> [deleted]</del>	See <i>DEPP</i> 2.5.16G	
...			
Paragraph 15B(2)(a) of Schedule 3	<del>when the <i>FCA</i> is deciding not to withdraw a notice issued to an <i>EEA firm</i> wishing to manage a <i>UCITS scheme</i> and to its <i>Home State regulator</i> that the <i>EEA firm</i> does not comply with the <i>fund application rules</i>, or is not authorised by its <i>Home State regulator</i> to manage the type of <i>collective investment scheme</i> for which <i>authorisation</i> is required, or has not provided the documentation required under article 20(1) of the <i>UCITS Directive</i> [deleted]</del>	<i>SUP-13A</i>	<i>Executive procedures</i>
Paragraph 19(8)/(12) of Schedule 3	<del>when the <i>FCA</i> is proposing or deciding to refuse to give a <i>consent notice</i> to a <i>UK firm</i> wishing to establish a <i>branch</i> under an <i>EEA right</i> [deleted]</del>	<i>SUP-13</i>	<i>RDC</i>

...

Payment Services Regulations	Description	Handbook reference	Decision maker
...			
Regulations 10(2), 10(3)(a), 15 and 19	when the <i>FCA</i> is proposing or deciding to either cancel an <i>authorised payment institution's</i> authorisation, or to cancel a <i>small payment institution</i> or <i>account information service provider's</i> registration, otherwise than at that institution's own request*		<i>RDC</i>
Regulations 28(1) and 26	<del>when the <i>FCA</i> is proposing to refuse to register an <i>EEA branch</i> or an <i>EEA registered account information service provider</i> [deleted]</del>		<del><i>Executive procedures</i></del>
Regulations 28(2)(a) and 26	<del>when the <i>FCA</i> is deciding to refuse to register an <i>EEA branch</i> or an <i>EEA registered account information service provider</i> [deleted]</del>		<del><i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i></del>
Regulations 28(1), 28(2)(a) and 26	<del>when the <i>FCA</i> is proposing or deciding to cancel the registration of an <i>EEA branch</i>* or an <i>EEA registered account information service provider</i> [deleted]</del>		<i>RDC</i>

...

Cross-Border Payments in Euro Regulations 2010 [deleted]	Description	Handbook reference	Decision maker
Regulations 7(1) and 7(3)	when the <i>FCA</i> is proposing or deciding to impose a financial penalty*		<i>RDC</i>
Regulations 7(1) and 7(3)	when the <i>FCA</i> is proposing or deciding to publish a statement that a <i>payment service provider</i> has contravened the <i>EU Cross-Border Regulation</i> *		<i>RDC</i>
Regulations 10(1) and 10(3)	when the <i>FCA</i> is proposing or deciding to exercise its powers to require restitution*		<i>RDC</i>
Schedule paragraph 1	when the <i>FCA</i> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>EU Cross-Border Regulation</i> (Note 1)		<i>RDC</i>
Schedule paragraph 1	when the <i>FCA</i> is proposing or deciding to impose a financial penalty against a relevant person (Note 1)		<i>RDC</i>
Note:			

~~(1) The *Cross-Border Payments in Euro 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.~~

[deleted]

Electronic Money Regulations	Description	Handbook reference	Decision maker
...			
Regulations 11(6), 11(9), 11(10)(b) and 15	when the <i>FCA</i> is exercising its powers to vary an <i>electronic money institution's</i> authorisation or vary a <i>small electronic money institution's</i> registration on its own initiative		<i>RDC</i> or <i>Executive procedures</i> (Note 1)
Regulation 29(2)	when the <i>FCA</i> is proposing to refuse to register an <i>EEA branch of an authorised electronic money institution</i> [deleted]		<i>Executive procedures</i>
Regulation 29(3)(a)	when the <i>FCA</i> is deciding to refuse to register an <i>EEA branch of an authorised electronic money institution</i> [deleted]		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulation 29(2) and Regulation 29(3)(a)	when the <i>FCA</i> is proposing or deciding to cancel the registration of an <i>EEA branch of an authorised</i>		<i>RDC</i>

	<i>electronic money institution*</i> [deleted]		
...			

<b>Recognised Auction Platforms Regulations 2011 [deleted]</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision-maker</b>
Regulation 5A	where the <i>FCA</i> is proposing or deciding to publish a statement ensuring an <i>RAP</i> , or to impose a financial penalty on an <i>RAP</i>	<i>REC 2A.4</i>	<i>RDC</i>

<b>Alternative Investment Fund Managers Regulations 2013</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
Regulation 13(2)(a), article 14b of the <i>EuVECA regulation</i> <i>RVECA regulation</i> and article 15b of the <i>EuSEF regulation</i> <i>SEF regulation</i>	where the <i>FCA</i> decides to refuse an application for entry on the register of <i>small registered UK AIFMs</i>		<i>Executive procedures</i> where no representations are made in response to a <i>warning notice</i> otherwise by the <i>RDC</i>
Regulation 18(1)	where the <i>FCA</i> proposes to revoke the registration of a <i>small registered UK AIFM</i> including, where		<i>RDC</i>

	applicable, its registration as a <del><i>EuSEF manager or EuVECA manager</i></del> <u><i>SEF manager or RVECA manager</i></u>		
Regulation 18(2)(a)	where the <i>FCA</i> decides to revoke the registration of a <i>small registered UK AIFM</i> including where applicable its registration as a <del><i>EuSEF manager or EuVECA manager</i></del> <u><i>SEF manager or RVECA manager</i></u>		<i>RDC</i>
Regulation 23B(1)	where the <i>FCA</i> proposes to refuse an application made by a <i>UK AIF</i> for authorisation as a <del><i>UK-ELTIF UK</i></del> <u><i>LTIF</i></u>		<i>Executive procedures</i>
Regulation 23B(2)(a)	where the <i>FCA</i> decides to refuse an application made by a <i>UK AIF</i> for authorisation as a <del><i>UK-ELTIF UK</i></del> <u><i>LTIF</i></u>		<i>Executive procedures</i> where no representations are made in response to a <i>warning notice</i> otherwise by the <i>RDC</i>
Regulation 23C(1)	where the <i>FCA</i> proposes to revoke the authorisation of a <del><i>UK-ELTIF UK</i></del> <u><i>LTIF</i></u>		<i>RDC</i>
Regulation 23C(2)(a)	where the <i>FCA</i> decides to revoke the authorisation of a <del><i>UK-ELTIF UK</i></del> <u><i>LTIF</i></u>		<i>RDC</i>
...			

Regulation 71(1)(e)	where the <i>FCA</i> is proposing or deciding to publish a statement that an <i>unauthorised AIFM</i> has contravened the regulations or <del>directly applicable <i>EuSEF regulation</i> or <i>EuVECA regulation</i></del> <u><i>SEF regulation</i> or <i>RVECA regulation</i></u>		<i>RDC</i>
Regulation 71(1)(f)	where the <i>FCA</i> is proposing or deciding to impose a financial penalty on an <i>unauthorised AIFM</i> that has contravened the regulations or <del>directly applicable <i>EuSEF regulation</i> or <i>EuVECA regulation</i></del> <u><i>SEF regulation</i> or <i>RVECA regulation</i></u>		<i>RDC</i>

...

**2 Annex 2 Supervisory notices**

Section of the Act	Description	Handbook reference	Decision maker
...			
191B(1)	when the <i>FCA</i> gives a <i>restriction notice</i> under section 191B		<i>Executive procedures</i>
197(3)/(6)/(7)(b)	<del>when the <i>FCA</i> is exercising its power of intervention in</del>	<i>SUP 14</i>	<del><i>RDC</i> or <i>executive procedures</i></del>



	respect of an <i>incoming firm</i> [deleted]		See <i>DEPP 2.5.7G</i> and <i>2.5.7AG</i>
...			

...

<b>Alternative Investment Fund Managers Regulations 2013</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
Regulation 22(4)	where the <i>FCA</i> is exercising its power on its own initiative to give or vary a direction under regulation 22(1) to a <i>small registered UK AIFM</i> , a <i>EuSEF manager</i> or <i>EuVECA manager</i> <del><i>SEF manager</i> or <i>RVECA manager</i></del>		<i>RDC</i> or <i>executive procedures</i>  See <i>DEPP 2.5.7G</i> to <i>DEPP 2.5.8G</i>
Regulation 22(4)	where the <del><i>FCA</i></del> is exercising its power on its own initiative to <del>give or vary a direction under regulation 22(2)</del> to a <del><i>small registered UK AIFM</i></del> with its registered office in an <del><i>EEA State</i></del> other than the <del><i>UK</i></del> in accordance with article 19.3 of the <del><i>EuSEF regulation</i></del> or article 18.3 of the <del><i>EuVECA regulation</i></del> [deleted]		<del><i>RDC</i> or <i>executive procedures</i></del>  <del>See <i>DEPP 2.5.7G</i> to <i>DEPP 2.5.8G</i></del>

...

The Financial Services Act 2012 (Consumer Credit) Order 2013 <u>[deleted]</u>	Description	Handbook reference	Decision maker
Article 3(6)	when the <i>FCA</i> is exercising its power of intervention in respect of an <i>incoming firm</i> by reference to the <del>contravention or likely contravention</del> of a <i>CCA Requirement</i>	<i>SUP 14</i>	<i>RDC</i> or <i>executive procedures</i>  See <del><i>DEPP 2.5.7G</i></del> and <del><i>DEPP 2.5.7AG</i></del>

...

Markets in Financial Instruments Regulations 2017	Description	Handbook reference	Decision maker
<del>Regulations 10(2) and Regulation 12(2)</del>	when the <i>FCA</i> is exercising its power of intervention in respect of a <i>third country</i> firm		<i>RDC</i> or <i>executive procedures</i>  (see <i>DEPP 2.5.7G</i> and <i>DEPP 2.5.7AG</i> )
...			

...

**6A The power to impose a suspension, restriction, condition, limitation or disciplinary prohibition**

**6A.1 Introduction**

...

- 6A.1.2      G      (1)      For the purposes of *DEPP* 6A, “suspension” refers to the suspension of:
- (a)      any *permission* which an *authorised person* has to carry on a *regulated activity* (under sections 123B or 206A of the *Act*),
  - (b)      any approval of the performance by an *approved person* of any function to which the approval relates (under section 66 of the *Act*),
  - (c)      a *sponsor’s* approval (under section 88A(2)(b) of the *Act*),
  - (d)      and a *primary information provider’s* approval (under section 89Q(2)(b) of the *Act*);
- (2)      “restriction” refers to limitations or other restrictions in relation to:
- (a)      the carrying on of a *regulated activity* by an *authorised person* (under sections 123B or 206A of the *Act*),
  - (b)      [deleted]
  - (c)      the performance of services to which a *sponsor’s* approval relates (under section 88A(2)(c) of the *Act*), and
  - (d)      the dissemination of *regulated information* by a *primary information provider* (under section 89Q(2)(c) of the *Act*);
- (3)      “condition” refers to a condition imposed in relation to any approval of the performance by an *approved person* of any function to which the approval relates (under section 66 of the *Act*);
- (4)      “limitation” refers, apart from in *DEPP* 6A.1.2G(2), to a limitation of the period for which any approval of the performance by an *approved person* of any function to which the approval relates is to have effect (under section 66 of the *Act*); and
- (5)      “disciplinary prohibition” refers to a temporary or permanent prohibition on an individual holding an office or position involving responsibility for taking decisions about the management of a *MiFID investment firm* (under section 123A(2)(a) and (3) of the *Act*) or a temporary prohibition on an individual directly or indirectly acquiring or disposing of *financial instruments* (~~or *emission products*~~) on his or her

own account or the account of a third party, (under section 123A(2)(b) of the *Act*), ~~or a temporary prohibition on an individual directly or indirectly making a bid at an auction conducted by a *recognised auction platform*, on his or her own account or the account of a third party (under section 123A(2)(c) of the *Act*).~~

~~[**Note:** see Regulation 6 and Schedule 1 to the *RAP Regulations* for application of the powers to contraventions of the *auction regulation*]~~

...

## 7 Statement of policy on interviews conducted on behalf of overseas and EEA regulators

### 7.1 Application and purpose

#### Application

7.1.1 G *DEPP 7* applies when the *FCA*:

- (1) has appointed an investigator at the request of an *overseas regulator*, under section 169(1)(b) (Assistance to overseas regulators) ~~or an *EEA regulator*~~ under section 131FA of the *Act*; and
- (2) has directed, or is considering directing, the investigator, under section 169(7) or section 131FA of the *Act*, to permit a representative of the *overseas regulator* ~~or of the *EEA regulator*~~ to attend, and take part in, any interview conducted for the purposes of the investigation.

...

7.1.4 G The *FCA* is keen to promote co-operation with *overseas regulators* ~~and *EEA regulators*~~. It views provision of assistance to *overseas regulators* ~~and *EEA regulators*~~ as an essential part of discharging its general functions.

### 7.2 Interviews

#### Appointment of investigator and confidentiality of information

7.2.1 G Under section 169(1)(b) and section 131FA of the *Act*, the *FCA* may appoint an investigator to investigate any matter at the request of an *overseas regulator* ~~or *EEA regulator*~~. The powers of the investigator appointed by the *FCA* (referred to here as the ‘*FCA*’s investigator’) include the power to require *persons* to attend at a specified time and place and answer questions (the compulsory interview power).

- 7.2.2 G Where the *FCA* appoints an investigator in response to a request from an *overseas regulator* ~~or *EEA regulator*~~ it may, under section 169(7) or section 131FA of the *Act*, direct him to permit a representative of that regulator to attend and take part in any interviews conducted for the purposes of the investigation. The *FCA* may only give a direction under section 169(7) or section 131FA if it is satisfied that any information obtained by an *overseas regulator* ~~or *EEA regulator*~~ as a result of the interview will be subject to the safeguards equivalent to those contained in Part XXIII (Public Record, Disclosure of Information and Cooperation) of the *Act*.

...

#### Policy on use of investigative powers

- 7.2.4 G The *FCA*'s policy on how it will use its investigative powers, including its power to appoint investigators, in support of *overseas regulators* ~~and *EEA regulators*~~, is set out in the *FCA*'s Enforcement Guide (*EG*).

#### Use of direction powers

- 7.2.5 G The *FCA* may need to consider whether to use its direction power at two stages of an investigation:
- (1) at the same time that it considers the request from the *overseas regulator* ~~or *EEA regulator*~~ to appoint investigators;
  - (2) after it has appointed investigators, either at the request of the *overseas regulator* ~~or *EEA regulator*~~ or on the recommendation of the investigators.
- 7.2.6 G Before making a direction under section 169(7) or section 131FA the *FCA* will discuss and determine with the *overseas regulator* ~~or *EEA regulator*~~ how this statement of policy will apply to the conduct of the interview, taking into account all the circumstances of the case. Amongst other matters, the *FCA* will at this stage determine the extent to which the representative of the *overseas regulator* ~~or *EEA regulator*~~ will be able to participate in the interview. The *overseas regulator* ~~or *EEA regulator*~~ will be notified of this determination on the issuing of the direction.
- 7.2.7 G The direction will contain the identity of the representative of the *overseas regulator* ~~or *EEA regulator*~~ that is permitted to attend any interview and the role that he will play in the interview. If the *FCA* envisages that there will be more than one interview in the course of the investigation, the direction may also specify which interview(s) the representative is allowed to attend.

#### Conduct of interview

...

7.2.9 G The *FCA*'s investigator will act on behalf of the *FCA* and under its control. He may be instructed to permit the representative of the *overseas regulator* ~~or *EEA regulator*~~ to assist in the preparation of the interview. Where the *FCA* considers it appropriate, it may permit the representative to attend and ask questions of the interviewee in the course of the interview. The interview will be conducted according to the terms of the direction and the notification referred to in *DEPP 7.2.6G*.

7.2.10 G If the direction does permit the representative of an *overseas regulator* ~~or *EEA regulator*~~ to attend the interview and ask the interviewee questions, the *FCA*'s investigator will retain control of the interview throughout. Control of the interview means the following will apply:

...

(3) The *FCA*'s investigator has responsibility for making a record of the interview. The record should note the times and duration of any breaks in the interview and any periods when the representative of the *overseas regulator* ~~or *EEA regulator*~~ was either present or not present.

(4) Where the *FCA*'s investigator considers it appropriate, he may either suspend the interview, ask the overseas representative to leave the interview, or terminate the interview and reschedule it for another occasion. In making that decision he will bear in mind the terms of the direction, any agreement made with the *overseas regulator* ~~or *EEA regulator*~~ as to the conduct of the interview and the contents of this statement of policy.

7.2.11 G The *FCA* will in general provide written notice of the appointment of an investigator to the *person* under investigation pursuant to the request of an *overseas regulator* ~~or *EEA regulator*~~. Whether or not the interviewee is the *person* under investigation, the *FCA*'s investigator will inform the interviewee of the provisions under which he has been appointed, the identity of the requesting authority and general nature of the matter under investigation. The interviewee will also normally be informed if a representative of the *overseas regulator* ~~or *EEA regulator*~~ is to attend and take part in the interview. Notification of any of these matters may not be provided in advance of the interview if the *FCA* believes that the circumstances are such that notification would be likely to result in the investigation being frustrated.

...

- 7.2.14 G When the *FCA*'s investigator has exercised the compulsory interview power, at the outset of the interview the interviewee will be given an appropriate warning. The warning, amongst other things, must state that the interviewee is obliged to answer all questions put to them during the interview, including any put by the representative of the *overseas regulator* ~~or *EEA regulator*~~. It will also state that in criminal proceedings or proceedings for *market abuse* the *FCA* will not use as evidence against the interviewee any information obtained under compulsion during the interview.
- 7.2.15 G The *FCA*'s investigator may decide which documents or other information may be put to the interviewee, and whether it is appropriate to give the interviewee sight of the *documents* before the interview takes place. Where the *overseas regulator* ~~or *EEA regulator*~~ wishes to ask questions about *documents* during the interview and the *FCA*'s investigator wishes to inspect those *documents* before the interview, he will be given the opportunity to do so. If the *FCA*'s investigator wishes to inspect them and has not been able to do so before the interview, he may suspend the interview until he has had an opportunity to inspect them.
- 7.2.16 G When the *FCA*'s investigator has exercised the compulsory interview power, the *FCA*'s investigator will require the *person* attending the interview to answer questions. Where appropriate, questions may also be posed by the representative of the *overseas regulator* ~~or *EEA regulator*~~. The interviewee will also be required to answer these questions. The *FCA*'s investigator may intervene at any stage during questioning by the representative of the *overseas regulator* ~~or *EEA regulator*~~.

#### Language

- 7.2.17 G Interviews will, in general, be conducted in English. Where the interviewee's first language is not English, at the request of the interviewee arrangements will be made for the questions to be translated into the interviewee's first language and for his answers to be translated back into English. If a translator is employed at the request of the representative of the *overseas regulator* ~~or *EEA regulator*~~ then the translation costs will normally be met by the *overseas regulator* ~~or *EEA regulator*~~. ~~Where interviews are being conducted in pursuance of an *EU* law obligation these costs will be met by the *FCA*.~~ In any event, the meeting of costs in relation to translators and, where applicable, the translation of *documents* will always be agreed in advance with the *overseas regulator* ~~or *EEA regulator*~~.

#### Tape-recording

- 7.2.18 G All compulsory interviews will be tape-recorded. The method of recording will be decided on and arranged by the *FCA*'s investigator.

Costs will be addressed similarly to that set out in the preceding paragraph. The *FCA* will not provide the *overseas regulator* ~~or EEA regulator~~ with transcripts of the tapes of interviews unless specifically agreed to, but copies of the tapes will normally be provided where requested. The interviewee will be provided with a copy of tapes of the interview but will only be provided with transcripts of the tapes or translations of any transcripts if he agrees to meet the cost of producing them.

Representation

7.2.19 G The interviewee may be accompanied at the interview by a legal adviser or a non-legally qualified observer of his choice. The costs of any representation will not be met by the *FCA*. The presence at the interview of a representative of the *overseas regulator* ~~or EEA regulator~~ may mean that the interviewee wishes to be represented or accompanied by a *person* either from or familiar with that regulator’s jurisdiction. As far as practical the arrangements for the interview should accommodate this wish. However, the *FCA* reserves the right to proceed with the interview if it is not possible to find such a *person* within a reasonable time or no such *person* is able to attend at a suitable venue.

7.2.20 G In relation to the publication of investigations by *overseas regulators* ~~or EEA regulators~~, the *FCA* will pursue a policy similar to the policy that relates to its own investigations.

...

**Sch 3 Fees and other required payments**

...

Sch 3.2G

The <i>FCA</i> ’s power to impose financial penalties is contained in:	
	Section 63A (Power to impose penalties) of the <i>Act</i>
	Section 66 (Disciplinary powers) of the <i>Act</i>
	Section 88A (Disciplinary powers: contravention of s.88(3)(c) or (e)) of the <i>Act</i>
	Section 89Q (Disciplinary powers: contravention of s.89P(4)(b) or (d)) of the <i>Act</i>
	Section 91 (Penalties for breach of Part 6 Rules) of the <i>Act</i>



	Section 123 (Power to impose penalties in cases of market abuse) of the <i>Act</i>
	section 131G (Power to impose penalty or issue censure) of the <i>Act</i>
	Section 192K (Power to impose penalty or issue censure) of the <i>Act</i>
	Section 206 (Financial penalties) of the <i>Act</i>
	Section 249 (Disciplinary measures) of the <i>Act</i>
	Section 312F (Financial penalties) of the <i>Act</i>
	Section 345 (Disciplinary measures) of the <i>Act</i>
	Part III of Schedule 1ZA (The Financial Conduct Authority) to the <i>Act</i>
	the <i>Money Laundering Regulations</i>
	the Transfer of Funds (Information on the Payer) Regulations 2007 (SI 2007/3298)
	the <i>RCB Regulations</i>
	the <i>Payment Services Regulations</i>
	<del>the <i>Cross-Border Payments in Euro Regulations</i> [deleted]</del>
	the <i>OTC derivatives, CCPs and trade repositories regulation</i>
	the <i>AIFMD UK regulation</i>
	the <i>Referral Fees Regulations</i>
	the <i>CCA Order</i>
	the <i>Immigration Regulations</i>
	the <i>MCD Order</i>
	the <i>Small and Medium Sized Business (Credit Information) Regulations</i>
	the <i>MiFI Regulations</i>
	the <i>UK Benchmarks Regulations 2018</i>
	the <i>UK Securitisation Regulations</i>
	the <i>DRS Regulations</i>

	the <i>Payment Accounts Regulations</i>
	the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i>

#### Sch 4 Powers Exercised

##### Sch 4.1G

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :	
	Section 63C (Statement of policy)
	Section 63ZD (Statement of policy relating to conditional approval and variation)
	Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the <i>Payment Services Regulations</i> and by paragraph 1 of the Schedule to the <del><i>Cross-Border Payments in Euro Regulations</i></del> )
	Section 88C (Action under s.88A: statement of policy)
	Section 89S (Action under s. 89Q: statement of policy)
	Section 93(1) (Statement of policy)
	Section 124(1) (Statement of policy)
	Section 131J (Impositions of penalties under section 131G: statement of policy)
	Section 139A (Power of the <i>FCA</i> to give guidance)
	Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule 5 to the <i>Payment Services Regulations</i> )
	Section 192N (Imposition of penalties under section 192K: statement of policy)
	Section 210(1) (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i> , by paragraph 3 of the Schedule to the <del><i>Cross-Border Payments in Euro Regulations</i></del> , by article 23(4) of the <i>MCD Order</i> , regulation 43 of the <i>Small and Medium Sized Business (Credit Information) Regulations</i> , by regulation 36(6) of the <i>Payment Accounts Regulations</i> and by

	regulation 40 of the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> )
	Section 249 (Disciplinary measures)
	Section 312J (Statement of policy)
	Section 345D (Imposition of penalties on auditors or actuaries: statement of policy)
	Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i> , <del>by paragraph 5 of the Schedule to the <i>Cross Border Payments in Euro Regulations</i></del> , by article 24(2) of the <i>MCD Order</i> , regulation 44 of the <i>Small and Medium Sized Business (Credit Information) Regulations</i> , by paragraph 4 of Schedule 7 of the <i>Payment Accounts Regulations</i> and by regulation 41 of the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> )
	Paragraph 16 (Penalties) of Schedule 1 (The Financial Services Authority)

## Sch 4.2G

The following additional powers and related provisions have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :	
	Regulation 42 (Guidance) of the <i>RCB Regulations</i>
	Regulation 44 (Warning notices and decision notices) of the <i>RCB Regulations</i>
	Regulation 86 (Proposal to take disciplinary measures) of the <i>Payment Services Regulations</i>
	Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>
	<del>Regulation 14 (Guidance) of the <i>Cross Border Payments in Euro Regulations</i> [deleted]</del>
	Regulation 70 (Warning Notices, Decision Notices and Supervisory Notices) of the <i>AIFMD UK regulation</i>
	Regulation 71 (Application of Act to unauthorised AIFs) of the <i>AIFMD UK regulation</i>
	Regulation 29 (Statements of policy) of the <i>Referral Fees Regulations</i>

	Regulation 30 (Application of Part 26 of the 2000 Act) of the <i>Referral Fees Regulations</i>
	Article 3(11) (Application of provisions of FSMA 2000 in connection with failure to comply with the 1974 Act) of the <i>CCA Order</i>
	Article 4 (Statement of policy) of the <i>CCA Order</i>
	Regulation 28 (Statements of policy) of the <i>Immigration Regulations</i>
	Regulation 29 (Application of Part 26 of the 2000 Act) of the <i>Immigration Regulations</i>
	Paragraph 7 of Schedule 1 (Guidance) of the <i>MiFI Regulations</i>
	Paragraph 14 of Schedule 1 (Statements of Policy) of the <i>MiFI Regulations</i>
	Paragraph 22 of Schedule 1 (Application of Part 26 of the Act) of the <i>MiFI Regulations</i>
	Regulation 20 (Guidance) of the <i>DRS Regulations</i>
	Regulation 27 (Statements of Policy) of the <i>DRS Regulations</i>
	Regulation 37 (Application of Part 26 of the Act) of the <i>DRS Regulations</i>
	Regulation 82 (The FCA: procedure (general)) of the <i>Money Laundering Regulations</i>
	Paragraph 3 (Statements of Policy) of Schedule 1 of the <i>Packaged Retail and Insurance-based Investment Products Regulations</i>
	Paragraph 6 (Application of Part 26 of the Act) of Schedule 1 to the <i>Packaged Retail and Insurance-based Investment Products Regulations</i>
	Regulation 14 (Statements of Policy) of the <i>UK Benchmarks Regulations 2018</i>
	Regulation 19 (Application of Part 11 of the Act (information gathering and investigations)) of the <i>UK Benchmarks Regulations 2018</i>
	Regulation 23 (Application of Part 26 of the Act (notices)) of the <i>UK Benchmarks Regulations 2018</i>
	Regulation 9 (Statements of Policy) of the <i>UK Securitisation Regulations</i>

	Paragraph 1 of Schedule 1 (Application of sections 66 to 70 of the Act) of the <i>UK Securitisation Regulations</i>
	Paragraph 3 of Schedule 1 (Application of Part 11 of the Act (information gathering and investigation)) of the <i>UK Securitisation Regulations</i>
	Paragraph 4 of Schedule 1 (Application of Part 14 of the Act (disciplinary measures)) of the <i>UK Securitisation Regulations</i>
	Application of Part 26 of the Act (notices) of the <i>UK Securitisation Regulations</i>

**EXITING THE EUROPEAN UNION: SPECIALIST SOURCEBOOKS  
(AMENDMENTS) INSTRUMENT 2019**

**Powers exercised**

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

**Commencement**

- B. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to the Handbook**

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

(1)	(2)
Collective Investment Schemes sourcebook (COLL)	Annex A
Credit Unions sourcebook (CREDS)	Annex B
Consumer Credit sourcebook (CONC)	Annex C
Investment Funds sourcebook (FUND)	Annex D
Professional Firms sourcebook (PROF)	Annex E
Regulated Covered Bonds(RCB)	Annex F
Recognised Investment Exchanges sourcebook (REC)	Annex G

**Citation**

- D. This instrument may be cited as the Exiting the European Union: Specialist Sourcebooks (Amendments) Instrument 2019.

By order of the Board  
[date]

**Editor's notes**

- (1) The near-final instrument relates to the statutory instruments set out in Annex 4 of the accompanying Policy Statement and other matters arising from the UK's withdrawal from the EU.
- (2) We will set out our approach in due course for any additional amendments which are required as a result of further statutory instruments.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 29 March 2019.

[*Editor's note:* The text of COLL 4.2.5BUK and COLL 4.5.8ABUK was not included in CP18/28 as the legislation which onshored the Securities Financing Transaction Regulation had not yet been published.]

## Annex A

### Amendments to the Collective Investment Schemes sourcebook (COLL)

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

## 1 Introduction

### 1.1 Applications and purpose

#### Application

- 1.1.1 G (1) This sourcebook, except for *COLL* 9 (Recognised schemes), applies to:
- ...
- (c) *managers and trustees of authorised unit trust schemes (AUTs); and*
- (cA) *authorised fund managers, depositaries and nominated partners of authorised contractual schemes (ACSs); and*
- (d) ~~to the extent indicated, UK UCITS management companies operating EEA UCITS schemes. [deleted]~~
- ...
- (4) ~~This sourcebook also applies to EEA UCITS management companies of UCITS schemes to the extent required by the UCITS Directive. [deleted]~~
- 1.1.1A R ~~This sourcebook does not apply to an incoming ECA provider acting as such. [deleted]~~
- ~~EEA territorial scope: compatibility with European law~~
- 1.1.1B R (1) ~~The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law.~~
- (2) ~~This rule overrides every other rule in this sourcebook. [deleted]~~
- ~~EEA UCITS management companies of UCITS schemes~~
- 1.1.1C G ~~An EEA UCITS management company that is providing collective portfolio management services for a UCITS scheme from a branch in the United Kingdom, or under the freedom to provide cross border services, is advised that where it operates a UCITS scheme as its designated management~~



~~company, it meets the Glossary definition of an “ACD” of an ICVC or a “manager” of an AUT or an authorised contractual scheme manager of an ACS, which in either case is a UCITS scheme. Such firms should be aware that provisions in this sourcebook that apply to an ACD, a manager or an authorised fund manager of a UCITS scheme accordingly apply to them, unless otherwise indicated: see COLL 12.3 (EEA UCITS management companies) for further details. [deleted]~~

Purpose

1.1.2 G ...

- (2) In addition, this sourcebook ~~implements~~ implemented part of the requirements of the *UCITS Directive* ~~to meet EU law obligations~~ relevant to *authorised funds* and *management companies*, along with other requirements implemented in other parts of the *Handbook*.

UCITS management company and product passport

1.1.2A G ~~COLL 12 provides for the application of COLL in relation to the management company passport under the UCITS Directive. It explains how the passporting regime applies to both UK UCITS management companies and EEA UCITS management companies when providing collective portfolio management services on a cross-border basis. It also explains how the product passport (for UCITS) operates and how UCITS schemes may be marketed in other EEA States. [deleted]~~

...

## 1.2 Types of authorised fund

...

Types of authorised fund - explanation

1.2.2 G (1) ~~UCITS schemes have to comply with the conditions necessary in order to enjoy the rights available under the UCITS Directive. Such schemes~~ must in particular comply with:

...

- (2) (a) *Non-UCITS retail schemes* are schemes that do not comply with all the conditions ~~set out in the UCITS Directive~~ necessary to be a UCITS scheme.

...

- (c) ~~Under~~ The UK may, under the legislation which implemented article 43 of AIFMD, where an AIF can be marketed to retail clients impose stricter requirements on the an AIFM or the an

*AIF marketed to retail clients* than the requirements that apply to an *AIF marketed* only to *professional clients*.

- (d) This sourcebook contains the stricter requirements for an AIF which is a non-UCITS retail scheme.

....

- (f) *Non-UCITS retail schemes* could become *UCITS schemes*, provided they are changed, so as to comply with the necessary conditions set out in the UCITS Directive.

...

...

- (3) ...

- (c) ~~Under article 43 of AIFMD, where an AIF can be marketed to retail clients, Member States may impose stricter requirements on the AIFM or the AIF than the requirements that apply to an AIF marketed only to professional clients.~~  
[deleted]

- (d) This sourcebook contains the stricter requirements for an AIF which is a qualified investor scheme.

...

...

...

Pension feeder funds

- 1.2.5 G ...

- (2) A pension feeder fund may not invest in units of an EEA UCITS scheme unless that scheme is a recognised scheme ~~under section 264 of the Act~~ (see COLL 5.6.27R and COLL 5.8.2AR).

...

## 2 Authorised fund applications

### 2.1 Authorised fund applications

...

~~Application by an EEA UCITS management company to manage a UCITS scheme~~

2.1.5 G ~~An EEA UCITS management company that proposes to act as the authorised fund manager of an AUT, ACS or ICVC that is a UCITS scheme, should be aware that it is required under paragraph 15A(1) of Schedule 3 to the Act to apply to the appropriate regulator for approval to do so. The form that the firm must use for this purpose is set out in SUP 13A Annex 3R (EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom). In addition, those firms are required to provide to the appropriate regulator certain fund documentation, as specified by COLL 12.3.4R (Provision of documentation to the FCA: EEA UCITS management companies). [deleted]~~  
~~[Note: article 20(1) of the UCITS Directive]~~

...

#### 4 Investor Relations

...

#### 4.2 Pre-sale notifications

...

Provision and filing of the prospectus

4.2.3 R (1) The authorised fund manager of an AUT, ACS or an ICVC must:

...

(b) file a copy of the *scheme's original prospectus*, together with all revisions thereto, with the FCA and, where a UCITS scheme is managed by an EEA UCITS management company, with that company's Home State regulator on request.

...

...

Table: contents of the prospectus

4.2.5 R This table belongs to COLL 4.2.2R (Publishing the prospectus).

<b>Document status</b>	
...	
<b>Authorised fund manager</b>	
6	The following particulars of the <i>authorised fund manager</i> :

	...	
	(f)	<del>if neither its registered office nor its head office is in the United Kingdom, the address of its principal place of business in the United Kingdom; [deleted]</del>
	...	
...		
<b>Depositary</b>		
8	The following information and particulars concerning the <i>depositary</i> :	
	...	
	(e)	<del>if neither its registered office nor its head office is in the United Kingdom, the address of its principal place of business in the United Kingdom; [deleted]</del>
	...	
...		
<b>Contracts and other relationships with parties</b>		
11	The following relevant details:	
	...	
	(g)	a list of:
	(i)	<del>the functions which the <i>authorised fund manager</i> has delegated in accordance with <i>FCA rules</i> or, for an <i>EEA UCITS management company</i>, in accordance with applicable <i>Home State</i> measures implementing article 13 of the <i>UCITS Directive</i>; and</del>
	...	
	...	
...		
<b>Marketing in another EEA state</b>		
26	<del>A <i>prospectus</i> of a <i>UCITS</i> scheme which is prepared for the purpose of marketing units in a <i>EEA State</i> other than the <i>United Kingdom</i>, must give details as to:</del>	
	(a)	<del>what special arrangements have been made:</del>

		(i)	for paying in that <i>EEA State</i> amounts distributable to <i>unitholders</i> resident in that <i>EEA State</i> ;
		(ii)	for <i>redeeming</i> in that <i>EEA State</i> the <i>units</i> of <i>unitholders</i> resident in that <i>EEA State</i> ;
		(iii)	for inspecting and obtaining copies in that <i>EEA State</i> of the <i>instrument constituting the fund</i> and amendments to it, the <i>prospectus</i> and the annual and half-yearly long report; and
		(iv)	for making public the <i>price of units</i> of each <i>class</i> ; and
	(b)	how the <i>ICVC</i> or the <i>authorised fund manager</i> of an <i>AUT</i> or <i>ACS</i> will publish in that <i>EEA State</i> notice:	
		(i)	that the annual and half-yearly long report are available for inspection;
		(ii)	that a distribution has been declared;
		(iii)	of the calling of a meeting of <i>unitholders</i> ; and
		(iv)	of the termination of the <i>authorised fund</i> or the revocation of its authorisation. [deleted]

...

Information to be provided on securities financing transactions and total return swaps

...

4.2.5B EU  
UK

<b>Transparency of collective investment undertakings in pre-contractual documents</b>	
1.	The <del>UCITS</del> prospectus referred to in Article 69 of Directive 2009/65/EC <del>The prospectus referred to in [COLL 4.2.2R]</del> , and the disclosure by AIFMs to investors referred to in Article 23(1) and (3) of Directive 2011/61/EU required by [FUND 3.2.2R] shall specify the SFT and total return swaps which UCITS management companies or UCITS investment companies, and AIFMs respectively, are authorised to use and include a clear statement that those transactions and instruments are used.

2.	The prospectus and the disclosure to investors referred to in paragraph 1 shall include the data provided for in Section B of the Annex.
[ <b>Note:</b> article 14(1) and (2) of the <i>Securities Financing Transactions Regulation</i> and article 3 for relevant definitions]	

...

## Guidance on contents of the prospectus

4.2.6 G ...

- (6) The *authorised fund manager* of a *UCITS scheme* should consider the appropriateness of including additional matters in its *prospectus* as a result of the *ESMA Guidelines on ETFs and other UCITS issues (ESMA 2012/832)*, which can be found at

[https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-832en\\_guidelines\\_on\\_etfs\\_and\\_other\\_ucits\\_issues.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf)

...

## 4.3 Approvals and notifications

...

## Appointment of a new authorised fund manager

- 4.3.6A R (1) ~~In the case of a *UCITS scheme*, the appointment of a new *ACD* of an *ICVC* under *COLL 6.5.3R* (Appointment of an *ACD*) or the replacement of the *authorised fund manager* of an *AUT* or *ACS* who proposes to retire under *COLL 6.5.8R* (Retirement of an authorised fund manager of an *AUT* or *ACS*) must, if in either case the new *authorised fund manager* is established in a different *EEA State* to the outgoing *authorised fund manager*, be treated as a significant change in accordance with *COLL 4.3.6R*.~~
- (2) Paragraph (1) does not apply:
- (a) if the appointment of the new *authorised fund manager* is the subject of an *extraordinary resolution* approved by a meeting of *unitholders*; or
- (b) following the termination of the appointment of the *ACD* of an *ICVC* under *COLL 6.5.4R(2)* or *COLL 6.5.4R(3)* (Termination of appointment of an *ACD*), if the *directors* of the *ICVC* other than the *ACD*, or the *depository* if there are no such *directors*, consider that it would be in the best interests of *unitholders* to appoint a new *ACD* without delay. [deleted]

## Guidance on significant changes

4.3.7 G ...

- (4) ~~The requirement in COLL 4.3.6AR(1) applies in all cases where the outgoing authorised fund manager (whether established in the United Kingdom or in another EEA State) is to be replaced by an authorised fund manager established in any other EEA State (including the United Kingdom). [deleted]~~

...

## Appointment of an AFM without prior written notice to unitholders

4.3.10 R (1) ~~In the case of a UCITS scheme, the appointment of a new authorised fund manager as a result of:~~

- (a) ~~in the case of an ICVC, the termination of the appointment of the previous ACD under COLL 6.5.4R(2) or COLL 6.5.4R(3) (Termination of appointment of an ACD); or~~
- (b) ~~in the case of an AUT or ACS, the replacement of the authorised fund manager under COLL 6.5.7R(2) (Replacement of an authorised fund manager of an AUT or ACS);~~

~~must, if the new authorised fund manager is established in a different EEA State to the outgoing authorised fund manager, be notified to unitholders. [deleted]~~

...

...

**4.5 Reports and accounts**

...

Information to be included in annual and half-yearly reports on securities financing transactions and total return swaps

...

4.5.8AB EU  
UK

<b>Transparency of collective investment undertakings in periodical reports</b>
---

1.	UCITS management companies, UCITS investment companies, and AIFMs shall inform investors on the use they make of SFTs and total return swaps in the following manner:	
	(a)	for UCITS management companies or UCITS investment companies in the half-yearly and annual reports referred to in <del>Article 68 of Directive 2009/65/EC</del> [ <u>COLL 4.5.3R (Preparation of long reports)</u> ];
	(b)	for AIFMs in the annual report referred to in <del>Article 22 of Directive 2011/61/EU</del> [ <u>FUND 3.3.2R (Provision of annual report).</u> ]
2.	...	
[ <b>Note:</b> article 13(1) and 13(2) of the <i>Securities Financing Transactions Regulation</i> and article 3 for relevant definitions]		

...

#### Publication and availability of annual and half-yearly long report

4.5.14 R ...

(2) The reports referred to in (1) must:

...

(c) for a *UCITS scheme*, be available for inspection by the public at a place designated by the *authorised fund manager* in each *EEA State* other than the *United Kingdom* in which *units* in the *authorised fund* ~~are~~ were marketed before exit day, in English and in at least one of that other *EEA State*'s official languages; and

(d) be sent to the *FCA* and, if the *UCITS scheme* is managed by an *EEA UCITS management company*, to that company's *Home State regulator* on request.

[**Note:** article 74 of the *UCITS Directive*]

...

#### 4.7 Key investor information and marketing communications

...

##### Key investor information

4.7.2 R ...



- (8) ~~Key investor information for a UCITS scheme must be used without alterations or supplements, except translation, in each EEA State where a UCITS marketing notification has been made so as to enable the marketing of the scheme's units in that State. [deleted]~~

[Note: article 78 of the UCITS Directive]

#### Form and content of a key investor information document

- 4.7.3 G The *KII Regulation* sets out the form and content of a *key investor information document*. ~~This Regulation is directly applicable in the United Kingdom and accordingly its articles (but not the preceding recitals) are binding on all firms to which it applies.~~ Under the Regulation an *authorised fund manager* must ensure that each *key investor information document* it produces for a *UCITS scheme* complies with the requirements of the Regulation. For ease of reference the Regulation is reproduced in *COLL Appendix 1EU Appendix 1UK* (The KII Regulation).

...

#### Synthetic risk and reward indicators and ongoing charges disclosures in the KII

- 4.7.8 G ...
- (3) ~~Firms should note that these methodologies may in due course become directly applicable obligations in the light of the European Securities and Markets Authority's powers to develop implementing technical standards in this area. [deleted]~~

...

#### 4.8 Notifications for UCITS master-feeder arrangements

...

##### Information to be provided to unitholders

- 4.8.3 R ...
- (2) Where a *UCITS marketing notification* ~~has been~~ was made in relation to a *feeder UCITS* before exit day, the *authorised fund manager* of the *feeder UCITS* must ensure that an accurate translation of the information in (1) is provided to *unitholders* in:
- (a) the official language, or one of the official languages, of the *feeder UCITS' Host State EEA state* where the UCITS marketing notification was made; or
- (b) a language approved by the ~~Host State regulator~~ overseas regulator in the EEA state where the UCITS marketing notification was made.

[**Note:** article 64 first and second paragraphs of the *UCITS Directive*]

...

## 5 Investment and borrowing powers

...

### 5.2 General investment powers and limits for UCITS schemes

Application

5.2.1 R ...

- (2) ~~COLL 5.2.23CR (Valuation of OTC derivatives) also applies to a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services. [deleted]~~

...

Eligible markets: requirements

5.2.10 R (1) A market is *eligible* for the purposes of the *rules* in this sourcebook if it is:

...

- (b) a market in the United Kingdom or an *EEA State* which is regulated, operates regularly and is open to the public; or

...

...

...

Issuers and guarantors of money-market instruments

5.2.10B R (1) A *UCITS scheme* may invest in an *approved money-market instrument* if it is:

- (a) issued or guaranteed by any one of the following:

- (i) a central authority of the United Kingdom or an *EEA State* or, if the *EEA State* is a federal state, one of the members making up the federation;
- (ii) a regional or local authority of the United Kingdom or an *EEA State*;

(iii) the Bank of England, the European Central Bank or a central bank of an *EEA State*;

...

(vi) a public international body to which the United Kingdom or one or more *EEA States* belong; or

...

(c) issued or guaranteed by an establishment which is:

(i) subject to prudential supervision in accordance with criteria defined by UK or EU law; or

(ii) subject to and complies with prudential rules considered by the *FCA* to be at least as stringent as those laid down by UK or EU law.

(2) An establishment shall be considered to satisfy the requirement in (1)(c)(ii) if it is subject to and complies with prudential rules, and fulfils one or more of the following criteria:

...

(d) on the basis of an in-depth analysis of the issuer, it can be demonstrated that the prudential rules applicable to that issuer are at least as stringent as those laid down by UK or EU law.

[**Note:** article 6 of the *UCITS eligible assets Directive*]

...

Other money-market instruments with a regulated issuer

5.2.10E G (1) In addition to instruments admitted to or *dealt in* on an *eligible* market, a *UCITS scheme* may also with the express consent of the *FCA* (which takes the form of a *waiver* under sections 138A and 138B of the *Act* as applied by section 250 of the *Act* or regulation 7 of the *OEIC Regulations*) invest in an *approved money-market instrument* provided:

...

(c) the issuer is a company whose capital and reserves amount to at least EUR 10 million and which presents and publishes its annual accounts in accordance with the requirements of the Companies Act 2006 applicable to public companies limited by shares or by guarantee, or private companies limited by shares or by guarantee, or, for companies incorporated in the EEA, Directive 78/660/EEC 2013/34/EU, is an entity which,

within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

...

- (3) A banking liquidity line is a banking facility secured by a financial institution which is an establishment subject to prudential supervision in accordance with criteria defined by UK or EU law or an establishment which is subject to and complies with prudential rules considered by the *FCA* (in accordance with *COLL* 5.2.10BR(2)) to be at least as stringent as those laid down by UK or EU law.

[**Note:** article 50(1)(h)(iv) of the *UCITS Directive* and article 7 of the *UCITS eligible assets Directive*]

Spread: general

5.2.11 R ...

- (2) For the purposes of this *rule* companies included in the same group for the purposes of consolidated accounts as defined in accordance with ~~the Seventh Council section 399 of Companies Act 2006, Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts~~ 2013/34/EU or, in the same group in accordance with international accounting standards, are regarded as a single body.

...

...

Spread: government and public securities

5.2.12 R (1) This *rule* applies in respect of a *transferable security* or an *approved money-market instrument* (“such securities”) that is issued by:

- (a) the United Kingdom or an EEA State;
- (b) a local authority of the United Kingdom or an EEA State;

...

- (d) a public international body to which the UK or one or more EEA States belong.

...

Investment in collective investment schemes

- 5.2.13 R A *UCITS scheme* must not invest in *units* in a *collective investment scheme* (“*second scheme*”) unless the *second scheme* satisfies all of the following conditions, and provided that no more than 30% of the value of the *UCITS scheme* is invested in *second schemes* within (1)(b) to (e):
- (1) the *second scheme* must:
- (a) be a *UCITS scheme* or satisfy the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive* as implemented in the *EEA*; or
  - (b) be a *recognised scheme* under the provisions of section 272 of the Act (~~Individually recognised overseas schemes~~) that is authorised by the *supervisory authorities* of Guernsey, Jersey or the Isle of Man (provided the requirements of ~~article 50(1)(e) of the *UCITS Directive*~~ *COLL 5.2.13AR* are met); or
  - (c) be authorised as a *non-UCITS retail scheme* (provided the requirements of ~~article 50(1)(e) of the *UCITS Directive*~~ *COLL 5.2.13AR*(1), (3) and (4) are met); or
  - (d) be authorised in ~~another~~ an *EEA State* (provided the requirements of ~~article 50(1)(e) of the *UCITS Directive*~~ *COLL 5.2.13AR* are met); or
  - (e) be authorised by the competent authority of an *OECD* member country (other than ~~another~~ an *EEA State*) which has:
    - (i) signed the IOSCO Multilateral Memorandum of Understanding; and
    - (ii) approved the *scheme’s* management company, rules and *depository/custody* arrangements;

(provided the requirements of ~~article 50(1)(e) of the *UCITS Directive*~~ *COLL 5.2.13AR* are met);

...

5.2.13A R The requirements referred to in *COLL 5.2.13R*(1) are that:

- (1) the *second scheme* is an undertaking:
- (a) with the sole object of collective investment in *transferable securities* or in other liquid financial assets, as referred to in this chapter, of capital raised from the public and which operate on the principle of risk-spreading; and
  - (b) with *units* which are, at the request of holders, repurchased or *redeemed*, directly or indirectly, out of those undertakings’

assets (action taken by a *scheme* to ensure that the price of its *units* on an investment exchange does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or *redemption*);

- (2) the second *scheme* is authorised under laws which provide that they are subject to supervision considered by the *FCA* to be equivalent to that laid down in the law of the *United Kingdom*, and that cooperation between the *FCA* and the *supervisory authorities* of the second *scheme* is sufficiently ensured;
- (3) the level of protection for *unitholders* in the second *scheme* is equivalent to that provided for *unitholders* in a *UCITS scheme*, and in particular that the rules on asset segregation, borrowing, lending, and uncovered sales of *transferable securities* and *approved money market instruments* are equivalent to the requirements of this chapter; and
- (4) the business of the second *scheme* is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period.

#### Qualifying non-UCITS collective investment schemes

5.2.14 G ...

- (2) ~~Article 50 of the *UCITS Directive* sets out the general investment limits. So, a *A scheme* which has the power to invest in gold or immovables would not meet the criteria set out in *COLL 5.2.13R(1)*.~~
- (3) In determining whether a *scheme* (other than a *UCITS*) meets the requirements of ~~article 50(1)(e) of the *UCITS Directive*~~ *COLL 5.2.13AR* for the purposes of *COLL 5.2.13R(1)*, the *authorised fund manager* should consider the following factors before deciding that the *scheme* provides a level of protection for *unitholders* which is equivalent to that provided to *unitholders* in a *UCITS scheme*:  
  
...  
  
...
- (4) The requirement for supervisory equivalence, as described in ~~article 50(1)(e) (first indent) of the *UCITS Directive*~~ *COLL 5.2.13AR(2)*, also applies to *schemes* (that are not *EEA UCITS schemes*) established in ~~other~~ *EEA States*. In considering whether the second scheme satisfies this requirement, the *authorised fund manager* should have regard to the first section of article 26 of *CESR's UCITS eligible assets guidelines*.

...

## Valuation of OTC derivatives

- 5.2.23C R (1) For the purposes of *COLL 5.2.23R(2)*, an *authorised fund manager* of a *UCITS scheme* ~~or a UK UCITS management company of an EEA UCITS scheme~~ must:
- (a) establish, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of the exposures of a *UCITS scheme* ~~or an EEA UCITS scheme~~ to *OTC derivatives*; and
- ...
- (2) Where the arrangements and procedures referred to in (1) involve the performance of certain activities by third parties, the *authorised fund manager* ~~or UK UCITS management company~~ must comply with the requirements in *SYSC 8.1.13R* (Additional requirements for a management company) and *COLL 6.6A.4R(5)* and (6) (Due diligence requirements of AFMs of UCITS schemes) ~~and EEA UCITS schemes~~ or, where appropriate, the equivalent requirements of the *UCITS Home State regulator* implementing article 5(2) and article 23(4), second subparagraph, of the *UCITS implementing Directive*.
- ...
- ...

Disclosure requirements in relation to UCITS schemes ~~or EEA UCITS schemes~~ that employ particular investment strategies

- 5.2.34 G (1) *Authorised fund managers* of *UCITS schemes* ~~or EEA UCITS schemes~~ should bear in mind that where a *UCITS scheme*, ~~or an EEA UCITS scheme that is a recognised scheme under section 264 of the Act~~, employs particular investment strategies such as those in (2), *COBS 4.13.2R* (Marketing communications relating to UCITS schemes ~~or EEA UCITS schemes~~) and *COBS 4.13.3R* (Marketing communications relating to a feeder UCITS) contain additional disclosure requirements in relation to marketing communications that concern those investment strategies.
- ...

## Guidance on syndicated loans

- 5.2.35 R ...
- (2) To determine whether an interest in a syndicated loan would be an eligible investment for a *UCITS scheme* in accordance with *COLL 5.2*, an *authorised fund manager* should first consider whether it constitutes a *transferable security* within the meaning of *COLL*

5.2.7R (Transferable securities) and ~~then consider~~ COLL 5.2.7AR (which implemented the additional eligibility criteria arising out of the *UCITS eligible assets Directive* that relate to liquidity, valuations and negotiability ~~(see COLL 5.2.7AR (Investment in transferable securities))~~).

...

...

## 5.6 Investment powers and borrowing limits for non-UCITS retail schemes

...

### Explanation of COLL 5.6

5.6.2 G (1) This section contains *rules* on the types of permitted investments and any relevant limits with which *non-UCITS retail schemes* must comply. These *rules* allow for the relaxation of certain investment and borrowing powers from the requirements of the *UCITS Directive* applicable to *UCITS schemes*. ~~Consequently, a scheme authorised as a non-UCITS retail scheme will not qualify for the cross border passporting rights conferred by the UCITS Directive on a UCITS scheme.~~

(2) Some examples of the different investment and borrowing powers under the *rules* in this section for *non-UCITS retail schemes* are the power to:

...

(c) invest in a wider range of *schemes* which do not comply with the requirements of the *UCITS Directive* alternative investment funds;

...

...

### Spread: government and public securities

5.6.8 R (1) This *rule* applies in respect of a *transferable security* or an *approved money-market instrument* (“such *securities*”) that is issued or guaranteed by:

(a) the UK or an *EEA State*; or

(b) a local authority of the UK or an *EEA State*; or

...



- (d) a public international body to which the UK or one or more *EEA States* belong.

...

...

#### Investment in collective investment schemes

- 5.6.10 R A *non-UCITS retail scheme*, except for a *feeder NURS* (which must instead comply with *COLL 5.6.26R*), must not invest in *units* in a *collective investment scheme* (second *scheme*) unless the second *scheme* meets each of the requirements at (1) to (5):

- (1) the second *scheme*:

- (a) is a UCITS scheme or satisfies the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive* as implemented in the EEA; or

...

...

...

#### Qualifying collective investment schemes for feeder NURS

- 5.6.26 R The *authorised fund manager* of a *feeder NURS* must ensure that the *feeder NURS* does not invest in the *qualifying master scheme*, unless the *qualifying master scheme* meets the requirements in (1) to (3):

- (1) the *qualifying master scheme*:

- (a) is a UCITS scheme or satisfies the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive* as implemented in the EEA; or

...

...

- (3) the *qualifying master scheme*:

- (a) is not:

- (i) a feeder UCITS or an EEA UCITS scheme or a sub-fund of an EEA UCITS scheme which has been approved by the overseas regulator of the UCITS Home State to invest at least 85% of its assets in the units of a single EEA master UCITS; or

...

(b) does not hold units in:

- (i) a feeder UCITS or an EEA UCITS scheme or a sub-fund of an EEA UCITS scheme which has been approved by the overseas regulator of the UCITS Home State to invest at least 85% of its assets in the units of a single EEA master UCITS; or

...

5.6.27 R An EEA UCITS scheme that is not a recognised scheme ~~under section 264 of the Act~~ is not a qualifying master scheme for COLL 5.6.26R(3) for a pension feeder fund that is a feeder NURS.

...

## 5.8 Investment powers and borrowing limits for feeder UCITS

...

Permitted types of scheme property

...

5.8.2A R The authorised fund manager of a pension feeder fund that is a feeder UCITS must ensure that the single master UCITS is:

- (1) a UCITS scheme; or
- (2) an EEA UCITS scheme that is a recognised scheme ~~under section 264 of the Act~~.

...

## 6 Operating duties and responsibilities

...

### 6.3 Valuation and pricing

Application

6.3.1 R ...

(2) ~~COLL 6.3.3AR to COLL 6.3.3DR (Accounting procedures):~~

(a) apply to:

- (i) ~~a UK UCITS management company providing collective portfolio management services for an EEA~~

~~UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services; and~~

- (ii) ~~an EEA UCITS management company providing collective portfolio management services for a UCITS scheme from a branch in the United Kingdom; in addition to applying in accordance with (1); but~~

- (b) ~~do not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services. [deleted]~~

...

#### Accounting procedures

- 6.3.3A R (1) ~~An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme~~ must ensure the employment of the accounting policies and procedures referred to in SYSC 4.1.9R (Accounting policies), so as to ensure the protection of unitholders.

...

- 6.3.3B R ~~An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme~~ must have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the ~~UCITS Home State~~ United Kingdom, so as to ensure that the calculation of the net asset value of each ~~scheme~~ it manages is accurately effected, on the basis of the accounting, and that subscription and ~~redemption~~ orders can be properly executed at that net asset value.

[Note: article 8(2) of the *UCITS implementing Directive*]

...

- 6.3.3D R ~~An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme~~ must establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of each ~~scheme~~ it manages.

[Note: article 8(3) of the *UCITS implementing Directive*]

...

## 6.6 Powers and duties of the scheme, the authorised fund manager, and the depositary

...

## Maintenance of records

...

6.6.6A R ...

- (2) ~~COLL 6.6A.6R ((Strategies for the exercise of voting rights) also applies to a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State, as well as applying in accordance with (1). [deleted]~~

...

...

## Committees and delegation

...

6.6.15A R (1) This rule applies to:

- (a) ~~an authorised fund manager (other than an EEA UCITS management company) of an AUT, ACS or an ICVC where such AUT, ACS or ICVC is a UCITS scheme; and~~
- (aa) ~~a small authorised UK AIFM that is the authorised fund manager of an AUT, ACS or an ICVC that is a non-UCITS retail scheme; and~~
- (b) ~~a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services. [deleted]~~
- (2) The authorised fund manager has the power to retain the services of any person to assist it in the performance of its functions, provided that:
- (a) a mandate in relation to *managing investments* of the scheme is not given to:
- ...
- (iv) any other person operating from an establishment in a country other than the *United Kingdom* unless such person:
- ...

(B) is subject to prudential supervision in such country;

and in addition if that *person* is not an ~~EEA~~ a *UK firm*, co-operation is ensured between the *FCA* and the *overseas regulator* of that *person*;

...

...

Delegation: guidance

6.6.16 G ...

- (3) For the purpose of *COLL 6.6.15AR (2)(a)(iv)*, adequate co-operation will be ensured where the *FCA* has entered into a co-operation agreement of the kind referred to in article 102(3) of the *UCITS Directive* providing for the exchange of information with the relevant *overseas regulator* which is subject to guarantees of professional secrecy that prevent recipients of any confidential information divulging it to any person whatsoever, save in summary or aggregate form such that *UCITS schemes, management companies* and *depositories* cannot be individually identified, without prejudice to cases covered by criminal law.

...

...

## 6.6A Duties of AFMs in relation to UCITS schemes and ~~EEA UCITS schemes~~

Application

6.6A.1 R (1) This section applies to:

- (a) an *authorised fund manager* of a *UCITS scheme*, a *depository*, an *ICVC* and any other *director* of an *ICVC* which is a *UCITS scheme*; ~~and~~
- (b) subject to (2), a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* under the freedom to provide *cross border services*.  
[deleted]
- (2) ~~*COLL 6.6A.6R (Strategies for the exercise of voting rights)* also applies to a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* from a *branch in another EEA State*, as well as applying in accordance with (1).~~ [deleted]

- (3) ~~This section does not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services. [deleted]~~

Duties of AFMs of UCITS schemes ~~and EEA UCITS schemes~~ to act in the best interests of the scheme and its unitholder

- 6.6A.2 R ~~An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme~~ must:

...

...

Due diligence requirements of AFMs of UCITS schemes ~~and EEA UCITS schemes~~

- 6.6A.4 R ~~An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme~~ must:

...

- (3) establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of any *UCITS scheme* ~~or EEA UCITS scheme~~ it manages are carried out in compliance with the objectives and the investment strategy and *risk limit system* of the *scheme*;

...

Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company

- 6.6A.5 R ~~The authorised fund manager of a UCITS scheme or the UK UCITS management company of an EEA UCITS scheme~~ must comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

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

Strategies for the exercise of voting rights

- 6.6A.6 R (1) ~~An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme~~ must develop adequate and effective strategies for determining when and how voting rights attached to ownership of *scheme property*, ~~or the instruments held by an EEA UCITS scheme~~, are to be exercised, to the exclusive benefit of the *scheme* concerned.

...

- (3) An authorised fund manager of a UCITS scheme ~~or a UK UCITS management company of an EEA UCITS scheme~~ must make available to unitholders:

...

...

#### Appointment of a single depositary

- 6.6A.7 R An authorised fund manager of a UCITS scheme, ~~or a UK UCITS management company of an EEA UCITS scheme,~~ must (for each scheme it manages) ensure that:

...

- (2) the assets of the ~~UCITS~~ UCITS scheme are entrusted to the ~~depository~~ for safekeeping in accordance with: COLL 6.6B.18R and COLL 6.6B.19R.

(a) ~~for a UCITS scheme, COLL 6.6B.18R and COLL 6.6B.19R;~~  
and

(b) ~~for an EEA UCITS scheme, the national laws and regulations in the Home State of the EEA UCITS scheme that implement article 22(5) of the UCITS Directive.~~

[**Note:** article 22(1) and (5) of the *UCITS Directive*]

#### Eligible depositaries for UCITS schemes

...

- 6.6A.9 G For a ~~depository~~ to be established in the *United Kingdom*, it must have its registered office ~~or branch~~ in the *United Kingdom*.

#### ~~Eligible depositaries for EEA UCITS schemes~~

- 6.6A.10 R ~~A UK UCITS management company must ensure the depository it appoints for each EEA UCITS scheme it manages is established in the Home State of the EEA UCITS scheme and is eligible to be a depository in that Home State.~~  
[deleted]

~~[**Note:** article 23(2) of the *UCITS Directive*]~~

#### Written contract

- 6.6A.11 R (1) An authorised fund manager of a UCITS scheme, ~~or a UK UCITS management company of an EEA UCITS scheme,~~ must ensure that the appointment of the *depository* is evidenced by a written contract.

...

...

- 6.6A.13 G Article 2 of the *UCITS level 2 regulation* sets out the minimum information that must be included in the written contract between:
- (1) (a) the *authorised fund manager* of a *UCITS scheme*; ~~or~~ and
  - (b) ~~a UK UCITS management company of an EEA UCITS scheme; and~~ [deleted]
- (2) the *depository*.

## 6.6B UCITS depositaries

...

Eligible depositaries for UCITS schemes

...

- 6.6B.6 G For a *depository* to be *established* in the *United Kingdom*, it must have its registered office ~~or branch~~ in the *United Kingdom*.

Depositaries appointed under COLL 6.6A.8R(3) (non-bank depositaries): Capital requirements

- 6.6B.7 G A *depository* appointed in accordance with *COLL 6.6A.8R(3)* needs to satisfy the capital requirements in either:
- (1) IPRU(INV) 5; or
  - (2) IFPRU and the ~~EU-CRR~~ UK CRR.

...

- 6.6B.9 G (1) If the *depository* is a *full-scope IFPRU investment firm*, it is subject to the capital requirements of *IFPRU* and the ~~EU-CRR~~ UK CRR.
- (2) However, these requirements are not in addition to *COLL 6.6B.8R* and therefore that *firm* may use the *own funds* required under *IFPRU* and the ~~EU-CRR~~ UK CRR to meet the £4 million requirement.

- 6.6B.10 G ~~If the depository appointed in accordance with COLL 6.6A.8R(3) is an incoming EEA firm that has a top-up permission for acting as trustee or depository of a UCITS, it must comply with the applicable capital requirements set out in IPRU(INV) 5. [deleted]~~

...

Depository functions: cash monitoring



- 6.6B.17 R The *depository* must ensure that the cash flows of each *UCITS scheme* are properly monitored and that:
- ...
- (2) all cash of the *scheme* has been booked in cash accounts which are:
- ...
- (b) at:
- ...
- (iii) a bank authorised in a ~~third country~~ country other than an EEA State; and
- (c) maintained in accordance with the principles in article 2 (safeguarding of client financial instruments and funds) of the *MiFID Delegated Directive*; and
- ...

...

#### Limitation on delegation

...

- 6.6B.23 G The use of services provided by securities settlement systems, as specified in the *Settlement Finality Directive* Financial Markets and Insolvency (Settlement Finality) Regulations 1999, or similar services provided by ~~third country~~ securities settlement systems in other countries, does not constitute a delegation by the *depository* of its functions for the purposes of *COLL 6.6B.22R*.

[**Note:** article 22a(4) of the *UCITS Directive*]

- 6.6B.24 G (1) (a) If a *depository* performs part of its functions through a *branch* in ~~another~~ an EEA State, this is not a delegation by the *depository* of its functions to a third party
- ...
- (2) ~~Paragraph (1) also applies where the *depository* is the UK branch of an EEA firm and it performs part of its functions:~~
- (a) ~~through a *branch* in another EEA State; or~~
- (b) ~~from the EEA State where it has its registered office.~~  
[deleted]
- (3) (a) A *depository* that performs part of its functions through a *branch* ~~or registered office~~ in ~~another~~ an EEA State should

ensure that those arrangements do not impede the *depository's* ability to meet the *threshold conditions*.

...

#### Delegation: safekeeping

- 6.6B.25 R A *depository* may delegate the functions in COLL 6.6B.18R and COLL 6.6B.19R to one or more third parties if:
- (1) the tasks are not delegated with the intention of avoiding the requirements of the *UCITS Directive*, as implemented in this chapter;

...

#### Delegation: third countries

- 6.6B.26 R A *depository* may delegate custody tasks in relation to *UCITS custodial assets* to an entity in a ~~third~~ another country even though that entity does not satisfy the conditions in COLL 6.6B.25R(4)(b)(i) if:
- (1) the law of that ~~third~~ country requires those *UCITS custodial assets* to be held in custody by a local entity;
- ...
- (3) the *depository* delegates its functions to such a local entity only:
    - (a) to the extent required by the law of that ~~third~~ country; and
- ...
- (4) the investors of the relevant *UCITS scheme* are informed before their investment:
    - (a) that such delegation is required due to legal constraints in the ~~third~~ other country;

...

...

...

#### Reporting of breaches

- 6.6B.30 R A *depository* must have appropriate procedures for its employees to report internally, through a specific, independent and autonomous channel, potential or actual breaches of those national provisions transposing which implemented the UCITS Directive ~~internally through a specific, independent and autonomous channel~~ before exit day.

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

...

## 6.9 Independence, names and UCITS business restrictions

...

Undesirable or misleading names

6.9.6 G ...

(3) The *FCA* is unlikely to approve a name of an *authorised fund* that includes the word “guaranteed” unless:

(a) the guarantee is given by:

(i) an *authorised person*;

(ii) a *person* ~~authorised by a Home State regulator~~ which is established in an EEA State and equivalent to an authorised person; or

(iii) a *person* subject to prudential supervision in accordance with criteria defined by ~~EU~~ UK law or prudential rules at least as stringent as those laid down by ~~EU~~ UK law;

other than the *authorised fund manager* or the *depository*.

...

...

...

Use of the term ‘UCITS ETF’

6.9.8B G ...

(2) A ‘UCITS ETF’ should use the identifier ‘UCITS ETF’ which identifies it as an exchange traded fund. This identifier should be used in its name, fund rules, *instrument of incorporation*, *prospectus*, *key investor information document* or marketing communications. ~~The identifier ‘UCITS ETF’ should be used in all EU languages.~~

...

...

Connected activities: guidance

6.9.10 G ...

- (2) ~~The restrictions of business imposed by COLL 6.9.9R reflect the position under Article 6 of the UCITS Directive. In accordance with recital (12) of the Directive the activities referred to at COLL 6.9.9R(3)(a) to COLL 6.9.9R(3)(c) may be performed on behalf of EEA UCITS management companies.~~

...

## 6.10 Senior personnel responsibilities

Application

- 6.10.1 R (1) This section applies to an authorised fund manager of a UCITS scheme.<sup>2</sup>
- (a) ~~an authorised fund manager of a UCITS scheme; and~~
- (b) ~~a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.~~
- (2) ~~This section does not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services. [deleted]~~

Senior personnel responsibilities

- 6.10.2 R In complying with SYSC 4.3.1R (Responsibility of senior personnel), an authorised fund manager of a UCITS scheme ~~or a UK UCITS management company of an EEA UCITS scheme~~ must ensure that its senior personnel:
- ...
- (3) are responsible for ensuring that the authorised fund manager ~~or UK UCITS management company~~ has a permanent and effective compliance function as referred to in SYSC 6.1 (Compliance), even if this function is performed by a third party;
- ...
- 6.10.3 R An authorised fund manager of a UCITS scheme ~~or a UK UCITS management company of an EEA UCITS scheme~~ must ensure that its senior personnel receive, on a regular basis, reports on the implementation of investment strategies and of the internal procedures for taking the investment decisions referred to in COLL 6.10.2R(2) to COLL 6.10.2R(5).  
[Note: article 9(5) of the UCITS implementing Directive]

## 6.11 Risk control and internal reporting

## Application

- 6.11.1 R (1) This section applies to an authorised fund manager of a UCITS scheme.<sup>2</sup>
- (a) ~~an authorised fund manager of a UCITS scheme; and~~
- (b) ~~a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.~~
- (2) ~~This section does not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services. [deleted]~~

## Permanent risk management function

- 6.11.2 R (1) ~~An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme~~ must establish and maintain a permanent risk management function.
- (2) The function referred to in (1) must be hierarchically and functionally independent from operating units, except where such independence would not be appropriate and proportionate in view of the nature, scale and complexity of the ~~authorised fund manager's or UK UCITS management company's~~ business and of each ~~scheme~~ it manages.
- (3) The ~~authorised fund manager or UK UCITS management company~~ must be able to demonstrate that:
- ...
- (b) its risk management process satisfies the requirements of COLL 6.12.3R (Risk management process) ~~or, where appropriate, the relevant UCITS Home State measures implementing article 51 of the UCITS Directive.~~

[**Note:** articles 12(1) and 12(2) of the *UCITS implementing Directive*]

- 6.11.3 G Where the risk management function required under COLL 6.11.2R(1) is not hierarchically and functionally independent, the ~~authorised fund manager or UK UCITS management company~~ should nevertheless be able to demonstrate that its risk management process satisfies the requirements of COLL 6.12.3R (Risk management process) and that, in particular, the appropriate safeguards have been adopted.

[**Note:** article 12(2) third paragraph and recital (12) of the *UCITS implementing Directive*]

## Duties of the permanent risk management function

- 6.11.4 R (1) The permanent risk management function must:
- ...
- (b) ensure compliance with the *risk limit system*, including statutory limits concerning global exposure and counterparty risk, as required by *COLL 5.2* (General investment powers and limits for UCITS schemes) and *COLL 5.3* (Derivative exposure) ~~or, where appropriate, the relevant *UCITS Home State* measures implementing articles 41, 42 and 43 of the *UCITS implementing Directive*;~~
- ...
- (f) review and support, where appropriate, the arrangements for the valuation of *OTC derivatives*, as referred to in *COLL 5.2.23R* (OTC transactions in derivatives), *COLL 5.2.23CR* (Valuation of OTC derivatives) and in this *rule* ~~or, where appropriate, the relevant *UCITS Home State* measures implementing article 44 of the *UCITS implementing Directive*.~~
- ...

## 6.12 Risk management policy and risk measurement

## Application

- 6.12.1 R This section applies to an authorised fund manager and a depositary of a UCITS scheme:
- (1) ~~an authorised fund manager and a depositary of a UCITS scheme;~~  
and
- (2) ~~a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.~~
- 6.12.2 G ~~In the FCA's view the requirements relating to risk management policy and risk measurement set out in this section are the regulatory responsibility of the management company's Home State regulator but to the extent that they constitute fund application rules, are also the responsibility of the UCITS' Home State regulator. As such, these responsibilities may overlap between the competent authorities of the Home and Host States. EEA UCITS management companies providing collective portfolio management services for a UCITS scheme, whether from a branch in the United Kingdom or under the freedom to provide cross border services, are therefore advised that they will be expected to comply with the requirements of this section, except for~~

~~COLL 6.12.3R(2) which, as a notification requirement, is a matter reserved for the rules of the *management company's Home State*. [deleted]~~

Risk management process

- 6.12.3 R (1) (a) ~~An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme~~ must use a risk management process enabling it to monitor and measure at any time the risk of the *scheme's* positions and their contribution to the overall risk profile of the *scheme*.
- (b) In particular, an *authorised fund manager* of a *UCITS scheme* ~~or a UK UCITS management company of an EEA UCITS scheme~~ must not solely or mechanically rely on credit ratings issued by credit rating agencies, as defined in article 3(1)(b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, or credit rating agencies as defined in the *CRA Regulation*, for assessing the creditworthiness of the *scheme's* assets.
- (2) ~~An authorised fund manager (excluding the EEA UCITS management company of a UCITS scheme) or a UK UCITS management company of an EEA UCITS scheme~~ must regularly notify the following information to the *FCA* and at least on an annual basis:
- ...
- 6.12.3A R ~~An authorised fund manager or a UK UCITS management company of an EEA UCITS scheme~~ subject to *COLL 6.12.3R(2)* must notify the *FCA* of the information specified in points (a) and (b) of that *rule*:
- (1) annually, within 30 *business days* of 31 October, with information that is accurate as of 31 October of that year;
- ...
- 6.12.3B G (1) In addition, an *authorised fund manager* ~~or a UK UCITS management company of an EEA UCITS scheme~~ subject to *COLL 6.12.3R(2)* should submit a notification to the *FCA* if there has been a significant change to the *fund's* risk profile since its last report, by sending the form in *COLL 6 Annex 2R*, completed as applicable, to [fundsupervision@fca.org.uk](mailto:fundsupervision@fca.org.uk).
- ...
- 6.12.4 G ...
- (3) ~~An authorised fund manager or a UK UCITS management company~~ is expected to demonstrate more sophistication in its risk management process for a *scheme* with a complex risk profile than

for one with a simple risk profile. In particular, the risk management process should take account of any characteristic of non-linear dependence in the value of a position to its underlying.

- (4) *An authorised fund manager or a UK UCITS management company* should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by SYSC 4.1 (General requirements).

...

- (6) *An authorised fund manager or a UK UCITS management company of an EEA UCITS scheme* should undertake the risk assessment required by COLL 5.2.20R (7)(d) (Permitted transactions (derivatives and forwards)) with the highest care when the counterparty to the *derivative* transaction is an *associate* of the *authorised fund manager, the UK UCITS management company* or the credit issuer.

[**Note:** CESR's UCITS eligible assets guidelines with respect to article 8(2)(d) of the UCITS eligible assets Directive]

#### Risk management policy

- 6.12.5 R (1) *An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme* must establish, implement and maintain an adequate and documented risk management policy for identifying the risks to which that *scheme* is or might be exposed.
- (2) The risk management policy must comprise such procedures as are necessary to enable the *authorised fund manager or UK UCITS management company* to assess the exposure of each UCITS it manages to *market risk, liquidity risk and counterparty risk*, and to all other risks, including *operational risk*, that might be material for that scheme.
- (3) The risk management policy must address at least the following elements:
- (a) the techniques, tools and arrangements that enable the *authorised fund manager or UK UCITS management company* to comply with the obligations set out in this section and COLL 5.3 (Derivative exposure);
- (b) the allocation of responsibilities within the *authorised fund manager or UK UCITS management company* pertaining to risk management; and

...



- (4) To meet its obligations in (1), (2) and (3) an *authorised fund manager* ~~or a UK UCITS management company~~ must take into account the nature, scale and complexity of its business and of the UCITS it manages.

[**Note:** article 38 of the *UCITS implementing Directive*]

- 6.12.6 G ~~UK UCITS management companies operating EEA UCITS schemes are advised that to the extent that the matters referred to in COLL 6.12.5R(3)(a) are viewed by the UCITS Home State regulator as falling under its responsibility, they will be expected to comply with the UCITS Home State measures implementing articles 40 and 41 of the UCITS implementing Directive.~~ [deleted]

#### Monitoring of risk management policy

- 6.12.7 R (1) An *authorised fund manager* of a UCITS scheme ~~or a UK UCITS management company of an EEA UCITS scheme~~ must assess, monitor and periodically review:
- ...
- (b) the level of compliance by the *authorised fund manager* ~~or the UK UCITS management company~~ with the risk management policy and with those arrangements, processes and techniques referred to in COLL 6.12.5R; and
- ...
- (2) The *authorised fund manager* ~~(excluding an EEA UCITS management company of a UCITS scheme) or a UK UCITS management company of an EEA UCITS scheme~~ must notify the FCA of any material changes to the risk management process.

[**Note:** article 39(1) and 39(2) of the *UCITS implementing Directive*]

- 6.12.8 G ~~UK UCITS management companies~~ Authorised fund managers are advised that when they applied for *authorisation* from the FCA under the *Act*, their ability to comply with the requirements in COLL 6.12.7R would have been assessed by the FCA as an aspect of their fitness and properness in determining whether the *threshold conditions* set out in Schedule 6 (Threshold conditions) of the *Act* were met. *Firms* are further advised that their compliance with these requirements is subject to review by the FCA on an ongoing basis in determining whether they continue to meet the *threshold conditions*.

[**Note:** article 39(3) of the *UCITS implementing Directive*]

#### Measurement and management of risk

- 6.12.9 R (1) An *authorised fund manager* of a UCITS scheme ~~or a UK UCITS management company of an EEA UCITS scheme~~ must adopt

adequate and effective arrangements, processes and techniques in order to:

...

- (2) For the purposes of (1), the *authorised fund manager* ~~or a UK UCITS management company~~ must take the following actions for each UCITS it manages:

...

- (3) The arrangements, processes and techniques referred to in (1) should be proportionate in view of the nature, scale and complexity of the business of the *authorised fund manager* ~~or the UK UCITS management company~~ and the UCITS it manages and be consistent with the UCITS' risk profile.

[**Note:** articles 40(1) and 40(2) of the *UCITS implementing Directive*]

6.12.10 G ~~UK UCITS management companies operating EEA UCITS schemes are advised that to the extent that the matters referred to in COLL 6.12.9R(1)(b) are viewed by the UCITS Home State regulator as falling under its responsibility, they will be expected to comply with the UCITS Home State measures implementing articles 41 and 43 of the UCITS implementing Directive. [deleted]~~

6.12.11 R (1) An *authorised fund manager* ~~or a UK UCITS management company of an EEA UCITS scheme~~ must employ an appropriate *liquidity risk* management process in order to ensure that each UCITS it manages is able to comply at any time with COLL 6.2.16R (Sale and redemption) ~~or the equivalent UCITS Home State measures implementing article 84(1) of the UCITS Directive.~~

- (2) Where appropriate, the *authorised fund manager* ~~or UK UCITS management company~~ must conduct stress tests to enable it to assess the *liquidity risk* of the UCITS under exceptional circumstances.

[**Note:** article 40(3) of the *UCITS implementing Directive*]

6.12.12 R An *authorised fund manager* ~~or a UK UCITS management company of an EEA UCITS scheme~~ must ensure that, for each UCITS it manages, the liquidity profile of the investments of the *scheme* is appropriate to the redemption policy laid down in the *instrument constituting the fund* or the *prospectus*.

[**Note:** article 40(4) of the *UCITS implementing Directive*]

...

## 6.13 Record keeping

Application

- 6.13.1 R (1) This section applies to an authorised fund manager of a UCITS scheme.<sup>2</sup>
- (a) ~~an authorised fund manager of a UCITS scheme; and~~
- (b) ~~a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.~~
- (2) ~~This section does not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services. [deleted]~~

#### Recording of portfolio transactions

- 6.13.2 R (1) ~~An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme~~ must ensure, for each portfolio transaction relating to a *scheme* it manages, that a record of information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay.

...

#### Recording of subscription and redemption orders

- 6.13.3 R (1) ~~An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme~~ must take all reasonable steps to ensure that every subscription and *redemption* order it receives relating to *units* in any such *scheme* it manages are centralised and recorded immediately after receipt of that order.

...

#### Record keeping requirements

- 6.13.4 R (1) ~~An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme~~ must ensure the retention of the records referred to in COLL 6.13.2R and COLL 6.13.3R for a period of at least five years or, in exceptional circumstances and where directed by the FCA, for a longer period, determined by the nature of the instrument or portfolio transaction, where it is necessary to enable the FCA to exercise its supervisory functions ~~under the UCITS Directive~~ in respect of UCITS schemes.
- (2) Following the termination of its authorisation, an *authorised fund manager* of a *UCITS scheme* ~~or a UK UCITS management company of an EEA UCITS scheme~~ must retain its records referred to in (1) for the outstanding term of the five year period or, if it transfers its responsibilities in relation to the *UCITS scheme* to another

*authorised fund manager or management company*, arrange for those records for the past five years to be accessible to that other manager.

- (3) The *authorised fund manager or the UK UCITS management company* must retain the records referred to in *COLL 6.13.2R* and *COLL 6.13.3R* in a medium that allows the storage of information in a way accessible for future reference by the *FCA*, and in such a form and manner that the following conditions are met:

...

Electronic data processing

- 6.13.5 R An *authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme* must make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction or subscription or *redemption* order, in order to be able to comply with *COLL 6.13.2R* (Recording of portfolio transactions) and *COLL 6.13.3R* (Recording of subscription and redemption orders).

[Note: article 7(1) of the *UCITS implementing Directive*]

- 6.13.6 R An *authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme* must ensure a high level of security during the electronic data processing referred to in *COLL 6.13.5R* as well as the integrity and confidentiality of the recorded information, as appropriate.

[Note: article 7(2) of the *UCITS implementing Directive*]

...

- 6 Annex 2R UK UCITS management company of UCITS schemes and EEA UCITS schemes: Derivative Use Report (FSA042: UCITS)**

...

...

- 6 Annex 3G Guidance notes on UK UCITS management company of UCITS schemes and EEA UCITS schemes: Derivative Use Report (FSA042: UCITS)**

Description	Guidance
Fund name	This is the name of the <i>scheme</i> or, where applicable, of the <i>sub-fund</i> as it appears on the FS Register <del>or, for an EEA UCITS scheme, in the prospectus.</del>
Fund authorisation	<del>Whether the <i>scheme</i> is authorised and regulated in the United Kingdom or in another EEA State.</del>

PRN or LEI	<p>For a <i>UCITS scheme</i>, this is the product reference number of the <i>scheme</i> or, where applicable, of the <i>sub-fund</i> which appears on the FS Register.</p> <p><del>EEA UCITS schemes are not assigned a PRN. Instead, the legal entity identifier (LEI) of the <i>scheme</i> or, where applicable, of the <i>sub-fund</i>, should be indicated. Where the LEI is not available, please leave the cell blank.</del></p>
...	

## 7 Suspension of dealings and termination of authorised funds

### 7.1 Introduction

Application

7.1.1 R ...

- (2) *COLL 7.7* (UCITS mergers) applies only to a *domestic UCITS merger* ~~or a cross-border UCITS merger~~.

...

### 7.2 Suspension and restoration of dealings

Requirement

7.2.1 R ...

- (2) On suspension, the *authorised fund manager*, or the *depository* if it has required the *authorised fund manager* to suspend *dealings* in *units*, must:

...

- (b) as soon as practicable give written confirmation of the suspension and the reasons for it to:

(i) the *FCA*; and

(ii) ~~the Home State regulator in each EEA State in which the authorised fund manager holds itself out as willing to sell or redeem units of the authorised fund concerned.~~

...

- (5) The *authorised fund manager* must inform the *FCA* of the proposed restart of *dealings* in *units* and immediately after the restart must

confirm this by giving notice to the *FCA* and the authorities mentioned in (2)(b)(ii).

...

...

## 7.6 Schemes of arrangement

Schemes of arrangement: explanation

7.6.1 G ...

- (3) *COLL 7.6.2R(3) to (6) apply to a domestic UCITS merger and cross-border UCITS merger. Arrangements constituting any such merger are in addition subject to the requirements of COLL 7.7 (UCITS mergers), implementing the requirements of the UCITS Directive.*

Schemes of arrangement: requirements

7.6.2 R ...

- (2) For a *UCITS scheme* or a *sub-fund* of a *UCITS scheme*, (1) applies as if the reference to a *regulated collective investment scheme* also excludes any *recognised scheme which is authorised under the UCITS Directive in an EEA State but was not a other than a scheme 'recognised scheme' under section 264 of the Act (Schemes constituted in other EEA States) immediately before exit day.*

...

## 7.7 UCITS mergers

Application

7.7.1 R This section applies to an *ICVC*, an *authorised fund manager* of an *AUT*, *ACS* or *ICVC*, any other *director* of an *ICVC* and the *depository* of any such *scheme* where, in each case, the *AUT*, *ACS* or *ICVC* is a *UCITS scheme* that is a party to:

- (1) a *domestic UCITS merger*; ~~or~~  
 (2) a ~~cross-border UCITS merger~~. [deleted]

7.7.2 G (1) The effect of *COLL 7.7.1R*, and in particular the narrow *Glossary* definition of *domestic UCITS merger* ~~which is drafted in accordance with article 2.1(r) of the UCITS Directive~~, is that this section will not apply to a merger in the *United Kingdom* between two or more *UCITS schemes* unless one of them ~~has been~~ was the subject of a *UCITS marketing notification* before exit day.

- (2) For arrangements to constitute a ~~cross-border UCITS merger~~, at least two of the relevant *UCITS* must be:
- (a) established in different *EEA States*; or
  - (b) established in the same *EEA State* and be merging into a newly constituted *UCITS* established in another *EEA State*.  
[deleted]

## References to a UCITS scheme

7.7.3 R In this section references to:

- (1) a *UCITS scheme*, a *merging UCITS*; or to a receiving UCITS ~~or to an EEA UCITS scheme~~ include the *sub-fund* of any such scheme.;
- (2) ~~the management company of an EEA UCITS scheme are to the operator of the scheme.~~ [deleted]

[**Note:** article 37 of the *UCITS Directive*]

## UCITS mergers

7.7.4 R A *domestic UCITS merger* between two or more *UCITS schemes*, ~~or a cross-border UCITS merger between one or more UCITS schemes which is or are the merging UCITS and one or more EEA UCITS schemes~~, is permissible provided:

...

- (2) in the case of a *UCITS scheme* that is:
  - (a) a *merging UCITS* ~~in a domestic or cross-border UCITS merger~~, an *extraordinary resolution* is approved by *unitholders* in accordance with *COLL 7.6.2R(3)* and (4) (*Schemes of arrangement: requirements*); and
  - (b) a *receiving UCITS* ~~in a domestic or cross-border UCITS merger~~, the *authorised fund manager* and *depository* of the *AUT* or *ACS* and the *directors* of the *ICVC* comply with *COLL 7.6.2R(5)* and (6).

[**Note:** articles 39(1), 39(4) and 44 first paragraph of the *UCITS Directive*]

...

## UCITS Regulations 2011

7.7.6 G (1) The requirements and the process which must be followed to give effect to a proposal for a ~~UCITS merger~~ domestic UCITS merger as specified by Chapter VI of the *UCITS Directive* (see articles 37 to

48) ~~have been~~ are implemented in the *United Kingdom* by the provisions of in Part 4 of the *UCITS Regulations 2011*. The main features of the regime as set out in those provisions include:

- (a) ~~the different types of merger operation that will be recognised for a UCITS merger~~ the merger must be a *domestic UCITS merger* which takes the form of a scheme of arrangement;
- (b) the need for the *FCA* to give prior approval to the proposed merger under regulation 9 (Application for authorisation) of the *UCITS Regulations 2011*, ~~where the arrangements proposed constitute either;~~
  - (i) ~~a *domestic UCITS merger*; or~~
  - (ii) ~~a *cross-border UCITS merger* in which the merging UCITS is a UCITS scheme (a UK UCITS);~~

...

...

#### Common draft terms of merger

- 7.7.7 R (1) The *authorised fund manager* of a *UCITS* scheme that is a *merging UCITS* or a *receiving UCITS* in a proposed *UCITS merger*, must in conjunction with any other *authorised fund manager* ~~or, as the case may be, *management company* of an *EEA UCITS* scheme that is a party to the proposed merger~~, draw up common draft terms of the proposed *UCITS merger*.
- (2) The common draft terms in (1) must set out the following particulars:
- (a) ~~an identification of the type of *UCITS merger* and of the *UCITS* involved;~~

...

...

#### Information to be given to unitholders

- 7.7.10 R ...
- (2) Where a *UCITS* scheme is the *merging UCITS* in a *domestic UCITS merger* ~~or *cross-border UCITS merger*~~, its *authorised fund manager* must provide the *information document* in (1):
- (a) to the *unitholders* of the *merging UCITS* and the *receiving UCITS* only after the *FCA* has given its approval to the *UCITS*



*merger proposal under regulation 9 of the UCITS Regulations 2011,<sup>3</sup> and*

- (b) ~~where the receiving UCITS (in the case of a cross-border UCITS merger) is an EEA UCITS scheme, to the unitholders of that scheme only after the Home State regulator of each merging UCITS has authorised the UCITS merger proposal under national measures implementing article 39 of the UCITS Directive; [deleted]~~

~~and in either case must do so at least 30 days before the last date by which unitholders may request repurchase or redemption of their units or, where applicable, conversion without additional charge.~~

- (3) The information *document* to be provided to the *unitholders* of the *merging UCITS* and the *receiving UCITS* under (1) must include the following:

...

- (c) any specific rights *unitholders* have in relation to the proposed *UCITS merger*, including but not limited to:

...

- (ii) the right to obtain a copy of the report of the independent auditor or the *depository* on request prepared for the purposes of regulation 11 of the *UCITS Regulations 2011* ~~or, if applicable, the equivalent national implementing measure of the UCITS Home State;~~
- (iii) the right to request the repurchase or *redemption* or, where applicable, the conversion of their *units* without charge under regulation 12 of the *UCITS Regulations 2011* ~~or, if applicable, the equivalent national implementing measure of the UCITS Home State;~~ and

...

...

- (4) If a *UCITS marketing notification* in respect of the *merging UCITS* or *receiving UCITS* has been made, the information *document* referred to in (3) must be provided in the official language, or one of the official languages, of the relevant ~~Host EEA State~~ in which *units* of the *UCITS scheme* ~~are to be~~ have been marketed, or in a language approved by its ~~Host State regulator~~ the overseas regulator in that EEA State. The *authorised fund manager* of the relevant *UCITS scheme* must provide an accurate translation of the information *document*.

[**Note:** article 43(1), 43(2), 43(3) and 43(4) of the *UCITS Directive*]

General rules regarding the content of merger information to be provided to unitholders

7.7.11 R ...

(2) ~~In the case of a proposed *cross-border UCITS merger*, the *authorised fund manager* of the *UCITS scheme*, being either the *merging UCITS* or the *receiving UCITS* respectively, must explain in plain language any terms or procedures relating to the *EEA UCITS scheme* which differ from those commonly used in the *United Kingdom*.~~ [deleted]

...

7.7.12 G ...

(2) The reference to “conversion” in *COLL 7.7.10R(2)* means an exchange of *units* in the *merging UCITS* or *receiving UCITS* for *units* in another *UCITS scheme* or ~~*EEA UCITS scheme*~~ that has similar investment policies and that is managed by the same *authorised fund manager* or one of its *affiliated companies*.

[**Note:** recital (1) of the *UCITS implementing Directive No 2*]

Specific rules regarding the content of merger information to be provided to unitholders of the merging UCITS

7.7.13 R (1) ~~Where the *merging UCITS* is a *UCITS scheme*, the~~ The information document that its *the authorised fund manager of a merging UCITS* must provide to its *unitholders* under *COLL 7.7.10R(3)(b)* must also include:

...

...

Specific rules regarding the content of merger information to be provided to unitholders of the receiving UCITS

7.7.14 R (1) ~~Where the *receiving UCITS* is a *UCITS scheme*, the~~ The information that its *the authorised fund manager of a receiving UCITS* must provide to its *unitholders* under *COLL 7.7.10R(3)(b)* must also include an explanation of whether the *authorised fund manager* expects the merger to have any material effect on the portfolio of the *receiving UCITS*, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.

...

...

## Key investor information

...

- 7.7.17 R (1) ~~Where a UCITS scheme is the receiving UCITS in a cross border UCITS merger, its authorised fund manager must ensure that an up-to-date version of the key investor information document of the receiving UCITS is made available to the management company of the merging UCITS for the purpose of providing it to investors in that UCITS.~~
- (2) ~~Where the key investor information document of the receiving UCITS has been amended for the purpose of (1), the authorised fund manager of the receiving UCITS must also provide it to all its existing unitholders. [deleted]~~
- [**Note:** article 5(2) of the ~~UCITS implementing Directive No 2~~]

...

## Effective merger date, exchange ratio calculation date and publication of merger

- 7.7.21 G ...
- (2) ~~For a UCITS scheme which is the receiving UCITS in a cross border UCITS merger, the effective date of the merger will be the date agreed by the FCA and the merging UCITS' Home State regulator. [deleted]~~
- (3) ~~For a UCITS scheme which is the receiving UCITS in a domestic UCITS merger or a cross border UCITS merger.~~
- ...
- (4) ~~For a UCITS scheme which is the merging UCITS in a cross border UCITS merger, the dates referred to in (2) and (3)(a) will be determined by the laws of the receiving UCITS Home State. Those dates will be after the date on which the merger proposal has been approved in accordance with COLL 7.7.4 R (2)(a) (UCITS mergers). [deleted]~~

[**Note:** article 47 of the *UCITS Directive*]

## Confirmation obligation on completion of a UCITS merger

- 7.7.22 R ~~The authorised fund manager of a UCITS scheme that is the receiving UCITS in either a domestic or cross border UCITS merger must confirm in writing to the depositary of the UCITS scheme and the FCA that the merger transfer is complete.~~

[**Note:** article 48(4) of the *UCITS Directive*]

...

## 9 Recognised schemes

...

### 9.2 Section 264 recognised schemes ~~[deleted]~~

9.2.1 G (1) ~~[deleted]~~

(2) ~~[deleted]~~

(3) ~~[deleted]~~

(4) ~~[deleted]~~

#### ~~Marketing of units of an EEA UCITS scheme~~

9.2.2 G (1) ~~The *units* of an *EEA UCITS scheme* in respect of which a notification has been transmitted to the *FSA* by the *competent authority* of the *UCITS Home State* in accordance with article 93 of the *UCITS Directive* may be marketed in the *United Kingdom*. This is the effect of section 264 (Schemes constituted in other EEA States) read in conjunction with section 238(4)(c) (Restrictions on promotion) of the *Act*.~~

(2) ~~Where a *management company* wishes to market the *units* of an *EEA UCITS scheme* it manages, without establishing a *branch* or providing any other services in the *United Kingdom*, a *management company passport* is not required for such *marketing activities*.~~

(3) ~~In this Chapter references to an *EEA UCITS scheme* include its *sub-funds*.~~

~~[**Note:** article 16(1) second paragraph, article 91(1) and 91(4) of the *UCITS Directive*]~~

### 9.3 Section 272 recognised schemes

...

#### ~~Additional information required in the prospectus for an application under section 272~~

9.3.2 R ~~An operator of a *scheme* recognised under section 272 of the *Act* recognised scheme must ensure the prospectus:~~

...

#### ~~Preparation and maintenance of prospectus~~

- 9.3.3 R (1) An operator of a ~~scheme which is~~ a *recognised scheme* by virtue of ~~section 272 of the Act~~ must comply with the requirements set out in *COLL 4.2* (Pre-sale notifications).
- (2) Where a ~~scheme recognised under sections 272 of the Act~~ *recognised scheme* is managed and authorised in Guernsey, Jersey or the Isle of Man, the *prospectus* need not comply with the requirements of *COLL 4.2.5R* (Table: contents of prospectus), providing it contains corresponding matter required under the law in its home territory.

Preparation of a key information document in accordance with the PRIIPs regulation

- 9.3.4 G ...
- (3) As a result, when a *recognised scheme* ~~under section 272 of the Act~~ is made available to *retail clients* in the *United Kingdom* the operator must draw up a *key information document* in accordance with the *PRIIPs Regulation*, unless the operator of such a scheme is otherwise exempt from such a requirement under the *PRIIPs Regulation* for the time being.

## 9.4 Facilities in the United Kingdom

General

- 9.4.1 R (1) The operator of a *recognised scheme* ~~under section 264 or section 272 of the Act~~ must maintain facilities in the *United Kingdom* in order to satisfy the requirements of *COLL 9.4.2R* to *COLL 9.4.6R*.

...

Documents

- 9.4.2 R (1) The operator of a *recognised scheme* must maintain facilities in the *United Kingdom* for any *person*, for inspection (free of charge) and for the obtaining (free of charge, in the case of the *documents* at (c), (d) and (e), and otherwise at no more than a reasonable charge) of copies in English of:
- ...
- (c) the latest *prospectus* (which must include the address where the facilities are maintained and details of those facilities); and
- (d) for a ~~section 264~~ *recognised scheme* which is an *EEA UCITS scheme*, the *EEA key investor information document*; and
- (e) ...

(1A) For a ~~section 264 recognised scheme~~, the requirement in (1) for documents to be in English applies only to the *EEA key investor information document* referred to in (1)(d). [deleted]

...

...

## 11 Master-feeder arrangements ~~under the UCITS Directive~~ for UCITS schemes

### 11.1 Introduction

Application

...

11.1.1A G It may be possible for a UCITS scheme to be the feeder UCITS of a master UCITS that is an EEA UCITS scheme. In such a case, the ability of the operator, AFM, depositary, and auditor of the feeder UCITS to comply with the applicable rules may depend upon whether appropriate agreements can be reached with the management company, depositary and auditor of the master UCITS. It is not possible for an EEA UCITS scheme to be a feeder of a master UCITS scheme.

...

Table of application

11.1.2 R This table belongs to *COLL* 11.1.1R.

Reference	ICVC	ACD	Any other directors of an ICVC	Authorised fund manager of an AUT or ACS	Depositary of an ICVC, AUT or ACS
...					
11.3.10G	*	*	*	*	
...					

...

### 11.2 Approval of feeder UCITS

Explanation

11.2.1 G (1) Section 283A(1) (Master-feeder structures) of the *Act*, ~~in implementation of article 59(1) of the UCITS Directive~~, provides that the *operator* of a *UCITS scheme* may not invest a higher

proportion of *scheme property* in *units* of another *UCITS* than is permitted by *rules* made by the *FCA* ~~implementing~~ (which implemented article 55 of the *UCITS Directive*), unless the investment is approved by the *FCA* in accordance with that section.

- (2) The ~~*FCA* has implemented~~ relevant rule which implemented article 55(1) of the *UCITS Directive* ~~in~~ is *COLL 5.2.11R(9)*, which provides that not more than 20% in value of a *scheme* is to consist of the *units* of any one *collective investment scheme*.

Application for approval of an investment in a master UCITS

11.2.2 R ...

- (2) Where the *master UCITS* is an *EEA UCITS scheme*, the application for approval must also be accompanied by an attestation ~~by the *master UCITS's Home State regulator*~~ from a person acceptable to the *FCA* that the *master UCITS*:

...

...

### 11.3 Co-ordination and information exchange for master and feeder UCITS

Authorised fund manager of a master UCITS: provision of documentation

11.3.1 R The *authorised fund manager* of a *UCITS scheme* that is a master *UCITS* must provide the *management company* of its *feeder UCITS* with all *documents* and information necessary for the latter to meet its regulatory obligations under the *UCITS Directive* provisions of *COLL* applicable in respect of a *UCITS scheme* under this chapter.

[**Note:** article 60(1) first paragraph first sentence of the *UCITS Directive*]

11.3.1A R The *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* of a *master UCITS* which is an *EEA UCITS scheme* must make a binding arrangement with the *management company* of the *master UCITS* to obtain all *documents* and information necessary to meet its regulatory obligations under the *Act*.

[**Note:** article 60(1) first paragraph first sentence of the *UCITS Directive*]

Master-feeder agreement and internal conduct of business rules

...

11.3.3 G Where an *authorised fund manager* of a *feeder UCITS* enters into a *master-feeder agreement* or, if applicable, internal conduct of business rules, with the *management company* of an *EEA UCITS scheme*, references in *COLL 11 Annex 1R* and *COLL 11 Annex 2R* to *COLL rules* ~~implementing~~ that implemented provisions in the *UCITS Directive* which are the responsibility of the *EEA UCITS scheme's Home State regulator* should be read as

referring to the corresponding provisions in the laws and regulations of that *EEA State*.

...

Law applicable to the master-feeder agreement

11.3.5 R ...

(2) Where the ~~feeder UCITS and the master UCITS are~~ is established in ~~different an EEA States~~ State, the ~~master-feeder agreement~~ must provide that the applicable law shall be ~~either UK law;~~

(a) ~~the law of the EEA State in which the feeder UCITS is established; or~~

(b) ~~the law of the EEA State in which the master UCITS is established;~~

and that both parties agree to the exclusive jurisdiction of the courts of the ~~EEA State whose law they have stipulated to be applicable to the agreement~~ UK.

[**Note:** article 14 of the *UCITS implementing Directive No 2*]

11.3.5A R (1)

Where paragraph (2) applies a master-feeder agreement that is effective prior to exit day need not comply with COLL 11.3.5R(2).

(2) This paragraph applies where the applicable law of the master-feeder agreement was:

(a) UK law before exit day, and remains so; or

(b) the law of the EEA State in which the master UCITS was established before exit day, and remains so.

Avoidance of opportunities for market timing

11.3.6 R ...

(2) Where ~~either the master UCITS or feeder UCITS~~ is an *EEA UCITS scheme* managed by an *EEA UCITS management company*, the *authorised fund manager* must co-ordinate with that *management company*.

[**Note:** article 60(2) of the *UCITS Directive*]

...

Obligations of the master UCITS

...



- 11.3.10 G ~~Where the *FCA* is informed in accordance with *COLL* 11.3.9R that a *feeder UCITS* which is an *EEA UCITS* scheme has invested in *units* of the *master UCITS*, section 261A and section 261Z4 (Information for home state regulator) of the *Act* and regulation 29A (Information for home state regulator) of the *OEIC Regulations* require the *FCA* to inform the *Home State regulator* of the *feeder UCITS* immediately. [deleted]~~  
~~[Note: article 66(1) second sentence of the *UCITS Directive*]~~

...

- 11.3.12 R An *authorised fund manager* of a *master UCITS* must ensure the timely availability of all information that is required in accordance with its obligations under the *regulatory system*, the general law and the *instrument constituting the fund*, to:

...

- (2) the ~~*competent authority*~~ of the ~~*feeder UCITS*~~ *FCA*;

...

...

## 11.4 Depositaries

...

Contents of the information-sharing agreement between depositaries

- 11.4.2 R ...
- (2) Where a *master-feeder agreement* exists in accordance with *COLL* 11.3.2R(1) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the *depositaries* must provide that *UK law applies to that agreement, and both depositaries agree to the exclusive jurisdiction of the UK courts in relation to that agreement.*
- (a) the law of the ~~*EEA State*~~ applying to the ~~*master feeder agreement*~~ will also apply to the information-sharing agreement; and
- (b) both *depositaries* agree to the exclusive jurisdiction of the courts of that ~~*EEA State*~~.
- (3) Where the *master-feeder agreement* has been replaced by internal conduct of business rules in accordance with *COLL* 11.3.2R(2) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the *depositaries* must provide that *UK law applies to that agreement, and both depositaries*

agree to the exclusive jurisdiction of the UK courts in relation to that agreement.:

- (a) ~~the law applying to the information-sharing agreement shall be either that of the EEA State in which the feeder UCITS is established or, where different, that of the EEA State in which the master UCITS is established; and~~
- (b) ~~both depositaries agree to the exclusive jurisdiction of the courts of the EEA State whose law is applicable to the information-sharing agreement.~~

[**Note:** articles 24 and 25 of the *UCITS implementing Directive No 2*]

- 11.4.2A    **R**    (1)    Where paragraph (2) applies, an information-sharing agreement between the depositaries that is effective prior to exit day need not comply with COLL 11.4.2R.
- (2)    This paragraph applies where the applicable law of the information sharing agreement between the depositaries was:
- (a)    UK law before exit day, and remains so; or
  - (b)    the law of a given EEA State before exit day, and remains so.

...

## **11.5        Auditors**

...

Contents of the information-sharing agreement between auditors

- 11.5.2    **R**    ...
- (3)    Where a *master-feeder agreement* exists in accordance with COLL 11.3.2R(1) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the auditors must provide that UK law applies to that agreement, and both auditors agree to the exclusive jurisdiction of the UK courts in relation to that agreement.:
- (a)    ~~the law of the EEA State applying to the master feeder agreement will also apply to the information-sharing agreement between auditors; and~~
  - (b)    ~~both auditors agree to the exclusive jurisdiction of the courts of that EEA State.~~
- (4)    Where the *master-feeder agreement* has been replaced by internal conduct of business rules in accordance with COLL 11.3.2R(2) (Master-feeder agreement and internal conduct of business rules),

the information-sharing agreement between the auditors must provide that UK law applies to that agreement, and both auditors agree to the exclusive jurisdiction of the UK courts in relation to that agreement.

- (a) ~~the law applying to the information sharing agreement shall be either that of the EEA State in which the feeder UCITS is established or, where different, that of the EEA State in which the master UCITS is established; and~~
- (b) ~~both auditors agree to the exclusive jurisdiction of the courts of the EEA State whose law is applicable to the information-sharing agreement.~~

[Note: articles 27 and 28 of the *UCITS implementing Directive No 2*]

- 11.5.2A R (1) An information-sharing agreement between the auditors that is effective prior to exit day need not comply with COLL 11.5.2R.
- (2) This paragraph applies where the applicable law of the information-sharing agreement between the auditors was:
- (a) United Kingdom law before exit day, and remains so; or
  - (b) the law of a given EEA State before exit day, and remains so.

...

## 11.6 Winding up, merger and division of master UCITS

### Explanation

- 11.6.1 G (1) Section 258A(1) and (2) and section 261Z(1) and (2) (Winding up or merger of master UCITS) of the *Act*, ~~in implementation of article 60 of the *UCITS Directive*,~~ provide that where a *master UCITS* is wound up, for whatever reason, the *FCA* is to direct the *manager* and *trustee* of any *AUT* or the *authorised contractual scheme manager* and *depository* of any *ACS* which is a *feeder UCITS* of the *master UCITS* to wind up the *scheme*, unless one of the following conditions is satisfied:

...

...

Winding up and liquidation of master UCITS: Time limit within which a master UCITS is to be wound up pursuant to FCA direction

- 11.6.2 R (1) The commencement of winding up of a *UCITS scheme* that is a *master UCITS* must take place no sooner than 3 months after a notification is made to its *unitholders* and, ~~where applicable, the competent authorities of the feeder UCITS Home State,~~ the FCA

informing ~~them~~ it of the binding decision to wind up the *master UCITS*.

...

...

#### Repurchase or redemption of units in a master UCITS

- 11.6.8 G Regulation 12(4) (Right of redemption) of the *UCITS Regulations 2011* provides that where a UK *master UCITS* merges with another *scheme*, the *master UCITS* must enable its *feeder UCITS* to repurchase or *redeem* all the *units* of the *master UCITS* in which they have invested before the consequences of the merger become effective, unless the *FCA* approves the continued investment by the *feeder UCITS* in a *master UCITS* resulting from the merger.

...

COLL 12 (Management company and product passports under the UCITS Directive) is deleted in its entirety. The deleted text of the chapter is not shown but it is marked [deleted] as shown below.

## **12 Management company and product passports under the UCITS Directive** [deleted]

Amend the following as shown.

**Appendix KII Regulation**  
**ix** ~~1EU~~  
**1UK**

...

### CHAPTER I

### SUBJECT MATTER AND GENERAL PRINCIPLES

...

Article 1A

**Definitions**

- (a) ‘Collective Investment Schemes sourcebook’ means the Collective Investment Schemes sourcebook made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 as in force on exit day.
- (b) ‘feeder UCITS’ has the meaning given in section 237(3) of the Financial Services and Markets Act 2000;
- (c) ‘management company’ has the meaning given in section 237(2) of the Financial Services and Markets Act 2000;
- (d) ‘master UCITS’ has the meaning given in section 237(3) of the Financial Services and Markets Act 2000;
- (e) ‘UCITS’ has the meaning given in section 236A of the Financial Services and Markets Act 2000; and
- (f) ‘UK UCITS’ has the meaning given in section 237(3) of the Financial Services and Markets Act 2000.

*Article 2***General principles**

1. Requirements laid down in this Regulation shall apply to any management company with regard to each ~~UCITS~~ UK UCITS it manages.
2. This Regulation shall apply to any investment company which has not designated a management company ~~authorised pursuant to Directive 2009/65/EC that has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity specified in article 51ZA of the Regulated Activities Order 2001.~~

*Article 3***Principles regarding the key investor information document**

...

3. The key investor information document shall be provided in such a way as to ensure that investors are able to distinguish it from other material. In particular, it shall not be presented or delivered in a way that is likely to lead investors to consider it less important than other information about the ~~UCITS~~ UK UCITS and its risks and benefits.

## CHAPTER II

**FORM AND PRESENTATION OF KEY INVESTOR INFORMATION**

## SECTION 1

**Title of document, order of contents and headings of sections**

## Article 4

**Title and content of document**

...

4. The identification of the ~~UCITS~~ UK UCITS, including the share class or investment compartment thereof, shall be stated prominently. In the case of an investment compartment or share class, the name of the ~~UCITS~~ UK UCITS shall follow the compartment or share class name. Where a code number identifying the ~~UCITS~~ UK UCITS, investment compartment or share class exists, it shall form part of the identification of the ~~UCITS~~ UK UCITS.

...

12. Authorisation details shall consist of the following statement:

*'This fund is authorised in ~~[name of Member State]~~ and regulated by ~~[identity of competent authority]~~ the United Kingdom and regulated by the Financial Conduct Authority'.*

*In cases where the UCITS is managed by a management company exercising rights under Article 16 of Directive 2009/65/EC, an additional statement shall be included:*

*'~~[Name of management company]~~ is authorised in ~~[name of Member State]~~ and regulated by ~~[identity of competent authority]~~'.*

...

## CHAPTER III

**CONTENT OF SECTIONS OF THE KEY INVESTOR INFORMATION DOCUMENT**

## SECTION 1

**Objectives and investment policy**

## Article 7

**Specific contents of the description**

1. The description contained in the 'Objectives and investment policy' section of the key investor information document shall cover those essential features of the ~~UCITS~~ UK UCITS about which an investor should be informed, even if these

features do not form part of the description of objectives and investment policy in the prospectus, including:

...

- (b) the possibility that the investor may redeem units of ~~UCITS~~ UK UCITS on demand, qualifying that statement with an indication as to the frequency of dealing in units;
- (c) whether the ~~UCITS~~ UK UCITS has a particular target in relation to any industrial, geographic or other market sectors or specific classes of assets;
- (d) whether the ~~UCITS~~ UK UCITS allows for discretionary choices in regards to the particular investments that are to be made, and whether this approach includes or implies a reference to a benchmark and if so, which one;

...

For the purposes of point (d), where a reference to a benchmark is implied, the degree of freedom available in relation to this benchmark shall be indicated, and where the ~~UCITS~~ UK UCITS has an index-tracking objective, this shall be stated.

2. The description referred to in paragraph 1 shall include the following information, so long as it is relevant:

- (a) where the ~~UCITS~~ UK UCITS invests in debt securities, an indication of whether they are issued by corporate bodies, governments or other entities, and, if applicable, any minimum rating requirements;
  - (b) where the ~~UCITS~~ UK UCITS is a structured fund, an explanation in simple terms of all elements necessary for a correct understanding of the pay-off and the factors that are expected to determine performance, including references, if necessary, to the details on the algorithm and its workings which appear in the prospectus;
- ...
- (d) where specific asset management techniques are used, which may include hedging, arbitrage or leverage, an explanation in simple terms of the factors that are expected to determine the performance of the ~~UCITS~~ UK UCITS;
  - (e) where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the ~~UCITS~~ UK UCITS, a statement that this is the case, making it also clear that portfolio transaction costs are paid from the assets of the fund in addition to the charges set out in Section 3 of this Chapter;
  - (f) where a minimum recommended term for holding units in the ~~UCITS~~ UK UCITS is stated either in the prospectus or in any marketing documents, or where it is stated that a minimum holding period is an essential element of the investment strategy, a statement with the following wording:

*'Recommendation: this fund may not be appropriate for investors who plan to withdraw their money within [period of time]'.*

...

4. The 'Objectives and investment policy' section of the key investor information document may contain elements other than those listed in paragraph 2, including the description of the ~~UCITS~~ UK UCITS' investment strategy, where these elements are necessary to adequately describe the objectives and investment policy of the ~~UCITS~~ UK UCITS.

## SECTION 2

### Risk and reward profile

#### Article 8

#### Explanation of potential risks and rewards, including the use of an indicator

1. The 'Risk and reward profile' section of the key investor information document shall contain a synthetic indicator, supplemented by:
- ...
- (b) a narrative explanation of risks which are materially relevant to the ~~UCITS~~ UK UCITS and which are not adequately captured by the synthetic indicator.
2. The synthetic indicator referred to in paragraph 1 shall take the form of a series of categories on a numerical scale with the ~~UCITS~~ UK UCITS assigned to one of the categories. The presentation of the synthetic indicator shall comply with the requirements laid down in Annex I.
- ...
4. The narrative explanation referred to in paragraph 1(a) shall include the following information:
- (a) a statement that historical data, such as is used in calculating the synthetic indicator, may not be a reliable indication of the future risk profile of the ~~UCITS~~ UK UCITS;
- (b) a statement that the risk and reward category shown is not guaranteed to remain unchanged and that the categorisation of the ~~UCITS~~ UK UCITS may shift over time;
- ...
- (d) a brief explanation as to why the ~~UCITS~~ UK UCITS is in a specific category;



- (e) details of the nature, timing and extent of any capital guarantee or protection offered by the ~~UCITS~~ UK UCITS, including the potential effects of redeeming units outside of the guaranteed or protected period.
5. The narrative explanation referred to in paragraph 1(b) shall include the following categories of risks, where these are material:
- ...
- (b) liquidity risk, where a significant level of investment is made in financial instruments, which are by their nature sufficiently liquid, yet which may under certain circumstances have a relatively low level of liquidity, so as to have an impact on the level of liquidity risk of the ~~UCITS~~ UK UCITS as a whole;
- ...
- (e) impact of financial techniques as referred to in ~~Article 50(1)(g) of Directive 2009/65/EC~~ [COLL 5.2.19R] such as derivative contracts on the ~~UCITS~~ UK UCITS' risk profile where such techniques are used to obtain, increase or reduce exposure to underlying assets.

#### *Article 9*

#### **Principles governing the identification, explanation and presentation of risks**

The identification and explanation of risks referred to in Article 8(1)(b) shall be consistent with the internal process for identifying, measuring and monitoring risk adopted by the ~~UCITS~~ UK UCITS' management company as laid down in ~~Directive 2010/43/EU~~ [6.12 of COLL]. Where a management company manages more than one ~~UCITS~~ UK UCITS, the risks shall be identified and explained in a consistent fashion.

#### SECTION 3

#### **Charges**

#### *Article 10*

#### **Presentation of charges**

...

- 2. The table referred to in paragraph 1 shall be completed in accordance with the following requirements:
  - (a) entry and exit charges shall each be the maximum percentage which might be deducted from the investor's capital commitment to the ~~UCITS~~ UK UCITS;
  - (b) a single figure shall be shown for charges taken from the ~~UCITS~~ UK UCITS over a year, to be known as the 'ongoing charges,' representing all annual

charges and other payments taken from the assets of the ~~UCITS~~ UK UCITS over the defined period, and based on the figures for the preceding year;

- (c) the table shall list and explain any charges taken from the ~~UCITS~~ UK UCITS under certain specific conditions, the basis on which the charge is calculated, and when the charge applies.

#### *Article 11*

##### **Explanation of charges and a statement about the importance of charges**

...

2. The ‘Charges’ section shall contain a statement about the importance of charges which shall make clear that the charges an investor pays are used to pay the costs of running the ~~UCITS~~ UK UCITS, including the costs of marketing and distributing the ~~UCITS~~ UK UCITS, and that these charges reduce the potential growth of the investment.

#### *Article 12*

##### **Additional requirements**

...

2. Where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the ~~UCITS~~ UK UCITS, this shall be stated within the ‘Objectives and investment policy’ section, as indicated in Article 7(2)(e).
3. Performance fees shall be disclosed in accordance with Article 10(2)(c). The amount of the performance fee charged during the ~~UCITS~~ UK UCITS’ last financial year shall be included as a percentage figure.

#### *Article 13*

##### **Specific cases**

1. Where a new ~~UCITS~~ UK UCITS cannot comply with the requirements contained in Article 10(2)(b) and Article 11(1)(b), the ongoing charges shall be estimated, based on the expected total of charges.

...

#### *Article 14*

##### **Cross-referencing**

The ‘Charges’ section shall include, where relevant, a cross-reference to those parts of the ~~UCITS~~ UK UCITS prospectus where more detailed information on charges can be found, including information on performance fees and how they are calculated.

#### SECTION 4

## Past performance

### Article 15

#### Presentation of past performance

1. The information about the past performance of the ~~UCITS~~ UK UCITS shall be presented in a bar chart covering the performance of the ~~UCITS~~ UK UCITS for the last 10 years.  
  
...
2. ~~UCITS~~ UK UCITS with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only.  
  
...
4. For a ~~UCITS~~ UK UCITS which does not yet have performance data for one complete calendar year, a statement shall be included explaining that there is insufficient data to provide a useful indication of past performance to investors.
5. The bar chart layout shall be supplemented by statements which appear prominently and which:  
  
...  
  
(d) indicate the currency in which past performance has been calculated.  
  
The requirement laid down in point (b) shall not apply to ~~UCITS~~ UK UCITS which do not have entry or exit charges.

...

### Article 16

#### Past performance calculation methodology

The calculation of past performance figures shall be based on the net asset value of the ~~UCITS~~ UK UCITS, and they shall be calculated on the basis that any distributable income of the fund has been reinvested.

### Article 17

#### Impact and treatment of material changes

1. Where a material change occurs to a ~~UCITS~~ UK UCITS' objectives and investment policy during the period displayed in the bar chart referred to in Article 15, the ~~UCITS~~ UK UCITS' past performance prior to that material change shall continue to be shown.

...

*Article 18***Use of a benchmark alongside the past performance**

1. Where the ‘Objectives and investment policy’ section of the key investor information document makes reference to a benchmark, a bar showing the performance of that benchmark shall be included in the chart alongside each bar showing the ~~UCITS~~ UK UCITS’ past performance.
2. For ~~UCITS~~ UK UCITS which do not have past performance data over the required five or 10 years, the benchmark shall not be shown for years in which the ~~UCITS~~ UK UCITS did not exist.

*Article 19***Use of ‘simulated’ data for past performance**

1. A simulated performance record for the period before data was available shall only be permitted in the following cases, provided that its use is fair, clear and not misleading:
  - (a) a new share class of an existing ~~UCITS~~ UK UCITS or investment compartment may simulate its performance by taking the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the ~~UCITS~~ UK UCITS;

...

...
3. A ~~UCITS~~ UK UCITS changing its legal status ~~but remaining established in the same Member State~~ shall retain its performance record only where the ~~competent authority of the Member State~~ Financial Conduct Authority reasonably assesses that the change of status would not impact the ~~UCITS~~ UK UCITS’ performance.
4. In the case of mergers ~~referred to in Article 2(1)(p)(i) and (iii) of Directive 2009/65/EC~~, as defined in regulation 7 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011, only the past performance of the receiving ~~UCITS~~ UK UCITS shall be maintained in the key investor information document.

## SECTION 5

**Practical information and cross-references***Article 20***Content of ‘practical information’ section**

1. The ‘Practical information’ section of the key investor information document shall contain the following information relevant to investors in ~~every Member State in which the UCITS is marketed~~ the United Kingdom:

...

- (b) where and how to obtain further information about the ~~UCITS~~ UK UCITS, copies of its prospectus and its latest annual report and any subsequent half-yearly report, stating in which language(s) those documents are available, and that they may be obtained free of charge;

...

- (d) a statement that the tax ~~legislation~~ position of the ~~UCITS~~ UK UCITS ~~home Member State~~ may have an impact on the personal tax position of the investor;

- (e) the following statement:

*‘[Insert name of investment company or management company] may be held liable solely on the basis of any statement contained in this document that is misleading, inaccurate or inconsistent with the relevant parts of the prospectus for the ~~UCITS~~ UK UCITS.’*

2. Where the key investor information document is prepared for a ~~UCITS~~ UK UCITS investment compartment, the ‘Practical information’ section shall include the information specified in Article 25(2) including on investors’ rights to switch between compartments.

...

## Article 21

### Use of cross-references to other sources of information

1. ...

Cross-references shall be permitted to the website of the ~~UCITS~~ UK UCITS or the management company, including a part of any such website containing the prospectus and the periodic reports.

...

## SECTION 6

### Review and revision of the key investor information document

...

## Article 23

### Publication of the revised version

...

3. A key investor information document with duly revised presentation of past performance of the ~~UCITS~~ UK UCITS shall be made available no later than 35 business days after 31 December each year.

#### Article 24

#### **Material changes to the charging structure**

...

2. Where the ‘ongoing charges’ calculated in accordance with Article 10(2)(b) are no longer reliable, the management company shall instead estimate a figure for ‘ongoing charges’ that it believes on reasonable grounds to be indicative of the amount likely to be charged to the ~~UCITS~~ UK UCITS in future.

This change of basis shall be disclosed through the following statement:

*‘The ongoing charges figure shown here is an estimate of the charges. [Insert short description of why an estimate is being used rather than an ex-post figure.] The ~~UCITS~~ UK UCITS’ annual report for each financial year will include detail on the exact charges made.’*

### CHAPTER IV

#### **PARTICULAR ~~UCITS~~ UK UCITS STRUCTURES**

##### SECTION 1

#### **Investment compartments**

##### Article 25

#### **Investment compartments**

1. Where a ~~UCITS~~ UK UCITS consists of two or more investment compartments a separate key investor information document shall be produced for each individual compartment.
2. Each key investor information document referred to in paragraph 1 shall indicate within the ‘practical information’ section the following information:
  - (a) that the key investor information document describes a compartment of a ~~UCITS~~ UK UCITS, and, if it is the case, that the prospectus and periodic reports are prepared for the entire ~~UCITS~~ UK UCITS named at the beginning of the key investor information document;

...

...

## SECTION 2

**Share classes***Article 26***Key investor information document for share classes**

1. Where a ~~UCITS~~ UK UCITS consists of more than one class of units or shares, the key investor information document shall be prepared for each class of units or shares.
2. The key investor information pertinent to two or more classes of the same ~~UCITS~~ UK UCITS may be combined into a single key investor information document, provided that the resulting document fully complies with all requirements as laid down in Section 2 of Chapter II, including as to length.
3. The management company may select a class to represent one or more other classes of the ~~UCITS~~ UK UCITS, provided the choice is fair, clear and not misleading to potential investors in those other classes. In such cases the 'Risk and reward profile' section of the key investor information document shall contain the explanation of material risk applicable to any of the other classes being represented. A key investor information document based on the representative class may be provided to investors in the other classes.

...

*Article 27***Practical information section**

If applicable, the Practical information section of the key investor information document shall be supplemented by an indication of which class has been selected as representative, using the term by which it is designated in the ~~UCITS~~ UK UCITS' prospectus.

That section shall also indicate where investors can obtain information about the other classes of the ~~UCITS~~ UK UCITS that are marketed in ~~their own Member State~~ the UK.

## SECTION 3

**Fund of funds***Article 28***Objectives and investment policy section**

Where the ~~UCITS~~ UK UCITS invests a substantial proportion of its assets in other UCITS or other collective investment undertakings as referred to in ~~Article 50(1)(e) of Directive 2009/65/EC~~ COLL 5.2.13R, the description of the objectives and investment policy of that UCITS in the key investor information document shall include a brief explanation of how the other collective undertakings are to be selected on an ongoing basis.

*Article 29***Risk and reward profile**

The narrative explanation of risk factors referred to in Article 8(1)(b) shall take account of the risks posed by each underlying collective undertaking, to the extent that these are likely to be material to the ~~UCITS~~ UK UCITS as a whole.

*Article 30***Charges section**

The description of the charges shall take account of any charges that that ~~UCITS~~ UK UCITS will itself incur as an investor in the underlying collective undertakings. Specifically, any entry and exit charges and ongoing charges levied by the underlying collective undertakings shall be reflected in the ~~UCITS~~ UK UCITS' calculation of its own ongoing charges figure.

## SECTION 4

**Feeder UCITS***Article 31***Objectives and investment policy section**

1. The key investor information document for a feeder UCITS, ~~as defined in Article 58 of Directive 2009/65/EC~~, shall contain, in the description of objectives and investment policy, information about the proportion of the feeder UCITS' assets which is invested in the master UCITS.

...

*Article 34***Practical information section**

...

2. The information referred to in paragraph 1 shall include:

...

- (b) whether the items listed in point (a) are available in paper copies only or in other durable media, and whether any fee is payable for items not subject to free delivery in accordance with ~~Article 63(5) of Directive 2009/65/EC~~ [COLL 4.2.3R and 4.5.15R].

...

...

## SECTION 5



## Structured ~~UCITS~~ UK UCITS

### Article 36

#### Performance scenarios

1. The key investor information document for structured ~~UCITS~~ UK UCITS shall not contain the ‘Past performance’ section.

For the purposes of this Section, structured ~~UCITS~~ UK UCITS shall be understood as ~~UCITS~~ UK UCITS which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of financial assets, indices or reference portfolios or ~~UCITS~~ UK UCITS with similar features.

2. For structured ~~UCITS~~ UK UCITS, the ‘Objectives and investment policy’ section of the key investor information document shall include an explanation of how the formula works or how the pay-off is calculated.

3. The explanation referred to in paragraph 2 shall be accompanied by an illustration, showing at least three scenarios of the ~~UCITS~~ UK UCITS’ potential performance. Appropriate scenarios shall be chosen to show the circumstances in which the formula may generate a low, a medium or a high return, including, where applicable, a negative return for the investor.

4. ...

They shall be presented in a way that is fair, clear and not misleading, and that is likely to be understood by the average retail investor. In particular, they shall not artificially magnify the importance of the final performance of the ~~UCITS~~ UK UCITS.

...

### Article 37

#### Length

The key investor information document for structured ~~UCITS~~ UK UCITS shall not exceed three pages of A4-sized paper when printed.

## CHAPTER V

### DURABLE MEDIUM

### Article 38

**Conditions applying to the provision of a key investor information document or a prospectus in a durable medium other than paper or by means of a website**

1. Where, ~~for the purposes of Directive 2009/65/EC~~, the key investor information document or prospectus is to be provided to investors using a durable medium other than paper the following conditions shall be met:

...

...

## CHAPTER VI

### FINAL PROVISIONS

#### *Article 39*

##### **Entry into force**

...

2. ...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

### **Appendix 2R Modifications to the KII Regulation for KII-compliant NURS**

...

## CHAPTER I

### SUBJECT MATTER AND GENERAL PRINCIPLES

...

#### *Article 1A*

##### **Definitions**

[deleted]

#### *Article 2*

##### **General principles**

...

CHAPTER II

**FORM AND PRESENTATION OF KEY INVESTOR INFORMATION**

*SECTION 1*

*Title of document, order of contents and headings of sections*

*Article 4*

**Title and content of document**

...

12. Authorisation details shall consist of the following statement:

*‘This fund is authorised in the United Kingdom and regulated by the Financial Conduct Authority’.*

~~In cases where the *KII-compliant NURS* is managed by an authorised fund manager exercising rights under Article 33 of Directive 2012/61/EU (AIFMD), an additional statement shall be included:~~

~~*‘[Name of authorised fund manager] is authorised in [name of Member State] and regulated by [identity of competent authority]’.*~~

**Annex B**

**Amendments to the Credit Unions sourcebook (CREDS)**

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

**2 Senior management arrangements, systems and controls**

**2.1 Application and purpose**

Application

...

Purpose

2.1.2 G The purpose of this chapter is to provide *rules* and *guidance* relating to senior management arrangements, systems and controls that are specific to *credit unions*.

...

2.1.3 G ...

(3) ~~SYSC 4 to SYSC 10 (other than SYSC 6.1.1R (which only applies to a limited extent) and SYSC 6.3) do not apply to a firm (including a credit union) in relation to its carrying on of auction regulation bidding (see SYSC 1 Annex 1 for the detailed rules on the application of SYSC 4 to SYSC 10). [deleted]~~

...

**10 Application of other parts of the Handbook to credit unions**

**10.1 Application and purpose**

...

Application of other parts of the Handbook and of Regulatory Guides to Credit Unions

10.1.3

G

Module	Relevance to Credit Unions
...	...
Banking: Conduct of Business	<i>BCOBS</i> sets out <i>rules</i> and <i>guidance</i> for <i>credit unions</i> on how they should conduct their business with their <i>customers</i> . In particular there are <i>rules</i> and <i>guidance</i> relating to communications with <i>banking customers</i> and <i>financial</i>

sourcebook (BCOBS)	<p><i>promotions (BCOBS 2), distance communications (BCOBS 3), information to be communicated to banking customers (BCOBS 4), post sale requirements (BCOBS 5), and cancellation (BCOBS 6). The rules in BCOBS 3.1 that relate to distance contracts may apply to a credit union. This is because <u>BCOBS 3 contains requirements which implemented the Distance Marketing Directive</u> applies where there is “an organised distance sales or service-provision scheme run by the supplier” (Article 2(a) of the <u>Distance Marketing Directive</u>), i.e. if the credit union routinely sells any of its services by post, telephone, fax or the internet.</i></p>
...	

## Annex C

### Amendments to the Consumer Credit sourcebook (CONC)

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

## 1 Application and purpose and guidance on financial difficulties

...

### 1.2 Who? What? Where?

...

~~EEA territorial scope rule: compatibility with European law~~

- 1.2.6 R (1) ~~CONC does not apply to an incoming ECA provider where, in providing a service, the provider is acting as such.~~
- (2) ~~CONC applies to an outgoing ECA provider where, in providing a service, the provider is acting as such.~~
- (3) ~~The territorial scope of CONC is otherwise modified to the extent necessary to be compatible with European law.~~
- (4) ~~This rule overrides every other rule in this sourcebook.~~
- Note:** ~~article 3(3) of, and the Annex to, the E-Commerce Directive.~~  
[deleted]

...

## 2 Conduct of business standards: general

...

### 2.7 Distance marketing

Application

- 2.7.1 R (1) Subject to (2) and (3), this section applies to a *firm* that carries on any distance marketing activity from an establishment in the *UK*, with or for a *consumer* in the *UK* ~~or another EEA State.~~

...

The distance marketing disclosure rules

- 2.7.2 R (1) Subject to (2), (3) and (4), a *firm* must provide a *consumer* with the distance marketing information (*CONC 2 Annex 1R*) in good time before the *consumer* is bound by a *distance contract* or offer.
- [**Note:** regulation 7(1) of SI 2004/2095]
- [**Note:** articles 3(1) and 4(5) of the *Distance Marketing Directive*]
- ...
- (4) ...
- (a) the *firm* has disclosed the information required by regulation 10(2) of the *disclosure regulations* (authorised non-business overdraft agreements) by means of the ~~European Consumer Credit Information form~~ Pre-contract Consumer Credit Information (Overdrafts) form in accordance with the *disclosure regulations* and, unless *CONC 2.7.12R* would otherwise apply, a copy of the contractual terms and conditions;
- ...

...

Contracts governed by law of a third party state

- 2.7.17 R If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the ~~EEA UK~~, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of ~~or one or more EEA States~~ the UK.
- [**Note:** regulation 16(3) of SI 2004/2095]
- [**Note:** articles 12 and 16 of the *Distance Marketing Directive*]

## 2.8 E-commerce

Application

- 2.8.1 R This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *UK* with or for a *person* in the *UK* ~~or another EEA State~~.

Information about the firm and its products or services

- 2.8.2 R A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm*, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (*GEN 4 Annex 1R*), together with a statement which explains that it is on the *Financial Services Register* and includes its firm reference number;
- (5) if it is a professional firm, ~~or a person regulated by the equivalent of a designated professional body in another EEA State:~~
  - (a) the name of the professional body ~~(including any designated professional body)~~ or similar institution with which it is registered;
  - (b) the professional title ~~and the EEA State where it was granted;~~  
and
  - (c) ~~a reference to the applicable professional rules in the EEA State of establishment and the means to access them: and~~  
[deleted]
  - (d) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[**Note:** article 5(1) of the E-Commerce Directive]

...

**2 Annex Distance marketing information  
1R**

This Annex belongs to *CONC 2.7.2R* (The distance marketing disclosure rules)

Information about the firm	
...	
(2)	Where the <i>firm</i> has a representative established in the <i>consumer's EEA State of residence UK</i> , the name of that representative and the geographical address relevant for the <i>consumer's</i> relations with that representative.
...	



(16)	<del>The <i>EEA State</i> or States whose laws are taken by the <i>firm</i> as a basis for the establishment of relations with the <i>consumer</i> prior to the conclusion of the contract.</del> [deleted]
...	

## Annex D

### Amendments to the Investment Funds sourcebook (FUND)

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

## 1 Introduction

### 1.1 Application and purpose

- 1.1.1 R (1) The application of this sourcebook is summarised at a high level in the following table. The detailed application is provided in each chapter.

Type of firm	Applicable chapters
...	
<i>full-scope UK AIFM of an <del>ELTIF</del> <u>LTIF</u></i>	Chapters 1, 3, 4.2 and 10
<i><del>full-scope UK AIFM of an EEA AIF</del></i>	<del>Chapters 1, 3 and 10</del>
<i>full-scope UK AIFM of a <del>non-EEA AIF</del> <u>non-UK AIF</u></i>	Chapters 1, 3 and 10
...	
<i><del>incoming EEA AIFM branch of a UK AIF</del></i>	<del>Chapters 1, 3 and 10</del>
...	
<i><del>depository of a UK <del>ELTIF</del> an <u>LTIF</u> managed by a full-scope UK AIFM</del></i>	Chapters 1, 3 and 4.2
<i><del>depository of a UK <del>ELTIF</del> managed by a full-scope EEA AIFM</del></i>	<del>Chapters 1, 3 and 4.2</del>

- (2) ...
- (3) *FUND 10 will apply to a UK AIFM ~~or incoming EEA AIFM~~ which intends to ~~passport or market~~ on a cross-border basis.*

Compatibility with ~~European law~~ AIFMD and the AIFMD level 2 regulation

- 1.1.2 R *Handbook rules* which conflict with either a *rule* which ~~transposes~~ transposed AIFMD or a provision in the *AIFMD level 2 regulation* are modified to the extent necessary to be compatible with ~~European law~~ those *rules* and provisions.

...

## 1.2 Structure of the Investment Funds sourcebook

Structure of the Investment Funds sourcebook

- 1.2.1 G *FUND* is structured as follows:

...

- (4) *FUND* 4 sets out some requirements in relation to ~~European AIF~~ specialist AIF regimes, including the LTIF regimes.

...

## 1.3 Types of fund manager

Types of fund manager within the scope of ~~European legislation~~ the UK AIFM and UCITS regimes

- 1.3.1 G The *UK* regulatory regime provides that an *undertaking* which manages an *AIF* or ~~UCITS~~ a UCITS scheme in the *UK* and ~~is within the scope of AIFMD or the UCITS Directive~~ must fall into one or both of the following categories:

- (1) an *AIFM*; or
- (2) a *UCITS management company*.

Types of fund manager outside the scope of ~~European legislation~~ the UK AIFM and UCITS regimes

- 1.3.2 G An *authorised person* that operates a *collective investment scheme* in the *UK* and falls entirely outside the scope of ~~AIFMD~~ the UK AIFM or ~~the UCITS Directive~~ regimes will be a *residual CIS operator*.

...

Full-scope UK AIFM

- 1.3.4 G (1) A *full-scope UK AIFM* is a *UK AIFM* which is authorised in accordance with ~~AIFMD~~ the UK AIFM regime and, therefore, subject to its full requirements.

...

Small AIFM

- 1.3.5 G (1) ~~AIFMD provides that an AIFM which has assets under management below certain thresholds (a “small AIFM”) may be subject to limited requirements under AIFMD. However, this is subject to the right of EEA States to impose stricter requirements. [deleted]~~
- (2) In the UK, the regulatory regime provides that an AIFM which has assets under management below certain thresholds (“a small AIFM”), with a registered office in the UK may be either:

...

Small authorised UK AIFM

- 1.3.6 G (1) ...
- (2) A *small authorised UK AIFM* may also opt in to the full requirements ~~in of AIFMD~~ the UK AIFM regime, in which case it will become a *full-scope UK AIFM*.

Small registered UK AIFM

...

- 1.3.8 G Under regulation 16 of the *AIFMD UK regulation* a *small registered UK AIFM* may apply to the FCA for a *Part 4A permission* to manage an AIF. In its application a *small registered UK AIFM* may apply to become:
- (1) ...
- (2) a *full-scope UK AIFM*, ~~in accordance with article 3(4) of AIFMD~~.

## 1.4 AIFM business restrictions

Single AIFM

- 1.4.1 R A *full-scope UK AIFM* must ensure that for each AIF it is appointed to manage, it is the only AIFM of that AIF, and is responsible for ensuring compliance with ~~AIFMD FUND~~, other rules in the Handbook which, when made, implemented AIFMD, the AIFMD level 2 regulation, the AIFMD UK regulation, and the AIFMD BTS and any other binding technical standards made in connection with the UK AIFM regime.

[Note: article 5(1) of AIFMD]

...

External AIFMs

- 1.4.3 R An *external AIFM* that is a *full-scope UK AIFM* must not engage in any activities other than:
- (1) ...

- (2) the management of *UCITS*, for which it is ~~subject to authorisation under the *UCITS Directive*~~ must have permission to carry on the regulated activity of managing a UK *UCITS*;
- (3) the management of portfolios of investments in accordance with mandates given by investors on a discretionary client-by-client basis, including portfolios of investments for ~~pension funds and institutions for occupation retirement provisions in accordance with article 19(1) of Directive 2003/41/EC~~ occupational pension schemes, within the meaning of section 1(1) of the Pension Schemes Act 1993;

...

...

- 1.4.6 G In the *FCA*'s view an *AIFM* is permitted under *FUND* 1.4.3R to carry out *AIFM management functions* for a collective investment undertaking ~~the management of which falls outside the scope of *AIFMD* or the *UCITS Directive*~~ which is neither an *AIF* nor a *UCITS*.

...

### 3 Requirements for alternative investment fund managers

#### 3.1 Application

- 3.1.1 G The application of this chapter is summarised in the following table; the detailed application is provided in each section.

Type of firm	Applicable sections
<del>Full-scope UK AIFM of a UK AIF.</del>	All of chapter 3.
<del>Full-scope UK AIFM of an EEA AIF operating from an establishment in the UK.</del>	All of chapter 3.
<del>Full-scope UK AIFM of an EEA AIF operating from a branch in another EEA state.</del>	All of chapter 3 with the exception of <i>FUND</i> 3.8 (Prime brokerage firms).
<del>Incoming EEA AIFM branch which manages a UK AIF.</del>	<i>FUND</i> 3.8 (Prime brokerage firms).
<del>Full-scope UK AIFM of a non-EEA AIF non-UK AIF marketed in the UK.</del>	All of chapter 3 with the exception of <i>FUND</i> 3.12 (Marketing in the home Member State of the AIFM UK).
<del>Full-scope UK AIFM of a non-EEA AIF non-UK AIF not marketed in the UK.</del>	All of chapter 3 with the exception of <i>FUND</i> 3.3 (Annual report of an AIF), <i>FUND</i> 3.11 (Depositaries) and <i>FUND</i>

	3.12 (Marketing in the <del>home Member State of the AIFM</del> <u>UK</u> ).
<i>UK depositary of a UK AIF or a <del>non-EEA AIF</del> non-UK AIF.</i>	<i>FUND 3.11 (Depositaries).</i>

### 3.2 Investor information

...

Prior disclosure of information to investors

- 3.2.2 R An *AIFM* must, for each *UK AIF* and ~~*EEA AIF*~~ that it manages, and for each *AIF* it *markets* in the ~~*EEA*~~ UK, make available to *AIF* investors before they invest, in line with the *instrument constituting the fund*, the following information and any material changes to it:

...

...

- 3.2.4 R Where the *AIF* is required to publish a *prospectus* under section 85 of the *Act* or the equivalent provision implementing article 3 of the ~~*Prospectus Directive in the AIF's Home State*~~, only information referred to in *FUND 3.2.2R* and *3.2.3R* that is additional to that contained in the *prospectus* needs to be disclosed, either separately or as additional information in the *prospectus*.

[**Note:** article 23(3) of *AIFMD*]

...

Periodic disclosure

- 3.2.5 R An *AIFM* must, for each *UK AIF* and ~~*EEA AIF*~~ it manages, and each *AIF* it *markets* in the ~~*EEA*~~ UK, disclose to investors periodically:

...

- 3.2.6 R An *AIFM* that manages a *UK AIF* or an ~~*EEA AIF*~~ or *markets* an *AIF* in the ~~*EEA*~~ UK must, for each such *AIF* that employs *leverage*, disclose on a regular basis:

...

...

### 3.3 Annual report of an AIF

Application

3.3.1 R This section applies to a *full-scope UK AIFM* of:

- (1) a *UK AIF*; and
- (2) ~~an *EEA AIF*; and [deleted]~~
- (3) a ~~*non-EEA AIF*~~ *non-UK AIF* marketed in the *UK*.

Provision of an annual report

3.3.2 R An *AIFM* must, for each *UK AIF* ~~and *EEA AIF*~~ it manages and for each *AIF* it markets in the *UK*:

...

- (3) make the annual report available to the *FCA* ~~and, in the case of an *EEA AIF*, to the competent authority of that *AIF*.~~

[**Note:** article 22(1) first paragraph and article 24(3)(a) of *AIFMD*]

...

- 3.3.4 R
- (1) Where the *AIF* is required to make an annual financial report public under *DTR* 4.1.3R (Publication of annual financial reports) or an equivalent provision ~~implementing article 4.1 of the Transparency Directive in the *Home State* of the *AIF* in the country where the *AIF* is established~~, only information referred to in *FUND* 3.3.5R that is additional to the annual financial report needs to be provided to investors on request, either separately or as an additional part of the annual financial report.
  - (2) Where additional information in (1) is provided as an addition to the annual financial report, that report must be made public no later than four months following the end of the financial year, under *DTR* 4.1.3R (Publication of annual financial reports) or an equivalent provision ~~implementing article 4.1 of the Transparency Directive in the *Home State* of the *AIF* in the country where the *AIF* is established~~.

[**Note:** second paragraph, article 22(1) of *AIFMD*]

...

Accounting information in the annual report

3.3.6 R The accounting information given in the annual report must be:

- (1) prepared in accordance with the accounting standards of the *Home State of the AIF UK* (or, for a ~~*non-EEA AIF*~~ *non-UK AIF*, the accounting standards of the ~~third~~ country where it is *established*) and

with the accounting rules set out in the *AIF's instrument constituting the fund*; and

- (2) audited by one or more persons empowered by law to audit accounts under the ~~Audit Directive~~ Companies Act 2006 (or for a ~~non-EEA AIF~~ non-UK AIF, under international auditing standards in force in the country where the ~~non-EEA AIF~~ non-UK AIF is established).

[Note: article 22(3) of *AIFMD*]

...

### 3.4 Reporting obligations to the FCA

...

#### Content of reporting information

- 3.4.3 R An *AIFM* must, for each *UK AIF* and *EEA AIF* it manages, and for each *AIF* it markets in the ~~EEA~~ UK, provide the following to the *FCA*:

...

...

#### Meaning of employing leverage on a substantial basis

- 3.4.6 ~~EU~~  
UK

Use of leverage on a 'substantial basis'	
1.	Leverage shall be considered to be employed on a substantial basis for the purposes of <del>Article 24(4) of Directive 2011/61/EU</del> [ <i>FUND 3.4.5R</i> ] when the exposure of an <i>AIF</i> as calculated according to the commitment method under Article 8 of this Regulation exceeds three times its net asset value.
[Note: article 111(1) of the <i>AIFMD</i> level 2 regulation]	

#### Additional information

- 3.4.6A R In addition to the information in *FUND 3.4.2R*, an *AIFM* must regularly report the following information to the *FCA*:

...

- (2) the information in *FUND 3.4.3R* for each *non-EEA AIF* it manages that is not *marketed* in the *EEA* or the UK, if:

...



- (b) that *AIF* is the *master AIF* of a *feeder AIF* which the *AIFM* also manages and that *feeder AIF* is:

...

- (ii) a *non-EEA AIF* that is marketed in the *EEA* or the *UK*.

...

- 3.4.6B G Further details in relation to the additional reporting requirements in *FUND* 3.4.6AR can be found in *ESMA*'s opinion on the "Collection of information for the effective monitoring of systemic risk under article 24(5), first subparagraph, of the *AIFMD*" (*ESMA* 2013/1340) dated 1 October 2013.  
(~~<https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-esma-1340-opinion-on-collection-of-information-under-aifmd-for-publication.pdf>~~) dated 1 October 2013.

- 3.4.6C R In addition to the information in *FUND* 3.4.2R, an *AIFM* must regularly report to the *FCA* the information in *FUND* 3.4.3R for each *non-EEA AIF* it manages that is not marketed in the *EEA UK* if the *AIFM* is subject to quarterly reporting under article 110 of the *AIFMD level 2 regulation* (see ~~*SUP* 16.18.4EU~~ 16.18.4UK) for that *AIF*.

...

...

#### Guidelines

- 3.4.8 G *ESMA*'s guidelines on reporting obligations under articles 3(3)(d) and 24(1), (2) and (4) of the *AIFMD* (*ESMA* 2013/1339) dated 15 November 2013  
(~~<https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-1339-final-report-on-esma-guidelines-on-aifmd-reporting-for-publication-revised.pdf>~~)  
provide further details in relation to the requirements in this section.

...

### 3.5 Investment in securitisation positions

- 3.5.4 R This section applies to a *full-scope UK AIFM* of:
- (1) a *UK AIF*; and
  - (2) ~~an *EEA AIF*~~; and a *non-UK AIF*.
  - (3) ~~a *non-EEA AIF*~~. [deleted]

...

3.5.6 G Article 41 of the *Securitisation Regulation* ~~replaces~~ replaced the original article 17 of AIFMD with an amended provision. *FUND* 3.5.4R and 3.5.5R ~~transpose~~ implemented article 17 of AIFMD, as amended.

...

### 3.6 Liquidity

#### Application

3.6.1 R This section applies to a *full-scope UK AIFM* of:

- (1) a *UK AIF*; and
- (2) ~~an EEA AIF~~; and [deleted]
- (3) a ~~non EEA AIF~~ non-UK AIF.

...

### 3.7 Risk management

#### Application

3.7.1 R This section applies to a *full-scope UK AIFM* of:

- (1) a *UK AIF*; and
- (2) ~~an EEA AIF~~; and [deleted]
- (3) a ~~non EEA AIF~~ non-UK AIF.

#### Functional and hierarchical separation

...

3.7.3	<u>EU</u> <u>UK</u>	Functional and hierarchical separation of the risk management function	
		...	

3.7.4	<u>EU</u> <u>UK</u>	Safeguards against conflicts of interest	
		1.	The safeguards against conflicts of interest referred to in the <u>UK legislation that implemented</u> Article 15(1) of Directive 2011/61/EU shall ensure, at least, that:
		...	

...		
-----	--	--

...

### 3.8 Prime brokerage firms

Application

3.8.1 R This section applies to:

- (1) a *full-scope UK AIFM* of:
  - (a) a *UK AIF*; and
  - (b) ~~an *EEA AIF* managed or marketed from an establishment in the UK;~~  
and [deleted]
  - (c) a ~~*non-EEA AIF non-UK AIF*~~; and
- (2) ~~an *incoming EEA AIFM branch* which manages or markets a UK AIF.~~  
[deleted]

...

### 3.9 Valuation

Application

3.9.1 R This section applies to a *full-scope UK AIFM* of:

- (1) a *UK AIF*; and
- (2) ~~an *EEA AIF*; and~~ [deleted]
- (3) a ~~*non-EEA AIF non-UK AIF*~~.

...

### 3.10 Delegation

Application

3.10.1 R This section applies to a *full-scope UK AIFM* of:

- (1) a *UK AIF*; and
- (2) ~~an *EEA AIF*; and~~ [deleted]
- (3) a ~~*non-EEA AIF non-UK AIF*~~

in relation to the delegation of those *AIFM management functions* for which it is responsible, other than supporting tasks such as administrative or technical functions.

[**Note:** recital 31 of *AIFMD*]

General delegation requirements

- 3.10.2 R An *AIFM* must ensure the following conditions are met when a delegate carries out any function on its behalf:
- ...
- (2) ...
- (d) in addition to (c), where the delegation of *AIFM investment management functions* is conferred on a ~~third-country~~ non-UK delegate, cooperation between the *FCA* and the supervisory authority of the delegate is ensured;
- ...
- ...

- 3.10.3 G For the purposes of *FUND* 3.10.2R(2)(d) cooperation is ensured between the *FCA* and the supervisory authorities of a ~~third-country~~ delegate which is not established in the UK where a cooperation arrangement is in place between the two authorities in accordance with ~~*AIFMD*~~ and article 78(3) of the *AIFMD level 2 regulation*.
- ...

**3.11 Depositaries**

Application

- 3.11.1 R This section applies in accordance with the table in *FUND* 3.11.2R and *FUND* 3.11.3R.
- 3.11.2 R This table belongs to *FUND* 3.11.1R.

<i>Rule</i>	<i>Full-scope UK AIFM of a UK AIF or an EEA AIF (other than a non-EEA feeder AIF non-UK)</i>	<i>Full-scope UK AIFM of a non-EEA AIF non-UK AIF or a non-EEA feeder AIF non-UK</i>	<i>UK depositary of a UK AIF (other than a non-EEA feeder AIF non-UK feeder AIF)</i>	<i>UK depositary of a non-EEA AIF non-UK AIF or a non-EEA feeder AIF non-UK feeder AIF</i>

	<i>feeder AIF</i> which is <i>marketed in</i> the UK)	<i>feeder AIF</i> which is <i>marketed in</i> the UK	which is <i>marketed in</i> the UK) managed by a <i>full-scope</i> UK AIFM or <del>an EEA</del> AIFM	which is <i>marketed in</i> the UK
...				
3.11.18R	X			
...				

3.11.3 R A UK depositary of a ~~non-EEA AIF~~ *non-UK AIF* or a ~~non-EEA feeder AIF~~ *non-UK feeder AIF* which is *marketed in the UK* that does not perform all of the functions of cash monitoring, safekeeping and oversight for the AIF need only comply with the following *rules* that are applicable to the functions it performs:

...

Appointment of a single depositary

3.11.4 R An AIFM must, for each AIF *UK AIF* it manages, ensure that:

...

(2) the assets of the AIF are entrusted to the *depositary* for safekeeping in accordance with *FUND 3.11.21R* and *FUND 3.11.23R*.

(a) ~~for a UK AIF, FUND 3.11.21R and FUND 3.11.23R; or~~

(b) ~~for an EEA AIF, the national laws and regulations in the Home State of the AIF implementing article 21(8) of AIFMD.~~

[**Note:** article 21(1) and (8) of AIFMD]

...

Eligible depositaries for UK AIFs

3.11.10 R Subject to *FUND 3.11.12R*, an AIFM must, for each *UK AIF* it manages, ensure the appointment of a *depositary* which is a *firm established* in the UK and which is one of the following:

...

(2) a *MiFID investment firm* or an *EEA MiFID investment firm* which:

...

...

3.11.11 G For a *depository* to be established in the UK, it must have its registered office or *branch* in the UK. A *MiFID investment firm* that has its registered office in the UK must be a *full-scope IFPRU investment firm* to meet the requirements of *FUND 3.11.10R(2)*. A *MiFID investment firm* that has a *branch* in the UK must meet the capital requirements under the *EU CRR* for a *CRD full-scope firm* as implemented in its *Home State* to meet the requirements of *FUND 3.11.10R(2)*.

(1) For a *depository* of a *fund* to be established in the UK, it must have:

(a) its registered office in the UK, where the *fund* is an *authorised fund*; or

(b) its registered office or *branch* in the UK, where the *fund* is an *unauthorised fund*.

(2) A *MiFID investment firm* that has its registered office in the UK must be a *full-scope IFPRU investment firm* to meet the requirements of *FUND 3.11.10R(2)*. An *EEA MiFID investment firm* that has a *branch* in the UK must meet the capital requirements under the *EU CRR* for a *CRD full-scope firm* as implemented in its *Home State* to meet the requirements of *FUND 3.11.10R(2)*.

...

3.11.15 G For certain types of closed-ended *AIFs* (such as private equity, venture capital and real estate funds) a wider range of entities than those specified in *FUND 3.11.10R* may perform the relevant *depository* functions. The *FCA* requires such entities to obtain authorisation as a *depository* to demonstrate that they can meet the commitments inherent in those functions, but imposes a lower level of capital requirements in recognition of the different degree of risk implied by the characteristics of the *AIF*. The capital requirements of such *firms* are contained in *IPRU-INV 5* (particularly *IPRU-INV 5.4.3R* (Own funds requirement)) but if the *firm* also undertakes *MiFID business*, its capital requirements will be contained in *IFPRU*, the *UK CRR*, and the *EU CRR*, or in *GENPRU* and *BIPRU* depending on the scope of that *MiFID business*.

[**Note:** recital 34 of *AIFMD*]

Additional requirements for depositaries of authorised *AIFs*

...

- 3.11.17 G Where the *firm* referred to in *FUND 3.11.16R* is a *full-scope IFPRU investment firm* which is a *depository* for an *authorised AIF* appointed in line with *FUND 3.11.10R(2)*, it is subject to the capital requirements of *IFPRU* and the *UK CRR* or *EU CRR*. However, these requirements are not in addition to *FUND 3.11.16R* and, therefore, a *firm* subject to this *rule* may use the *own funds* required under *IFPRU* and the *UK CRR* or *EU CRR* to meet the £4 million requirement.

Eligible depositories for EEA AIFs

- 3.11.18 R ~~An AIFM must, for each EEA AIF it manages, ensure the appointment of a depository which is established in the Home State of the AIF and which is eligible to be a depository in that Home State in accordance with article 21(3) of AIFMD. [deleted]~~  
 [~~Note: article 21(3) and (5)(a) of AIFMD]~~

...

Depository functions: cash monitoring

- 3.11.20 R A *depository* must ensure that the *AIF's* cash flows are properly monitored and that:

...

- (2) all cash of the *AIF* has been booked in cash accounts opened:

...

- (b) at:

...

- (iii) a bank authorised in a ~~third~~ non-EEA country; or

- (iv) another entity of the same nature, in the relevant market where cash accounts are required, provided such an entity is subject to effective prudential regulation and supervision which have the same effect as EU UK law and are effectively enforced and in accordance with the principles set out in article 2 (safeguarding of client financial instruments and funds) of the *MiFID Delegated Directive*; and

...

Depository functions: safekeeping of financial instruments

...

3.11.22

EU  
UK

Financial instruments to be held in custody		
1.	Financial instruments belonging to the AIF or to the AIFM acting on behalf of the AIF which are not able to be physically delivered to the depositary shall be included in the scope of the custody duties of the depositary where all of the following requirements are met:	
	(a)	they are transferable securities including those which embed derivatives as referred to in [ <i>COLL 5.2.19R(3) and (3A)</i> ], money market instruments or units of collective investment undertakings;
	...	
...		
<b>[Note:</b> Article 88 of the <i>AIFMD level 2 regulation</i> ]		

...

Delegation: general prohibition

...

3.11.27 G The use of services provided by securities settlement systems, as specified in the ~~*Settlement Finality Directive*~~ Financial Markets and Insolvency (Settlement Finality) Regulations 1999, or similar services provided by ~~third country~~ securities settlement systems in other countries, does not constitute a delegation by the *depositary* of its functions.

**[Note:** article 21(11) fifth paragraph of *AIFMD*]

3.11.27A G (1) (a) If a *depositary* performs part of its functions through a *branch* in ~~another~~ an EEA State this is not a delegation by the *depositary* of its functions to a third party.

...

(2) Paragraph (1) also applies where the *depositary* is the *UK branch* of an *EEA firm* and it performs part of its functions:

(a) through a *branch* in ~~another~~ an EEA State; or

...

(3) (a) A *depositary* that performs part of its functions through a *branch* or registered office in ~~another~~ an EEA State should



ensure that those arrangements do not impede the *depository's* ability to meet the *threshold conditions*.

(b) ...

(ii) For example, the *FCA's* ability to supervise the *depository* might be impeded if the *depository* performed tasks other than administrative and supporting tasks from its *branch* or registered office in ~~another~~ an EEA State.

Delegation: safekeeping

3.11.28 R A *depository* may delegate the functions in *FUND* 3.11.21R and *FUND* 3.11.23R to third parties, subject to the following conditions:

(1) the tasks are not delegated with the intention of avoiding the requirements of ~~*AIFMD*~~ those rules or the *AIFMD level 2 regulation*;

...

Delegation: ~~third~~ countries other than the UK

3.11.29 R A *depository* may delegate custody tasks in relation to *AIF custodial assets* to an entity in a ~~third~~ country other than the UK that does not satisfy the conditions in *FUND* 3.11.28R(4)(b), provided that:

(1) the law of that ~~third~~ country requires those *AIF custodial assets* to be held in custody by a local entity;

...

(3) the *depository* delegates its functions to such a local entity only to the extent required by the law of that ~~third~~ country and only for as long as there is no local entity that satisfied the delegation conditions in *FUND* 3.11.28R(4)(b);

(4) the investors of the relevant *AIF* are informed before their investment that such delegation is required due to legal constraints in ~~the third~~ that country and of the reasons as to why the delegation is necessary; and

...

...

AIFM of a ~~non-EEA AIF~~ non-UK AIF

3.11.33 R An *AIFM* of a ~~non-EEA AIF~~ non-UK AIF or a ~~non-EEA feeder AIF~~ non-UK feeder AIF which is *marketed* in the *UK* must:

...

...

### 3.12 Marketing a UK AIF in the ~~home Member State of the AIFM~~ UK

#### Application

3.12.1 R This section applies to:

- (1) a *full-scope UK AIFM* of a UK AIF.
  - (a) a ~~UK AIF~~; and
  - (b) an ~~EEA AIF~~; and
- (2) a ~~full-scope EEA AIFM~~ of:
  - (a) a ~~UK AIF~~; and
  - (b) an ~~EEA AIF~~. [deleted]

#### Marketing application

3.12.2 D Under regulation 54 (FCA approval for marketing) of the *AIFMD UK regulation*, a *full-scope UK AIFM* and a ~~full-scope EEA AIFM~~ may apply to market a UK AIF ~~or EEA AIF~~ it manages in the *UK* by submitting a notice to the *FCA* in the form set out in *FUND 3 Annex 1D*.

3.12.3 G If the UK AIF ~~or EEA AIF~~ is a *feeder AIF*, the *master AIF* needs to be an *AIF* that is not managed by a ~~non-EEA AIFM non-UK AIFM~~ non-UK AIFM or is not a ~~non-EEA AIF non-UK AIF~~ for it to be *marketed* in accordance with regulation 54 of the *AIFMD UK Regulation*. If the *master AIF* is managed by a ~~non-EEA AIFM non-UK AIFM~~ or is a ~~non-EEA AIF non-UK AIF~~, the *AIF* may be marketed in the *UK* in accordance with regulation ~~57~~ 59 (~~Marketing under article 36 of the directive~~) of the *AIFMD UK regulation* (see ~~FUND 10.5.3G~~ 10.5.9G (~~Marketing under article 36 of AIFMD~~) of AIFs managed by other third-country AIFMs).

3.12.4 G (1) A *full-scope UK AIFM* may use the form set out in *FUND 3 Annex 1D* to apply to market a UK AIF ~~or EEA AIF~~ (that is not a *feeder AIF*, the *master AIF* of which is managed by a ~~non-EEA AIFM non-UK AIFM~~ or is a ~~non-EEA AIF non-UK AIF~~) to *professional clients* and/or *retail clients*.

(2) A *full-scope UK AIFM* may inform the *FCA* of its intention to market such an *AIF* in the *UK* in its application to become authorised as a *full-scope UK AIFM*, in which case the *firm* does not also have to submit the form in *FUND 3 Annex 1D* in respect of that *marketing*.

- (3) ~~A full-scope UK AIFM may also use the form in FUND 3 Annex 1D to apply to the FCA to market an AIF in other EEA States using the AIFMD marketing passport and to notify the FCA of material changes to domestic and cross-border marketing. [deleted]~~
- 3.12.5 G (1) ~~A full-scope EEA AIFM that wishes to market a UK AIF or EEA AIF (that is not a feeder AIF, the master AIF of which is managed by a non-EEA AIFM or is a non-EEA AIF) to professional clients should do so using the marketing passport provided for under AIFMD and should, therefore, apply to its Home State regulator for permission to do so.~~
- (2) ~~In accordance with regulation 49 (Marketing by full-scope EEA AIFMs of certain AIFs) of the AIFMD UK Regulation, a full-scope EEA AIFM may market such an AIF to retail clients in the UK if the FCA has received a regulator's notice in relation to the marketing in accordance with Schedule 3 to the Act (EEA Passport rights) or if the AIFM has applied to the FCA for permission to market the AIF using the form in FUND 3 Annex 1D and the FCA has approved such marketing.~~
- (3) ~~As such, a full-scope EEA AIFM may use the form in FUND 3 Annex 1D to apply to market such an AIF in the UK to retail clients, but should not use this form to apply to market such an AIF to professional clients in the UK. [deleted]~~
- 3.12.6 G ~~A full-scope UK AIFM or a full-scope EEA AIFM that intends to market to retail clients should consider the application of the financial promotions regime and ensure it is compliant with the relevant requirements (see PERG 8.37.14G (Application of the financial promotion and scheme promotion restrictions)).~~

...

## 4 **European Specialist AIF Regimes**

### 4.1 **Application**

- 4.1.1 G The application of this chapter is summarised in the following table; the detailed application is provided in each section.

Type of firm	Applicable sections
<i>Full-scope UK AIFM of a UK ELTIF an LTIF.</i>	<i>FUND 4.2 (ELTIFs LTIFs)</i>

<del>Full scope UK AIFM of an EEA ELTIF.</del>	FUND 4.2 (ELTIFs)
UK depositary of a UK <del>ELTIF</del> <u>an LTIF</u> .	FUND 4.2 ( <del>ELTIFs</del> <u>LTIFs</u> )

## 4.2 ~~ELTIFs~~ LTIFs

### Application

4.2.1 R This section applies to:

- (1) a *full-scope UK AIFM* of: an LTIF; and
  - (a) a ~~UK ELTIF~~; or
  - (b) an ~~EEA ELTIF~~; and
- (2) a UK depositary of a ~~UK ELTIF~~ an LTIF.

### The ~~ELTIF~~ LTIF Regulation

- 4.2.2 G (1) The ~~ELTIF regulation~~ LTIF regulation lays down uniform rules on the authorisation, investment policies and operating conditions of UK AIFs or ~~EEA AIFs~~, or compartments of those AIFs, that are *marketed* in the ~~EEA UK~~ as ~~European~~ long-term investment funds (~~ELTIFs~~) (LTIFs).
- (2) ~~The ELTIF regulation is a directly applicable EU regulation.~~  
[deleted]

### Interaction between the ~~ELTIF regulation~~ LTIF regulation and ~~AIFMD~~ the UK AIFM regime

- 4.2.3 G (1) To be eligible to manage an ~~ELTIF~~ LTIF, an AIFM needs to be a full-scope UK AIFM:  
  - (a) a ~~full-scope UK AIFM~~; or
  - (b) a ~~full-scope EEA AIFM~~.
- (2) This means that the AIFM and the depositary of an ~~ELTIF~~ LTIF need to comply with the applicable requirements of:
  - (a) ~~AIFMD~~ the UK AIFM regime; and
  - (b) the ~~ELTIF regulation~~ LTIF regulation.

Specific depositary provisions where an ~~ELTIF~~ LTIF is marketed to retail investors

- 4.2.4 G (1) Article 29 of the ~~ELTIF regulation~~ LTIF regulation contains specific provisions concerning the *depository* of an ~~ELTIF~~ LTIF that is *marketed to retail clients* which have the effect of amending the corresponding provisions of which implemented AIFMD in the United Kingdom.
- (2) Article 29 of the ~~ELTIF regulation~~ LTIF regulation is replicated in ~~FUND 4.2.5EU~~ FUND 4.2.5UK.
- (3) These specific provisions and the corresponding references in AIFMD (as implemented before exit day), as well as the relevant provisions and ~~UK transposition~~ in the AIFMD UK regulation and rules are summarised in FUND 4.2.6G.
- (4) Where these specific provisions conflict with a *rule* or *guidance*, the relevant *rule* or *guidance* has been disapplied in FUND 4.2.7R.

4.2.5 EU  
UK

<b>Specific provisions concerning the depository of an <del>ELTIF</del> <u>LTIF</u> marketed to retail investors</b>	
1.	<del>By way of derogation from article 21(3) of Directive 2011/61/EU, the depository of an ELTIF marketed to retail investors shall be an entity of the type referred to in article 23(2) of Directive 2009/65/EC</del> <u>Notwithstanding the provisions in [FUND 3.11.10R], the depository of an LTIF marketed to retail investors must be an entity that satisfies the criteria referred to in [COLL 6.6A.8R(1) to (3)].</u>
<u>1A.</u>	<u>The requirements of section 243(5) and (5A) and 261D(5) of FSMA and regulation 15(8)(a) of the Open-Ended Investment Companies Regulations 2001(11), as amended from time to time, do not apply to a qualifying EEA firm until the end of the period determined in accordance with regulation 17 (period during which regulation 8 or 11 is to apply) of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018</u>
<u>1B.</u>	<u>In paragraph 1A ‘qualifying EEA firm’ means a body corporate which:</u>  <u>(a) is the depository of an LTIF;</u>  <u>(b) is, by virtue of regulation 8 or 11 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, treated as having a Part 4A permission relating to one or more regulated activity; and</u>

	(c) had immediately before exit day, and continues to have, a <u>Part 4A permission to carry on the regulated activity specified in Article 51ZD of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.</u>	
2.	<del>By way of derogation from the second subparagraph of article 21(13) and article 21(14) of Directive 2011/61/EU, the depositary of an ELTIF</del> <u>Notwithstanding regulations 30 and 32 of the AIFM Regulations, the depositary of an LTIF</u> marketed to retail investors shall not be able to discharge itself of liability in the event of a loss of financial instruments held in custody by a third party.	
3.	The liability of the depositary referred to in <del>article 21(12) of Directive 2011/61/EU</del> <u>regulation 30 of the AIFM Regulations</u> shall not be excluded or limited by agreement where the <del>ELTIF</del> <u>LTIF</u> is marketed to retail investors.	
4.	Any agreement that contravenes paragraph 3 shall be void.	
5.	The assets held in custody by the depositary of an <del>ELTIF</del> <u>LTIF</u> shall not be reused by the depositary, or by any third party to whom the custody function has been delegated, for their own account. Reuse comprises any transaction involving assets held in custody including, but not limited to, transferring, pledging, selling and lending.	
	The assets held in custody by the depositary of an <del>ELTIF</del> <u>LTIF</u> are only allowed to be reused provided that:	
	(a)	the reuse of the assets is executed for the account of the <del>ELTIF</del> <u>LTIF</u> ;
	(b)	the depositary is carrying out the instructions of the manager of the <del>ELTIF</del> <u>LTIF</u> on behalf of the <del>ELTIF</del> <u>LTIF</u> ;
	(c)	the reuse is for the benefit of the <del>ELTIF</del> <u>LTIF</u> and in the interests of the unit- or shareholders; and
	(d)	the transaction is covered by high quality and liquid collateral received by the <del>ELTIF</del> <u>LTIF</u> under a title transfer arrangement.
The market value of the collateral referred to in point (d) of the second subparagraph shall at all times amount to at least the market value of the reused assets plus a premium.		
<b>[Note: article 29 of the <del>ELTIF regulation</del> <u>LTIF regulation</u>]</b>		

Summary of specific provisions concerning the depositary of an ~~ELTIF~~ LTIF marketed to retail investors

4.2.6

G

	<del>ELTIF regulation</del> <u>LTIF regulation</u>	AIFMD reference	<u>UK transposition Relevant provisions in AIFMD UK regulation and FCA rules</u>
(1)	Article 29(1) of the <del>ELTIF regulation</del> <u>LTIF regulation</u>	Article 21(3) of AIFMD	<del>FUND 3.11.10R to FUND 3.11.15G and FUND 3.11.18R</del>
(2)	Article 29(2) of the <del>ELTIF regulation</del> <u>LTIF regulation</u>	Second paragraph of article 21(13) and 21(14) of AIFMD	Regulations 30(4) and (5) and 32 of the AIFMD UK regulation (Note 1)
(3)	Article 29(3) of the <del>ELTIF regulation</del> <u>LTIF regulation</u>	Article 21(12) of AIFMD	Regulations 30(1) to (3) and 31(1) of the AIFMD UK regulation (Note 2)
(4)	Article 29(5) of the <del>ELTIF regulation</del> <u>LTIF regulation</u>	Article 21(10) third paragraph of AIFMD	<del>FUND 3.11.24R</del>
<p><b>Note 1:</b> <del>The AIFMD UK regulation</del> was Regulations 30(4) and 32 do not apply to the <u>depositary</u> of a <u>UK LTIF</u> which is marketed to retail investors under Chapter V of the <u>LTIF regulation</u>. This follows from regulations 30(7) and 32(3) of the <u>AIFMD UK regulation</u> which were amended by The European Long-term Investment Funds Regulations 2015 (SI 2015/1882) so that these regulations do not apply to a <u>depositary</u> of an <u>EEA ELTIF</u> or a <u>UK ELTIF</u> that is marketed to retail clients under Chapter V of the <u>ELTIF Regulation</u> (see regulations 30(7) and 32(3) of the <u>AIFMD UK regulation</u>) and The Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018 (SI XXXX/XXXX).</p>			
<p><b>Note 2:</b> No modifications are needed to these provisions as the liability of the depositary referred to in article 21(12) of AIFMD is unaffected by the <del>ELTIF regulation</del> <u>LTIF regulation</u>.</p>			

Disapplication of FUND depositary provisions for an ~~ELTIF~~ LTIF marketed to retail investors

- 4.2.7 R The following provisions do not apply when an ~~ELTIF~~ LTIF is marketed to a retail client:
- (1) ~~FUND 3.11.10R to FUND 3.11.15G~~ (Eligible depositaries for UK AIFs); and
  - (2) ~~FUND 3.11.18R~~ (Eligible depositaries for EEA AIFs); and [deleted]
  - (3) ~~FUND 3.11.24R~~ (Reuse of assets).

Documentation and information required to market an ~~ELTIF~~ LTIF

- 4.2.8 G (1) To market an ~~ELTIF~~ LTIF an AIFM is required to:
- (a) ~~notify its competent authority~~ the FCA in accordance with ~~article 31 of AIFMD~~ regulation 54 of the AIFMD UK regulation, if it wishes to market the ~~ELTIF~~ LTIF in the ~~Home State of the AIFM~~ UK (see article 31(1) of the ~~ELTIF regulation~~ LTIF regulation); and
  - (b) ~~notify its competent authority in accordance with article 32 of AIFMD~~, if it wishes to market the ~~ELTIF~~ in a ~~Host State of the AIFM~~ (see article 31(2) of the ~~ELTIF regulation~~); and [deleted]
  - (c) provide the following additional documentation and information to ~~its competent authority~~ the FCA (see article 31(4) of the ~~ELTIF regulation~~ LTIF regulation):
    - (i) the prospectus of the ~~ELTIF~~ LTIF;
    - (ii) the *key information document* of the ~~ELTIF~~ LTIF in the event that it is marketed to retail clients; and
    - (iii) information on the facilities referred to in article 26 of the ~~ELTIF regulation~~ LTIF regulation.
- (2) To market an ~~ELTIF~~ LTIF, a full-scope UK AIFM should submit a notice to the FCA using the forms in:
- (a) ~~FUND 3 Annex 1D~~ (Notification of intention to market an AIF in the United Kingdom) to market an ~~ELTIF~~ LTIF in the ~~United Kingdom~~; and



- (b) ~~SUP 13 Annex 8BR (Passporting: AIFMD) to market an ELTIF in an EEA State other than the United Kingdom; and [deleted]~~
- (c) FUND 4 Annex 1R (Additional documentation and information to market an ~~ELTIF~~ LTIF) (as required by FUND 4.2.9R).

4.2.9 R The AIFM of an ~~ELTIF~~ LTIF must submit a notice to the FCA using the form in FUND 4 Annex 1R (Additional documentation and information to market an ~~ELTIF~~ LTIF) to market the ~~ELTIF~~ LTIF.

Interaction between ~~ELTIFs~~ LTIFs and authorised funds

- 4.2.10 G (1) The requirements in relation to an ~~ELTIF~~ LTIF are set out in the ~~ELTIF regulation~~ LTIF regulation rather than in FCA rules.
- (2) (a) As a result, the *Glossary* term of an *authorised fund* has only limited application to an ~~ELTIF~~ LTIF.
  - (b) This is to avoid all the requirements for an *authorised AIF* applying to an AIFM or *depository* of an ~~ELTIF~~ LTIF.
- (3) (a) The *Glossary* term of an *authorised fund* only applies to a ~~UK-ELTIF~~ an LTIF (other than a *body corporate* that is not a *collective investment scheme*) in FEES 6 and COMP.
- (b) This is to allow the *rules and guidance* in FEES 6 and COMP to apply to a ~~UK-ELTIF~~ an LTIF (other than a *body corporate* that is not a *collective investment scheme*) in the same way as other types of *fund* that are authorised by the FCA.
- 4.2.11 G (1) However, a *full-scope UK AIFM* of a ~~UK-ELTIF~~ an LTIF needs to obtain the *permission of managing an AIF* that is an *authorised AIF*.
- (2) Similarly, the *depository* of a ~~UK-ELTIF~~ an LTIF needs to obtain the *permission of acting as trustee or a depository of an AIF* that is an *authorised AIF*.
- (3) (a) Where the requirements for an AIFM or a *depository* of an ~~ELTIF~~ LTIF are concerned, an ~~ELTIF~~ LTIF bears more of a resemblance to an *authorised AIF* than an *unauthorised AIF*.
  - (b) As a result, *firms* that do not have the *permission to manage an AIF* that is an *authorised AIF* or *act as a trustee or depository of an AIF* that is an *authorised AIF* will need to vary their *permission* to be able to act as the AIFM or *depository* of an ~~ELTIF~~ LTIF.

## 4 Annex 1R Additional documentation and information to market an ~~ELTIF~~ LTIF

...

### 10 Operating on a cross-border basis

#### 10.1 Application and purpose

##### Application

- 10.1.1 G (1) This chapter applies to the following types of *firm* in relation to the activities in (2):
- (a) ...;
  - (b) ~~a full scope EEA AIFM~~; [deleted]
  - (c) ~~a small non-EEA AIFM~~ small non-UK AIFM; and
  - (d) ~~an above threshold non-EEA AIFM~~ above threshold non-UK AIFM.
- (2) The activities to which this chapter relates are the management and marketing on a cross-border basis, into or from the *UK* of:
- (a) a *UK AIF*; and
  - (b) ~~an EEA AIF~~; and a non-UK AIF.
  - (c) ~~a non-EEA AIF~~. [deleted]

...

##### Introduction

- 10.1.3 G ~~An AIFM operates on a cross border basis when it manages or markets an AIF in an EEA State other than the state in which it has its registered office (which may include, in certain cases, a state which is a non-EEA State).~~ [deleted]
- 10.1.4 G (1) ~~AIFMD allows certain types of AIFM to operate on a cross border basis using a passport. There are two types of passport that are provided for in AIFMD:~~ [deleted]
- (a) ~~a management passport, which allows an AIFM to establish a branch in, or provide cross border services into, another EEA State to manage an AIF; and~~

- (b) ~~a marketing passport, which allows an AIFM to provide cross-border services into another EEA State to market an AIF to investors that are professional clients.~~
- (2) ~~The following types of AIFM are allowed to operate on a cross-border basis using the management and marketing passport:~~
- (a) ~~a full-scope UK AIFM of:~~
- (i) ~~a UK AIF; and~~
- (ii) ~~an EEA AIF; and~~
- (b) ~~a full-scope EEA AIFM of:~~
- (i) ~~a UK AIF; and~~
- (ii) ~~an EEA AIF.~~
- 10.1.5 G (1) ~~AIFMD also contains~~ There are specific provisions for third country AIFs and AIFMs (ie, in relation to ~~non-EEA AIFs non-UK AIFs~~ non-EEA AIFMs non-UK AIFMs) and the ~~marketing of a UK AIF or an EEA AIF~~ a non-UK AIF that is a feeder AIF, the master AIF of which is managed by a ~~non-EEA AIFM non-UK AIFM~~ or is a non-EEA AIF non-UK AIF.
- (2) ~~In line with these provisions, the following types of AIFM are~~ A UK AIFM is allowed to manage a non-EEA AIF non-UK AIF from an EEA State the UK.:
- (a) ~~a full-scope UK AIFM; and~~
- (b) ~~a full-scope EEA AIFM.~~
- (3) ~~In addition, EEA States may allow the UK~~ allows the marketing by the following types of AIFM in ~~their territory only~~ the UK:
- (a) ~~a full-scope UK AIFM of:~~
- (i) ~~a UK AIF or an EEA AIF~~ a UK AIF or an EEA AIF that is a feeder AIF, the master AIF of which is managed by a ~~non-EEA AIFM non-UK AIFM~~ non-EEA AIFM non-UK AIFM or is a ~~non-EEA AIF non-UK AIF~~ non-EEA AIF non-UK AIF and;
- (ii) ~~a non-EEA AIF non-UK AIF;~~
- (b) ~~a full-scope EEA AIFM of:~~

- (i) ~~a UK AIF or an EEA AIF that is a feeder AIF, the master AIF of which is managed by a non-EEA AIFM or is a non-EEA AIF; and~~
- (ii) ~~a non-EEA AIF; and [deleted]~~
- (c) a ~~non-EEA AIFM~~ non-UK AIFM of:
  - (i) a UK AIF; and
  - (ii) ~~an EEA AIF; and~~ a non-UK AIF.
  - (iii) ~~a non-EEA AIF. [deleted]~~

FUND 10.2 (AIFM management passport) and 10.3 (AIFM marketing passport) are deleted in their entirety. The deleted text of each section is not shown but the sections are marked [deleted] as shown below.

**10.2 AIFM management passport [deleted]**

**10.3 AIFM marketing passport [deleted]**

Amend the following as shown.

**10.4 AIFM third country management**

Application

- 10.4.1 G This section applies to a *full-scope UK AIFM* of a ~~non-EEA AIF~~ non-UK AIF that is not *marketed* in the ~~EEA UK~~ to ~~EEA UK~~ investors.

Applicable requirements

- 10.4.2 G A *full-scope UK AIFM* may manage a ~~non-EEA AIF~~ non-UK AIF subject to the satisfaction of certain conditions. If the *AIF* is not *marketed*, these conditions are that:
- (1) the *AIFM* complies with the full requirements of ~~AIFMD~~ FUND, other rules in the Handbook which, when made, implemented AIFMD, the AIFMD level 2 regulation, the AIFMD UK regulation in respect of that *AIF*, except ~~article 21 (Depositaries) and article 22~~ FUND 3.3 (Annual reporting) and FUND 3.11 (Depositaries), the

AIFMD BTS and any other binding technical standards made in connection with the UK AIFM regime; and

- (2) (in accordance with regulation 33 of the *AIFMD UK regulation*) appropriate cooperation arrangements are in place between the ~~competent authorities of the Home State of the AIFM FCA~~ and the supervisory authorities of the ~~third~~ country where the ~~non-EEA AIF non-UK AIF~~ non-UK AIF is established in order to ensure an efficient exchange of information that allows the ~~competent authority of the Home State of the AIFM FCA~~ to carry out its duties in accordance with AIFMD FUND, other rules in the Handbook which, when made, implemented AIFMD, the AIFMD level 2 regulation and the UK AIFMD regulation.

- 10.4.3 G As a result, a *full-scope UK AIFM* of a ~~non-EEA AIF non-UK AIF~~ non-UK AIF that is not *marketed* is required to comply with:
- (1) all of *FUND 3* with the exception of *FUND 3.3* (Annual report of an *AIF*), *FUND 3.11* (Depositaries) and *FUND 3.12* (Marketing in the ~~home Member State of the AIFM UK~~); and
- (2) ...
- 10.4.4 G If a *full-scope UK AIFM* wishes to market in the *UK* a ~~non-EEA AIF non-UK AIF~~ non-UK AIF that it manages, the *AIFM* must comply with the relevant requirements, as explained in *FUND 10.5.3G* to *FUND 10.5.5G* (Marketing ~~under article 36 of AIFMD~~ of third country AIFs managed by full-scope UK AIFMs).

## 10.5 National private placement

Application

- 10.5.1 G This section applies to the following types of *AIFM* that intend to market an *AIF* in the *UK*:
- (1) a *full-scope UK AIFM* of:
- (a) a *feeder AIF* that is a *UK AIF* ~~or an EEA AIF~~, the *master AIF* of which is managed by a ~~non-EEA AIFM non-UK AIFM~~ non-UK AIFM or is a ~~non-EEA AIF non-UK AIF~~ non-UK AIF; and
- (b) a ~~non-EEA AIF non-UK AIF~~ non-UK AIF;
- (2) a ~~full-scope EEA AIFM~~ of: [deleted]

- (a) a *feeder AIF* that is a *UK AIF* or an *EEA AIF*, the *master AIF* of which is managed by a *non-EEA AIFM* or is a *non-EEA AIF*; and
  - (b) a *non-EEA AIF*;
- (3) a *small non-EEA AIFM* of: [deleted]
- (a) a *UK AIF*;
  - (b) an *EEA AIF*; and
  - (c) a *non-EEA AIF*; and
- (4) an ~~*above-threshold non-EEA AIFM*~~ *above-threshold non-UK AIFM* of:
- (a) a *UK AIF*; and
  - (b) an *EEA AIF*; and [deleted]
  - (c) a ~~*non-EEA AIF*~~ *non-UK AIF*.

## Introduction

- 10.5.2 G ~~*AIFMD*~~ permits ~~*EEA States*~~ to allow the ~~*marketing in their territory*~~ *Marketing in the UK* only of the types of *AIF* set out in *FUND* 10.5.1G; ~~is permitted~~ subject to certain conditions. ~~This has been implemented in the UK by (see Part 6 (Marketing) of the AIFMD UK regulation).~~ In accordance with these provisions, an *AIFM* of the type set out in *FUND* 10.5.1G may *market* an *AIF* in the *UK* providing it has notified the *FCA* of its intention to *market*, it meets the relevant conditions in the *AIFMD UK regulation* and the *FCA* has not suspended or revoked the *AIFM*'s entitlement to *market* the *AIF*. The *AIFM* is entitled to *market* the *AIF* as soon as a notification containing all of the required information has been sent to the *FCA*.

## Marketing under article 36 of the AIFMD of third country AIFs managed by full-scope UK AIFMs

- 10.5.3 G In accordance with regulation 57 ~~(Marketing under Article 36 of the directive)~~ of the *AIFMD UK regulation*, a *full-scope UK AIFM* ~~and a full-scope EEA AIFM~~ may *market* the following types of *AIF* in the *UK* by submitting a notification to the *FCA* in the form in *FUND* 10 Annex 1D:
- (1) a *feeder AIF* that is a *UK AIF* ~~or an EEA AIF~~, the *master AIF* of which is managed by a ~~*non-EEA AIFM*~~ *non-UK AIFM* or is a ~~*non-EEA AIF*~~ *non-UK AIF*; and

- (2) a ~~non-EEA AIF~~ non-UK AIF.
- 10.5.4 G To allow the *AIFM* to comply with regulation 57(4), the notification includes a statement from the *AIFM* confirming that the following conditions are met:
- (1) subject to (2), the *AIFM* complies with the requirements of ~~*AIFMD FUND*~~, other rules in the Handbook which, when made, implemented *AIFMD*, the *AIFMD level 2 regulation*, the *AIFMD UK regulation*, the *AIFMD BTS* and any other binding technical standards made in connection with the *UK AIFM regime* in respect of that *AIF*;
  - (2) the *AIFM* is not required to comply with the requirements of ~~article 24~~ *FUND 3.11* (Depositaries) ~~of *AIFMD*~~ provided the *AIFM*:
    - (a) ensures that one or more entities, other than the *AIFM*, are appointed to carry out the duties in ~~article 21(7) to (9) of *AIFMD*~~ *FUND 3.11.20R* to *3.11.23R* and *3.11.25R*; and
    - ...
  - (3) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the *FCA* and the supervisory authorities of the relevant third country to ensure an efficient exchange of information that enables the *FCA* to carry out its duties in accordance with ~~*AIFMD FUND*~~, other rules in the Handbook which, when made, implemented *AIFMD*, the *AIFMD level 2 regulation* and the *AIFMD UK regulation*, the *AIFMD BTS* and any other binding technical standards made in connection with the *UK AIFM regime*; and
  - (4) the ~~third~~ country where the ~~non-EEA AIF~~ non-UK AIF is established is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force (FATF).
- 10.5.5 G (1) As a result of *marketing* an *AIF* in the *UK*, a *full-scope UK AIFM* is required to comply with:
- (a) all of *FUND 3*, except certain sections of *FUND 3.11* (Depositaries) (as set out in *FUND 3.11.33R* (*AIFM* of a ~~non-EEA AIF~~ non-UK AIF)) and (Marketing in the ~~home Member State of the *AIFM UK*~~); and
  - (b) ...
- (2) A *full-scope UK AIFM* managing a ~~non-EEA AIF~~ non-UK AIF that is not *marketed* should note that the *rules* it needs to comply with will change in relation to that *AIF* as a result of the *AIF* being *marketed*

(see *FUND* 10.4.3G for details of the rules that apply to a *full-scope UK AIFM* managing a ~~*non-EEA AIF*~~ *non-UK AIF* that is not *marketed*). In particular, an *AIFM* will be subject to the annual report requirements in *FUND* 3.3 (Annual report of an AIF) and some of the depositary provisions in *FUND* 3.11 (Depositaries) (as set out in *FUND* 3.11.33R (AIFM of a ~~*non-EEA AIF*~~ *non-UK AIF*)).

#### Marketing of AIFs managed by small third-country AIFMs

- 10.5.6 G In accordance with regulation 58 (Marketing of AIFs managed by small third country AIFMs) of the *AIFMD UK regulation*, a ~~*small non-EEA AIFM*~~ *small non-UK AIFM* may market an AIF in the UK managed by it by submitting a notification to the FCA in the form set out in *FUND* 10 Annex 1D.
- 10.5.7 G To allow the *AIFM* to comply with the requirements of regulation 58(2), the notification includes a statement from the *AIFM* confirming that the following conditions are met:
- (1) ...
- (2) the *AIFM* is a ~~*small non-EEA AIFM*~~ *small non-UK AIFM*.
- 10.5.8 G As a result of *marketing* an AIF in the UK, a ~~*small non-EEA AIFM*~~ *small non-UK AIFM* is required to provide the FCA with information on:
- ...

#### Marketing ~~under article 42 of the directive~~ of AIFs managed by other third-country AIFMs

- 10.5.9 G In accordance with regulation 59 (~~Marketing under article 42 of the directive~~) of the *AIFMD UK regulation*, an ~~*above-threshold non-EEA AIFM*~~ *above-threshold non-UK AIFM* may market a UK AIF, ~~an EEA AIF~~ or a ~~*non-EEA AIF*~~ *non-UK AIF* in the UK managed by it by submitting a notification to the FCA in the form in *FUND* 10 Annex 1D.
- 10.5.10 G To allow the *AIFM* to comply with the requirements of regulation 59(2), the notification includes a statement from the *AIFM* confirming that the following conditions are met:
- ...
- (2) the *AIFM* complies with the requirements of ~~articles 22 to 24 AIFMD~~ *FUND* 3.2 (Investor information), 3.3 (Annual report of an AIF), and 3.4 (Reporting obligations to the FCA) in so far as such provisions are relevant to the *AIFM* and the AIF to be *marketed*;
- ...



- (4) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between:
  - (a) the *FCA* and, if applicable, the *competent authorities* of the other ~~EEA State~~ country where the *AIF* is established; and
  - (b) the supervisory authorities of the country where the ~~non-EEA AIFM~~ non-UK AIFM is established and, if applicable, of the country where the ~~non-EEA AIF~~ non-UK AIF is established,

to ensure an efficient exchange of information that enables the *FCA* to carry out its duties in accordance with *AIFMD*; and

- (5) the ~~third~~ country where the ~~non-EEA AIF~~ non-UK AIF is established is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force (FATF).

10.5.11 G As a result of *marketing* an *AIF* in the *UK*, an ~~above-threshold non-EEA AIFM~~ above-threshold non-UK AIFM is required to comply with:

...

10.5.11 G (1) (a) A provision of *FUND* 3.2 (Investor Information), *FUND* 3.3  
A (Annual report of the *AIF*) or *FUND* 3.4 (Reporting obligations to the *FCA*) will not be relevant to an ~~above-threshold non-EEA AIFM~~ above-threshold non-UK AIFM and the *AIF* it *markets*, if it relates to another provision to which the *AIFM* is not subject.

...

...

...

**App 1 Written Notice decision procedures under the AIFMD UK regulation**

**App 1.1 Section title**

...

App 1.1.4G

Regulation	Description	Decision Maker
...		

54(6)	Where the <i>FCA</i> proposes to refuse an application to <i>market</i> an <i>AIF</i> by a <i>full-scope UK AIFM</i> <del>or a full-scope EEA AIFM</del> under regulation 54 (FCA approval for marketing) of the <i>AIFMD UK regulation</i> .	<i>Executive procedures</i>
54(7)(a)	Where the <i>FCA</i> decides to refuse an application to <i>market</i> an <i>AIF</i> by a <i>full-scope UK AIFM</i> <del>or a full-scope EEA AIFM</del> under regulation 54 (FCA approval for marketing) of the <i>AIFMD UK regulation</i> .	<i>Executive procedures</i>
...		

...

## Annex E

### Amendments to the Professional Firms sourcebook (PROF)

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

#### 1 Professional firms

##### 1.1 Application and Purpose

Application

...

- 1.1.1A R This sourcebook does not apply to an *incoming ECA provider* acting as such. [deleted]

...

Purpose

...

- 1.1.4 G This sourcebook outlines:

...

- (6) the arrangements made by the *FCA* for ~~complying with its obligations under the *IDD*~~ in relation to:
- (a) maintaining a record of *unauthorised persons*, including *exempt professional firms*, that carry on, or are proposing to carry on, *insurance distribution activity*; ~~and~~
  - (b) ~~*exempt professional firms* that wish to passport under the *IDD*.~~

...

- 1.1.6 G The *rules* and *guidance* in this sourcebook are intended to:

...

- (4) explain the background to and the arrangements made by the *FCA* for:
- (a) the registration of *unauthorised persons*, including *exempt professional firms*, that carry on, or are proposing to carry on, *insurance distribution activity*; ~~and~~

- (b) ~~authorised professional firms and exempt professional firms that wish to exercise their EEA right under the IDD to establish a branch or provide cross border services in another EEA State.~~

...

### 3 The FCA's duties and powers

#### 3.1 The FCA's duty to keep itself informed

...

- 3.1.2 G The *FCA* keeps itself informed in a number of ways. A *designated professional body* has a duty under section 325(4) of the *Act* to cooperate with the *FCA*. Article 94 of the *Regulated Activities Order* requires each *designated professional body* to provide the *FCA* with the information it needs to maintain a public record of *persons* that are registered with the *FCA* to conduct *insurance distribution activity*. The *FCA* has made arrangements with each of the *designated professional bodies* about the information they provide to it, to include information about:

...

- (6) the names and addresses of each of their *exempt professional firms* that carry on, or are proposing to carry on, *insurance distribution activity*, together with the details of the individuals within the management of the *exempt professional firms* who are responsible for the *insurance distribution activity* ~~and, where relevant, the passporting information required by the *FCA* for the purposes of paragraph 25 of Schedule 3 to the *Act* (EEA Passport Rights).~~

...

### 5 Non-mainstream regulated activities

...

#### 5.3 Reference to other sourcebooks and manuals

Conduct of Business sourcebook

- 5.3.2 G *COBS* 18.11 provides that *COBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except for:

...

(2) (where these are *insurance distribution activities*) the parts of *COBS* set out in *COBS* 18.11.2R(3)(a) to (i) which ~~implement~~ implemented the *IDD* apply unless:

(a) the *designated professional body* of the *firm* has made rules which ~~implement~~ implemented some or all of articles 1(4), 17, 18, 19, 20, 23, 24(1) to (4) and (6), 29, and 30 of the *IDD*;

...

...

...

#### Senior Management Arrangements, Systems and Controls

5.3.4 G The following provisions do not apply to *authorised professional firms* when carrying on *non-mainstream regulated activities*:

...

(4) *SYSC* 19F.2 (*IDD* remuneration incentives) where the *designated professional body* of the *firm* has made *rules*, approved by the *FCA*, that ~~implement~~ implemented article 17(3) of the *IDD* and that apply to the *firm*; and

...

...

#### Client Assets

5.3.9 G *CASS* 1.2.4R provides that with the exception of *CASS* 1 and the *insurance client money chapter*, *CASS* does not apply to *authorised professional firms* when carrying on *non-mainstream regulated activities*. *CASS* 1.2.5R further provides that if the *non-mainstream regulated activities* are *insurance distribution activity*, *CASS* 5 (the *insurance client money chapter*) does not apply to an *authorised professional firm*, if the *firm's designated professional body* has rules applicable to the *firm* which ~~implement~~ implemented the *IDD* and which are in the form approved by the *FCA* under section 332(5) of the *Act*.

#### Insurance: Conduct of Business sourcebook

5.3.10 G (1) *ICOBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* (see *ICOBS* 1 Annex 1, Part 1, paragraph 3.1R, except for:

...

(d) provisions in *ICOBS* which ~~implement~~ implemented articles 1(4), 17, 18, 19, 20, 23, and 24 of the *IDD* (see *ICOBS* 2.2.2R (communication

to customers and financial promotions), *ICOBS* 2.2.2AR (marketing communications), *ICOBS* 2.5.-1R (the customer's best interests rule), *ICOBS* 2.6 (Distribution of connected contracts through exempt persons), *ICOBS* 4.1 (Information about the firm, its services and remuneration), *ICOBS* 4.1A (Means of communicating to customers), *ICOBS* 4.3 (remuneration disclosure), *ICOBS* 5.2 (Demands and needs), *ICOBS* 5.3.3R (Advice on the basis of a fair analysis), *ICOBS* 5.3.4R (Personalised explanation), *ICOBS* 6A.1.4R (Ensuring the customer can make an informed decision) and *ICOBS* 6A.3 (Cross-selling)), except to the extent that the *firm* is subject to equivalent *rules* of its *designated professional body* which have been approved by the *FCA*.

...

## 7 Insurance Distribution Activity

### 7.1 Register of persons carrying on insurance distribution activity

...

Financial Services Register

...

7.1.7 G The information to be included on the record in relation to *exempt professional firms* will, as required by the UK provisions which implemented the IDD, include details of:

- (1) the name and address of each *exempt professional firm* that carries on, or is proposing to carry on, *insurance distribution activity*; and
- (2) where the *exempt professional firm* is not an individual, the names of the individuals within the management of the *exempt professional firm* who are responsible for the *insurance distribution activity*; ~~and~~
- (3) ~~each EEA State in which the exempt professional firm under an EEA right derived from the IDD:~~
  - (a) ~~has established a branch; or~~
  - (b) ~~is providing cross border services.~~ [deleted]

...

### 7.2 Passporting under the IDD [deleted]

7.2.1 G ~~All persons that are on the register maintained by the FCA in accordance with article 3 of the IDD, and so permitted to conduct insurance distribution activity, are entitled to exercise the EEA right conferred upon them by articles 4 (freedom to provide services) and 6 (freedom of establishment) of the IDD to establish a branch or provide services relating~~

to *insurance distribution activity* in another *EEA State*. Both *authorised professional firms* and *exempt professional firms* that are so registered by the *FCA* get the benefit of these passporting rights.

- 7.2.2 G ~~Any authorised professional firm or exempt professional firm that is contemplating the exercise of rights under articles 4 (freedom to provide services) or 6 (freedom of establishment) of the *IDD* to establish a *branch* or provide services relating to *insurance distribution activity* in another *EEA State* is referred to SUP 13 (Exercise of passport rights by UK firms) for further details as to the applicable process. Note that both *authorised professional firms* and *exempt professional firms* are *UK firms* for the purposes of the *Handbook*, including SUP 13.~~
- 7.2.3 G ~~A *UK firm* proposing to establish a *branch* in another *EEA State* for the first time under an *EEA right* derived from the *IDD* must first satisfy the conditions in paragraphs 19(2),(4) and (5) of Part III of Schedule 3 to the *Act* (EEA Passport Rights). These include the requirement that the firm must at the outset give the *FCA* a notice in the required form of its intention to establish the *branch*. SUP 13.3.2G to SUP 13.3.2CG and SUP 13.3.5G detail the procedure to be followed once such a *notice of intention* has been received by the *FCA*. SUP 13.5.1R (Specified contents: notice of intention to establish a branch) and SUP 13.6.9AG (Firms passporting under the *IDD*) will also be relevant.~~
- 7.2.4 G ~~A *UK firm* proposing to provide *cross border services* into another *EEA State* for the first time under an *EEA right* derived from the *IDD* must first satisfy the conditions in paragraph 20(1) of Part III of Schedule 3 to the *Act* (EEA Passport Rights). The *UK firm* must at the outset give the *FCA* a notice in the required form of its intention to provide the *cross border services* into another *EEA State*. In this instance, the relevant procedure to be followed is outlined in SUP 13.4.2G, SUP 13.4.4G and SUP 13.4.5AG. SUP 13.5.2R (Specified contents: notice of intention to provide cross border services) and SUP 13.7.11AG will also be relevant.~~

## Annex F

## Amendments to the Regulated Covered Bonds sourcebook (RCB)

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

## 1 Introduction

### 1.1 Introduction to sourcebook

...

#### Purpose

1.1.2 G The general purpose of this sourcebook is to set out the guidance, directions and rules made by the *FCA* under the *RCB Regulations*. Those regulations enable bonds to be issued which ~~comply with Article 52(4) of the *UCITS Directive*~~ qualify under *COLL* 5.2.11R(5A) and 5.6.7R(3A) for a concession from the general spread of risk requirements in respect of *transferable securities*.

...

1.1.7 G An *insurer* (which is not a UK *Solvency II firm*; ~~or a non-directive friendly society, incoming EEA firm or an incoming Treaty firm~~) may benefit from increased counterparty limits under *INSPRU* 2.1.22R(3)(b). An *insurer* which is a UK *Solvency II firm* is subject to the rules in the PRA Rulebook which transposed the *Solvency II Directive* and also to the *Solvency II Regulation* (EU) 2015/35 of 10 October 2014.

...

1.1.9 G (1) *Issuers* which are subject to an obligation to publish a prospectus under the ~~*Prospectus Directive Act*~~ and the *Prospectus Rules* are required by Article 3 of the *PD Regulation* to disclose risk factors. These requirements are set out in ~~*PR* 2.3.1EUUK~~ and *PR* App 3.1.1EUUK.

...



## Annex G

### Amendments to the Recognised Investment Exchanges sourcebook (REC)

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

#### 1 Introduction

##### 1.1 Application

- 1.1.1 G (1) The *rules and guidance* in this sourcebook apply to *recognised bodies* and to applicants for recognition as *RIEs* under *Part XVIII* of the *Act* (Recognised Investment Exchanges and Clearing Houses) ~~and (as *RAPs*) under the *RAP regulations*.~~
- ...
- 1.1.1A G ~~The *guidance* in *REC 6A* applies to *EEA market operators* exercising passporting rights in the *United Kingdom*. [deleted]~~
- 1.1.2 G ...
- (2) *UK RIEs* must satisfy *recognition requirements* prescribed by the Treasury (in certain cases with the approval of the Secretary of State) in the *Recognition Requirements Regulations*. *UK RIEs* must also satisfy the *MIFID/MiFIR requirements*. ~~*RAPs* must satisfy the recognition requirements prescribed by the Treasury in the *RAP regulations*, under the *auction regulation* and must also be *UK RIEs* and so are subject to requirements under the *MIFID/MiFIR requirements*. *ROIEs* must satisfy *recognition requirements* laid down in *section 292* of the *Act* (Overseas investment exchanges and overseas clearing houses).~~
- ...
- 1.1.3 G (1) The *recognition requirements* for *UK recognised bodies* are set out, with *guidance*, in *REC 2*. ~~The *RAP recognition requirements* (other than requirements under the *auction regulation* which are not reproduced in *REC*) are set out, with *guidance*, in *REC 2A*.~~
- ...
- (5A) ~~*Guidance* for *EEA market operators* exercising their passporting rights in the *United Kingdom* is set out in *REC 6A*. [deleted]~~
- ...
- #### 1.2 Purpose, status and quotations, notes or references

## Purpose

- 1.2.1 G The purpose of the *guidance* (~~other than in REC 6A~~) in this sourcebook is to give information on the *recognised body requirements*. ~~The purpose of the guidance in REC 6A is to give EEA market operators information about their passporting rights in the United Kingdom.~~ Explanations of the purposes of the *rules* in this sourcebook are given in the chapters concerned.

## Status

- 1.2.2 G (1) ... Other informative text regarding provisions of *EU* directives or ~~directly applicable EU onshored regulations~~ which is meant to be for the convenience of readers but is not part of the legislative material is preceded by the word “Note”. ...

...

## Quotations

- 1.2.3 G (1) This sourcebook contains quotations from the *Act*, the *Recognition Requirements Regulations*, ~~the RAP regulations~~, the *Companies Act 1989* and, where necessary, words have been added to, or substituted for, the text of these provisions to facilitate understanding.

...

## 2 Recognition requirements

### 2.1 Introduction

- 2.1.1 G (1) This chapter contains the *recognition requirements* for *UK RIEs* (~~other than RAPs~~) and sets out *guidance* on those requirements. ~~Except for REC 2.5A, references to recognised body or UK recognised bodies in the rest of this chapter shall be read as referring to UK RIEs.~~

...

- 2.1.1A G ~~Guidance on the RAP recognition requirements which apply to RAPs is set out in REC 2A (Recognised Auction Platforms).~~ *Guidance* on the *recognition requirements* for *ROIEs* is set out in **REC 6** (Overseas Investment Exchanges).

...

### 2.4A Management body

...

2.4A.2 UK Schedule to the Recognition Requirements Regulations, paragraph 2B

..

(2) For the purposes of sub-paragraph (1)(a) -

...

(b executive or non-executive directorships -  
)

...

(ii) held within the same undertaking where the [*UK RIE*] holds a qualifying holding ~~within the meaning of Article 4.1.31 of the markets in financial instruments directive~~ [*MiFID*],

...

...

...

(7) In sub-paragraph (2)(b)(ii)—

“qualifying holding” means a direct or indirect holding in an investment firm which represents 10% or more of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC, taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists;

“Directive 2004/109/EC” means Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

...

## 2.5 Systems and controls, algorithmic trading and conflicts

2.5.1 UK Schedule to the Recognition Requirements Regulations, paragraphs 3 – 3H

...

Paragraph 3B – Halting trading

...

- (4) If a trading venue operated by the [UK RIE] is material in terms of liquidity of the trading of a financial instrument and it halts trading ~~in an EEA State~~ in the United Kingdom in that instrument it must have systems and procedures in place to ensure that it notifies the FCA.

...

#### Paragraph 3C – Direct electronic access

Where the [UK RIE] permits direct electronic access to a trading venue it operates, it must -

- (1) (a) ensure that a member of, or participant in that trading venue is only permitted to provide direct electronic access to the venue if the member or participant -
- (i) ~~is an investment firm, as defined by Article 4.1.1 of the markets in financial instruments directive (definitions), authorised in accordance with the directive;~~  
an investment firm which has permission under Part 4A of the Act to carry on a regulated activity which is any of the investment services or activities;
  - (ii) ~~is a credit institution authorised in accordance with the capital requirements directive;~~  
a qualifying credit institution that has Part 4A permission to carry on the regulated activity of accepting deposits;
  - (iii) ~~comes within Article 2.1(a), (e), (i), or (j) of the markets in financial instruments directive (exemptions) and has a Part 4A permission relating to investment services and activities;~~  
is a person who falls within regulation 30(1A) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 and has permission under Part 4A of the Act to carry on a regulated activity which is any of the investment services or activities;
  - (iv) is a third country firm providing the direct electronic access in the course of exercising rights under Article 46.1 (general provisions) ~~or 47.3 (equivalence decision)~~ of the markets in financial instruments regulation;

...

...

- (c) ensure that a member of, or participant in, the trading venue retains responsibility for adherence to the requirements of any provisions of the law of the United Kingdom relied on by the United Kingdom before exit day to implement the markets in financial instruments directive in respect of orders and trades executed using the direct electronic access service, as those provisions have effect on exit day, in the case of rules made by the FCA under the Act, and as amended from time to time, in all other cases;

...

#### Paragraph 3G – Tick size regimes

- (1) ...

...

- (b) any financial instrument for which ~~regulatory technical standards are adopted by the European Commission~~ FCA pursuant to Article 49.3 or 4 under paragraphs 24 and 25 of Part 2 of Schedule 3 to ~~of the markets in financial instruments regulation which is traded on that trading venue.~~

...

...

- (3) The tick size regime must comply with ~~any regulatory technical standards adopted by the European Commission pursuant to Article 49.3 or 4 of the markets in financial instruments directive~~ Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds.

...

#### Paragraph 3H – Synchronisation of business clocks

- (1) The [UK RIE] must synchronise the business clocks it uses to record the date and time of any reportable event in accordance with ~~regulatory technical standards adopted by the European Commission pursuant to Article 50 of the markets in financial instruments directive~~ Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks.

...

...

**2.6 General safeguards for investors, suspension and removal of financial instruments from trading and order execution on regulated markets**

...

2.6.7 ~~EU~~ ...  
UK

2.6.8 ~~EU~~ ...  
UK

...

2.6.10 ~~EU~~ ...  
UK

2.6.11 ~~EU~~ ...  
UK

2.6.11A ~~EU~~ ...  
UK

2.6.11B ~~EU~~ ...  
UK

2.6.11C ~~EU~~ ...  
UK

...

2.6.15 ~~EU~~ ...  
UK

2.6.16 ~~EU~~ ...  
UK

...

2.6.18 ~~EU~~ ...  
UK

2.6.18A ~~EU~~ ...  
UK

2.6.18B ~~EU~~ ...

	<u>UK</u>	
2.6.18C	<del>EU</del> ...	
	<u>UK</u>	
	...	
<b>2.7</b>	<b>Access to facilities</b>	
	...	
2.7.1A	UK	Schedule to the Recognition Requirements Regulations, Paragraph 7B
		...
		(2) In particular those rules must specify the obligations for users or members of its <i>facilities</i> arising from -
		...
		(c) its professional standards for staff of any <i>investment firm</i> or <del><i>credit institution</i></del> <u>qualifying credit institution</u> having access to or membership of a financial market operated by the [UK <i>RIE</i> ];
		(d) conditions established under sub-paragraph (3)(c) for access to or membership of a trading venue operated by the [UK <i>RIE</i> ] by persons other than <i>investment firms</i> or <del><i>credit institutions</i></del> <u>qualifying credit institutions</u> ; and
		...
		...
		(4) <del>Rules under this paragraph must enable—</del>
		(a) <del>an <i>investment firm</i> authorised under Article 5 of [MiFID], or</del>
		(b) <del>a <i>credit institution</i> authorised under the [CRD],</del>
		<del>by the <i>competent authority</i> of another <i>EEA State</i> (including a <i>branch</i> established in the <i>United Kingdom</i> of such a firm or institution) to have direct or remote access to or membership of, any trading venue operated by the [UK <i>RIE</i>] on the same terms as a <i>UK firm</i>. [deleted]</del>
		...
2.7.1B	UK	Schedule to the Recognition Requirements Regulations, Paragraph 7C
		...

- (3) ~~The rules under sub-paragraph (2) must enable an *investment firm* or a *credit institution* authorised by the *competent authority* of another *EEA State* (including a *branch* established in the *United Kingdom* of such a firm or institution) to have access to those *facilities* on the same terms as a *UK firm* for the purposes of finalising or arranging the finalisation of transactions in *financial instruments*. [deleted]~~

...

2.7.1C UK Schedule to the Recognition Requirements Regulations, Paragraph 9ZC

...

- (1) The rules of the [UK RIE] about access to, or membership of, a regulated market operated by it must permit the [UK RIE] to give access to or admit membership to (as the case may be) only -

- (a) ~~an investment firm authorised under article 5 of [MiFID]~~ which has permission under Part 4A of the Act to carry on a regulated activity which is an investment service or activity;
- (b) ~~a credit institution authorised in accordance with the capital requirements directive; or~~ a qualifying credit institution that has Part 4A permission to carry on the regulated activity of accepting deposits;

...

...

## 2.7A Position management and position reporting in relation to commodity derivatives

2.7A.1 UK ...

Paragraph 7BB – Position reporting

...

- (2) The [UK RIE] must -
- (a) where it meets the minimum threshold, as specified in a ~~delegated act adopted by the European Commission pursuant to Article 58.6 of the markets in financial instruments directive~~ article 83 (position reporting) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, make public a weekly report with the aggregate positions held by the different categories of



persons for the different commodity derivatives, emission allowances, or emission allowance derivatives traded on the trading venue specifying -

...

...

(4) The [*UK RIE*] must classify persons holding positions in commodity derivatives, emission allowances, or emission allowance derivatives according to the nature of their main business, taking account of any applicable authorisation or registration, as -

- (a) an investment firm or qualifying credit institution;
- (b) an investment fund, either as an undertaking for collective ~~investments~~ investment in transferrable securities within the meaning of section 236A of the Act, an AIF or an AIFM within the meaning of regulations 3 and 4 respectively of the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773) as defined in the UCITS Directive, or an alternative investment fund or alternative investment fund manager as defined in the alternative investment fund managers directive;
- (c) ~~another financial institution, including an insurance undertaking and a reinsurance undertaking as defined in the Solvency 2 Directive and an institution for occupational retirement provision as defined in Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement;~~

another financial institution, including an insurance undertaking within the meaning of section 417 of the Act, a reinsurance undertaking within the meaning of section 417 of the Act, and an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993;

...

[Note: 1993 c.48. Section 1 was amended by section 239 of the Pension Schemes Act 2004 (c. 35) and S.I. 2007/3014.]

(5) The [*UK RIE*] must communicate the weekly report mentioned in sub-paragraph (2)(a) to the FCA ~~and ESMA~~.

...

## 2.12 Availability of relevant information and admission of financial instruments to trading

...

2.12.2AA UK Schedule to the Recognition Requirements Regulations, Paragraph 9ZB

...

...

(6) In this paragraph –

“the disclosure obligations” are the initial ongoing and ad hoc disclosure requirements contained in-

...

(b) ~~Articles 3, 5, 7, 8, 14 and 16 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading;~~

those provisions of Part 6 of the Act and Part 6 rules (within the meaning of section 73A of the Act) which were relied on by the United Kingdom before exit day to implement—

(i) Articles 3, 5, 7, 8, 14 and 16 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading;

(ii) Articles 4 to 6, 14 and 16 to 19 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market;

as they have effect on exit day in the case of Part 6 rules;

(c) ~~Articles 4 to 6, 15 and 16 to 19 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 relating to harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market; and~~

any EU regulation, originally made under any of the provisions mentioned in paragraphs (a), (b)(i) and (b)(ii), which is retained direct EU legislation; and

(d) ~~EU legislation made under the provisions mentioned in paragraphs (a) to (c);~~

any subordinate legislation (within the meaning of the Interpretation Act 1978) made under any of the provisions mentioned in paragraphs (a), (b)(i) and (b)(ii) on or after exit day.

and the legislation referred to in paragraphs (b) and (c) is given effect-

- (a) ~~in the United Kingdom by Part 6 of the [Financial Services and Markets Act 2000] Act and Part 6 rules (within the meaning of section 73A of the Act);]~~
- (b) ~~in another EEA State by legislation transposing the relevant Articles in that State.~~

2.12.2B EU ...

UK

...

2.12.2D EU ...

UK

2.12.2E EU ...

UK

...

## **2.16A Operation of a multilateral trading facility (MTF) or an organised trading facility (OTF)**

2.16A.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 9A-9H

...

- (2) ~~[A UK RIE]~~ An exchange operating a multilateral trading facility or an organised trading facility must comply with those requirements of- —

- (a) ~~Chapter 1 of Title II of [MiFID]; and~~

any provisions of the law of the United Kingdom relied on by the United Kingdom before exit day to implement Chapter 1 of Title II of the markets in financial instruments directive—

- (i) as they have effect on exit day, in the case of rules made by the FCA under the Act; and

- (ii) as amended from time to time, in all other cases;

- (b) ~~any directly applicable EU legislation made under Chapter 1;~~

any EU regulation originally made under Chapter 1 of the markets in financial instruments directive which is retained direct EU legislation, or any subordinate legislation (within the meaning of the Interpretation Act 1978) made under those provisions on or after exit day;

which are applicable to a market operator ~~---~~ operating such a facility.

...

Paragraph 9C - Specific requirements for multilateral trading facilities: access to a facility

...

- (a) ~~an investment firm authorised under Article 5 of the markets in financial instruments directive~~ which has permission under Part 4A of the Act to carry on a regulated activity which is an investment service or activity;
- (b) ~~a credit institution authorised in accordance with the capital requirements directive; or~~  
a qualifying credit institution that has Part 4A permission to carry on the regulated activity of accepting deposits.

...

...

Paragraph 9E – SME growth markets

- (1) A [UK RIE] operating a ~~multilateral trading facility which has registered that facility as an SME growth market in accordance with Article 33 of the markets in financial instruments directive~~ (an “exchange-operated SME growth market”) must comply with rules made by the FCA for the purposes of this paragraph as they have effect on exit day.

...

...

Paragraph 9F – Specific requirements for organised trading facilities: execution of orders

...

- (3) If the [UK RIE] engages in matched principal trading in accordance with sub-paragraph (2)(a) it must establish arrangements to ensure compliance with the definition of matched

principal trading in ~~article 4.1.38 of the markets in financial instruments directive.~~

...

- (6) The second discretion is whether to match a specific client order with other orders available on the organised trading facility at a given time, provided the exercise of such discretion is in compliance with specific instructions received from the client and in accordance with the [*UK RIE*'s] obligations under ~~Article 27 of the markets in financial instruments directive.~~

- (a) section 11.2A of the Conduct of Business sourcebook;
- (b) Articles 64 to 66 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;
- (c) Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions; and
- (d) Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution.

...

- (9) The [*UK RIE*] must comply with rules made by the FCA as they have effect on exit day as to how Articles 24, 25, 27 and 28 of the markets in financial instruments directive apply to its operation of an organised trading facility.

...

- (11) In this paragraph –  
 “close links” has the meaning given in ~~Article 4.1.1 of the markets in financial instruments directive~~ Article 2(1)(21) of the markets in financial instruments regulation;

“investment firm” has the meaning given in ~~Article 4.1.1 of the markets in financial instruments directive~~ Article 2(1A) of the markets in financial instruments regulation;

“non-equities” means bonds, structured finance products, emissions allowances and derivatives traded on a trading venue to which Article 8(1) of the markets in financial instrument regulation applies.

...

## 2.16B Operation of a data reporting service

Schedule to the Recognition Requirements Regulations, Paragraph 9I

- 2.16B.1 UK A [*UK RIE*] providing data reporting services must comply ~~with~~ with ~~Title V of the markets in financial instruments directive~~.
- (a) the Data Reporting Services Regulations 2017 (SI 2017/699);
  - (b) the requirements of [MAR 9];
  - (c) Chapter 6 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;
  - (d) Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers;
  - (e) Commission Implementing Regulation (EU) 2017/1110 of 22 June 2017 laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting service providers and related notifications pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

...

Delete the text of REC 2A (Recognised Auction Platforms). The text is not shown but the chapter is marked [deleted] as shown below.

## 2A Recognised Auction Platforms [deleted]

...

Amend the following as shown.

### **3 Notification rules for UK recognised bodies**

#### **3.1 Application and purpose**

Application

...

- 3.1.3A G ~~The *notification rules* in this chapter which apply to an *RAP* are without prejudice to *notification rules* which apply to a *UK RIE* which operates the *RAP*. However, a *UK RIE* which operates an *RAP* may make a single notification where a notification is required both in its capacity as a *UK RIE* and an *RAP*. [deleted]~~

...

#### **3.4 Members of the management body and internal organisation**

Purpose

...

- 3.4.4A R The following information is specified for the purposes of *REC* 3.4.2AR:

...

- (3) where applicable, a description of the responsibilities which he or she will have in the post to which he or she is to be appointed or elected, ~~including for a *UK RIE* which operates an *RAP* where the *person* has responsibilities both in the *UK RIE* and *RAP*, a description of the responsibilities he has in respect of each body;~~
- (4) where applicable, a description of the responsibilities in the post from which he or she resigned or otherwise ceased to act, ~~including for a *UK RIE* which operates an *RAP* where the *person* had responsibilities both in the *UK RIE* and the *RAP*, a description of the responsibilities he or she had in respect of each body; and~~

...

...

#### **3.13 Delegation of relevant functions**

Application

...

- 3.13.1 G (1) The purpose of *REC 3.13* is to enable the *FCA* to monitor any significant instances where *UK recognised bodies* outsource their functions to other *persons* (as permitted under Regulation 6 of the *Recognition Requirements Regulations* ~~or, in relation to an *RAP*, under regulation 13 of the *RAP regulations*~~). See *REC 2.2* and *REC 2A.2*).

...

- 3.13.2 R Where a *UK recognised body* makes an offer or agrees to delegate any of its *relevant functions* to another *person*, it must immediately give the *FCA* notice of that event, and:

...

- (2) inform the *FCA* of the reasons why it is satisfied that it will continue to meet the *recognition requirements* ~~or (for an *RAP*) *RAP recognition requirements*~~ following that delegation;

...

...

### 3.14 Products, services and normal hours of operation

...

#### Hours of operation

- 3.14.11 R Where a *UK recognised body* proposes to change its normal hours of operation ~~or (for *RAPs*) the timing, frequency or duration of its bidding windows~~, it must give the *FCA* notice of that proposal, and particulars of, and the reasons for, the actions proposed, at the same time as the proposal is first formally communicated to its *members* or shareholders, or any group or class of them.

### 3.14A Operation of a trading venue

#### Purpose

- 3.14A.1 G ...
- [~~Note: *MiFID RTS 3* and *MiFID ITS 4*, Annex IV provide for the format for notification by the operator of an *MTF* or *OTF* to its *Home State competent authority* of any arrangements to facilitate access to and trading on the *trading venue* by remote users, members or participants within the territory of another *EEA State*~~]

...



~~Operation of a recognised auction platform~~

- 3.14A.6 G ~~If a UK RIE proposes to operate an RAP, it will need to make a separate application to be recognised as an RAP (see REC 5 (Applications)).~~  
~~[deleted]~~

Pre- and post- trade transparency requirements for equity and non-equity instruments: form of waiver and deferral

...

- 3.14A.7B G ~~According to article 4(7) of MiFIR, waivers granted by competent authorities in accordance with articles 29(2) and 44(2) of Directive 2004/39/EC and articles 18, 19 and 20 of Regulation (EC) No 1287/2006 before 3 January 2018 shall be reviewed by ESMA by 3 January 2020. ESMA shall issue an opinion to the competent authority, assessing the continued compatibility of those waivers with the requirements established in MiFIR and any regulations made pursuant to it. The FCA will cooperate with ESMA in relation to the continued effect of existing waivers.~~  
~~[deleted]~~

...

### 3.15 Suspension of services and inability to operate facilities

#### Purpose

- 3.15.1 G (1) The purpose of REC 3.15.2R to REC 3.15.5G is to enable the FCA to obtain information where a UK recognised body decides to suspend the provision of its services in relation to particular investments or (for an RAP) decides to cancel an auction. Planned changes to the provision of services should be notified to the FCA under REC 3.14.

...

- (3) ~~REC 3.15.8R to REC 3.15.9G provide for notification to the FCA where an RAP has to cancel an auction in specified circumstances.~~  
~~[deleted]~~

...

#### ~~Recognised auction platforms—cancellation of auctions~~

- 3.15.8 R ~~Where an RAP has to cancel an auction in the circumstances set out in articles 7(5) or 7(6) of the auction regulation, it must immediately give the FCA notice of that cancellation.~~ ~~[deleted]~~
- 3.15.9 G ~~Under article 7(7) of the auction regulation, an RAP is required to notify the FCA of:~~ ~~[deleted]~~

- (1) ~~the methodology used to determine the application of article 7(6) of the *auction regulation*; and~~
- (2) ~~modifications to that methodology made between bidding windows.~~

...

### 3.18 Membership

- 3.18.1 G (1) The purpose of *REC 3.18* is to enable the *FCA* to monitor changes in the types of *member* admitted by *UK recognised bodies* and to ensure that the *FCA* has notice of foreign jurisdictions in which the *members* of *UK recognised bodies* are based. *UK recognised bodies* may admit *persons* who are not *authorised persons* or *persons* who are not located in the *United Kingdom*, provided that the *recognition requirements* ~~or (for *RAPs*) *RAP recognition requirements*~~ continue to be met.
- (2) *REC 3.18.2R* focuses on the admission of *persons* who are not *authorised persons* (whether or not they are located in the *United Kingdom*) and on whether the specific *recognition requirement* ~~or (for an *RAP*) *RAP recognition requirement*~~ relating to access to *facilities* can still be met. *REC 3.18.3R* focuses on the admission of *members* from outside the *UK* and whether all relevant *recognition requirements* ~~or (for an *RAP*) *RAP recognition requirements*~~ can be met.

...

- 3.18.2 R Where a *UK recognised body* admits a *member* who is not an *authorised person* of a type of which, immediately before that time, that *UK recognised body* had not admitted to membership, it must immediately give the *FCA* notice of that event, and:

- (1) a description of the type of *person* whom it is admitting to membership; and
- (2) (in relation to a *UK RIE*) particulars of its reasons for considering that, in admitting that type of *person* to membership, it is able to continue to satisfy the *recognition requirement* in paragraph 4(2)(a) of the Schedule to the *Recognition Requirements Regulations* which applies to it; and
- (3) ~~(in relation to an *RAP*) particulars of its reasons for considering that, in admitting that type of *person* to membership, it is able to continue to satisfy the *RAP recognition requirement* in regulation 20 (*Access to auctions*) which applies to it. [deleted]~~

- 3.18.3 R Where a *UK recognised body* admits for the first time a *member* whose head or registered office is in a jurisdiction from which that *UK*

*recognised body* has not previously admitted *members*, it must immediately give the *FCA* notice of that event, and:

...

- (2) the name of any regulatory authority in that jurisdiction which regulates that *member* in respect of activities relating to *specified investments* ~~or (for an *RAP*) relating to *emissions auction products*~~; and
- (3) particulars of its reasons for considering that, in admitting a *member* from that jurisdiction to membership, it is able to continue to satisfy the *recognition requirements* ~~or (for an *RAP*) the *RAP recognition requirements*~~ which apply to it.

...

### **3.22 Restriction of, or instruction to close out, open positions**

...

- 3.22.2 R ~~Where an *RAP* proposes to impose a maximum bid size or take other remedial measures to mitigate risks of *market abuse*, *financial crime* or anti-competitive behaviour in accordance with article 57 of the *auction regulation*, the *RAP* must give the *FCA* notice of that event and details of the remedial measures proposed. [deleted]~~

...

### **3.24 Transfers of ownership**

- 3.24.1 R When a *UK RIE* becomes aware of a transfer of ownership of the *UK RIE* which gives rise to a change in the *persons* who are in a position to exercise significant influence over the management of the *UK RIE* ~~or (in the case of a *UK RIE* that is also an *RAP*) over the management of the *RAP*~~, whether directly or indirectly, it must immediately notify the *FCA* of that event, and:

...

...

### **3.25 Significant breaches of rules and disorderly trading conditions**

- 3.25.1 R A *UK RIE* ~~and an *RAP*~~ must immediately notify the *FCA* of:

...

### **3.26 Proposals to make regulatory provision**

...

Disapplication of duty to notify proposal to make regulatory provision

- 3.26.4 R The duty in section 300(B)(1) of the *Act* does not apply to any of the following:
- (1) any *regulatory provision* which is required under ~~EU law~~ or any enactment or rule of law in the *United Kingdom*; or

...

...

## 4 Supervision

### 4.1 Application and purpose

...

Purpose

- 4.1.2 G This chapter sets out the *FCA*'s approach to the supervision of *recognised bodies* and contains *guidance* on:

...

- (2) the *FCA*'s approach to the exercise of its powers under:
- (a) (for *RIEs*) section 296 of the *Act* (Appropriate regulator's power to give directions) ~~or (for *RAPs*) regulation 3 of the *RAP regulations*~~ to give directions to *recognised bodies* (*REC* 4.6);
- (b) (for *RIEs*) section 297 of the *Act* (Revoking recognition) ~~or (for *RAPs*) regulation 4 of the *RAP regulations*~~ to revoke *recognition orders* (*REC* 4.7);

...

...

### 4.2A Publication of information by UK RIEs ~~and RAPs~~

- 4.2A.1 G Under subsections 292A(1) and (2) of the *Act*, a *UK RIE* must as soon as practicable after a *recognition order* is made in respect of it publish such particulars of the ownership of the *UK RIE*, including the identity and scale of interests of the *persons* who are in a position to exercise significant influence over the management of the *UK RIE* ~~or (where the *UK RIE* is also an *RAP*) the *RAP*~~, whether directly or indirectly, as the *FCA* may reasonably require.

- 4.2A.2 G Under subsections 292A(3) and (4) of the *Act*, a *UK RIE* must as soon as practicable after becoming aware of a transfer of ownership of the *UK RIE*

which gives rise to a change of *persons* who are in a position to exercise significant influence over the management of the *UK RIE* ~~or (where the *UK RIE* is also an *RAP*) the *RAP*~~, whether directly or indirectly, publish such particulars of any such transfer as the *FCA* may reasonably require.

...

Delete the text of REC 4.2B (Exercise of passport rights by a UK RIE). The text is not shown but the section is marked [deleted] as shown below.

#### **4.2B Exercise of passport rights by a UK RIE [deleted]**

Amend the following as shown.

#### **4.2C Control over a UK RIE**

...

4.2C.2 G The *FCA* will approve an acquisition or an increase in control if it is satisfied that the acquisition by the *person* seeking approval does not pose a threat to the sound and prudent management of any financial market operated by the *UK RIE* (see section 301F(4) of the *Act*). ~~The reference to any financial market is to be read as including a reference to any auction platform as a result of the *RAP* regulations.~~

...

#### **4.2D Suspension and removal of financial instruments from trading by the FCA**

...

4.2D.10 G Under sections 313CC (2) and (3) of the *Act*, if the *FCA* receives notice that ~~a competent authority of another *EEA State* has suspended or removed a financial instrument from trading on a trading venue or systematic internaliser pursuant to articles 32.2, 52.2 or 69.2 of *MiFID*, the *FCA* must require any trading venue or systematic internaliser falling under its jurisdiction as defined in section 313D of the *Act*, and which trades the same instrument, to suspend or remove the instrument from trading if the suspension or removal was due to suspected market abuse; a take-over bid; or the non-disclosure of *inside information* about the *issuer* or the instrument. The same applies in relation to a derivative which relates to or is referenced to the *financial instrument*. The *FCA* must revoke the~~

requirement if the other *EEA State* informs the *FCA* it has lifted the suspension or removal. ~~[deleted]~~

- 4.2D.11 G The *FCA* receives notice for the purposes of *REC 4.2D.10G* when it is provided by a *competent authority* of another *EEA State* or *ESMA* in accordance with section 313CC(4) of the *Act*. ~~[deleted]~~

#### 4.2E Information: compliance of UK recognised bodies with ~~EU~~ specified requirements

- 4.2E.1 G (1) Under section 293A of the *Act*, the *FCA* may require a *UK recognised body* to give such information as it reasonably requires in order to satisfy itself that the *UK recognised body* is complying with any qualifying ~~EU~~ provision that is specified, or of a description specified, for the purposes of section 293A of the *Act* by the Treasury.

...

...

#### 4.4 Complaints

Recognised body's arrangements

- 4.4.1 G *Recognised bodies* may receive complaints from time to time from their *members* and other people, both about the conduct of *members* and about the *recognised body* itself. A *UK recognised body* will need to have satisfactory arrangements to investigate these complaints in order to satisfy the relevant *recognition requirements* (see *REC 2.15* and *REC 2.16*) ~~or *RAP recognition requirements* (see *REC 2A.3.2G*)~~.

...

#### 4.6 The section 296 power to give directions

- 4.6.1 G Under section 296 of the *Act* (*FCA's* power to give directions) ~~and (for *RAPs*) under regulation 3 of the *RAP regulations*~~, the *FCA* has the power to give directions to a *recognised body* to take specified steps in order to secure its compliance with the *recognised body requirements*. In the case of a *UK RIE* ~~(including one which operates an *RAP*)~~ those steps may include granting the *FCA* access to the *UK RIE's* premises for the purposes of inspecting those premises or any documents on the premises and the suspension of the carrying on of any *regulated activity* by the *UK RIE* for the period specified in the direction.
- 4.6.3 G The *FCA* is likely to exercise its power under section 296 of the *Act* ~~or regulation 3 of the *RAP regulations*~~ if it considers that:

...

- 4.6.4 G Under section 298(7) of the *Act* (Directions and revocation: procedure), and ~~(for *RAPs*) regulation 5(7) of the *RAP regulations*~~, the *FCA* need not follow the consultation procedure set out in the rest of section 298 (see *REC* 4.8) or may cut short that procedure, if it considers it reasonably necessary to do so. ~~For *RAPs*, the *FCA* need not follow the procedure set out in regulation 5 of the *RAP regulations* or may cut short the procedure, if it considers it essential to do so.~~

...

#### 4.7 The section 297 power to revoke recognition

- 4.7.1 G Under section 297 of the *Act* (Revoking recognition) ~~and (for *RAPs*) under regulation 4 of the *RAP regulations*~~, the *FCA* has the power to revoke a *recognition order* relating to a *recognised body*.

...

- 4.7.2A G ~~Where the *FCA* makes a revocation order under section 297 of the *Act* in relation to a *UK RIE* which is also an *RAP*, the *FCA* will also revoke the *recognition order* relating to its status as an *RAP*. [deleted]~~

- 4.7.3 G The *FCA* will usually consider revoking a *recognition order* if:

...

- (2) It would not be possible for the *recognised body* to comply with a direction under section 296 of the *Act* (*FCA*'s power to give directions) ~~or (for *RAPs*) regulation 3 of the *RAP regulations*~~; or
- (3) for some other reason, it would not be appropriate for the *FCA* to give a direction under section 296 ~~or (for *RAPs*) regulation 3 of the *RAP regulations*~~; or
- (4) in the case of a *UK RIE*, it has not carried on the business of an investment exchange during the 12 *months* beginning with the day on which the *recognition order* took effect in relation to it, or it has not carried on the business of an investment exchange at any time during the period of six *months* ending with the day the *recognition order* is revoked. ~~;~~
- (5) ~~in the case of an *RAP* in relation to its *RAP recognition order*, it has not carried on the business of an *auction platform* during the 12 *months* beginning with the day on which the *RAP recognition order* took effect in relation to it, or it has not carried on the business of an *auction platform* at any time during the period of six *months* ending with the day the *RAP recognition order* is revoked.~~ [deleted]

- 4.7.4 G The *FCA* would be likely to consider the conditions in *REC* 4.7.3G(2) or *REC* 4.7.3G(3) to be triggered in the following circumstances:

...

- (3) the *recognised body* is failing or has failed to comply with a direction made under section 296 of the *Act* ~~or (for *RAPs*) regulation 3 of the *RAP regulations*~~; or

...

...

#### 4.8 The section 298 procedure

4.8.1 G A decision to:

- (1) revoke a *recognition order* under section 297 of the *Act* (Revoking recognition) ~~or (for *RAPs*) regulation 4 of the *RAP regulations*~~; or
- (2) make a direction under section 296 (*FCA's* powers to give directions) ~~or (for *RAPs*) regulation 3 of the *RAP regulations*~~; or
- (3) refuse to make a *recognition order* under section 290 (Recognition orders) or 290A (Refusal of recognition on ground of excessive regulatory provision) ~~or (for *RAPs*) regulation 2 of the *RAP regulations*~~;

is a serious one and section 298 of the *Act* (Directions and revocation: procedure) ~~and (for *RAPs*) regulation 5 of the *RAP regulations*~~ sets out procedures (see *REC* 4.8.9G) which the *FCA* will follow unless;

in the case of a revocation of a *recognition order*, the *recognised body* concerned has given its consent (see section 297(1) ~~or regulation 4(1) of the *RAP regulations*~~); or:

~~(G (a), in the case where the *FCA* proposes to make a direction under section 296, it considers it is reasonably necessary not to follow, or to cut short, the procedure (see *REC* 4.8.7G); or,~~

~~(G (b) (for *RAPs*) in a case where the *FCA* proposes to make a direction under regulation 3 of the *Rap regulations*, it considers it is essential not to follow, or to cut, short, the procedure.~~

...

4.8.3 G In considering whether it would be appropriate to exercise the powers under section 296 or section 297 of the *Act* ~~or (for *RAPs*) regulation 3 or 4 of the *RAP regulations*~~, the *FCA* will have regard to all relevant information and factors including:

...

...



- 4.8.5 G The procedures laid down in section 298 of the *Act* and ~~(for RAPs) regulation 5 of the *RAP regulations*~~ are summarised, with the *FCA*'s guidance about the actions it proposes to take in following these ~~procedures~~ procedures, in the tables at *REC* 4.8.9G and ~~*REC* 4.8.10G~~ respectively.
- 4.8.6 G Before exercising its powers under section 296 or section 297 of the *Act* ~~or (for RAPs) regulation 3 or 4 of the *RAP regulations*~~, the *FCA* will usually discuss its intention, and the basis for this, with the *members of the management body* or other appropriate representatives of the *recognised body*. It will usually discuss its intention not to make a *recognition order* with appropriate representatives of the applicant.

Key steps in the section 298 procedure

...

- 4.8.10 G ~~For RAPs, key steps in the regulation 5 procedure [deleted]~~

	The <i>FCA</i> will:	<i>Guidance</i>
(1)	give written notice to the <i>RAP</i> (or applicant);	The notice will state why the <i>FCA</i> intends to take the action it proposes to take, and include an invitation to make representations, and the date by which representations should be made.
(2)	take such steps as it considers reasonably practicable to bring the notice to the attention of the <i>members</i> of the <i>RAP</i> or of the applicant, as the case may be;	The <i>FCA</i> will also notify <i>persons</i> individually (as far as it considers it reasonably practicable to do so) if it considers that the action it proposes to take would affect them adversely in a way which would be different from its effect on other

		<i>persons</i> of the same class.
(3)	publish the notice so as to bring it to the attention of other <i>persons</i> likely to be affected;	
(4)	receive representations from the <i>RAP</i> or applicant concerned, any <i>member</i> of the <i>RAP</i> or applicant, and any other <i>person</i> who is likely to be affected by the action the <i>FCA</i> proposes to take;	The <i>FCA</i> will not usually consider oral representations without first receiving written representations from the <i>person</i> concerned. It will normally only hear oral representations from the <i>RAP</i> (or applicant) itself or of a <i>person</i> whom it has notified individually, on request.
(5)	write promptly to any <i>person</i> who requests the opportunity to make oral representations if it decides not to hear that <i>person's</i> representations;	The <i>FCA</i> will indicate why it will not hear oral representations and the <i>FCA</i> will allow the <i>person</i> concerned further time to respond.
(6)	have regard to representations made;	
(7)	(when it has reached its decision) notify the <i>RAP</i> (or applicant)	

	concerned in writing;	
(8)	<del>(if it has decided to give a direction, or revoke or refuse to make a recognition order) take such steps as it considers reasonably practicable to bring its decision to the attention of members of the RAP or applicant and to other persons likely to be affected.</del>	The <i>FCA</i> will usually give notice of its decision to the same <i>persons</i> and in the same manner as it gave notice of its intention to act.

**4.9 Disciplinary measures**

- 4.9.1 G (1) Under sections 312E and 312F of the *Act*, if the *FCA* considers that a *recognised body* has contravened a requirement imposed by the *FCA* under any provision of the *Act* that relates to a *RIE*, or under any provision of the *Act* whose contravention constitutes an offence the *FCA* has power to prosecute, or by a qualifying ~~EU~~ provision specified by the Treasury it may:
- (a) publish a statement to that effect; or
  - (b) impose on the body a financial penalty of such amount as it considers appropriate.

...

...

**5 Applications for Recognition (UK recognised bodies)**

**5.1 Introduction and legal background**

...

- 5.1.1A G ~~A UK RIE may apply to the FCA for recognition as an RAP under regulation 2 of the RAP regulations. [deleted]~~

...

## 5.2 Application process

...

- 5.2.3 G An application should:
- (1) be made in accordance with any directions the *FCA* may make under section 287 (Application by an investment exchange) of the *Act* ~~or (for *RAPs*) regulation 2 of the *RAP regulations*~~;

...

...

- 5.2.5A G ~~A *UK RIE* applying for recognition as an *RAP* may wish to consult the *FCA* about the extent to which information which it has already supplied in connection with its status as a *UK RIE* can be used to support an application to be recognised as an *RAP*. [deleted]~~

- 5.2.6 G Under section 289 of the *Act* (Applications: supplementary) ~~or (for an *RAP* applicant) regulation 2 of the *RAP regulations*~~, the *FCA* may require the applicant to provide additional information, and may require the applicant to verify any information in any manner. In view of their likely importance for any application, the *FCA* will normally wish to arrange for its own inspection of an applicant's information technology systems.

- 5.2.6A G In the case of an application to become a *UK RIE* ~~or an *RAP*~~, under subsection 290(1B) of the *Act* ~~and (for an *RAP* applicant) regulation 2(8) of the *RAP regulations*~~, the application must be determined by the *FCA* before the end of the period of six *months* beginning with the date on which it receives the completed application.

...

- 5.2.12 G Where the *FCA* considers that it is unlikely to make a *recognition order* it will discuss its concerns with the applicant as early as possible with a view to enabling the applicant to make changes to its rules or guidance, or other parts of the application (see *REC* 5.2.7G). If the *FCA* decides that it will not make a *recognition order*, it will follow the procedure set out in section 298 of the *Act* (Directions and revocation: procedure) ~~or (in the case of an *RAP*) regulation 5 of the *RAP regulations*~~ and described in more detail in *REC* 4.8.

Information and supporting documentation (see *REC* 5.2.4G)

- 5.2.14 G (1) Details of the applicant's constitution, structure and ownership, including its memorandum and articles of association (or similar or analogous *documents*) and any agreements between the applicant, its owners or other *persons* relating to its constitution or governance (if not contained in the information listed in *REC* 5.2.3AG). ~~An applicant for *RAP* status must provide details of the~~

relationship between the governance arrangements in place for the *UK RIE* and the *RAP*.

...

- (3) Details of the *facilities* which the applicant plans to operate, including details of the trading platform or ~~(for an *RAP*) *auction platform*~~, settlement arrangements, clearing facilitation services and *custody* services which it plans to supply. ~~An applicant for *RAP* status must provide details on the relationship between the *auction platform* and any secondary market in *emissions auction products* which it operates or plans to operate.~~

...

- (18) Details of membership selection criteria, rules and procedures; including ~~(for an *RAP*) details of how the rules of the *UK RIE* will change in order to reflect *RAP* status.~~

...

## 6 Overseas Investment Exchanges

### 6.1 Introduction and legal background

- 6.1.1 G (1) obtain a *Part 4A permission* from the *FCA*; or
- (2) ~~(in the case of an *EEA firm* or a *Treaty firm*) qualify for *authorisation* under Schedule 3 (*EEA Passport Rights*) or Schedule 4 (*Treaty rights*) to the *Act*, respectively; or [deleted]~~
- (3) ~~(in the case of an *EEA market operator*) obtain *exempt person* status by exercising its passport rights under article 34(6) of *MiFID* (in the case of arrangements relating to a *multilateral trading facility*) or *organised trading facility*) or article 53(6) of *MiFID* (in the case of arrangements relating to a *regulated market*); or [deleted]~~

...

...

Delete the text of REC 6A (EEA market operators in the United Kingdom). The text is not shown but the chapter is marked [deleted] as shown below.

## 6A EEA market operators in the United Kingdom [deleted]

...

Amend the following as shown.

**Sch 1 Record keeping requirements**

1.1G ...

*UK recognised bodies* have obligations under the *Recognition Requirements Regulations* to ensure that satisfactory arrangements are made for recording transactions effected by, or cleared through, their *facilities*. See *REC 2.9* for guidance (~~in the case of *RAPs*, see *REC 2.9* as applied by *REC 2A.3.2G*~~).

~~*RAPs* also have separate record keeping obligations under the *auction regulation*.~~

**Sch 2 Notification requirements**

2.1G The following table summarises the notification requirements applicable to all *recognised bodies*. The *notification rules* are set out in detail in *REC 3* (Notification rules for UK recognised bodies) and *REC 6.7* and, to avoid unnecessary repetition, are not set out in detail here. ~~The *notification rules* for *RAPs* differ in some respects from the *notification rules* for *UK RIEs* (for example, due to requirements contained in the *auction regulation*).~~

...

2.2G

Reference to legislation or Handbook	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>RAPs</i>				
<del>The <i>auction regulation</i> article 7(7)</del>	Either a methodology or a modification to that methodology as specified by the <i>auction regulation</i>	See <i>REC 3.15</i>	Event concerned	Without delay
Notification rules for UK recognised bodies (see <i>REC 3</i> (Notification rules for UK recognised bodies))				

...				
REC 3.14	Products, services and normal hours of operation <del>or (for RAPs) the timing, frequency or duration of its bidding windows</del>	See REC 3.14	See REC 3.14	Immediately
...				
REC 3.15	Suspension of services and inability to operate <del>facilities or (for RAPs) the cancellation of an auction</del>	See REC 3.15	Event concerned	Immediately
...				
REC 3.18	Membership	Information regarding new types of <i>member</i> and reasons for considering the <i>recognition requirements</i> <del>or (for RAPs) the RAP recognition requirement in regulation 20</del> can still be met	Admission of new type of non- <i>authorised person</i> or <i>person</i> from new non-UK jurisdiction to membership	Immediately
...				
REC 3.22	Restriction <u>on open position</u> or instruction to close out;	Details of decision to restrict member's	Decision to take action <del>or (for RAPs)</del>	Immediately

	<del>open positions or (for RAPs) restriction on maximum bid size or other remedial measures</del>	<del>open position or instruction to close out position or (for RAPs) details of the event and remedial measures proposed</del>	<del>proposal to take action</del>	
...				

...



**EXITING THE EUROPEAN UNION: LISTING, PROSPECTUS AND DISCLOSURE  
SOURCEBOOKS (AMENDMENTS) INSTRUMENT 2019**

**Powers exercised**

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

**Commencement**

- B. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to the Handbook**

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

(1)	(2)
Listing Rules sourcebook (LR)	Annex A
Prospectus Rules sourcebook (PR)	Annex B
Disclosure Guidance and Transparency Rules sourcebook (DTR)	Annex C

**Citation**

- D. This instrument may be cited as the Exiting the European Union: Listing, Prospectus and Disclosure Sourcebooks (Amendments) Instrument 2019.

By order of the Board  
[date]

**Editor's notes**

- (1) The near-final instrument relates to the statutory instruments set out in Annex 4 of the accompanying Policy Statement and other matters arising from the UK's withdrawal from the EU.
- (2) We will set out our approach in due course for any additional amendments which are required as a result of further statutory instruments.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 29 March 2019.

## Annex A

### Amendments to the Listing Rules sourcebook (LR)

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

#### 1 Preliminary: All securities

##### 1.1 Introduction

**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering ‘Alternative Performance Measures’. See <https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf> ESMA guidelines: Alternative Performance Measures dated 5 October 2015 (ESMA/2015/1415).

...

##### 1.4 Miscellaneous

...

Use of an RIS

...

- 1.4.12 R Where a *listing rule* requires an *issuer* who is not subject to *DTR* 6.3.1R to use the services of an *RIS*, the *issuer* must comply with the provisions of *DTR* 6.3, except in relation to information which is required to be disclosed under ~~the *Transparency Directive*~~, articles 17 and 19 of the *Market Abuse Regulation* or the *DTR*.

##### 1.5 Standard and Premium Listing

Standard and premium listing explained

- 1.5.1 G ...

- (2) A *listing* that is described as a *standard listing* sets requirements that are based on the minimum ~~EU directive~~ standards set out in the *United Kingdom provisions which implemented CARD and the TD*. A *listing* that is described as a *premium listing* will include requirements that exceed those required under ~~relevant EU directives~~ the *United Kingdom provisions which implemented CARD and the TD*.

...

...

## 2 Requirements for listing: All securities

### 2.1 Preliminary

...

Refusal of applications

...

2.1.3 G Under the *Act*, the *FCA* may also refuse an application for *admission* if it considers that:

...

- (2) for *securities* already listed in ~~another EEA State~~ a third country, the *issuer* has failed to comply with any obligations under that listing.

...

### 2.2 Requirements for all securities

...

Admission to trading

2.2.3 R Other than in regard to *securities* to which *LR 4* applies, to be *listed, equity shares* must be admitted to trading on a *regulated market* for ~~listed securities operated by a RIE~~. All other *securities* must be admitted to trading on a *RIE's* market for *listed securities*.

...

Prospectus

2.2.10 R ~~(1)~~ This *rule* applies if under the *Act* ~~or under the law of another EEA State~~:

- (a) a *prospectus* must be approved and published for the *securities*; or
- (b) the *applicant* is permitted and elects to draw up a *prospectus* for the *securities*.

~~(2)~~ To be *listed*:

- ~~(a)~~ a *prospectus* must have been approved by the *FCA* and published in relation to the *securities*; ~~or~~

- (b) ~~if another EEA State is the Home Member State for the securities, the relevant competent authority must have supplied the FCA with:~~
  - (i) ~~a certificate of approval;~~
  - (ii) ~~a copy of the prospectus as approved; and~~
  - (iii) ~~(if applicable) a translation of the summary of the prospectus.~~

...

### 3 Listing applications: All securities

...

#### 3.3 Shares

...

Documents to be provided 48 hours in advance

- 3.3.2 R The following documents must be submitted, in final form, to the FCA by midday two *business days* before the FCA is to consider the application:

...

- (2) ~~one of:~~
  - (a) the *prospectus* or *listing particulars*, that has been approved, by the FCA; ~~or~~
  - (b) ~~a copy of the prospectus, a certificate of approval and (if applicable) a translation of the summary of the prospectus, if another EEA State is the home Member State for the shares; or~~
  - (c) ~~[deleted]~~

...

...

#### 3.4 Debt and other securities

...

Documents to be provided 48 hours in advance

3.4.4 R An *applicant* must submit, in final form, to the *FCA* by midday two *business days* before the *FCA* is to consider the application:

...

(2) ~~either:~~

(a) the *prospectus* or *listing particulars* that has been approved by the *FCA*; ~~or~~

(b) a copy of the ~~*prospectus*~~, a certificate of approval and (if applicable) a translation of the ~~*summary*~~ of the ~~*prospectus*~~, if another ~~*EEA State*~~ is the ~~*home Member State*~~ for the ~~*securities*~~;

...

...

Exempt public sector issuers

3.4.9 R ~~A *public sector issuer*~~ An *issuer* that seeks *admission* of *debt securities* referred to in paragraphs 2 and 4 of Schedule 11A of the *Act* must submit to the *FCA* in final form a completed Application for Admission of Securities to the Official List.

**Note:** The Application for Admission of Securities to the Official List form can be found on the UKLA section of the *FCA*'s website.

...

3.4.9B G ~~A *public sector issuer*~~ An *issuer* referred to in *LR 3.4.9R* that is not required to produce a *prospectus* or *listing particulars* must confirm on its application form that no *prospectus* or *listing particulars* are required.

...

## 4 Listing particulars for professional securities market and certain other securities: All securities

### 4.1 Application and Purpose

Application

4.1.1 R This chapter applies to an *issuer* that has applied for the *admission* of:

...

- (2) any other *specialist securities* for which a *prospectus* is not required under the ~~*prospectus directive Act*~~ or the *prospectus rules*.

...

## 4.2 Contents and format of listing particulars

...

### Summary

- 4.2.2 R (1) The *listing particulars* must contain a *summary* that complies with the requirements in section 87A(5) and (6) of the *Act* and ~~PR 2.1.4EU UK~~ to PR 2.1.7R (as if those requirements applied to the *listing particulars*).

...

...

### Minimum information to be included

- 4.2.4 R The following minimum information from the *PD Regulation* must be included in *listing particulars*:

...

- (5) for an issue of *securities* by the government of a ~~*non-EEA State third country*~~ or a local or regional authority of a ~~*non-EEA State third country*~~, the *schedule* applicable to *securities* issued by third countries and their regional and local authorities; and

...

...

### Responsibility for listing particulars

...

- 4.2.13 R ...
- (2) An *issuer* that is ~~the~~ a government of a ~~*non-EEA State*~~ or a local or regional authority of a ~~*non-EEA State*~~ is not required under paragraph (1)(a) to state that it accepts responsibility for the *listing particulars*.

...

## 4.3 Approval and publication of listing particulars

...

Filing and publication of listing particulars etc

...

- 4.3.5 R An *issuer* must ensure that after *listing particulars* or *supplementary listing particulars* are approved by the *FCA*, the *listing particulars* or *supplementary listing particulars* are filed and published as if the relevant requirements in *PR 3.2*, the *PD Regulation* and ~~Commission Delegated Regulation (EU) 2016/301~~ the *Prospectus RTS Regulation 2* applied to them.

#### 4.4 Miscellaneous

Supplementary listing particulars

...

- 4.4.2 R An *issuer* must ensure that after *supplementary listing particulars* are approved by the *FCA*, the *supplementary listing particulars* are filed and published as if the requirements in *PR 3.2*, the *PD Regulation* and ~~Commission Delegated Regulation (EU) 2016/301~~ the *Prospectus RTS Regulation 2* applied to them.

...

### 5 Suspending, cancelling and restoring listing and reverse takeovers: All securities

...

#### 5.4A Transfer between listing categories: Equity shares

...

~~Directive obligations~~ Obligations under the Act and Prospectus Rules

- 5.4A.15 G An *issuer* may take steps, in connection with a transfer, which require it to consider whether a *prospectus* is necessary, for example, if the *company* or its capital is reconstituted in a way that could amount to an *offer of transferable securities to the public*. The *issuer* and its advisers should consider whether ~~directive obligations~~ under the Act and the prospectus rules may be triggered.

...

#### 5.5 Miscellaneous

...

Suspension, cancellation or restoration by overseas exchange or authority



...

5.5.3 G ...

- (4) If an *overseas* exchange or ~~competent authority~~ overseas authority requests the *FCA* to suspend, cancel or restore the *listing of securities*, the *FCA* will, wherever practical, contact the *issuer* or its *sponsor* before it suspends, cancels or restores the *listing*. Therefore, *issuers* are encouraged to contact the *FCA* at the same time as they contact their home exchange.

...

...

## 6 Additional requirements for premium listing (commercial company)

...

### 6.14 Shares in public hands

6.14.1 R Where an *applicant* is applying for the *admission* of a *class* of *equity shares* to *premium listing*, a sufficient number of *shares* of that *class* must, no later than the time of *admission*, be distributed to the public ~~in one or more EEA States~~.

[Note: article 48 of the *CARD*]

6.14.2 R For the purposes of *LR* 6.14.1R:

- (1) ~~account may also be taken of holders in one or more states that are not EEA States, if the shares are listed in the state or states; [deleted]~~

...

...

6.14.5 G ...

- (2) In considering whether to grant a modification, the *FCA* may take into account the following specific factors:

- (a) ~~shares of the same class that are held (even though they are not listed) in states that are not EEA States; [deleted]~~

...

### 6.15 Shares of a ~~non-EEA~~ third country company

- 6.15.1 R The *FCA* will not admit *shares* of an *applicant* incorporated in a ~~non-EEA State~~ a third country that are not listed either in its country of incorporation or in the country in which a majority of its *shares* are held, unless the *FCA* is satisfied that the absence of the listing is not due to the need to protect investors.
- [Note: article 51 of the *CARD*]

...

## 8 Sponsors: Premium listing

...

### 8.2 When a sponsor must be appointed or its guidance obtained

When a sponsor must be appointed

- 8.2.1 R A *company* with, or applying for, a *premium listing* of its *securities* must appoint a *sponsor* on each occasion that it:
- (1) is required to submit any of the following documents to the *FCA* in connection with an application for *admission* of *securities* to *premium listing*:
    - ...
    - (b) ~~a certificate of approval from another competent authority; or~~ [deleted]
    - ...
- ...

...

### 8.4 Role of a sponsor: transactions

Application for admission

- 8.4.1 R *LR 8.4.2R* to *LR 8.4.4G* apply in relation to an application for *admission* of *securities* to *premium listing* if an *applicant* does not have *securities* already admitted to *premium listing*, the conditions in *LR 6.1.1R(1)*, *LR 6.1.1R(2)*, *LR 21.2.5R(1)*, *LR 21.2.5R(2)*, *LR 21.6.13R(1)* or *LR 21.6.13R(2)* do not apply and, in connection with the application, the *applicant* is required to submit to the *FCA*:
- ...
- (2) ~~a certificate of approval from another competent authority; or~~ [deleted]

...

8.4.2 R A *sponsor* must not submit to the *FCA* an application on behalf of an *applicant*, in accordance with *LR 3*, unless it has come to a reasonable opinion, after having made due and careful enquiry, that:

...

(2) the *applicant* has satisfied all applicable requirements set out in the *prospectus rules* ~~unless the home Member State of the *applicant* is not, or will not be, the United Kingdom;~~

...

...

Application for admission: further issues

...

8.4.8 R A *sponsor* must not submit to the *FCA* an application on behalf of an *applicant*, in accordance with *LR 3* (Listing applications), unless it has come to a reasonable opinion, after having made due and careful enquiry, that:

...

(2) the *applicant* has satisfied all applicable requirements set out in the *prospectus rules* ~~unless the home Member State of the *applicant* is not, or will not be, the United Kingdom;~~ and

...

Further issues: procedure

8.4.9 R A *sponsor* must:

(1) submit a completed Sponsor’s Declaration on an Application for Listing to the *FCA* either:

...

(b) at a time agreed with the *FCA* if the *FCA* ~~is not approving the *prospectus* or~~ did not approve the *prospectus* or if it is determining whether a document is an *equivalent document*;

...

...

**9 Continuing obligations**

...

**9.2 Requirements with continuing application**

...

Compliance with the disclosure requirements and transparency rules

- 9.2.5 G *A listed company, whose equity shares are admitted to trading on a regulated market in the United Kingdom, should consider the obligations under the disclosure requirements.*

...

- 9.2.6B R *A listed company that is not already required to comply with the transparency rules (or with corresponding requirements imposed by another EEA Member State) must comply with DTR 4, DTR 5 and DTR 6 as if it were an issuer for the purposes of the transparency rules.*

...

**9.8 Annual Financial Report**

...

Annual financial report

...

- 9.8.7A R (1) *An overseas company with a premium listing that is not required to comply with requirements imposed by another EEA State that correspond to DTR 7.2 (Corporate governance statements) must comply with DTR 7.2 (Corporate governance statements) as if it were an issuer to which that section applies.*
- (2) *An overseas company with a premium listing which complies with LR 9.8.7R will be taken to satisfy the requirements of DTR 7.2.2R and DTR 7.2.3R, but (unless it is required to comply with requirements imposed by another EEA State that correspond to DTR 7.2) must comply with all of the other requirements of DTR 7.2 as if it were an issuer to which that section applies.*

...

**10 Significant transactions: Premium listing**

...

**10 Annex 1G The Class Tests**

...

Figures used to classify assets and profits

8R

...

- (3) (a) The figures of the *listed company* must be adjusted to take account of transactions completed during the period to which the figures referred to in (1) or (2) relate, and subsequent completed transactions which have been notified to a *RIS* under *LR* 10.4 or *LR* 10.5.

...

...

**14 Standard listing (shares)**

...

**14.2 Requirements for listing**

...

Shares in public hands

14.2.2

R

- (1) If an application is made for the *admission* of a *class* of *shares*, a sufficient number of *shares* of that *class* must, no later than the time of *admission*, be distributed to the public in one or more *EEA States*.
- (2) ~~For the purposes of paragraph (1), account may also be taken of holders in one or more states that are not *EEA States*, if the *shares* are listed in the state or states. [deleted]~~

...

14.2.3

G

The *FCA* may modify *LR* 14.2.2R to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of *shares* of the same *class* and the extent of their distribution to the public. ~~For that purpose, the *FCA* may take into account *shares* of the same *class* that are held (even though they are not listed) in states that are not *EEA States*.~~

[Note: Article 48 *CARD*]

...

Shares of a ~~non-*EEA*~~ third country company

- 14.2.4 R The *FCA* will not admit *shares* of a *company* incorporated in a ~~non-EEA State~~ *third country* that are not listed either in its country of incorporation or in the country in which a majority of its *shares* are held, unless the *FCA* is satisfied that the absence of the listing is not due to the need to protect investors.

[Note: Article 51 *CARD*]

...

### 14.3 Continuing obligations

#### Admission to trading

- 14.3.1 R Other than in regard to *securities* to which *LR 4* applies, the *listed equity shares* of a *company* must be admitted to trading on a *regulated market for listed securities* ~~operated by a RIE~~.

...

#### Disclosure Requirements and Transparency Rules

- 14.3.11 G A *company* whose *shares* are admitted to trading on a *regulated market in the United Kingdom*, should consider its obligations under the *disclosure requirements and transparency rules*.

...

#### Registrar

- 14.3.15 R (1) ~~This rule applies to an overseas company for whom the United Kingdom is a host Member State for the purposes of the Transparency Directive. [deleted]~~

...

- 14.3.15A G ~~An overseas company for whom the United Kingdom is the home Member State for the purposes of the Transparency Directive should see LR 14.3.22G and LR 14.3.23R. [deleted]~~

...

#### Compliance with the transparency rules

...

- 14.3.23 R A *listed company* that is not already required to comply with the *transparency rules* ~~(or with corresponding requirements imposed by another EEA Member State)~~ must comply with *DTR 4*, *DTR 5* and *DTR 6* as if it were an *issuer* for the purposes of the *transparency rules*.

14.3.24 R *A listed company* that is not already required to comply with *DTR 7.2* (Corporate governance statements), ~~or with corresponding requirements imposed by another *EEA State*~~, must comply with *DTR 7.2* as if it were an *issuer* to which that section applies.

...

## 15 Closed-Ended Investment Funds: Premium listing

...

### 15.2 Requirements for listing

...

Shares of a ~~non-EEA company~~ a third country company

15.2.1A R The *FCA* will not admit *shares* of a *company* incorporated in a ~~non-EEA State~~ third country that are not listed either in its country of incorporation or in the country in which a majority of its *shares* are held, unless the *FCA* is satisfied that the absence of the listing is not due to the need to protect investors.

[Note: Article 51 *CARD*]

...

## 17 Debt and debt-like securities: Standard listing

...

### 17.3 Requirements with continuing application

...

Annual accounts

...

17.3.4 R ...

(3) The annual report and accounts must:

- (a) have been prepared in accordance with the *issuer's* national law and, in all material respects, with national accounting standards or ~~IAS~~ UK-adopted IFRS; and
- (b) have been independently audited and reported on, in accordance with:

- (i) the auditing standards applicable in an ~~EEA State~~ the United Kingdom; or
- (ii) an equivalent auditing standard.

17.3.5 G ...

- (3) An *issuer* incorporated or established in a ~~non-EEA State~~ third country which is not required to draw up its accounts so as to give a true and fair view but is required to draw them up to an equivalent standard, may draw up its accounts to this equivalent standard.

...

#### Disclosure requirements and transparency rules

17.3.8 G An *issuer*, whose *securities* are admitted to trading on a *regulated market* ~~in the United Kingdom~~, should consider the obligations referred to under articles 17 and 18 of the *Market Abuse Regulation*.

...

### 17.5 Requirements for states, regional and local authorities and public international bodies

...

#### Compliance with transparency rules

17.5.2 R (1) This *rule* applies to a state, a regional or local authority and a *public international body* with *listed debt securities* ~~for whom the United Kingdom is its home Member State for the purposes of the Transparency Directive~~.

...

...

### 18 Certificates representing certain securities: Standard listing

...

### 18.2 Requirements for listing

...

#### Certificates representing equity securities of an overseas company

18.2.8 R (1) If an application is made for the *admission* of a *class* of *certificates representing shares* of an *overseas company*, a sufficient number of certificates must, no later than the time



of *admission*, be distributed to the public ~~in one or more EEA States.~~

- (2) ~~For the purposes of paragraph (1), account may also be taken of holders in one or more states that are not EEA States, if the certificates are listed in the state or states. [deleted]~~

...

- 18.2.9 G The *FCA* may modify *LR 18.2.8R* to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of certificates of the same *class* and the extent of their distribution to the public. ~~For that purpose, the *FCA* may take into account certificates of the same *class* that are held (even though they are not listed) in states that are not EEA States.~~

[Note: Article 48 *CARD*]

...

## 18.4 Continuing obligations

...

Annual accounts continuing obligations

- 18.4.3A R ...

- (3) The annual report and accounts must:
- (a) have been prepared in accordance with the *issuer's* national law and, in all material respects, with national accounting standards or ~~IAS~~ UK-adopted IFRS; and
  - (b) have been independently audited and reported on, in accordance with:
    - (i) the auditing standards applicable in ~~an EEA State~~ the United Kingdom; or
    - (ii) an equivalent auditing standard.

...

## 21 Sovereign Controlled Commercial Companies: Premium listing

...

### 21.6 Requirements for listing: Certificates representing shares

...

## Certificates in public hands

21.6.18 R (1) If an application is made for the *admission* of a *class* of *certificates representing shares*, a sufficient number of certificates must, no later than the time of *admission*, be distributed to the public ~~in one or more EEA States~~.

(2) ~~For the purposes of paragraph (1), account may also be taken of holders in one or more states that are not EEA States, if the certificates are listed in the state or states.~~  
[deleted]

...

21.6.19 G ...

(2) In considering whether to grant a modification, the *FCA* may take into account the following specific factors:

(a) ~~certificates of the same class that are held (even though they are not listed) in states that are not EEA States;~~ [deleted]

...

...

Certificates of a ~~non-EEA company~~ third country

21.6.21 R The *FCA* will not admit *certificates representing shares* of an *applicant* incorporated in a ~~non-EEA State~~ third country where the *class of equity shares* which the certificates represent is not listed either in its country of incorporation or in the country in which a majority of its *equity shares* are held, unless the *FCA* is satisfied that the absence of listing is not due to the need to protect investors.

[**Note:** article 51 of *CARD*]

## Additional requirements for the certificates

...

21.6.23 R To be *listed*, the *certificates representing shares* must be admitted to trading on a *regulated market* for *listed securities* ~~operated by a RIE~~.

...

**21.8 Continuing obligations: Certificates representing shares**

...

Additional requirements: compliance with the disclosure requirements and transparency rules

21.8.14 G *A listed company, whose certificates representing shares are admitted to trading on a regulated market in the United Kingdom, should consider its obligations under the disclosure requirements.*

...

21.8.17 R *A listed company that is not already required to comply with DTR 4, DTR 5 and DTR 6 (or with corresponding requirements imposed by another EEA Member State) must comply with DTR 4, DTR 5 and DTR 6 as if it were an issuer of shares for the purposes of the transparency rules.*

...

## Appendix 1 Relevant definitions

Insert the following new definitions in the appropriate alphabetical position and amend the existing definitions as shown.

### Appendix 1

### Relevant definitions

App 1.1

Relevant definitions

1.1.1

**Note:** The following definitions relevant to the *listing rules* are extracted from the *Glossary*.

...

*authorised person*

(in accordance with section 31 of the *Act* (Authorised persons)) one of the following:

- (a) a *person* who has a *Part 4A permission* to carry on one or more *regulated activities*;
- (b) ~~an *incoming EEA firm*; [deleted]~~
- (c) ~~An *incoming Treaty firm*; [deleted]~~
- (d) ~~A *UCITS qualifier*; [deleted]~~
- (e) an *ICVC*;
- (f) the *Society of Lloyd's*.

(see also *GEN 2.2.18R* for the position of an *authorised partnership* or unincorporated association which is dissolved.)

*bank*

(a) a *firm* with a *Part 4A permission* which includes accepting deposits, and:

(i) which is a *credit institution*; ~~or~~

(ii) ~~whose *Part 4A permission* includes a requirement that it comply with the rules in *GENPRU* and *BIPRU* relating to banks;~~  
[deleted]

but which is not a *building society*, a *friendly society* or a *credit union*;

(b) an *EEA bank* which is a *full credit institution*. [deleted]

...

*competent authority*

(in relation to the functions referred to in Part VI of the Act):  
the *FCA*

(a) ~~the authority designated under *Schedule 8* to the Act (transfer of functions under Part VI (Official listing)) as responsible for performing those functions under the Act; for the time being the *FCA* in its capacity as such; or~~

(b) ~~an authority exercising functions corresponding to those functions under the laws of another *EEA State*.~~

...

*EEA State*

~~(in accordance with *paragraph 8* of *Schedule 3* to the Act (EEA Passport Rights)) a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992, as it has effect for the time being; as at 1 May 2004, the following are the *EEA States*: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden and the *United Kingdom*.~~

(in accordance with *Schedule 1* to the Interpretation Act 1978), in relation to any time:

(a) a state which at that time is a member State; or

(b) any other state which is at that time a party to the EEA agreement.

[Note: Current non-member State parties to the EEA agreement are Norway, Iceland and Lichtenstein.]

...

EU the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7 February 1992 (as amended), taking into account United Kingdom's withdrawal from the Union pursuant to Article 50 of the Treaty.

EU-adopted International Accounting Standards (or EU adopted IFRS) means the international accounting standards within the meaning of EC Regulation No 1606/2002 of the European Parliament and of the Council of 19 July 2002 as adopted from time to time by the European Commission in accordance with that Regulation.

EUWA the European Union (Withdrawal) Act 2018.

...

~~Home Member State or Home State~~ (as defined in ~~section 102C~~ of the Act) in relation to an issuer of ~~transferable securities~~, the ~~EEA State~~ which is the "home Member State" for the purposes of the ~~prospectus directive~~ (which is to be determined in accordance with ~~Article 2.1(m)~~ of that directive.

~~Host Member State or Host State~~ (as defined in ~~Article 2.1(n)~~ of the ~~prospectus directive~~) the ~~State where an offer to the public is made or admission to trading is sought~~, when different from the ~~home Member State~~.

~~IAS~~ International Accounting Standards

...

*investment trust* a *company* which:

(a) is approved by the Commissioners for HM Revenue and Customs under sections 1158 and 1159 of the Corporation Tax Act 2010 (or, in the case of a newly formed *company*, has declared its intention to conduct its affairs so as to obtain such approval); or

(b) (for the purposes of the definitions of *non-mainstream pooled investment* and *packaged product* only) is resident in an *EEA State* ~~other than the United Kingdom~~ and would qualify for such approval if resident in the *United Kingdom*.

...

*Market Abuse Regulation* the UK version of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, which is part of United Kingdom law by virtue of the EUWA.

...

*non-EEA state* a country or state that is not an *EEA State*.

...

*PD Regulation* ~~Regulation number 809/2004 of the European Commission~~  
the United Kingdom version of the Prospectus Directive Regulation (No 2004/809/EC), which is part of United Kingdom law by virtue of EUWA.

...

*prospectus* (1) a prospectus required under the *prospectus directive*  
the Act.  
(2) ...

*Prospectus RTS Regulation 2* the United Kingdom version of Commission Delegated Regulation (EU) 2016/301 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004, which is part of United Kingdom law by virtue of the EUWA.

...

*recognised scheme* a ~~scheme~~ recognised under:  
(a) ~~section 264 of the Act (Schemes constituted in other EEA States); or~~  
...  
(c) ~~section 272 of the Act (Individually recognised overseas schemes).~~

a scheme recognised for the purpose of part XVII of the Act.

...

*regulated market*

a ~~multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third party buying and selling interests in financial instruments~~ in the system and in accordance with its non-discretionary rules in a way that results in a contract, in respect of the *financial instruments* admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of *MiFID* a regulated market which is a *UK RIE*.

[**Note:** article 4(1)(21) 2(1)(13A) of *MiFID MiFIR*]

*regulatory information service* or *RIS*

- (a) a primary information provider; ~~or~~
- (b) an incoming information society service that has its establishment in an *EEA State* other than the *United Kingdom* and that disseminates regulated information in accordance with the minimum standards set out in article 12 of the TD implementing Directive.
- (c) [deleted]

...

*specified investment*

any of the following *investments* specified in *Part III* of the *Regulated Activities Order* (Specified Investments):

...

- (ia) ~~emissions auction product (article 82A);~~ [deleted]

...

...

*state finance organisation*

a legal person other than a *company*:

- (1) which is a national of an ~~EEA State~~ a state;
- ...
- (4) which is financed by means of the resources they have raised and resources provided by the ~~EEA State~~ state; and
- (5) the *debt securities* issued by it are considered by the law of the relevant ~~EEA State~~ state as securities issued or guaranteed by that state.

*state monopoly* a *company* or other legal person which is a national of an ~~EEA State~~ a state and which:

- (1) in carrying on its business benefits from a monopoly right granted by an ~~EEA state~~ a state; and
- (2) is set up by or pursuant to a special law or whose borrowings are unconditionally and irrevocably guaranteed by an ~~EEA state~~ a state or one of ~~the federated states of an EEA state~~ a state's federated states.

...

*third country* a territory or country which is not the *United Kingdom*.

...

*transferable security* (as defined in section 102A of the *Act*) anything which is a transferable security for the purposes of ~~MiFID~~ *MiFIR*, other than money market instruments for the purposes of ~~that directive~~ *MiFIR* which have a maturity of less than 12 months.

...

*UK-adopted international accounting standards* (in accordance with section 474(1) of the Companies Act 2006) international accounting standards which are adopted for use within the *United Kingdom* by virtue of Chapter 2 or 3 of Part 2 of the International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019.

*UK-adopted IFRS* *UK-adopted international accounting standards*.

...

After LR TR 13 (Transitional Provisions for the UK Corporate Governance Code) insert the following new LR TR 14. The text is not underlined.

**TR 14 Transitional Provisions for a prospectus approved by an EEA State before exit day**

(1)	(2)	(3)	(4)	(5)	(6)
-----	-----	-----	-----	-----	-----



	<b>Material to which the Transitional Provision applies</b>		<b>Transitional Provision</b>	<b>Transitional Provision: dates in force</b>	<b>Handbook Provision: coming into force</b>
1.	<i>LR 2.2.1R, LR 3.3.2R, LR 3.3.6R, LR 3.4.4R, LR 8.2.1R, LR 8.4.1R and LR 8.4.9R.</i>	R	For the purposes of these rules references to a <i>prospectus</i> include a prospectus referred to in regulation 73 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019.	For 12 months following <i>exit day</i>	<i>Exit day</i>

## Annex B

### Amendments to the Prospectus Rules sourcebook (PR)

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

#### 1 Preliminary

##### 1.1 Preliminary

###### Application

**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering ‘Alternative Performance Measures’. See <https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf> ESMA Guidelines on Alternative Performance Measures, 5 October 2015(ESMA/2015/1415)

- 1.1.1 R (1) ~~PR 2, PR 3, PR 4.2, PR 5.1, PR 5.3.1 UK to PR 5.3.3G and PR 5.5~~ only apply (subject to paragraph (2)) in relation to:
- (a) an offer, or a request for admission to trading of transferable securities, in respect of which section 85 of the Act applies (other than an exempt offer under section 86 of the Act) ~~and in relation to which the United Kingdom is the Home State;~~
  - (b) an offer, or a request for admission to trading of transferable securities, where under section 87 of the Act a person has elected to have a prospectus in relation to the transferable securities; and
  - (c) an offer in the United Kingdom, or a request for admission to trading of transferable securities, not referred to in paragraphs (a) or (b), ~~in relation to which the United Kingdom is the Home State.~~
- (2) ~~PR 2, PR 3, PR 4.2, PR 5.3.1UK to PR 5.3.3G also apply in relation to an offer, or a request for admission to trading of transferable securities, where another competent authority of an EEA State has transferred the function of approving the prospectus to the FCA.~~  
[deleted]

...

###### Provisions implementing the Prospectus Directive

- 1.1.6 G The FCA considers that the following documents together determine the effect of the UK provisions which implemented the Prospectus Directive:

- (1) *Part 6 of the Act;*
- (2) *the PD Regulation;*
- (3) *these rules;*
- (4) *the ESMA Prospectus Recommendations;*
- (5) *the ESMA Prospectus Questions and Answers;*
- (6) *the ESMA Prospectus Opinions; and*
- (7) *the Prospectus RTS Regulations.*

...

## 1.2 Requirement for a prospectus and exemptions

### Requirement for a prospectus

- 1.2.1 UK Sections 85 and 86 of the *Act* provide for when a *prospectus* approved by the *FCA* will be required:

85 ...

- (7) “Approved prospectus” means, in relation to transferable securities to which this section applies, a prospectus approved by the ~~competent authority of the home State in relation to the issuer of the securities~~ FCA.

86 Exempt offers to the public

- (1) A person does not contravene section 85(1) if:

...

- (b) the offer is made to or directed at fewer than 150 persons, other than qualified investors, ~~per EEA State in the United Kingdom;~~

...

- (e) the total consideration for the transferable securities being offered in the ~~EEA states~~ United Kingdom cannot exceed ~~100,000~~ 8,000,000 euros (or an equivalent amount); or

...

- (1A) An offer (“the current offer”) falls within this subsection ~~where~~ if the transferable securities are ~~resold~~ being sold or placed through a financial intermediary where:

...

(1B) The conditions referred to in subsection (1A)(c) are:

...

- (b) in the case of non-equity transferable securities falling within ~~article 5(4)(b) of the prospectus directive~~ [PR 2.2.7R (2)], that the securities concerned have not ceased to be issued in a continuous or repeated manner.

(2) Where -

- (a) a person who is not a qualified investor (“the client”) has engaged a qualified investor falling within ~~point (1) of Section 1 of Annex II to the markets in financial instruments directive~~ paragraph 3(a) of Schedule 1 to the markets in financial instruments regulation to act as his agent; and

...

...

(7) “Qualified investor”, in relation to an offer of transferable securities, means –

- (a) a person described in ~~points (1) to (4) of Section I of Annex II to the markets in financial instruments directive~~ paragraph 3 of Schedule 1 to the markets in financial instruments regulation, other than a person who, before the making of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with ~~the final paragraph of Section I of Annex II to that directive~~ paragraph 4 of that Schedule;
- (b) a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with ~~Section II of Annex II to that directive~~ paragraphs 5 and 6 of that Schedule and has not subsequently, but before the making of the offer, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with ~~the final paragraph of Section I of Annex II to that directive~~ paragraph 4 of that Schedule;
- (c) ~~a person who is recognised as an eligible counterparty in accordance with article 24 of that directive and has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional~~

~~client in accordance with the final paragraph of Section I of Annex II of that directive;~~

a person who:

(i) is an eligible counterparty for the purposes of [COBS 3.6], and

(ii) has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with paragraph 4 of Schedule 1 to the markets in financial instruments regulation; or

(d) a person whom -

...

(ii) ~~the firm may continue to treat as a professional client from 3 January 2018~~ was entitled immediately before exit day to continue to treat as a professional client by virtue of Section II.2 of Annex II to the markets in financial instruments directive.

(8) In subsection (7) “relevant firm” means an investment firm or qualifying credit institution acting in connection with the offer.

(9) Investment firms and qualifying credit institutions which are authorised persons must communicate their classification of their clients as being or not being qualified investors on request to an issuer, subject to complying with ~~data protection legislation~~;

(a) data protection legislation, or

(b) any retained direct EU legislation which is not part of the data protection legislation but which relates to data protection.

~~(10) In subsections (8) and (9)–~~

~~“credit institution” means–~~

~~(a) a credit institution authorised under the banking consolidation directive; or~~

~~(b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have one, its head office) in an EEA State. [deleted]~~

## Exempt securities – offers of securities to the public

- 1.2.2 R In accordance with section 85(5)(b) of the *Act*, section 85(1) of the *Act* does not apply to *offers* of the following types of *transferable securities*:
- (1) shares issued in substitution for shares of the same class already issued, if the issue of the new shares does not involve any increase in the issued capital;
  - (2) *transferable securities* offered in connection with a takeover by means of an exchange offer, if a document is available containing information which is regarded by the *FCA* as being equivalent to that of the *prospectus*, taking into account the requirements of EU UK legislation
  - (3) *transferable securities* offered, allotted or to be allotted in connection with a merger or division, if a document is available containing information which is regarded by the *FCA* as being equivalent to that of the *prospectus*, taking into account the requirements of EU UK legislation;
  - (4) dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which the dividends are paid, if a document is made available containing information on the number and nature of the shares and the reasons for and details of the *offer*;
  - (5) *transferable securities* offered, allotted or to be allotted to existing or former directors or employees by their employer or by an affiliated undertaking if:
    - (a) the *company* has its head office or registered office in the EU United Kingdom, provided a document is made available containing information on the number and nature of the *transferable securities* and the reasons for and details of the *offer*; or
    - (b) the *company* is established outside the EU United Kingdom and has *transferable securities* that are *admitted to trading*, provided a document is made available containing information on the number and nature of the *transferable securities* and the reasons for and details of the *offer*; or
    - (c) the *company* is established outside the EU United Kingdom and has *transferable securities* admitted to trading admitted to trading on a third country market provided that:
      - (i) a document is made available containing adequate information, including the number and nature of the *transferable securities*; and

- (ii) the reasons for and details of the *offer* in a language customary in the sphere of international finance English; and
- (iii) the ~~European Commission~~ Treasury has adopted an equivalence decision for the purpose of article 4(1) of the ~~PD~~ regarding the third country market concerned.

[Note: article 4(1) *PD*]

Exempt securities – admission to trading on a regulated market

1.2.3 R In accordance with section 85(6)(b) of the *Act*, section 85(2) of the *Act* does not apply to the *admission to trading* of the following types of *transferable securities*:

- (1) ~~*transferable securities* referred to in article 1(5)(a) of the *Prospectus Regulation*~~ *transferable securities fungible with transferable securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20% of the number of transferable securities already admitted to trading on the same regulated market;*
- (2) shares issued in substitution for shares of the same class already *admitted to trading* on the same *regulated market*, if the issue of the shares does not involve any increase in the issued capital;
- (3) *transferable securities* offered in connection with a takeover by means of an exchange offer, if a document is available containing information which is regarded by the *FCA* as being equivalent to that of the *prospectus*, taking into account the requirements of ~~EU~~ UK legislation;
- (4) *transferable securities* offered, allotted or to be allotted in connection with a merger or a division, if a document is available containing information which is regarded by the *FCA* as being equivalent to that of the *prospectus*, taking into account the requirements of ~~EU~~ UK legislation;
- (5) shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which the dividends are paid, if the shares are of the same class as the shares already *admitted to trading* on the same *regulated market* and if a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
- (6) *transferable securities* offered, allotted or to be allotted to existing or former directors or employees by their employer or an affiliated undertaking, if the *transferable securities* are of the same class as the *transferable securities* already *admitted to trading* on the same

*regulated market* and if a document is made available containing information on the number and nature of the *transferable securities* and the reasons for and detail of the offer;

- (7) ~~shares referred to in article 1(5)(b) of the *Prospectus Regulation*~~ shares resulting from the conversion or exchange of other *transferable securities* or from the exercise of the rights conferred by other *transferable securities*, where the resulting shares are of the same class as the shares already *admitted to trading* on the same *regulated market*, provided that the resulting shares represent, over a period of 12 months, less than 20% of the number of shares of the same class already *admitted to trading* on the same *regulated market*, subject to *PR 1.2.3AR*;
- (8) *transferable securities* already *admitted to trading* on another *regulated market*, on the following conditions:
- (a) that these *transferable securities*, or *transferable securities* of the same class, have been *admitted to trading* on that other *regulated market* for more than 18 months;
  - (b) that, for *transferable securities* first admitted to trading after the 31 December 2003, the *admission to trading* on that other *regulated market* was associated with an approved prospectus made available to the public in accordance with Article 14 of the *prospectus directive*;
  - (c) that, except where (b) applies, for *transferable securities* first *admitted to listing* after 30 June 1983, listing particulars were approved in accordance with the requirements of Directive 80/390/EEC or Directive 2001/34/EC;
  - (d) that the ongoing obligations for trading on that other *regulated market* have been fulfilled;
  - (e) that the *person* requesting the *admission to trading* under this exemption makes a summary document available to the public in English ~~a language accepted by the competent authority of the EEA State of the regulated market where admission is sought;~~
  - (f) that the summary document referred to in paragraph (e) is made available to the public in the ~~EEA State of the regulated market where admission to trading is sought~~ United Kingdom in the manner set out in ~~Article 14 of the *prospectus directive*~~ *PR 3.2.4R*; and
  - (g) that the contents of the summary document comply with ~~article 5(2) of the *prospectus directive* section 87A(5) and (6) of the *Act*, Article 24 of the *PD Regulation* and *PR 2.1.7R*.~~ Also the document must state where the most recent



*prospectus* can be obtained and where the financial information published by the *issuer* pursuant to its ongoing disclosure obligations is available;

- (9) ~~*transferable securities* referred to in article 1(5)(c) of the *Prospectus Regulation* *transferable securities* resulting from the conversion or exchange of other *transferable securities*, own funds or eligible liabilities by a resolution authority due to the exercise of a power referred to in the law of the *United Kingdom* or any part of the *United Kingdom* which was relied on immediately before *exit day* to implement Article 53(2), 59(2) or Article 63(1) or (2) of Directive 2014/59/EU.~~

[**Note:** article 4(2) of the *PD*, points (a), (b) and (c) of the first subparagraph of article 1(5) of the *Prospectus Regulation* and the second subparagraph of article 1(5) of the *Prospectus Regulation*]

- 1.2.3A EU R Points (a), (b) and (c) of the first subparagraph of Article 1(5) of the *Prospectus Regulation* and the second subparagraph of Article 1(5) of the *Prospectus Regulation* provide that:

~~Article 1~~

~~Subject matter, scope and exemptions~~

~~...~~

~~5. The obligation to publish a prospectus set out in Article 3(3) shall not apply to the admission to trading on a regulated market of any of the following:~~

- ~~(a) securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20 % of the number of securities already admitted to trading on the same regulated market;~~
- ~~(b) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already admitted to trading on the same regulated market, subject to the second subparagraph of this paragraph;~~
- ~~(c) securities resulting from the conversion or exchange of other securities, own funds or eligible liabilities by a resolution authority due to the exercise of a power referred to in Article 53(2), 59(2) or Article 63(1) or (2) of Directive 2014/59/EU;~~

... [deleted]

The requirement that the resulting shares represent, over a period of 12 months, less than 20 % of the number of shares of the same class already ~~admitted to trading~~ admitted to trading on the same ~~regulated market~~ regulated market as referred to in ~~point (b) of the first subparagraph~~ PR 1.2.3R(7) shall not apply in any of the following cases:

- (a) where a *prospectus* was drawn up in accordance with ~~either this Regulation or Directive 2003/71/EC~~ these rules and Part VI of the Act upon the *offer* to the public or *admission to trading* on a *regulated market* of the ~~securities~~ transferable securities giving access to the shares;
- (b) where the ~~securities~~ transferable securities giving access to the shares were issued before 20 July 2017;
- (c) where the shares qualify as Common Equity Tier 1 items as laid down in Article 26 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of an institution as defined in point (3) of Article 4(1) of that Regulation and result from the conversion of Additional Tier 1 instruments issued by that institution due to the occurrence of a trigger event as laid down in point (a) of Article 54(1) of that Regulation;
- (d) where the shares qualify as eligible own funds or eligible basic own funds as defined in the law of the United Kingdom or any part of the United Kingdom which was relied on immediately before exit day to implement Section 3 of Chapter VI of Title I of Directive 2009/138/EC of the European Parliament and of the Council, and result from the conversion of other ~~securities~~ transferable securities which was triggered for the purposes of fulfilling the obligations to comply with the law of the United Kingdom or any part of the United Kingdom which was relied on immediately before exit day to implement the Solvency Capital Requirement or Minimum Capital Requirement as laid down in Sections 4 and 5 of Chapter VI of Title I of Directive 2009/138/EC or the group solvency requirement as laid down in Title III of Directive 2009/138/EC.

...

## **2 Drawing up the prospectus**

### **2.1 General contents of prospectus**

General contents of prospectus

2.1.1 UK Sections 87A(2), (2A), (3) and (4) of the *Act* provide for the general contents of a *prospectus*:

...

(2A) If, in the case of transferable securities to which section 87 applies, the prospectus states that the guarantor is a specified ~~EEA~~ State, the prospectus is not required to include other information about the guarantor.

...

...

#### Contents of summary

2.1.4 ~~EU~~  
UK Article 24 of the *PD Regulation* provides for how the contents of the *summary* are to be determined:

Content of the summary of the prospectus, of the base prospectus and of the individual issue

1 The issuer, the offeror or the person asking for the admission to trading on a regulated market shall determine the detailed content of the summary referred to in ~~Article 5(2) of Directive 2003/71/EC~~ section 87A(5) of [the Act] in accordance with this Article.

A summary shall contain the key information items set out in Annex XXII. Where an item is not applicable to a prospectus, such item shall appear in the summary with the mention “not applicable”. The length of the summary shall take into account the complexity of the issuer and of the securities offered, but shall not exceed 7% of the length of a prospectus or 15 pages, whichever is the longer. It shall not contain cross-references to other parts of the prospectus.

The order of the sections and of the elements of Annex XXII shall be mandatory. The summary shall be drafted in clear language, presenting the key information in an easily accessible and understandable way. Where an issuer is not under an obligation to include a summary in a prospectus pursuant to ~~Article 5(2) of Directive 2003/71/EC~~ section 87A(5) of [the Act], but produces an overview section in the prospectus, this section shall not be entitled “Summary” unless the issuer complies with all disclosure requirements for summaries laid down in this Article and Annex XXII.

...

2.1.5 G [deleted]

- 2.1.6 R The *summary* must be in the language in which the *prospectus* was originally drawn up English.

[**Note:** article 19.2 *PD*]

~~**Note:** *PR 4.1* sets out rules about the language in which the *prospectus* must be drawn up.~~

~~**Note:** Article 19.2 of the *prospectus directive* also allows the competent authority of a *Host State* to require that the *summary* be translated into its official language(s). The *FCA* as competent authority of a *Host State* requires a *summary* to be translated into English under *PR 4.1.6R*.~~

- 2.1.7 R The *summary* must also contain a warning to the effect that:
- (1) it should be read as an introduction to the *prospectus*;
  - (2) any decision to invest in the *transferable securities* should be based on consideration of the *prospectus* as a whole by the investor; and
  - (3) ~~where a claim relating to the information contained in a *prospectus* is brought before a court, the plaintiff investor might, under the national legislation of the *EEA States*, have to bear the costs of translating the *prospectus* before the legal proceedings are initiated; and [deleted];~~
  - (4) civil liability attaches to those *persons* who are responsible for the *summary* including any translation of the *summary*, but only if the *summary* is misleading, inaccurate or inconsistent when read together with the other parts of the *prospectus* or it does not provide, when read together with the other parts of the *prospectus*, *key information* in order to aid investors when considering whether to consider an *offer* further as set out in section 90(12) of the *Act*.

[**Note:** articles 5.2 and 6.2 *PD*]

## 2.2 Format of prospectus

...

Base prospectus

- 2.2.7 R The *prospectus* can, at the choice of the *issuer*, *offeror* or *person* requesting admission, consist of a *base prospectus* containing all relevant information concerning the *issuer* and the *transferable securities* to be *offered* or to be *admitted to trading* if it relates to one of the following types of *transferable securities*:
- (1) *non-equity transferable securities*, including warrants in any form, issued under an *offering programme*; or

- (2) *non-equity transferable securities* issued in a continuous or repeated manner by *credit institutions*:
- (a) where the sums deriving from the issue of the *transferable securities*, under national legislation, are placed in assets which provide sufficient coverage for the liability deriving from *transferable securities* until their maturity date;
  - (b) where, in the event of the insolvency of the related *credit institution*, the said sums are intended, as a priority, to repay the capital and interest falling due, without prejudice to the UK provisions which implemented the provisions of Directive 2001/24/EC on the reorganisation and winding up of credit institutions.

[Note: article 5.4 PD]

...

2.2.10 ~~EU~~ UK Articles 25 and 26 of the *PD Regulation* provide for the format of *prospectuses* and base prospectuses:

Format of the prospectus

...

2 Where an issuer, an offeror or a person asking for the admission to trading on a regulated market chooses, according to [~~LR 3.1.1R~~ PR 2.2.1R and 2.2.2R], to draw up a prospectus composed of separate documents, the securities note and the registration document shall be each composed of the following parts in the following order:

...

...

Format of the base prospectus and its related final terms

26.1

...

5. ...

- (a) that the final terms have been prepared for the purpose of ~~Article 5(4) of Directive 2003/71/EC~~ [PR 2.2.9R and 2.2.9AR] and must be read in conjunction with the base prospectus and its supplement(s);

- (b) where the base prospectus and its supplement(s) are published in accordance with ~~Article 14 of Directive 2003/71/EC~~ [PR 3.2.2R to 3.2.6R];

...

- 5a ~~The final terms and the summary of the individual issue shall be drawn up in the same language respectively as the approved version of the form of the final terms of the base prospectus and as the summary of the base prospectus.~~

~~When the final terms are communicated to the competent authority of the host Member State or, if there is more than one host Member State, to the competent authorities of the host Member States, in accordance with Article 5(4) of Directive 2003/71/EC, the following language rules shall apply to the final terms and the annexed summary:~~

- (a) ~~where the summary of the base prospectus is to be translated pursuant to Article 19 of Directive 2003/71/EC, the summary of the individual issue annexed to the final terms shall be subject to the same translation requirements as the summary of the base prospectus;~~
- (b) ~~where the base prospectus is to be translated pursuant to Article 19 of Directive 2003/71/EC, the final terms and the summary of the individual issue annexed thereto, shall be subject to the same translation requirements as the base prospectus.~~

~~The issuer shall communicate those translations, together with the final terms, to the competent authority of the host Member State or, if there is more than one host Member State, to the competent authorities of the host Member States. [deleted]~~

...

- 2.2.11 ~~EU~~ UK The *PD Regulation* provides for categories of information to be included in the base *prospectus* and final terms.

Categories of information in the base prospectus and the final terms

- 2a ...

- 2 Where the conditions of ~~Article 16(1) of Directive 2003/71/EC~~ section 87G of [the Act] apply, a supplement shall be required.

Where those conditions do not apply, the issuer, the offeror or the person asking for admission to trading on a regulated market shall publish a notice of the change.

## 2.3 **Minimum information to be included in a prospectus**

Minimum information

- 2.3.1 ~~EU~~ Articles 3 to 23 of the *PD Regulation* provide for the minimum information to be included in a *prospectus*:  
UK

**Note:** the Annexes (including *schedules* and *building blocks*) referred to in these articles are set out for information in *PR App 3*.

### Article 3

#### Minimum information to be included in a prospectus

...

A prospectus shall contain the information items required in Annexes I to XVII and Annexes XX to XXX depending on the type of issuer or issues and securities involved. Subject to Article 4a(1), ~~a competent authority~~ the FCA shall not require that a prospectus contains information items which are not included in Annexes I to XVII or Annexes XX to XXX.

~~In order to ensure conformity with the obligation referred to in Article 5(1) of Directive 2003/71/EC, the competent authority of the home Member State~~ The FCA, when approving a prospectus in accordance with ~~Article 13 of that Directive~~ section 85 of [the Act], may, on a case by case basis, require the information provided by the issuer, the offeror or the person asking for admission to trading on a regulated market to be completed, for each of the information items.

Where the issuer, the offeror or the person asking for the admission to trading on a regulated market is required to include a summary in a prospectus, in accordance with ~~Article 5(2) of Directive 2003/71/EC, the competent authority of the home Member State~~ section 87A(5) of [the Act], the FCA, when approving the prospectus in accordance with ~~Article 13 of that Directive~~ section 85 of [the Act], may, on a case-by-case basis, require certain information provided in the prospectus, to be included in the summary.

...

### Article 4

#### Share registration document schedule

...

- 2 The schedule set out in paragraph 1 shall apply to the following:

...

- (2) other securities which comply with the following conditions:

...

- (b) provided that these shares or other transferable securities equivalent to shares are or will be issued by the issuer of the security and are not yet traded on a regulated market or an

equivalent market outside the ~~Community~~ United Kingdom at the time of the approval of the prospectus covering the securities, and that the underlying shares or other transferable securities equivalent to shares can be delivered with physical settlement.

#### Article 4a

Share registration document schedule in cases of complex financial history or significant financial commitment

1 Where the issuer of a security covered by Article 4(2) has a complex financial history, or has made a significant financial commitment, and in consequence the inclusion in the registration document of certain items of financial information relating to an entity other than the issuer is necessary in order to satisfy the obligation laid down in ~~Article 5(1) of Directive 2003/71/EC~~ section 87A(1)(b), (2) and (3) of [the Act], those items of financial information shall be deemed to relate to the issuer. The ~~competent authority of the home Member State~~ FCA shall in such cases request that the issuer, the offeror or the person asking for admission to trading include those items of information in the registration document.

...

2 The ~~competent authority~~ FCA shall base any request pursuant to the first subparagraph of paragraph 1 on the requirements set out in item 20.1 of Annex I, item 15.1 of Annex XXIII, item 20.1 of Annex XXV, item 11.1 of Annex XXVII and item 20.1 of Annex XXVIII as regards the content of financial information and the applicable accounting and auditing principles, subject to any modification which is appropriate in view of any of the following factors:

...

Where in the individual case, the obligation laid down in ~~Article 5(1) of Directive 2003/71/EC~~ section 87A(1)(b), (2) and (3) of [the Act] may be satisfied in more than one way, preference shall be given to the way that is the least costly or onerous.

(3) Paragraph 1 is without prejudice to the responsibility under national law of any other person, including the persons ~~referred to in Article 6(1) of Directive 2003/71/EC~~ specified in [PR 5.5], for the information contained in the prospectus. In particular, those persons shall be responsible for the inclusion in the registration document of any items of information requested by the ~~competent authority~~ FCA pursuant to paragraph 1.

(4) For the purposes of paragraph 1, an issuer shall be treated as having a complex financial history if all of the following conditions apply:

...



- (b) that inaccuracy will affect the ability of an investor to make an informed assessment as mentioned in ~~Article 5(1) of Directive 2003/71/EC~~ section 87A(2) of [the Act]; and

...

...

## Article 8

Securities note schedule for debt securities with a denomination per unit of less than EUR 100 000

...

- 6. In this Article “regulated market” includes an equivalent market outside the United Kingdom.

...

## Article 9

Guarantees building block

...

Item 3 of Annex VI shall not apply where a ~~Member~~ State acts as guarantor.

...

## Article 14

Banks registration document schedule

...

- 2. ~~The schedule set out in paragraph 1 shall apply to credit institutions as defined in point (a) of Article 1(1) of Directive 2000/12/EC as well as to third country credit institutions which do not fall under that definition but have their registered office in a state which is a member of the OECD.~~

The schedule referred to in paragraph 1 applies to:

- (a) a credit institution which has permission under Part 4A of [the Act] to carry on the regulated activity of accepting deposits and has its registered office, or if it has no registered office, its head office, in the United Kingdom; and
- (b) a credit institution established outside the United Kingdom which does not fall within point (a) but has its registered office in a state which is a member of the OECD.

...

...

Article 16

Securities note schedule for debt securities with a denomination per unit of at least EUR 100 000

...

6. In this Article “regulated market” includes an equivalent market outside the United Kingdom.

...

Article 17

Additional information building block on the underlying share

...

2. The additional information referred to in the first subparagraph of paragraph 1 shall only apply to those securities which comply with both of the following conditions:

...

(2) provided that these shares or other transferable securities equivalent to shares are or will be issued by the issuer of the security, by an entity belonging to the group of that issuer or by a third party and are not yet traded on a regulated market or an equivalent market outside the ~~Union~~ United Kingdom at the time of the approval of the prospectus covering the securities, and that the underlying shares or other transferable securities equivalent to shares can be delivered with physical settlement.

...

Article 18

Registration document schedule for collective investment undertakings of the closed-end type

...

2. The schedule shall apply to collective investment undertakings of the closed-end type holding a portfolio of assets on behalf of investors that:

(1) are recognised by national law in the ~~Member~~ State in which it is incorporated as a collective investment undertaking of the closed end type; or

...

## Article 19

Registration document schedule for ~~Member States, third countries and their regional and local authorities~~ UK and foreign governments or regional or local authorities

1. For the registration document for securities issued by ~~Member States, third countries and their regional and local authorities~~ the government of the United Kingdom or of any other country or by a regional or local authority in the United Kingdom or any other country information shall be given in accordance with the schedule set out in Annex XVI.
2. The schedule shall apply to all types of securities issued by ~~Member States, third countries and their regional and local authorities~~ the government of the United Kingdom or of any other country or by a regional or local authority in the United Kingdom or any other country.

...

## Article 20a

Additional information building block for consent given in accordance with ~~Article 3(2) of Directive 2003/71/EC~~ section 86(1A) of [the Act]

1. For the purposes of ~~the third subparagraph of Article 3(2) of Directive 2003/71/EC~~ section 86(1A) of [the Act], the prospectus shall contain the following:

...

2. Where a financial intermediary does not comply with the conditions attached to consent as disclosed in the prospectus, a new prospectus shall be required in accordance with ~~the second paragraph of Article 3(2) of Directive 2003/71/EC~~ section 85(1) of [the Act].

...

...

## Article 22

Minimum information to be included in a base prospectus and its related final terms

1. ...

A base prospectus shall contain the information items required in Annexes I to XVII, Annex XX and Annexes XXIII to XXX depending on the type of issuer and securities involved. ~~Competent authorities~~ The FCA shall not

require that a base prospectus contains information items which are not included in Annexes I to XVII, Annex XX or Annexes XXIII to XXX.

In order to ensure conformity with ~~the obligation referred to in Article 5(1) of Directive 2003/71/EC, the competent authority of the home Member State, when approving a base prospectus in accordance with Article 13 of that Directive~~ subsection (1)(b) of section 87A of [the Act], the FCA, when approving a base prospectus in accordance with that section, may, on a case-by-case basis, require the information provided by the issuer, the offeror or the person asking for admission to trading on a regulated market to be completed for each of the information items.

Where the issuer, the offeror or the person asking for the admission to trading on a regulated market is required to include a summary in a base prospectus, in accordance with ~~Article 5(2) of Directive 2003/71/EC, the competent authority of the home Member State, when approving the base prospectus in accordance with Article 13 of that Directive~~ subsection (5) of section 87A of [the Act], the FCA, when approving the base prospectus in accordance with that section, may, on a case-by-case basis, require certain information provided in the base prospectus to be included in the summary.

...

7. ...

Where the issuer needs to prepare a supplement concerning information in the base prospectus that relates to only one or several specific issues, the right of investors to withdraw their acceptances pursuant to ~~Article 16(2) of Directive 2003/71/EC~~ section 87Q(4) of [the Act] shall only apply to the relevant issues and not to any other issues of securities under the base prospectus.

...

## Article 23

Adaptations to the minimum information given in prospectuses and base prospectuses

1. Notwithstanding Articles 3 second paragraph and 22(1) second sub-paragraph, where the issuer's activities fall under one of the categories included in Annex XIX, the [FCA], taking into consideration the specific nature of the activities involved, may ask for adapted information, in addition to the information items included in the schedules and building blocks set out in 4 to 20, including, where appropriate, a valuation or other expert's report on the assets of the issuer, in order to comply with the obligation referred to in ~~[sections 87A(2),(3) and (4)]~~ section 87A(1)(b) of the Act. ~~The [FCA] shall forthwith inform the Commission thereof.~~

~~In order to obtain the inclusion of a new category in Annex XIX a Member State shall notify its request to the Commission. The Commission shall~~

~~update this list following the Committee procedure provided for in Article 24 of [the *prospectus directive*].~~

...

3. ...

The [FCA] shall decide, in consultation with the issuer, the offeror or the person asking for admission to trading on a regulated market, what information shall be included in the prospectus or base prospectus in order to comply with the obligation referred to in ~~[sections 87A(2),(3) and (4) section 87A(1)(b) of [the *Act*].~~ The [FCA] shall ~~forthwith inform the Commission thereof.~~

...

- 2.3.1A ~~EU~~ UK Articles 26a, 26b and 26c respectively provide for a proportionate disclosure regime for rights issues (as defined by the *PD Regulation*); for small and medium-sized enterprises and *companies* with reduced market capitalisation; and for issues by *credit institutions* referred to in Article 1 (2) (j) of the PD.

Proportionate schedule for rights issuers

- 26a 1. The proportionate schedules set out in Annexes XXIII and XXIV shall apply to rights issues, provided that the issuer has shares of the same class already admitted to trading on a regulated market or ~~a multilateral trading facility as defined in point 15 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council~~ a UK multilateral trading facility as defined in Article 2(1)(14A) of the markets in financial instruments regulation.
2. Issuers whose shares of the same class are already admitted to trading on a UK multilateral trading facility can only make use of the schedules set out in Annexes XXIII and XXIV when the rules of that multilateral trading facility contain the following:
- (a) provisions requiring issuers to publish annual financial statements and audit reports within six months after the end of each financial year, half yearly financial statements within four months after the end of the first six months of each financial year and make public inside information as defined in ~~point 1 of the first paragraph of Article 1 of Directive 2003/6/EC pursuant to Article 6 of that Directive~~ Article 7(1) of Regulation 596/2014/EU pursuant to Article 17 of that Regulation;

...

- (c) provisions preventing insider dealing and market manipulation in accordance with ~~Directive 2003/6/EC~~ Regulation 596/2014/EU.

...

Proportionate schedules for small and medium-sized enterprises and companies with reduced market capitalisation

- 26b The proportionate schedules set out in Annexes XXV to XXVIII shall apply when securities issued by small and medium-sized enterprises and companies with reduced market capitalisation are offered to the public or admitted to trading on a regulated market ~~situated or operating within a Member State~~.

...

Proportionate requirements for issues by credit institutions referred to in ~~Article 1(2)(j) of Directive 2003/71/EC~~ paragraph 8 of Schedule 11A to [the Act]

- 26c Credit institutions issuing securities referred to in ~~Article 1(2)(j) of Directive 2003/71/EC~~ paragraph 8 of Schedule 11A to [the Act] that draw up a prospectus in accordance with ~~Article 1(3) of that Directive~~ section 87 of that Act may choose to include in their prospectus historical financial information covering only the last financial year, or such shorter period that the issuer has been in operation, in accordance with Annex XXIX to this Regulation.

...

## 2.4 Incorporation by reference

Incorporation by reference

- 2.4.1 R (1) Information may be incorporated in the *prospectus* by reference to one or more previously or simultaneously published documents that have been approved by the ~~competent authority of the Home State or filed with or notified to it in accordance with the *prospectus directive* or the *TD FCA* or filed with it or notified to it in accordance with the law of the *United Kingdom*, or any part of the *United Kingdom*, which was relied on immediately before *exit day* to implement the *prospectus directive* or the *TD*.~~

[**Note:** article 11.1 *PD*].

- (2) [deleted]

- 2.4.2 G Information under the *United Kingdom* provisions which implemented the *TD* that may be incorporated by reference includes, for example, annual accounts and annual reports, interim management statements, equivalent information made available to markets in the United Kingdom, half yearly reports and reports on payments to governments.

...

- 2.4.6 EU Article 28 of the *PD Regulation* provides examples of information that may be incorporated by reference:  
UK

...

## 2.5 Omission of information

...

Omission of information from prospectus

- 2.5.1A UK Section 87A(2A) of the *Act* provides that information about certain guarantors may be omitted from a prospectus:

If, in the case of transferable securities to which section 87 applies, the prospectus states that the guarantor is a specified ~~EEA~~ State, the prospectus is not required to include other information about the guarantor.

...

Request to omit information

- 2.5.3 G Article 2(2) of ~~Commission Delegated Regulation (EU) 2016/301~~ *Prospectus RTS Regulation 2* sets out requirements regarding the submission of requests to omit information from a *prospectus*. The *FCA* considers that a reasoned request for this purpose would:

- (1) be in writing from the *applicant*;
- (2) identify the specific information concerned and the specific reasons for its omission; and
- (3) state why in the *applicant's* opinion one or more of the grounds in section 87B(1) of the *Act* applies.

[**Note:** Extracts of article 2 of ~~Commission Delegated Regulation (EU) 2016/301~~ *Prospectus RTS Regulation 2* are reproduced for the convenience of readers in ~~PR 3.1.1EU~~ *PR 3.1.1UK*.]

## 3 Approval and publication of prospectus

### 3.1 Approval of prospectus

Prospectus review process

- 3.1.-1 ~~EU~~ UK Articles 2, 3 and 4 of ~~Commission Delegated Regulation (EU) 2016/301~~ *Prospectus RTS Regulation 2* provide that:

Article 2

Submission of an application for approval

...

2. Along with the first draft of the prospectus submitted to the competent authority, or during the prospectus review process, the issuer, offeror or person asking for admission to trading on a regulated market shall also submit in searchable electronic format
- (a) where required by the ~~competent authority of the home Member State~~ FCA according to Article 25(4) of Regulation (EC) No 809/2004 or on their own initiative, a cross reference list which shall also identify any items from Annexes I to XXX to Regulation (EC) No 809/2004 that have not been included in the prospectus because, due to the nature of the issuer, offeror or person asking for admission to trading or the securities being offered to the public or admitted to trading, they were not applicable.
  - ...
  - (b) where the issuer, offeror or person asking for admission to trading on a regulated market is requesting that the ~~competent authority of the home Member State~~ FCA authorises the omission of information from the prospectus pursuant to ~~Article 8(2) of Directive 2003/71/EC~~ section 87B FSMA, a reasoned request to that effect;
  - (c) ~~where the issuer, offeror or person asking for admission to trading on a regulated market requests that the competent authority of the home Member State notify the competent authority of a host Member State, upon approval of the prospectus, with a certificate of approval pursuant to Article 18(1) of Directive 2003/71/EC, a request to this effect; [deleted]~~
  - (d) any information which is incorporated by reference into the prospectus, unless such information has already been approved by or filed with the ~~same competent authority~~ FCA in accordance with ~~Article 11 of Directive 2003/71/EC~~ [PR 2.4];
  - (e) any other information considered necessary, on reasonable grounds, for the review by the ~~competent authority of the home Member State~~ FCA and expressly required by the ~~competent authority~~ FCA for that purpose.

### Article 3

#### Changes to the draft prospectus

1. Following submission of the first draft of the prospectus to the ~~competent authority of the home Member State~~ FCA, where the issuer, offeror or person asking for admission to trading on a regulated market submits subsequent drafts of the prospectus, the subsequent drafts shall be marked to highlight all changes made to the preceding unmarked draft of the prospectus as submitted to the ~~competent authority~~ FCA. Where only limited changes are made, marked extracts of the draft prospectus,



showing all changes from the preceding draft, shall be considered acceptable. An unmarked draft of the prospectus shall always be submitted along with the draft highlighting all changes.

Where the issuer, offeror or person asking for admission to trading on a regulated market is unable to comply with the requirement set out in the first subparagraph due to technical difficulties related to the marking of the prospectus, each change made to the preceding draft of the prospectus shall be identified to the ~~competent authority of the home Member State~~ FCA in writing.

2. Where the ~~competent authority of the home Member State~~ FCA has, in accordance with Article 5(2) of this Regulation, notified the issuer, offeror or person asking for admission to trading on a regulated market that it considers that the draft prospectus does not meet the requirement of completeness, including consistency of the information given and its comprehensibility, the subsequently submitted draft of the prospectus shall be accompanied by an explanation as to how the incompleteness notified by the ~~competent authority~~ FCA has been addressed.

Where changes made to a previously submitted draft prospectus are self-explanatory or clearly address the incompleteness notified by the ~~competent authority~~ FCA, an indication of where the incompleteness has been addressed shall be considered sufficient.

...

Applying for approval

- 3.1.1 R [deleted]
- 3.1.1A R If the order of disclosure items in the *prospectus* does not coincide with the order set out in the schedules and building blocks in the *PD Regulation*, an *applicant* must provide the *FCA* with a cross reference list identifying the pages where each disclosure item can be found in the *prospectus*.

[**Note:** Articles 25(4) and 26(3) of the *PD Regulation* and article 2(2) of ~~Commission Delegated Regulation (EU) 2016/301~~ *Prospectus RTS Regulation 2*]

...

Timeframe for submission

- 3.1.3 R (1) The *applicant* must submit to the *FCA* by the date specified in paragraph (2):
- (a)
- (i) a completed Form A;

- (ii) a completed Publication Form; and
- (iii) a completed Issuer Contact Details Form.

[**Note:** Article 2(2)(e) of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus RTS Regulation 2. These forms are available on the UKLA section of the FCA's website.]

- (b) the relevant fee; and

[**Note:** FEES 3 sets out the relevant fee payable to the FCA.]

- (c) the first draft of the *prospectus* (accompanied, where relevant, by the additional information set out in article 2(2) of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus RTS Regulation 2).

[**Note:** Extracts of article 2 of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus RTS Regulation 2 are reproduced for the convenience of readers in ~~PR 3.1.1EU~~ PR 3.1.1UK.]

- (2) The date referred to in paragraph (1) is:

- (a) at least 10 *working days* before the intended approval date of the *prospectus*; or
- (b) at least 20 *working days* before the intended approval date of the *prospectus* if the *applicant* does not have *transferable securities admitted to trading* and has not previously made an *offer*; or
- (c) as soon as practicable in the case of a *supplementary prospectus*.

- (3) The *applicant* must submit the final version of the draft *prospectus* and the additional information set out in Article 4 of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus RTS Regulation 2 to the FCA before midday on the day on which approval is required to be granted.

[**Note:** Article 4 of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus RTS Regulation 2 is reproduced for the convenience of readers in ~~PR 3.1.1EU~~ PR 3.1.1UK.]

...

#### Request for certificate of approval

- 3.1.6 G If an *applicant* wishes the FCA to provide a certificate of approval to another competent authority at the time the *prospectus* is approved, it

~~should note the requirements set out in PR 3.1.1EU and (PR 5.3.2R. As provided by article 18(1) of the PD, a request may still be submitted to the FCA after the prospectus has been approved (PR 5.3.2R sets out the requirements for such a request). [deleted]~~

#### Approval of prospectus

- 3.1.7 UK Section 87A(1) of the *Act* provides for the approval of a *prospectus* by the *FCA*:

[**Note:** Section 87C of the *Act* sets out time limits for the *FCA* to notify an applicant of its decision on an application for approval.]

- (1) The [*FCA*] may not approve a *prospectus* unless it is satisfied that:
- (a) ~~the United Kingdom is the home State in relation to the issuer of the transferable securities to which it relates, [deleted]~~
- ...
- (c) all of the other requirements imposed by or in accordance with ~~this Part or the prospectus directive~~ qualifying prospectus legislation have been complied with (so far as those requirements apply to a prospectus for the transferable securities in question).

- 3.17A ~~EU~~ UK Article 5(2) and (4) of ~~Commission Delegated Regulation (EU) 2016/301~~ *Prospectus RTS Regulation 2* provide that:

...

2. Where the ~~competent authority of the home Member State~~ FCA considers, on reasonable grounds, that the documents submitted to it are incomplete or that supplementary information is needed, for instance due to inconsistencies or incomprehensibility of certain information provided, it shall notify the issuer, offeror or person asking for admission to trading of the need for supplementary information and the reasons therefor, in writing, via electronic means.

...

4. Where the issuer, offeror or person asking for admission to trading on a regulated market is unable or unwilling to provide the supplementary information requested in accordance with paragraph 2, the ~~competent authority of the home Member State~~ FCA shall be entitled to refuse the approval of the prospectus and terminate the review process.

...

...

#### Transfer to another competent authority

- 3.1.12 R (1) ~~A person seeking to have the function of approving a *prospectus* transferred to the competent authority of another *EEA State* must make a written request to the *FCA* at least 10 working days before the date the transfer is sought.~~
- (2) ~~The request must:~~
- (a) ~~set out the reasons for the proposed transfer;~~
- (b) ~~state the name of the competent authority to whom the transfer is sought; and~~
- (c) ~~include a copy of the draft *prospectus*. [deleted]~~
- 3.1.13 G ~~The *FCA* will consider transferring the function of approving a *prospectus* to the competent authority of another *EEA State*:~~
- (1) ~~if requested to do so by the *issuer*, *offeror* or *person* requesting admission or by another competent authority; or~~
- (2) ~~in other cases if the *FCA* considers it would be more appropriate for another competent authority to perform that function. [deleted]~~

...

#### Service of Notice Regulations

- 3.1.17 G Regulation 7 of The Financial Services and Markets Act 2000 (Service of Notice Regulations) 2001 (SI 2001/1420) contains provisions relating to the possible methods of serving documents on the *FCA*. Regulation 7 does not apply to the submission of a draft *prospectus* or *listing particulars* to the *FCA* for approval because of the provisions set out in *PR 3.1.1EU PR 3.1.1UK*.

### 3.2 Filing and publication of prospectus

...

#### Method of publishing

- 3.2.4 R A *prospectus* is deemed to be made available to the public for the purposes of *PR 3.2.2R* to *PR 3.2.3R* when published either:
- (1) by insertion in one or more newspapers circulated throughout, or widely circulated in, the *EEA States* in which the *offer* is made or ~~the admission to trading is sought~~ *United Kingdom*; or
- (2) in a printed form to be made available, free of charge, to the public at the offices of the *regulated market* on which the *transferable securities* are being *admitted to trading*, or at the registered office of

the *issuer* and at the offices of the financial intermediaries placing or selling the *transferable securities*, including paying agents; or

- (3) in electronic form on the *issuer's* website or, if applicable, on the website of the financial intermediaries placing or selling the *transferable securities*, including paying agents; or
- (4) in an electronic form on the website of the *regulated market* where the *admission to trading* is sought.

[**Note:** article 14.2 *PD*]

...

3.2.6A EU ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus RTS  
UK Regulation 2 provides that:

...

#### Article 6

##### Publication of the prospectus in electronic form

1. When published in electronic form pursuant to ~~points (c), (d) or (e) of Article 14(2) of Directive 2003/71/EC~~ [PR 3.2.4R (3) or (4)], the prospectus, whether a single document or comprising several documents, shall:

...

...

3. If a prospectus for offer of securities to the public is made available on the websites of issuers or financial intermediaries or of regulated markets, these shall take measures to avoid targeting residents in ~~Member States~~ or third countries where the offer of securities to the public does not take place, such as the insertion of a disclaimer as to who are the addressees of the offer.

...

#### Article 7

##### Publication of final terms

The publication method for final terms related to a base prospectus does not have to be the same as the one used for the base prospectus as long as the publication method used is one of the methods indicated in ~~Article 14 of Directive 2003/71/EC~~ [PR 3.2.4R].

#### Article 8

## Publication in newspapers

1. In order to comply with ~~point (a) of Article 14(2) of Directive 2003/71/EC~~ [PR 3.2.4R (1)] the publication of a prospectus shall be made in a general or financial information newspaper having national or supra-regional scope.
2. If the ~~competent authority~~ FCA is of the opinion that the newspaper chosen for publication does not comply with the requirements set out in paragraph 1, it shall determine a newspaper whose circulation is deemed appropriate for this purpose ~~taking into account, in particular, the geographic area, number of inhabitants and reading habits in each Member State.~~

...

### 3.3 Advertisements

...

- 3.3.3A ~~EU~~ Article 11 of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus  
~~UK~~ RTS Regulation 2 provides that:

Article 11

Dissemination of advertisements

...

4. Where no prospectus is required ~~in accordance with Directive 2003/71/EC~~ under Part VI of FSMA, any advertisement shall include a warning to that effect unless the issuer, offeror or person asking for admission to trading on a regulated market chooses to publish a prospectus which complies with ~~Directive 2003/71/EC Part VI of FSMA, the Prospectus Rules sourcebook,~~ Regulation (EC) No 809/2004 and this Regulation.

...

- 3.3.7 ~~EU~~ Article 12 of ~~Commission Delegated Regulation (EU) 2016/301~~ Prospectus  
~~UK~~ RTS Regulation 2 provides that:

Article 12

Consistency for the purposes of ~~Article 5(4) of Directive 2003/71/EC~~ [PR 3.3.4R]

...

### 3.4 Supplementary prospectus

Supplementary prospectus

...

## Amendments to summary

- 3.4.2 R *A supplementary prospectus* must also if necessary include an amendment or supplement to the *summary*, ~~and any translations of the *summary*~~, to take into account the new information.

[**Note:** article 16.1 *PD*]

**Note:** Sections 87Q(4) and (5) of the *Act* set out the rights of investors to withdraw their acceptances after a *supplementary prospectus* is published.

...

## Minimum situations in which a supplementary prospectus must be submitted for approval

- 3.4.4 ~~EU~~ UK ~~Commission Delegated Regulation (EU) No 382/2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus *Prospectus RTS Regulation 1*~~ provides that:

...

## Article 2

## Obligation to publish a supplement

A supplement to the prospectus shall be published in the following situations:

...

- (f) ~~where an issuer is seeking admission to trading on (an) additional regulated market(s) in (an) additional Member State(s) or is intending to make an offer to the public in (an) additional Member State(s) other than the one(s) provided for in the prospectus; [deleted]~~

...

## 4 Use of languages and third country issuers

### 4.1 Use of languages

#### Language

- 4.1.1 R ~~If an offer is made, or admission to trading is sought, only in the United Kingdom and the United Kingdom is the Home State, the A prospectus must be drawn up in English.~~

[**Note:** article 19.1 *PD*]

- 4.1.2 R ~~If an *offer* is made, or *admission to trading* is sought, in more than one *EEA State* including the *United Kingdom* and the *United Kingdom* is the *Home State*, the *prospectus* must be drawn up in English and must also be made available either in a language accepted by the competent authorities of each *Host State* or in a language customary in the sphere of international finance, at the choice of the *issuer, offeror* or *person* requesting admission (as the case may be). [deleted]~~

~~[Note: article 19.3 PD]~~

- 4.1.3 R (1) ~~If an *offer* is made, or *admission to trading* is sought, in one or more *EEA States* excluding the *United Kingdom* and the *United Kingdom* is the *Home State*, the *prospectus* must be drawn up in a language accepted by the competent authorities of those *EEA States* or in a language customary in the sphere of international finance, at the choice of the *issuer, offeror* or *person* requesting admission (as the case may be).~~

~~[Note: article 19.2 PD]~~

- (2) ~~For the purpose of the scrutiny by the *FCA* where the *United Kingdom* is the *Home State*, the *prospectus* must be drawn up either in English or in another language customary in the sphere of international finance, at the choice of the *issuer, offeror* or *person* requesting admission (as the case may be). [deleted]~~

~~[Note: article 19.2 PD]~~

- 4.1.4 R ~~If *admission to trading* of *non-equity transferable securities* whose denomination per unit amounts to at least 100,000 euros (or an equivalent amount) is sought in the *United Kingdom* or in one or more other *EEA States*, the *prospectus* must be drawn up in either a language accepted by the competent authorities of the *Home State* and *Host States* or in a language customary in the sphere of international finance, at the choice of the *issuer, offeror* or *person* requesting admission (as the case may be). [deleted]~~

~~[Note: article 19.4 PD]~~

English Language

- 4.1.5 G ~~English is a language accepted by the *FCA* where the *United Kingdom* is a *Home State* or *Host State*. [deleted]~~

Language customary in the sphere of international finance

- 4.1.5A G ~~The *FCA* will consider a language to be customary in the sphere of international finance if documents in that language are accepted for scrutiny and filing in at least three international capital markets in each of the following:~~



- (1) ~~Europe;~~
- (2) ~~Asia; and~~
- (3) ~~The Americas. [deleted]~~

Summary to be translated into English

4.1.6 R ~~If:~~

- (1) ~~an offer is made in the *United Kingdom*;~~
- (2) ~~a *prospectus* relating to the *transferable securities* has been approved by the competent authority of another *EEA State* and the *prospectus* contains a *summary*; and~~
- (3) ~~the *prospectus* is drawn up in a language other than English that is customary in the sphere of international finance;~~

~~the offeror must ensure that the *summary* is translated into English.  
[deleted]~~

~~[Note: article 19.2 PD]~~

## 4.2 Third country issuers

Approval of prospectus drawn up in accordance with third country laws

4.2.1 R If a *prospectus* relating to an *issuer* that has its registered office in a country that is not ~~an *EEA State*~~ the *United Kingdom* is drawn up in accordance with the legislation of that country, the *FCA* may, ~~if the *United Kingdom* is the *Home State* in relation to the *issuer*,~~ approve the *prospectus* if it is satisfied that:

- (1) the *prospectus* has been drawn up in accordance with international standards set by international securities commission organisations, including the IOSCO disclosure standards; and
- (2) the information requirements, including information of a financial nature, are equivalent to the requirements under *Part 6* of the *Act*, the *PD Regulation* and these *rules*.

[Note: article 20.1 PD]

...

## 5 Other provisions

...

### 5.3 Certificate of approval

5.3.1 UK Sections 87H and 87I of the *Act* provide:

## Prospectus approved in another EEA State

- 87H (1) ~~A prospectus approved by the competent authority of an EEA State other than the United Kingdom is not an approved prospectus for the purposes of section 85 unless that authority has notified ESMA and provided the competent authority with—~~
- ~~(a) a certificate of approval;~~
  - ~~(b) a copy of the prospectus as approved; and~~
  - ~~(c) if requested by the [FCA], a translation of the summary of the prospectus.~~
- ~~(2) A document is not a certificate of approval unless it states that the prospectus—~~
- ~~(a) has been drawn up in accordance with the prospectus directive; and~~
  - ~~(b) has been approved, in accordance with that directive, by the competent authority providing the certificate.~~
- ~~(3) A document is not a certificate of approval unless it states whether (and, if so, why) the competent authority providing it authorised, in accordance with the prospectus directive, the omission from the prospectus of information which would otherwise have been required to be included.~~
- ~~(3A) The competent authority must publish on its website a list of certificates of approval provided to it in accordance with this section.~~
- ~~(3B) The list referred to in subsection (3A) must—~~
- ~~(a) be kept up to date;~~
  - ~~(b) retain items on it for a period of at least 12 months; and~~
  - ~~(c) include hyperlinks to any certificate of approval and prospectus published on the website of—~~
    - ~~(i) the competent authority of the EEA State which provided the certificate;~~
    - ~~(ii) the issuer; or~~
    - ~~(iii) the regulated market where admission to trading is sought.~~

- (4) ~~“Prospectus” includes a supplementary prospectus.~~

Provision of information to host Member State

- 87I (1) ~~The [FCA] must, if requested to do so, supply the competent authority of a specified EEA State with—~~
- ~~(a) a certificate of approval;~~
  - ~~(b) a copy of the specified prospectus (as approved by the [FCA]); and~~
  - ~~(c) a translation of the summary of the specified prospectus (if the request states that one has been requested by the other competent authority).~~
- ~~(1A) If the competent authority supplies a certificate of approval to the competent authority of the specified EEA State, it must also supply a copy of that certificate to—~~
- ~~(a) the person who made the request under this section; and~~
  - ~~(b) ESMA~~
- ~~(2) Only the following may make a request under this section—~~
- ~~(a) the issuer of the transferable securities to which the specified prospectus relates;~~
  - ~~(b) a person who wishes to offer the transferable securities to which the specified prospectus relates to the public in an EEA State other than (or as well as) the United Kingdom;~~
  - ~~(c) a person requesting the admission of the transferable securities to which the specified prospectus relates to a regulated market situated or operating in an EEA State other than (or as well as) the United Kingdom.~~
- ~~(3) A certificate of approval must state that the prospectus—~~
- ~~(a) has been drawn up in accordance with this Part and the prospectus directive; and~~
  - ~~(b) has been approved, in accordance with those provisions, by the [FCA].~~
- ~~(4) A certificate of approval must state whether (and, if so, why) the [FCA] authorised, in accordance with section 87B, the omission from the prospectus of information which would otherwise have been required to be included.~~

- (5) ~~The [FCA] must comply with a request under this section—~~
- (a) ~~if the prospectus has been approved before the request is made, within 3 working days beginning with the date the request is received; or~~
  - (b) ~~if the request is submitted with an application for the approval of the prospectus, on the first working day after the date on which it approves the prospectus.~~
- (6) ~~“Prospectus” includes a supplementary prospectus.~~
- (7) ~~“Specified” means specified in a request made for the purposes of this section. [deleted]~~

#### Requests to the FCA to supply a certificate of approval

- 5.3.2 R (1) ~~This rule applies to a request by a *person* to the *FCA* to supply information referred to in *section 87I* of the *Act* to the competent authority of a relevant *Host State*.~~
- (2) ~~The request must be in writing and must include:~~
- (a) ~~the relevant *prospectus* as approved (if it has already been approved); and~~
  - (b) ~~a translation of the *summary* if required by the competent authority of a relevant *host State*.~~

~~[Note: See PR 3.1.1EU for the additional requirements where a request is made prior to the approval of a *prospectus*]  
[deleted]~~

- 5.3.3 G ~~The *FCA* will inform the *person* who made the request as soon as practicable after it has supplied the information to the other competent authority. [deleted]~~

#### Certificate received from another competent authority

- 5.3.4 G ~~If the *FCA* receives information referred to in *section 87H* from another competent authority it will as soon as practicable give notice on the *FCA* website that it has received the information. [deleted]~~

## 5.5 Persons responsible for a prospectus

...

Rules only apply if UK is Home State

5.5.2 R The ~~rules~~ in this section only apply in respect of a *prospectus* if the ~~United Kingdom~~ is the *Home State* for the *issuer* in relation to the *transferable securities* to which the *prospectus* relates. ~~[deleted]~~

...

Appendix 1	Relevant definitions
App 1.1	Relevant definitions
1.1.1	<b>Note: The following definitions relevant to the <i>prospectus</i> rules are extracted from the <i>Glossary</i>.</b>
Insert the following new definitions in the appropriate alphabetical position and amend the existing definitions as shown.	
...	
<i>credit institution</i>	as <del>defined in article 4(1)(1) of the <i>EUCRR</i></del> <u>has the meaning in article 4(1)(1) of the <i>UK CRR</i>.</u>
...	
<i>EEA State</i>	<p><del>(in accordance with paragraph 8 of Schedule 3 to the Act (EEA Passport Rights)) a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May 1992, as it has effect for the time being; as at 1 May 2004, the following are the <i>EEA States</i>: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden and the <i>United Kingdom</i>.</del></p> <p><u>(in accordance with Schedule 1 to the Interpretation Act 1978, in relation to any time:</u></p>
	(a) <u>a state which at that time is a member State; or</u>
	(b) <u>any other state which is at that time a party to the EEA agreement.</u>
	<u>[Note: Current non-member State parties to the EEA agreement are Norway, Iceland and Lichtenstein.]</u>
...	
<i>Home Member State or Home State</i>	<del>(as defined in section 102C of the Act) in relation to an issuer of <i>transferable securities</i>, the <i>EEA State</i> which is the “home Member State” for the purposes of the <i>prospectus directive</i> (which is to be determined in accordance with Article 2.1(m) of</del>

	<del>that directive.</del>
<del>Host Member State or Host State</del>	<del>(as defined in Article 2.1(n) of the <i>prospectus directive</i>) the State where an offer to the public is made or admission to trading is sought, when different from the <i>home Member State</i>.</del>
...	
<i>PD Regulation</i>	<u>the United Kingdom version of the Prospectus Directive Regulation (No 2004/809/EC), which is part of United Kingdom law by virtue of the EUWA.</u>
...	
<i>PRIIPS Regulation</i>	<u>the United Kingdom version of Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), which is part of United Kingdom law by virtue of the EUWA.</u> <a href="http://data.europa.eu/eli/reg/2014/1286/oj">http://data.europa.eu/eli/reg/2014/1286/oj</a>
...	
<i>prospectus</i>	a <i>prospectus</i> required under the <del><i>prospectus directive</i></del> <u>the Act.</u>
...	
<i>Prospectus Regulation</i>	<u>the United Kingdom version of Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, which is part of United Kingdom law by virtue of the EUWA.</u>
<i>Prospectus RTS Regulations</i>	(1) <u>the United Kingdom version of Commission Delegated Regulation (EU) No 382/2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus, which is part of United Kingdom law by virtue of the EUWA; and</u>
	(2) <u>the United Kingdom version of Commission Delegated Regulation (EU) 2016/301 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004, which is part of United Kingdom law by virtue of the EUWA.</u>
<i>Prospectus RTS</i>	<u>the United Kingdom version of Commission Delegated</u>

<u>Regulation 1</u>	<u>Regulation (EU) No 382/2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus, which is part of <i>United Kingdom</i> law by virtue of the <i>EUWA</i>.</u>	
<u>Prospectus RTS Regulation 2</u>	<u>the <i>United Kingdom</i> version of Commission Delegated Regulation (EU) 2016/301 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004, which is part of <i>United Kingdom</i> law by virtue of the <i>EUWA</i>.</u>	
...		
<i>Public international body</i>	(as defined in the <i>PD Regulation</i> ) a legal entity of public nature established by an international treaty between sovereign States and of which one or more <del>Member</del> <u>sovereign</u> States are members.	
<i>qualified investor</i>	(as defined in section 86(7) of the <i>Act</i> ) in relation to an <i>offer</i> of <i>transferable securities</i> :	
	(a)	a person or entity described in <del>points (1) to (4) of Section I of Annex II to <i>MiFID</i></del> <u>paragraph 3 of Schedule 1 to the <i>markets in financial instruments regulation</i></u> , other than a <i>person</i> who, before the making of the <i>offer</i> , has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a <i>non-professional client</i> in accordance with <del><i>MiFID</i></del> <u>paragraph 4 of that Schedule</u> ; or
	(b)	a <i>person</i> who has made a request to one or more relevant firms to be treated as a <i>professional client</i> in accordance with <del>Section II of Annex II to <i>MiFID</i></del> <u>paragraphs 5 and 6 of that Schedule</u> and has not subsequently, but before the making of the <i>offer</i> , agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a <i>non-professional client</i> in accordance with <del>the final paragraph of Section I of Annex II of <i>MiFID</i></del> <u>paragraph 4 of that Schedule</u> ; or
	(c)	a <i>person</i> who is <del>an <i>eligible counterparty</i> in accordance with article 30 of <i>MiFID</i></del> and has not, before the making of the <i>offer</i> , agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a <i>non-professional client</i> in accordance with <del>the final paragraph of Section I of Annex II of <i>MiFID</i></del> ; or -
	(i)	<u>is an eligible counterparty for the purposes of</u>

			<u>[COBS 3.6], and</u>
		(ii)	<u>has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with paragraph 4 of Schedule 1 to the markets in financial instruments regulation; or</u>
	(d)	a person whom:	
		(i)	any relevant firm was authorised to continue to treat as a <i>professional client</i> immediately before 3 January 2018 by virtue of article 71.6 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments; and
		(ii)	<del>the firm may continue to treat as a professional client from 3 January 2018</del> <u>was entitled immediately before exit day to continue to treat as a professional client</u> by virtue of Section II.2 of Annex II to <i>MiFID</i> .
...			
<i>regulated information</i>	<del>(as defined in the PD Regulation) all information which the issuer, or any person who has applied for the admission of securities to trading on a regulated market without the issuer's consent, is required to disclose under Directive 2001/34/EC or under Article 6 of Directive 2003/6/EC</del> <u>all information which an issuer, or any other person who has applied for the admission of financial instruments to trading on a regulated market without the issuer's consent, is required to disclose under:</u>		
	(a)	<u>DTR; or</u>	
	(b)	<u>articles 17 to 19 of the Market Abuse Regulation; or</u>	
	(c)	<u>LR.</u>	
<i>regulated market</i>	<del>a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third party buying and selling interests in financial instruments in the system and in accordance with its non-discretionary rules in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the Title III of MiFID.</del> <u>a regulated market which is a UK RIE.</u> <b>[Note: article 4(1)(21) 2(1)(13A) of MiFID MiFIR]</b>		



...	
<i>transferable security</i>	(as defined in section 102A of the Act) anything which is a transferable security for the purposes of <del>MiFID</del> <u>MiFIR</u> , other than money-market instruments for the purposes of <del>that directive</del> <u>MiFIR</u> which have a maturity of less than 12 months.
	Note: In the <i>prospectus directive</i> and <i>PD regulation</i> , the Commission uses the term “security” rather than “transferable security” <u>is used</u> .
...	

<b>App 3</b>	<b>Schedules and Building Blocks and Table of Combinations of Schedules and Building Blocks</b>	
3.1 <del>EU</del> <u>UK</u>	The following <i>schedules</i> and <i>building blocks</i> and tables of combinations are copied from the <i>PD Regulation</i> :	
	...	
	<b>ANNEX I</b>	
		Minimum Disclosure Requirements for the Share Registration Document (schedule)
	...	
	<b>19.</b>	<b>RELATED PARTY TRANSACTIONS</b>
		Details of related party transactions (which for these purposes are those set out in <del>the Standards adopted according to the Regulation (EC) No 1606/2002</del> <u>UK-adopted international accounting standards or UK accounting standards</u> ), that the issuer has entered into during the period covered by the historical financial information and up to the date of the registration document, must be disclosed in accordance with <del>the respective standard adopted according to Regulation (EC) No 1606/2002</del> <u>UK-adopted international accounting standards or UK accounting standards</u> if applicable.
		...
	<b>20.</b>	<b>FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</b>

20.1	<u>Historical Financial Information</u>
	<p>Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is the shorter. <del>Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.</del></p>
	<p><u>In relation to a financial year beginning on or before the day on which exit day falls, such financial information must be prepared as mentioned in Article 35.</u></p> <p><u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in the United Kingdom, such financial information must be prepared in accordance with:</u></p>
	<p>(a) <u>UK-adopted international accounting standards, or</u></p>
	<p>(b) <u>if those standards are not applicable, UK accounting standards.</u></p>
	<p><u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in a country outside the United Kingdom, such financial information must be prepared in accordance with:</u></p>
	<p>(a) <u>UK-adopted international accounting standards,</u></p>
	<p>(b) <u>one of the accounting standards referred to in Article 35(5), or</u></p>
	<p>(c) <u>national accounting standards of that country that are equivalent to UK-adopted international accounting standards.</u></p>
	<p><u>For an issuer established in a country outside the United Kingdom, if such financial information is not prepared in accordance with the required standards, it must be presented in the form of restated financial statements.</u></p>
	<p>...</p>

		<p>If the issuer has been operating in its current sphere of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with <del>the standards applicable to annual financial statements under the Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards where the issuer is an issuer from the Community.</del> For third country issuers, <del>the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards</del> <u>the standards that would apply under the second, third or fourth subparagraph to an annual financial statement in respect of a financial year beginning at the time when that period began.</u> This historical financial information must be audited.</p>
		...
		<p>The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a <del>Member State</del> <u>the United Kingdom</u> or an equivalent standard.</p>
		...
		<b>ANNEX IV</b>
		Minimum Disclosure Requirements for the Debt and Derivative Securities Registration Document (schedule)
		(Debt and derivative securities with a denomination per unit of less than EUR 100 000)
		...
	<b>13.</b>	<b>FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</b>
	13.1	<u>Historical Financial Information</u>
		<p>Audited historical financial information covering the latest 2 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. <del>Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member States national accounting standards for issuers from the Community. For third country issuers, such financial information must be</del></p>

		<del>prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.</del>
		<u>In relation to a financial year beginning on or before the day on which exit day falls, such financial information must be prepared as mentioned in Article 35.</u>  <u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in the United Kingdom, such financial information must be prepared in accordance with—</u>
	(a)	<u>UK-adopted international accounting standards, or</u>
	(b)	<u>if those standards are not applicable, UK accounting standards.</u>
		<u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in a country outside the United Kingdom, such financial information must be prepared in accordance with:</u>
	(a)	<u>UK-adopted international accounting standards,</u>
	(b)	<u>one of the accounting standards referred to in Article 35(5), or</u>
	(c)	<u>national accounting standards of that country that are equivalent to UK-adopted international accounting standards.</u>
		<u>For an issuer established in a country outside the United Kingdom, if such financial information is not prepared according to the required standards, it must be presented in the form of restated financial statements.</u>
		...
		<del>If the issuer has been operating in its current sphere of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under the Regulation (EC) No 1606/2002, or if not applicable to a Member States national accounting standards where the issuer is an issuer from the Community. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards <u>the standards that would apply under the second, third or fourth subparagraph to an annual financial statement in respect of a financial year beginning at the</u></del>

		time when that period began. This historical financial information must be audited.
		...
		The historical annual financial information must have been independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in <del>a Member State</del> <u>the United Kingdom</u> or an equivalent standard.
		...
		<b>ANNEX VII</b>
		Minimum Disclosure Requirements for Asset Backed Securities Registration Document (schedule)
		...
	<b>8.</b>	<b>FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION, AND PROFITS AND LOSSES</b>
		...
	8.2	Historical Financial Information
		Where, since the date of incorporation or establishment, an issuer has commenced operations and financial statements have been made up, the registration document must contain audited historical financial information covering the latest 2 financial years (or shorter period that the issuer has been in operation) and the audit report in respect of each year. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. <del>Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.</del>
		<u>In relation to a financial year beginning on or before the day on which exit day falls, such financial information must be prepared as mentioned in Article 35.</u>

		<u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in the United Kingdom, such financial information must be prepared in accordance with:</u>
		(a) <u>UK-adopted international accounting standards, or</u>
		(b) <u>if those standards are not applicable, UK accounting standards.</u>
		<u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in a country outside the United Kingdom, such financial information must be prepared in accordance with:</u>
		(a) <u>UK-adopted international accounting standards,</u>
		(b) <u>one of the accounting standards referred to in Article 35(5), or</u>
		(c) <u>national accounting standards of that country that are equivalent to UK-adopted international accounting standards.</u>
		<u>For an issuer established in a country outside the United Kingdom, if such financial information is not prepared according to the required standards, it must be presented in the form of restated financial statements.</u>
		...
		<del>If the issuer has been operating in its current sphere of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards where the issuer is from the Community. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards</del> <u>the standards that would apply under the second, third or fourth subparagraph to an annual financial statement in respect of a financial year beginning at the time when that period began.</u> This historical financial information must be audited.
		...
		The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a <del>Member State</del> <u>the United Kingdom</u> or an equivalent standard.
	8.2 bis	...

		<p>Where, since the date of incorporation or establishment, an issuer has commenced operations and financial statements have been made up, the registration document must contain audited historical financial information covering the latest 2 financial years (or shorter period that the issuer has been in operation) and the audit report in respect of each year. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. <del>Such financial information must be prepared according to Regulation (EC) No 1606/2002 or, if not applicable, to a Member State's national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. Otherwise, the following information must be included in the registration document:</del></p>
		<p>(a) <del>a prominent statement that the financial information included in the registration document has not been prepared in accordance with the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and that there may be material differences in the financial information had Regulation (EC) No 1606/2002 been applied to the historical financial information; [deleted]</del></p>
		<p>(b) <del>immediately following the historical financial information a narrative description of the differences between the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and the accounting principles adopted by the issuer in preparing its annual financial statements. [deleted]</del></p>
		<p><u>In relation to a financial year beginning on or before the day on which exit day falls, such financial information must be prepared as mentioned in Article 35.</u></p> <p><u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in the United Kingdom, such financial information must be prepared in accordance with:</u></p>
		<p>(a) <u>UK-adopted international accounting standards, or</u></p>
		<p>(b) <u>if those standards are not applicable, UK accounting standards.</u></p>
		<p><u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in a country outside the United Kingdom, such financial information must be prepared in accordance with:</u></p>

		(a)	<u>UK-adopted international accounting standards,</u>
		(b)	<u>one of the accounting standards referred to in Article 35(5), or</u>
		(c)	<u>national accounting standards of that country that are equivalent to UK-adopted international accounting standards.</u>
		<u>For an issuer established in a country outside the United Kingdom, if such financial information is not prepared according to the required standards, the following information must be included in the registration document:</u>	
		(a)	<u>a prominent statement that the financial information included in the registration document has not been prepared:</u>
		(i)	<u>in the case of a financial year beginning on or before the day on which exit day falls, in accordance with International Financial Reporting Standards adopted pursuant to Regulation (EC) No 1606/2002 as it applies in the European Union, or</u>
		(ii)	<u>in the case of a financial year beginning after that day, in accordance with UK-adopted international accounting standards, and</u>
		(b)	<u>immediately following the historical financial information, a narrative description of the differences between whichever of those international standards is relevant and the accounting principles adopted by the issuer in preparing its annual financial statements.</u>
		...	
		The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a Member State <u>the United Kingdom</u> or an equivalent standard.	
		...	
	...		
		<b>ANNEX IX</b>	
		Minimum Disclosure Requirements for the Debt and Derivative securities Registration Document (schedule)	
		(Debt and derivative securities with a denomination per unit of at least EUR 100 000)	
	...		



11.	<b>FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</b>
11.1	<u>Historical Financial Information</u>
	<p>Audited historical financial information covering the latest 2 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. <del>Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. Otherwise, the following information must be included in the registration document:</del></p>
	<p>(a) <del>a prominent statement that the financial information included in the registration document has not been prepared in accordance with the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and that there may be material differences in the financial information had Regulation (EC) No 1606/2002 been applied to the historical financial information; [deleted]</del></p>
	<p>(b) <del>immediately following the historical financial information a narrative description of the differences between the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and the accounting principles adopted by the issuer in preparing its annual financial statements; [deleted]</del></p>
	<p><u>In relation to a financial year beginning on or before the day on which exit day falls, such financial information must be prepared as mentioned in Article 35.</u></p> <p><u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in the United Kingdom, such financial information must be prepared in accordance with:</u></p>
	<p>(a) <u>UK-adopted international accounting standards, or</u></p>
	<p>(b) <u>if those standards are not applicable, UK accounting standards.</u></p>

		<u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in a country outside the United Kingdom, such financial information must be prepared in accordance with:</u>	
		(a)	<u>UK-adopted international accounting standards,</u>
		(b)	<u>one of the accounting standards referred to in Article 35(5), or</u>
		(c)	<u>national accounting standards of that country that are equivalent to UK-adopted international accounting standards.</u>
		<u>For an issuer established in a country outside the United Kingdom, if such financial information is not prepared according to the required standards, the following information must be included in the registration document:</u>	
		(a)	<u>a prominent statement that the financial information included in the registration document has not been prepared:</u>
		(i)	<u>in the case of a financial year beginning on or before the day on which exit day falls, in accordance with International Financial Reporting Standards adopted pursuant to Regulation (EC) No 1606/2002 as it applies in the European Union, or</u>
		(ii)	<u>in the case of a financial year beginning after the day on which exit day falls, in accordance with UK-adopted international accounting standards, and</u>
		(b)	<u>immediately following the historical financial information, a narrative description of the differences between whichever of those international standards is relevant and the accounting principles adopted by the issuer in preparing its annual financial statements.</u>
		...	
		The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a <del>Member State</del> <u>the United Kingdom</u> or an equivalent standard. Otherwise, the following information must be included in the registration document:	
		...	
	...		
<b>ANNEX X</b>			

		Minimum Disclosure Requirements for the Depository Receipts issued over shares (schedule)
		INFORMATION ABOUT THE ISSUER OF UNDERLYING SHARES
	...	
	<b>19.</b>	<b>RELATED PARTY TRANSACTIONS</b>
		Details of related party transactions (which for these purposes are <del>those set out in the Standards adopted according to Regulation (EC) No 1606/2002</del> <u>UK-adopted international accounting standards or UK accounting standards</u> ), that the issuer has entered into during the period covered by the historical financial information and up to the date of the prospectus must be disclosed in accordance with <del>the respective standard adopted according to Regulation (EC) No 1606/2002</del> <u>UK-adopted international accounting standards or United Kingdom accounting standards</u> if applicable.
		...
	<b>20.</b>	<b>FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</b>
	20.1	<u>Historical Financial Information</u>
		Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is the shorter. <del>Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.</del>
		<u>In relation to a financial year beginning on or before the day on which exit day falls, such financial information must be prepared as mentioned in Article 35.</u>

		<u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in the United Kingdom, such financial information must be prepared in accordance with:</u>
		(a) <u>UK-adopted international accounting standards, or</u>
		(b) <u>if those standards are not applicable, UK accounting standards.</u>
		<u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in a country outside the United Kingdom, such financial information must be prepared in accordance with:</u>
		(a) <u>UK-adopted international accounting standards,</u>
		(b) <u>one of the accounting standards referred to in Article 35(5), or</u>
		(c) <u>national accounting standards of that country that are equivalent to UK-adopted international accounting standards.</u>
		<u>For an issuer established in a country outside the United Kingdom, if such financial information is not prepared in accordance with the required standards, it must be presented in the form of restated financial statements.</u>
		...
		<del>If the issuer has been operating in its current sphere of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards where the issuer is an issuer from the Community. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards</del> <u>the standards that would apply under the second, third or fourth subparagraph to an annual financial statement in respect of a financial year beginning at the time when that period began.</u> This historical financial information must be audited.
		The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the prospectus, it gives a true and fair view, in accordance with auditing standards applicable in a Member State <u>the United Kingdom</u> or an equivalent standard.
	20.1 bis	...

		<p>Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is the shorter. <del>Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. Otherwise, the following information must be included in the prospectus:</del></p>
		<p>(a) <del>a prominent statement that the financial information included in the registration document has not been prepared in accordance with the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and that there may be material differences in the financial information had Regulation (EC) No 1606/2002 been applied to the historical financial information; [deleted]</del></p>
		<p>(b) <del>immediately following the historical financial information a narrative description of the differences between the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 and the accounting principles adopted by the issuer in preparing its annual financial statements. [deleted]</del></p>
		<p><u>In relation to a financial year beginning on or before the day on which exit day falls, such financial information must be prepared as mentioned in Article 35.</u></p> <p><u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in the United Kingdom, such financial information must be prepared in accordance with:</u></p>
		<p>(a) <u>UK-adopted international accounting standards, or</u></p>
		<p>(b) <u>if those standards are not applicable, UK accounting standards.</u></p>
		<p><u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in a country outside the United Kingdom, such financial information must be prepared in accordance with:</u></p>
		<p>(a) <u>UK-adopted international accounting standards,</u></p>

		(b)	<u>one of the accounting standards referred to in Article 35(5), or</u>
		(c)	<u>national accounting standards of that country that are equivalent to UK-adopted international accounting standards.</u>
		<u>For an issuer established in a country outside the United Kingdom, if such financial information is not prepared according to the required standards, the following information must be included in the registration document—</u>	
		(a)	<u>a prominent statement that the financial information included in the registration document has not been prepared:</u>
		(i)	<u>in the case of a financial year beginning on or before the day on which exit day falls, in accordance with International Financial Reporting Standards adopted pursuant to Regulation (EC) No 1606/2002 as it applies in the European Union, or</u>
		(ii)	<u>in the case of a financial year beginning after the day on which exit day falls, in accordance with UK-adopted international accounting standards, and</u>
		(b)	<u>immediately following the historical financial information, a narrative description of the differences between whichever of those international standards is relevant and the accounting principles adopted by the issuer in preparing its annual financial statements.</u>
		...	
		The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the prospectus, it gives a true and fair view, in accordance with auditing standards applicable in a <del>Member State</del> <u>the United Kingdom</u> or an equivalent standard. Otherwise, the following information must be included in the prospectus:	
		...	
	...		
	<b>ANNEX XI</b>		
	<b>MINIMUM DISCLOSURE REQUIREMENTS FOR THE BANKS REGISTRATION DOCUMENT (SCHEDULE)</b>		
	...		
	<b>11.</b>	<b>FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</b>	

11.1	<u>Historical Financial Information</u>
	<p>Audited historical financial information covering the latest 2 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. <del>Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.</del></p>
	<p><u>In relation to a financial year beginning on or before the day on which exit day falls, such financial information must be prepared as mentioned in Article 35.</u></p> <p><u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in the United Kingdom, such financial information must be prepared in accordance with:</u></p>
	<p>(a) <u>UK-adopted international accounting standards, or</u></p>
	<p>(b) <u>if those standards are not applicable, UK accounting standards.</u></p>
	<p><u>In relation to a financial year beginning after the day on which exit day falls, for issuers established in a country outside the United Kingdom, such financial information must be prepared in accordance with:</u></p>
	<p>(a) <u>UK-adopted international accounting standards,</u></p>
	<p>(b) <u>one of the accounting standards referred to in Article 35(5), or</u></p>
	<p>(c) <u>national accounting standards of that country that are equivalent to UK-adopted international accounting standards.</u></p>
	<p><u>For an issuer established in a country outside the United Kingdom, if such financial information is not prepared according to the required standards, it must be presented in the form of restated financial statements.</u></p>
	<p>...</p>

		<p>If the issuer has been operating in its current sphere of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with <del>the standards applicable to annual financial statements under Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards where the issuer is an issuer from the Community.</del> For third country issuers, the <del>historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards</del> <u>the standards that would apply under the second, third or fourth subparagraph to an annual financial statement in respect of a financial year beginning at the time when that period began.</u> This historical financial information must be audited. If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least the following:</p>
		...
		<p>The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards applicable in a <del>Member State</del> <u>the United Kingdom</u> or an equivalent standard.</p>
		...
	<b>ANNEX XV</b>	
		<p>Minimum disclosure requirements for the registration document for securities issued by collective investment undertakings of the closed-end type (schedule)</p>
		...
	2.	<b>Investment Restrictions</b>
		...
	2.9	<p>Item 2.2 does not apply to investment in securities issued or guaranteed by a government, government agency or instrumentality of any <del>Member State, its regional or local authorities, or OECD Member State.</del></p>
		...
	<b>ANNEX XVI</b>	
		<p>Minimum Disclosure Requirements for the Registration Document for securities issued by <del>Member States, third countries</del> <u>States</u> and their regional and local authorities (schedule)</p>



	...			
	<b>ANNEX XXI</b>			
		List of additional information in final terms		
		<b>ADDITIONAL INFORMATION</b>		
		Example(s) of complex derivatives securities <del>as referred to in recital 18 of the Prospectus Regulation</del> such as <u>shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities</u>		
		...		
	<b>ANNEX XXII</b>			
		Disclosure requirements in summaries		
		<b>Guide to using the Tables:</b>		
	...			
	7.	Where a prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 100 000 in accordance with either or both of Annexes IX or XIII and a summary is required <del>by a Member State in accordance with Articles 5(2) and 19(4) of Directive 2003/71/EC</del> by section 87A(5) of [the Act], or is produced on a voluntary basis, the disclosure requirements for the summary in relation to Annexes IX and XIII are as set out in the Tables. Where an issuer is not under an obligation to include a summary in a prospectus but wishes to produce some overview section in the prospectus, it should ensure that it is not titled “ <i>summary</i> ” unless it complies with all the disclosure requirements for summaries.		
		<b>Section A – Introduction and warnings</b>		
		Annexes	Element	Disclosure requirement
		All	A.1	Warning that:
				<ul style="list-style-type: none"> <li>● [this] summary should be read as introduction to the prospectus;</li> </ul>
				<ul style="list-style-type: none"> <li>● any decision to invest in the securities should be based on consideration of</li> </ul>

					the prospectus as a whole by the investor;
					<ul style="list-style-type: none"> <li>where a claim relating to the information contained in [the] prospectus is brought before a court, the plaintiff investor might, under the national legislation of the Member States, have to bear the costs of translating the prospectus before the legal proceedings are initiated; and</li> </ul>
					<ul style="list-style-type: none"> <li>civil liability attaches only to those persons who have tabled the summary including any translation thereof, but only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus or it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities.</li> </ul>
		...	...	...	
		...			

<b>ANNEX XXIII</b>	
	Proportionate Schedule for Minimum Disclosure Requirements for the Share Registration Document for Rights Issues
	...
<b>14.</b>	<b>RELATED PARTY TRANSACTIONS</b>
	<p><del>If International Financial Reporting Standards adopted according to the Regulation (EC) No 1606/2002 do not apply</del> <u>If UK-adopted international accounting standards or, in relation to financial years beginning on or before the day on which exit day falls, International Accounting Standards adopted according to Regulation (EC) No 1606/2002 as it applies in the European Union, do not apply</u> to the issuer, the following information must be disclosed for the period covered by the historical financial information and up to the date of the registration document:</p>
	...
	<p><del>If international Financial Reporting Standards adopted according to the Regulation (EC) No 1606/200 apply</del> <u>If UK-adopted international accounting standards or, in relation to financial years beginning on or before the day on which exit day falls, International Accounting Standards adopted according to Regulation (EC) No 1606/2002 as it applies in the European Union, apply</u> to the issuer, the above information must be disclosed only for the transactions occurred since the end of the last financial period for which audited financial information have been published.</p>
<b>15.</b>	<b>FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</b>
15.1	Historical Financial Information
	<p>Audited historical financial information covering the last financial year (or such shorter period that the issuer has been in operation and the audit report. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 12 months, or the entire period for which the issuer has been in operation, whichever is the shorter. <del>Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the European Union.</del></p>
	<p><u>In relation to a financial year beginning on or before the day on which exit day falls, such financial information must be prepared as mentioned in Article 35.</u></p>

		<u>For an issuer established in the United Kingdom, in respect of a financial year beginning on or before the day on which exit day falls, such financial information must be prepared in accordance with:</u>
	(a)	<u>UK-adopted international accounting standards, or</u>
	(b)	<u>if those standards are not applicable, UK accounting standards.</u>
		<del>For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.</del> <u>For an issuer established in a country outside the United Kingdom, in respect of a financial year beginning after the day on which exit day falls, such financial information must be prepared in accordance with:</u>
	(a)	<u>UK-adopted international accounting standards,</u>
	(b)	<u>one of the accounting standards referred to in Article 35(5), or</u>
	(c)	<u>national accounting standards of that country that are equivalent to UK-adopted international accounting standards.</u>
		<u>For an issuer established in a country outside the United Kingdom, if such financial information is not prepared according to the required standards, it must be presented in the form of restated financial statements.</u>
		...
		<del>If the issuer has been operating in its current area of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards where the issuer is an issuer from the European Union. For third country issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards</del> <u>the standards that would apply under the second, third or fourth subparagraph to an annual financial statement in respect of a financial year beginning at the time when that period began.</u> This historical financial information must be audited.
		...
	...	

<b>ANNEX XXV</b>	
	Proportionate Schedule for Minimum Disclosure Requirements for the Share Registration Document for SMEs and companies with reduced market capitalisation
	...
<b>9.</b>	<b>OPERATING AND FINANCIAL REVIEW</b>
	The issuer must disclose the following information if the Annual Reports, presented and prepared in accordance with <del>Article 46 of Directive 78/660/EEC and Article 36 of Directive 83/349/EEC</del> <u>Part 15 of the Companies Act 2006</u> for the periods covered by the historical financial information, are not included in or annexed to the prospectus:
	...
<b>19.</b>	<b>RELATED PARTY TRANSACTIONS</b>
	<del>If International Financial Reporting Standards adopted according to the Regulation (EC) No 1606/2002 do not apply</del> <u>If UK-adopted international accounting standards or, in relation to financial years beginning on or before the day on which exit day falls, International Accounting Standards adopted according to Regulation (EC) No 1606/2002 as it applies in the European Union, do not apply</u> to the issuer, the following information must be disclosed for the period covered by the historical financial information and up to the date of the registration document:
	...
	<del>If international Financial Reporting Standards adopted according to the Regulation (EC) No 1606/2002 apply</del> <u>If UK-adopted international accounting standards or, in relation to financial years beginning on or before the day on which exit day falls, International Accounting Standards adopted according to Regulation (EC) No 1606/2002 as it applies in the European Union, apply</u> to the issuer, the above information must be disclosed only for the transactions occurred since the end of the last financial period for which audited financial information have been published.
<b>20.</b>	<b>FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</b>
20.1	Historical Financial Information
	A statement that audited historical financial information covering the latest two financial years (or such shorter period that the issuer has been in operation) have been prepared <del>according to Regulation (EC) No 1606/2002, or, if not applicable, to a Member State national accounting</del>

		<u>standards for issuers from the European Union in accordance with the required accounting standards, and where own and consolidated financial statements as the case may be can be obtained.</u>
		<u>For issuers established in the United Kingdom, the required accounting standards are:</u>
	(a)	<u>in relation to financial years beginning on or before the day on which exit day falls, the standards required by Article 35, and</u>
	(b)	<u>in relation to financial years beginning after the day on which exit day falls, UK-adopted international accounting standards, or if not applicable, UK accounting standards.</u>
		...
		<u>For third country issuers, a statement that such financial information have been prepared and audited according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards</u> <u>For issuers established in a country outside the United Kingdom, a statement that such financial information has been prepared and audited in accordance with the required accounting standards, and where it can be obtained. If such financial information is not equivalent to these standards, a statement that it has been prepared in the form of restated financial statements, and where it can be obtained.</u>
		<u>For issuers established in a country outside the United Kingdom, the required accounting standards are:</u>
	(a)	<u>in relation to financial years beginning on or before the day on which exit day falls, the standards required by Article 35, and</u>
	(b)	<u>in relation to financial years beginning after the day on which exit day falls, UK-adopted international accounting standards, one of the standards referred to in Article 35(5), or that country's national accounting standards that are equivalent to UK-adopted international accounting standards.</u>
		...
	<b>ANNEX XXVI</b>	
		Proportionate Schedule for Minimum Disclosure Requirements for the Debt and Derivative Securities <100 000 EUR Registration Document for SMEs and companies with reduced market capitalisation [see footnote in Regulation (EU) No 486/2012]
		...

13.	<b>FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</b>
13.1	Historical Financial Information
	A statement that audited historical financial information covering the last financial year (or such shorter period that the issuer has been in operation) have been prepared <del>according to Regulation (EC) No 1606/2002, or, if not applicable, to a Member State national accounting standards for issuers from the European Union</del> <u>in accordance with the required accounting standards</u> , and where own and consolidated financial statements as the case may be can be obtained.
	<u>For issuers established in the United Kingdom, the required accounting standards are:</u>
	(a) <u>in relation to financial years beginning on or before the day on which exit day falls, the standards required by Article 35, and</u>
	(b) <u>in relation to financial years beginning after the day on which exit day falls, UK-adopted international accounting standards, or if not applicable, UK accounting standards.</u>
	...
	<del>For third country issuers, a statement that such financial information have been prepared and audited according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards</del> <u>For issuers established in a country outside the United Kingdom, a statement that such financial information has been prepared and audited in accordance with the required accounting standards</u> , and where it can be obtained. If such financial information is not equivalent to these standards, a statement that it has been prepared in the form of restated financial statements, and where it can be obtained.
	<u>For issuers established in a country outside the United Kingdom, the required accounting standards are:</u>
	(a) <u>in relation to financial years beginning on or before the day on which exit day falls, the standards required by Article 35, and</u>
	(b) <u>in relation to financial years beginning after the day on which exit day falls, UK-adopted international accounting standards, the standards referred to in Article 35(5) or that country's national accounting standards that are equivalent to UK-adopted international accounting standards.</u>
	...

<b>ANNEX XXVII</b>	
	Proportionate Schedule for Minimum Disclosure Requirements for the Debt and Derivative Securities >100 000 EUR Registration Document for SMEs and companies with reduced market capitalisation (schedule) [see footnote in Regulation (EU) No 486/2012]
	...
<b>11.</b>	<b>FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</b>
11.1	Historical Financial Information
	A statement that audited historical financial information covering the last financial year (or such shorter period that the issuer has been in operation) have been prepared <del>according to Regulation (EC) No 1606/2002, or, if not applicable, to a Member State national accounting standards for issuers from the European Union</del> in accordance with the required accounting standards, and where own and consolidated financial statements as the case may be can be obtained.
	<u>For issuers established in the United Kingdom, the required accounting standards are:</u>
	(a) <u>in relation to financial years beginning on or before the day on which exit day falls, the standards required by Article 35, and</u>
	(b) <u>in relation to financial years beginning after the day on which exit day falls, UK-adopted international accounting standards, or if not applicable, UK accounting standards.</u>
	...
	<del>For third country issuers, a statement that such financial information have been prepared and audited according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards</del> <u>For issuers established in a country outside the United Kingdom, a statement that such financial information has been prepared and audited in accordance with the required accounting standards, and where it can be obtained. If such financial information is not equivalent to these standards, a statement that it has been prepared in the form of restated financial statements, and where it can be obtained.</u>
	<u>For issuers established in a country outside the United Kingdom, the required accounting standards are:</u>



		(a)	<u>in relation to financial years beginning on or before the day on which exit day falls, the standards required by Article 35, and</u>
		(b)	<u>in relation to financial years beginning after the day on which exit day falls, UK-adopted international accounting standards, the standards referred to in Article 35(5) or that country's national accounting standards that are equivalent to UK-adopted international accounting standards.</u>
	...		
<b>ANNEX XXVIII</b>			
			Proportionate Schedule for Minimum Disclosure Requirements for the Depositary Receipts issued over shares for SMEs and companies with reduced market capitalisation [see footnote in Regulation (EU) No 486/2012]
	...		
	<b>9.</b>		<b>OPERATING AND FINANCIAL REVIEW</b>
			The issuer must disclose the following information if the Annual Reports, presented and prepared in accordance with <del>Article 46 of Directive 78/660/EEC and Article 36 of Directive 83/349/EEC</del> <u>Part 15 of the Companies Act 2005</u> for the periods covered by the historical financial information, are not included in or annexed to the prospectus:
	...		
	<b>19.</b>		<b>RELATED PARTY TRANSACTIONS</b>
			<del>“If International Financial Reporting Standards adopted according to the Regulation (EC) No 1606/2002 do not apply</del> <u>If UK-adopted international accounting standards or, in relation to financial years beginning on or before the day on which exit day falls, International Accounting Standards adopted according to Regulation (EC) No 1606/2002 as it applies in the European Union, do not apply</u> to the issuer, the following information must be disclosed for the period covered by the historical financial information and up to the date of the registration document:
	...		
			<del>If international Financial Reporting Standards adopted according to the Regulation (EC) No 1606/200 apply</del> <u>If UK-adopted international accounting standards or, in relation to financial years beginning on or before the day on which exit day falls, International Accounting Standards adopted according to Regulation (EC) No 1606/2002 as it applies in the European Union, apply</u> to the issuer, the above information must be disclosed only for the transactions occurred since the end of the last

		financial period for which audited financial information have been published.
	<b>20.</b>	<b>FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</b>
	20.1	Historical Financial Information
		A statement that audited historical financial information covering the latest two financial years (or such shorter period that the issuer has been in operation) have been prepared <del>according to Regulation (EC) No 1606/2002, or, if not applicable, to a Member State national accounting standards for issuers from the European Union</del> <u>in accordance with the required accounting standards</u> , and where own and consolidated financial statements as the case may be can be obtained.
		<u>For issuers established in the United Kingdom, the required accounting standards are:</u>
	(a)	<u>in relation to financial years beginning on or before the day on which exit day falls, the standards required by Article 35, and</u>
	(b)	<u>in relation to financial years beginning after the day on which exit day falls, UK-adopted international accounting standards, or if not applicable, UK accounting standards.</u>
		...
		<del>For third country issuers, a statement that such financial information have been prepared and audited according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country's national accounting standards equivalent to these standards</del> <u>For issuers established in a country outside the United Kingdom, a statement that such financial information has been prepared and audited in accordance with the required accounting standards</u> , and where it can be obtained. If such financial information is not equivalent to these standards, a statement that it has been prepared in the form of restated financial statements, and where it can be obtained.
		<u>For issuers established in a country outside the United Kingdom, the required accounting standards are:</u>
	(a)	<u>in relation to financial years beginning on or before the day on which exit day falls, the standards required by Article 35, and</u>
	(b)	<u>in relation to financial years beginning after the day on which exit day falls, UK-adopted international accounting standards, the standards referred to in Article 35(5) or that country's national accounting standards that are equivalent to UK-adopted international accounting standards.</u>

	...	
	<b>ANNEX XXIX</b>	
		Proportionate Schedule for Minimum Disclosure Requirements for Issues by Credit Institutions referred to in <del>Article 1(2)(j) of Directive 2003/71/EC</del> paragraph 5 of Schedule 11A to [the Act]
		Minimum Disclosure Requirements for issues by credit institutions referred to in <del>Article 1(2)(j) of Directive 2003/71/EC</del> paragraph 5 of Schedule 11A to [the Act] [see footnote in Regulation (EU) No 486/2012]
	...	
	<b>11.</b>	<b>FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES</b>
		Audited historical financial information covering the <b>last financial year</b> (or such shorter period that the issuer has been in operation), and the audit report. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 12 months, or the entire period for which the issuer has been in operation, whichever is the shorter. Such financial information must be prepared <del>according to Regulation (EC) No 1606/2002, or if not applicable to a Member States national accounting standards for issuers from the European Union</del> <u>in accordance with UK-adopted international accounting standards or, if not applicable, United Kingdom accounting standards or, in relation to financial years beginning on or before the day on which exit day falls, as mentioned in Article 35.</u>
	...	
	...	

PR Transitional Provisions  
TR

## Transitional Provisions

(1)	(2) Material to which the Transitional Provision applies	(3)	(4) Transitional Provision	(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...					
3.	<u>PR 2.4.1R (1)</u>	<u>R</u>	<u>An issuer whose home Member State for the purposes of the Prospectus Directive was, immediately before exit day, not the United Kingdom, may incorporate information in the prospectus by reference to one or more previously or simultaneously published documents that have been approved by the competent authority of that Member State or filed with that competent authority or notified to it in accordance with the Prospectus Directive or the TD.</u>	<u>For 12 months following exit day</u>	<u>Exit day</u>
4.	<u>PR 1 to 5</u>	<u>R</u>	<u>For the purposes of these rules references to a prospectus include a prospectus referred to under regulation 73 of the Official Listing of Securities, Prospectus and</u>	<u>For 12 months following exit day</u>	<u>Exit day</u>

			<p><u>Transparency (Amendment etc.) (EU Exit) Regulations 2019.</u></p> <p><i>[Editor's note: The text of regulation 73 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 is due to be published by HM Treasury.]</i></p>		
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## Annex C

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

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

#### 1 Introduction

##### 1.1 Application and purpose (Disclosure guidance)

[**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering ‘Alternative Performance Measures’. See <https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf> ESMA guidelines: ESMA Guidelines on Alternative Performance Measures, 5 October 2015 (ESMA/2015/1415).]

...

##### 1.4 Suspension of trading

1.4.1 R [deleted]

[**Note:** ~~article 23(2)(j) of the *Market Abuse Regulation*~~ section 122I of the *Act*]

...

#### 1A Introduction (Transparency rules)

##### 1A.1 Application and purpose (Transparency rules)

**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering ‘Alternative Performance Measures’, 5 October 2015 (ESMA/2015/1415). See <https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf>

...

Purpose

1A.1.3 G The original purpose of the *transparency rules* ~~is~~ was to implement the *Transparency Directive* and to make other rules to ensure there is adequate transparency of and access to information in the UK financial markets.

...

#### 1B Introduction (Corporate governance)

## 1B.1 Application and purpose (Corporate governance)

**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering ‘Alternative Performance Measures’, 5 October 2015 (ESMA/2015/1415). See

<https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf>

Purpose: Audit committees

- 1B.1.1 G The original purpose of the requirements in *DTR 7.1* ~~is~~ was to implement parts of the *Audit Directive* which require *issuers* that are required to appoint a *statutory auditor* to appoint an audit committee or have a body performing equivalent functions.

...

Exemptions

- 1B.1.3 R *DTR 7.1* does not apply to:

- (1) any *issuer* which is a *subsidiary undertaking* of a *parent undertaking* where the *parent undertaking* is subject to:
  - (a) ~~*DTR 7.1*, or to requirements implementing article 39 of the *Audit Directive* in any other *EEA State*~~; and
  - (b) articles 11(1), 11(2) and 16(5) of the *Audit Regulation*;

[**Note:** article 39(3)(a) of the *Audit Directive*]

...

- (4) any *issuer* which is:
  - (a) a UK UCITS; or
  - (b) an *AIF*.

[**Note:** article 39(3)(b) of the *Audit Directive*]

Purpose: Corporate governance statements

- 1B.1.4 G The original purpose of the requirements in *DTR 7.2* ~~is~~ was to implement parts of the *Accounting Directive* (including that Directive as applied to banking and insurance companies) which require companies to publish a corporate governance statement.

...

Exemptions

- 1B.1.6 R The *rules* in DTR 7.2.2R, 7.2.3R, 7.2.7R and 7.2.8AR do not apply to an *issuer* which has not issued *shares* which are *admitted to trading* unless it has issued *shares* which are traded on an a UK MTF.

[**Note:** article 20(4) of the *Accounting Directive*]

...

## 2 Disclosure and control of inside information by issuers

...

### 2.2 Disclosure of inside information

...

- 2.2.1A EU [article 17(1) of the *Market Abuse Regulation*]  
UK

...

### 2.5 Delaying disclosure of inside information

...

- 2.5.1A EU [article 17(4), (5) and (8) of the *Market Abuse Regulation*]  
UK

- 2.5.1B G *Issuers* should be aware that *ESMA* has issued guidelines under article 17(11) of the *Market Abuse Regulation* which contain a non-exhaustive indicative list of the legitimate interests of *issuers* to delay disclosure of *inside information* and situations in which delayed disclosure is likely to mislead the public: see the *ESMA MAR delayed disclosure guidelines*. ~~The *ESMA MAR delayed disclosure guidelines* are available here: [https://www.esma.europa.eu/sites/default/files/library/2016-1478\\_mar\\_guidelines\\_-\\_legitimate\\_interests.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-1478_mar_guidelines_-_legitimate_interests.pdf).~~

...

- 2.5.6A EU [article 17(8) of the *Market Abuse Regulation*]  
UK

...

### 2.6 Control of inside information

...

- 2.6.2A EU [article 17(7) of the *Market Abuse Regulation*]  
UK

...



**2.8 Insider lists**

Requirement to draw up insider lists

2.8.1A ~~EU~~ [article 18(1)(c) of the *Market Abuse Regulation*]  
UK

...

2.8.2A ~~EU~~ [article 18(1)(c) of the *Market Abuse Regulation*]  
UK

...

2.8.3A ~~EU~~ [article 18(3) of the *Market Abuse Regulation*]  
UK

...

2.8.4A ~~EU~~ [article 18(4) of the *Market Abuse Regulation*]  
UK

...

2.8.5A ~~EU~~ [article 18(5) of the *Market Abuse Regulation*]  
UK

...

2.8.9A ~~EU~~ [article 18(2) of the *Market Abuse Regulation*]  
UK

...

2.8.10 ~~EU~~ [article 18(2) of the *Market Abuse Regulation*]  
A UK

...

**3 Transactions by persons discharging managerial responsibilities and their connected persons**

...

**3.1**

...

3.1.2-A ~~EU~~ [article 19(1) of the *Market Abuse Regulation*]  
UK

...

3.1.3A ~~EU~~ [article 19(6) of the *Market Abuse Regulation*]  
UK

...

## 4 Periodic Financial Reporting

### 4.1 Annual Financial Report

Application

[**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation on enforcement of financial information, 10 July 2014/ESMA/2014/807 <https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-807-final-report-on-esma-guidelines-on-enforcement-of-financial-information.pdf>]

4.1.1 R Subject to the exemptions set out in DTR 4.4 (Exemptions) this section applies to an issuer:

- (1) whose *transferable securities* are admitted to trading; ~~and~~
- (2) whose ~~Home State~~ is the *United Kingdom*.

...

Audited financial statements

4.1.6 R (1) If an *issuer* is required to prepare consolidated accounts according to ~~the Seventh Council Directive 83/349/EEC~~, the audited financial statements must comprise:

- (a) consolidated accounts prepared in accordance with UK-adopted IFRS, and
- (b) accounts of the parent *company* prepared in accordance with the national law of the ~~EEA State in which the parent company is incorporated~~ United Kingdom.

[**Note:** article 4(3) of the *TD*].

- (2) If an *issuer* is not required to prepare consolidated accounts, the audited financial statements must comprise accounts prepared in accordance with the national law of the ~~EEA State in which the issuer is incorporated~~ United Kingdom.

[**Note:** article 4(3) of the *TD*].

Auditing of financial statements

- 4.1.7 R (1) ~~If an *issuer* is required to prepare consolidated accounts, the~~ The financial statements must be audited in accordance with Article 37 of the Seventh Council Directive 83/349/EEC Part 16 of the Companies Act 2006.
- (2) ~~If an *issuer* is not required to prepare consolidated accounts the financial statements must be audited in accordance with Articles 51 and 51a of the Fourth Council Directive 78/660/EEC. [deleted]~~
- ...
- [Note: article 4(4) of the *TD*]
- (4) An *issuer* which is a UK-traded ~~non-EEA~~ third country company within the meaning of section 1241 of the Companies Act 2006 must ensure that the *person* who provides the audit report is:
- ...
- (b) eligible for appointment as a *statutory auditor* under section 1212 of the Companies Act 2006; ~~or,~~
- (c) ~~an EEA auditor within the meaning of section 1261 of the Companies Act 2006. [deleted]~~
- [Note: Article 45(4) of the *Audit Directive*]

...

- 4.1.11 R The management report required by *DTR* 4.1.8R must also give an indication of:
- ...
- (4) the information concerning acquisitions of own *shares* prescribed by the *United Kingdom* provisions which implemented article 24(2) of Directive 2012/30/EU;
- ...
- [Note: article 4(5) of the *TD*]

...

## 4.2 Half-yearly financial reports

### Application

- 4.2.1 R Subject to the exemptions set out in *DTR* 4.4 (Exemptions) this section applies to an *issuer*:
- (1) whose *shares* or *debt securities* are admitted to trading; ~~and~~

(2) whose ~~Home State~~ is the *United Kingdom*.

...

#### Preparation and content of condensed set of financial statements

4.2.4 R (1) If an *issuer* is required to prepare consolidated accounts, the condensed set of financial statements must be prepared in accordance with ~~IAS IAS~~ 34 as contained in UK-adopted IFRS.  
[**Note:** article 5(3) of the *TD*]

...

...

#### Responsibility statements

4.2.10 R ...

(4) A *person* making a responsibility statement will satisfy the requirement in (3) (a) above to confirm that the condensed set of financial statements gives a true and fair view of the assets, liabilities, financial position and profit or loss of the *issuer* (or the undertakings included in the consolidation as a whole) by including a statement that the condensed set of financial statements have been prepared in accordance with:

(a) ~~IAS IAS~~ 34 as contained in UK-adopted IFRS; or

(b) for *UK issuers* not using UK-adopted IFRS, Financial Reporting Standard 104: Interim Financial Reporting issued by the Financial Reporting Council; or

(c) for all other *issuers* not using UK-adopted IFRS, a national accounting standard relating to interim reporting,

...

...

### 4.3A Reports on payments to governments

#### Application

4.3A.1 R Subject to the exemptions set out in *DTR* 4.4 (Exemptions) this section applies to an *issuer*:

(1) active in the extractive or logging of primary forest industries; and

(2) whose *transferable securities* are *admitted to trading*; ~~and~~

(3) ~~whose *Home State* is the *United Kingdom*. [deleted]~~

4.3A.2 R In this section references to an “*issuer* active in the extractive or logging of primary forest industries” are to an *issuer* which is:

- (1) ~~active in the extractive industry as defined in article 41(1) of the *Accounting Directive* a mining or quarrying undertaking; or~~
- (2) ~~active in the logging of primary forests as defined in article 41(2) of the *Accounting Directive* a logging undertaking.~~

In this section “mining or quarrying undertaking”, “logging undertaking”, “payment” and “government” have the meanings given in regulation 2 of the Reports on Payments to Governments Regulations 2014 (SI 2014/3209).

4.3A.3 G An *issuer* is considered to be active in the extractive or logging of primary forest industries if any of its subsidiary undertakings are:

- (1) ~~active in the logging of primary forests as defined in article 41(2) of the *Accounting Directive* a mining or quarrying undertaking; or~~
- (2) ~~active in the logging of primary forests as defined in article 41(2) of the *Accounting Directive* a logging undertaking.~~

In this ~~guidance~~ section “subsidiary undertaking” has the meaning given in regulation 2 of the Reports on Payments to Governments Regulations 2014 (SI 2014/3209).

[**Note:** article 44(1) of the *Accounting Directive*]

...

#### Content of reports on payments to governments

4.3A.7 R (1) ~~The report on payments to governments must be prepared in accordance with Chapter 10 of the *Accounting Directive*. [deleted]~~

...

4.3A.7 R (1) The report on payments to governments must state the following information in relation to the relevant activities:

- (a) the government to which each payment has been made, including the country of that government;
- (b) the total amount of payments made to each government;
- (c) the total amount per type of payment made to each government; and
- (d) where those payments have been attributed to a specific project, the total amount per type of payment made for each

such project and the total amount of payments for each such project.

- (2) If an issuer is required to prepare consolidated accounts, the relevant activities referred to in (1) are those of:
- (a) the issuer; and
- (b) any subsidiary undertaking of the issuer.
- (3) If an issuer is not required to prepare consolidated accounts, the relevant activities referred to in (1) are those of the issuer.
- (4) Where the issuer, or, where applicable, any of its subsidiary undertakings, makes a payment that is not attributable to a specific project, that payment may be disclosed in the report without splitting or disaggregating the payment to allocate it to a specific project.
- (5) A payment need not be taken into account in the report if:
- (a) it is a single payment of an amount less than £86,000; or
- (b) it forms part of a series of related payments within a financial year whose total amount is less than £86,000.
- (6) Payments, activities and projects may not be artificially split or aggregated to avoid the application of this section.
- (7) The disclosure of payments must reflect the substance, rather than the form, of each payment, relevant activity or project concerned.
- (8) Where payments in kind are made to a government, the report must state the value of such payments in kind and, where applicable, the volume of those payments in kind, and the directors must provide supporting notes to explain how the value has been determined.
- (9) In this rule “relevant activities”, “project” and “director” have the meanings given in regulation 2 of the Reports on Payments to Governments Regulations 2014 (SI 2014/3209)

4.3A.7    R  
B

- (1) Payments made by a subsidiary undertaking may be excluded from the report on payments to governments where:
- (a) severe long-term restrictions substantially hinder the exercise of the rights of the issuer over the assets or management of that subsidiary undertaking;
- (b) the information necessary for the preparation of the report cannot be obtained without disproportionate expense or undue delay; or

(c) the shares of that undertaking are held exclusively with a view to subsequent resale.

(2) The issuer may only exclude payments by a subsidiary undertaking under (1) (a) to (c) where the subsidiary undertaking is excluded from the consolidated group accounts on the same basis.

4.3A.8 G The *FCA* considers a report on payments to governments which is prepared in accordance with the Reports on Payments to Governments Regulations 2014 (SI 2014/3209) to be in compliance with *DTR 4.3A.7R(1)* 4.3A.7AR and 4.3A.7BR.

#### 4.4 Exemptions

##### Public sector issues

4.4.1 R The *rules* on annual financial reports (*DTR 4.1*) and half-yearly financial reports (*DTR 4.2*) do not apply to:

...

(3) a public international body of which at least one ~~EEA State~~ state is a member;

...

(6) ~~EEA States'~~ national central banks.

[**Note:** article 8(1)(a) of the *TD*]

##### Debt issuers

...

4.4.4 R The *rules* on half-yearly financial reports do not apply to an *issuer* already existing on 31 December 2003 which exclusively issue *debt securities* unconditionally and irrevocably guaranteed by the *issuer's Home Member State* United Kingdom or by a regional or local authority of ~~that state~~ the United Kingdom, on a *regulated market*.

[**Note:** article 8(3) of the *TD*]

...

##### ~~Non-EEA States~~ Third countries – Equivalence

4.4.8 R An *issuer* whose registered office is in a ~~non-EEA State~~ third country is exempted from the *rules* on:

...

if the law of the ~~non-EEA State~~ third country in question lays down equivalent requirements or the *issuer* complies with requirements of the law of a ~~non-EEA State~~ third country that the *FCA* considers as equivalent.

[**Note:** article 23(1) of the *TD*]

- 4.4.9 G The *FCA* maintains a published list of ~~non-EEA States~~ third countries, for the purpose of ~~article 23.1 of the *TD*~~ DTR 4.4.8R, whose laws lay down requirements equivalent to those imposed upon *issuers* by this chapter, or where the requirements of the law of that ~~non-EEA State~~ third country are considered to be equivalent by the *FCA*. Such *issuers* remain subject to the following requirements of *DTR* 6:

...

...

## 5 Vote Holder and Issuer Notification Rules

### 5.1 Notification of the acquisition or disposal of major shareholdings

- 5.1.1 R In this chapter:

- (1) references to an “*issuer*”, in relation to *shares* admitted to trading on a *regulated market*, are to an *issuer* whose ~~Home State is the United Kingdom~~ *shares* are admitted to trading on a *regulated market*;
- (2) references to a “non-UK *issuer*” are to an *issuer* whose *shares* are admitted to trading on a *regulated market* ~~and whose Home State is the United Kingdom~~ other than:

...

...

- 5.1.2 R A *person* must notify the *issuer* of the percentage of its voting rights he holds as *shareholder* or holds or is deemed to hold through his direct or indirect holding of financial instruments falling within *DTR* 5.3.1R (1) (or a combination of such holdings) if the percentage of those voting rights:

...

and in the case of an issuer which is not incorporated in an ~~EEA State~~ the *United Kingdom* a notification under (2) must be made on the basis of equivalent events and disclosed information.

[**Note:** articles 9(1), 9(2), 13(1) and 13a(1) of the *TD*]

...

- 5.1.4 R (1) References to a *market maker* are to a *market maker* which:



- (a) (subject to (3) below) is authorised by its ~~Home State under MiFID~~ the FCA or the PRA under the United Kingdom provisions which implemented MiFID;

...

[**Note:** articles 9(5) and 9(6) of the TD]

- (2) A *market maker* relying upon the exemption for *shares* or financial instruments within DTR 5.3.1R(1) held by it in that capacity must notify the ~~competent authority of the Home Member State of the issuer~~ FCA, at the latest within the time limit provided for by DTR 5.8.3R, that it conducts or intends to conduct market making activities on a particular *issuer* (and shall equally make such a notification if it ceases such activity).
- (3) References to a *market maker* also include a *third country investment firm* and a *credit institution* when acting as a *market maker* and which, in relation to that activity, is subject to regulatory supervision under the laws of an ~~EEA State~~ the United Kingdom.

#### Aggregation of Holdings

- 5.1.4A EU ~~Commission Delegated Regulation (EU) No 2015/761 supplementing~~  
UK ~~Directive 2004/109/EC of the European Parliament and of the Council with~~  
~~regard to certain regulatory technical standards on major holdings~~ The TD  
Major Holdings Regulation provides that:

...

#### Article 2

#### **Aggregation of holdings**

For the purpose of calculation of the 5% thresholds referred to in ~~Article 9(5) and (6) of Directive 2004/109/EC~~ [DTR 5.1.3R(3) and (4)], holdings under United Kingdom law corresponding to Articles 9, 10 and 13 of that Directive 2004/109/EC shall be aggregated.

#### Aggregation of holdings in the case of a group

- 5.1.4B EU ~~Commission Delegated Regulation (EU) No 2015/761 supplementing~~  
UK ~~Directive 2004/109/EC of the European Parliament and of the Council with~~  
~~regard to certain regulatory technical standards on major holdings~~ The TD  
Major Holdings Regulation provides that:

...

#### Article 3

#### **Aggregation of holdings in the case of a group**

For the purpose of calculation of the 5% thresholds referred to in ~~Article 9(5) and (6) of Directive 2004/109/EC~~ [DTR 5.1.3R(3) and (4)] in the case of a group of companies, holdings shall be aggregated at group level according to the principle laid down in ~~Article 10(e) of that Directive~~ [DTR 5.2.1R(e)].

Certain voting rights to be disregarded (except at 5% 10% and higher thresholds)

5.1.5 R ...

- (2) For the purposes of DTR 5.1.5R(1)(a), a person (“A”) may lawfully manage *investments* belonging to another if:
- (a) A can manage those *investments* in accordance with a *Part 4A permission*;
  - (b) ~~A is an EEA firm other than one mentioned in sub-paragraphs (e) or (e) of paragraph 5 of Schedule 3 to the Act and can manage those investments in accordance with its EEA authorisation; [deleted]~~
  - (c) A can, in accordance with section 327 of the *Act*, manage those *investments* without contravening the prohibition contained in section 19 of the *Act*; or
  - (d) ~~A can lawfully manage those investments in another EEA State and would, if he were to manage those investments in the UK, require a Part 4A permission; or [deleted]~~
  - (e) A can lawfully manage those *investments* in a *non-EEA State third country* and would, if he were to manage those *investments* in the *UK*, require a *Part 4A permission*.

## 5.2 Acquisition or disposal of major proportions of voting rights

...

5.2.4 R ~~DTR 5.1.2R and case (c) of DTR 5.2.1R do not apply in respect of voting rights attaching to shares provided to or by a member of the European System of Central Banks the Bank of England in carrying out their its functions as a monetary authorities authority, including shares provided to or by any such member the Bank of England under a pledge or repurchase of similar agreement for liquidity granted for monetary policy purposes or within a payments system provided:~~

...

[Note: article 11 of the *TD*.]

...

### 5.3 Notification of voting rights arising from the holding of certain financial instruments

...

- 5.3.2A G ~~The FCA maintains a published An~~ indicative list of financial instruments that are subject to notification requirements according to ~~article 13(1b) of the TD is published by ESMA~~ DTR 5.3.1R.

[**Note:** article 13(1b) of the *TD*]

- 5.3.2B EU ~~Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings~~ The TD Major Holdings Regulation provides that:

...

Article 6

#### **Client-serving transactions**

The exemption referred to in ~~Article 9(6) of Directive 2004/109/EC~~ [DTR 5.1.3R(4)] shall apply to financial instruments held by a natural person or legal entity fulfilling orders received from clients, responding to a client's request to trade otherwise than on a proprietary basis, or hedging positions arising out of such dealings

- 5.3.2C G ~~The exemption referred to in article 9(6) of Directive 2004/109/EC is set out in DTR 5.1.3R(4).~~ [deleted]

- 5.3.3 G (1) For the purposes of *DTR 5.3.1R(1)(a)* ~~and to give effect to Directive 2004/109/EC (TD)~~, financial instruments within *DTR 5.3.1R(1)(a)* should be taken into account in the context of notifying major holdings, to the extent that such instruments give the holder an unconditional right to acquire the underlying shares or cash on maturity. Consequently, financial instruments financial instruments within *DTR 5.3.1R(1)(a)* should not be considered to include instruments entitling the holder to receive shares depending on the price of the underlying share reaching a certain level at a certain moment in time. Nor should they be considered to cover those instruments that allow the instrument issuer or a third party to give shares or cash to the instrument holder on maturity.

[**Note:** Recital 13 of the *TD implementing Directive*]

...

...

- 5.3.3B EU ~~Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with~~ UK

~~regard to certain regulatory technical standards on major holdings~~ The TD Major Holdings Regulation provides that:

...

Article 4

### **Financial instruments referenced to a basket of shares or an index**

1. Voting rights referred to in ~~Article 13(1a)(a) of Directive 2004/109/EC [DTR 5.3.3AR]~~ in the case of a financial instrument referenced to a basket of shares or an index shall be calculated on the basis of the weight of the share in the basket of shares or index where any of the following conditions apply:

(a) the voting rights in a specific issuer held through financial instruments referenced to the basket or index represent 1% or more of voting rights attached to shares of that issuer;

(b) the shares in the basket or index represent 20% or more of the value of the securities in the basket or index.

2. Where a financial instrument is referenced to a series of baskets of shares or indices, the voting rights held through the individual baskets of shares or indices shall not be accumulated for the purpose of the thresholds set out in paragraph 1.

5.3.3C EU ~~Commission Delegated Regulation (EU) No 2015/761 supplementing Directive 2004/109/EC of the European Parliament and of the Council with~~ UK ~~regard to certain regulatory technical standards on major holdings~~ The TD Major Holdings Regulation provides that:

...

Article 5

### **Financial instruments providing exclusively for a cash settlement**

1. ~~The number of voting rights referred to in Article 13(1a)(b) of Directive 2004/109/EC [DTR 5.3.3AR]~~ relating to financial instruments which provide exclusively for a cash settlement, with a linear, symmetric pay-off profile with the underlying share shall be calculated on a delta-adjusted basis with cash position being equal to 1.

...

6. The number of voting rights shall be calculated daily, taking into account the last closing price of the underlying share. The holder of the financial instrument shall notify the issuer when that holder reaches, exceeds or falls below the applicable thresholds provided for in ~~Article 9(1) of Directive 2004/109/EC [DTR 5.1.2R]~~.

...

#### 5.4 Aggregation of managed holdings

- 5.4.1 R (1) The *parent undertaking* of a *management company* shall not be required to aggregate its holdings with the holdings managed by the *management company* ~~under the conditions laid down in~~ in accordance with the *United Kingdom* provisions which implemented the *UCITS Directive*, provided such *management company* exercises its voting rights independently from the *parent undertaking*.

...

- 5.4.2 R (1) The *parent undertaking* of an *investment firm* authorised by the *FCA* or the *PRA* under the *United Kingdom* provisions which implemented *MiFID* shall not be required to aggregate its holdings with the holdings which such *investment firm* manages on a client-by-client basis within the meaning of ~~Article 4(1), point 8, of *MiFID*~~ Article 2(7) of the *MiFID Org Regulation*, provided that:

...

...

...

- 5.4.5 R Where the *parent undertaking* intends to benefit from the exemptions only in relation to the financial instruments referred to in ~~Article 13 of the *TD*~~ *DTR 5.3.1R*, it must notify to the *FCA* only the list referred to in paragraph (1) of *DTR 5.4.4R*.

[**Note:** article 10(3) of the *TD implementing Directive* and article 13 of the *TD*]

...

- 5.4.9 R Undertakings whose registered office is in a ~~third country~~ *third country* which would have required ~~authorisation in accordance with Article 6(1) of the *UCITS directive* a *Part 4A permission to carry on the regulated activity* specified under article 51ZA of the *Regulated Activities Order* or with regard to portfolio management authorisation under point 4 of section A of Annex 1 to *MiFID* paragraph 4 of Part 3 of Schedule 2 to the *Regulated Activities Order* if it had its registered office or, only in the case of an *investment firm*, its head office within the ~~EEA~~ *United Kingdom*, shall be exempted from aggregating holdings with the holdings of its *parent undertaking* under this rule provided that they comply with equivalent conditions of independence as *management companies* or *investment firms*.~~

[Article 23(6) *TD*]

5.4.10 R A ~~third country~~ *third country* shall be deemed to set conditions of independence equivalent to those set out in this *rule* where under the law of that country, a *management company* or *investment firm* is required to meet the following conditions:

...

5.4.11 R A *parent undertaking* of a ~~third country~~ *third country* undertaking must comply with the notification requirements in *DTR 5.4.4R(1)* and *DTR 5.4.5R* and in addition:

...

[**Note:** article 23 of the *TD implementing Directive*]

...

## 5.8 Procedures for the notification and disclosure of major holdings

...

5.8.2 R ...

(2) The notification must be made to the *issuer* of each of the underlying *shares* to which the financial instrument relates and, in the case of *shares* admitted to trading on a *regulated market*, to ~~each competent authority of the Home States of such issuers~~ the FCA.

...

[**Note:** articles 11(3), (4) and (5) of the *TD implementing Directive*]

...

## 5.11 ~~Non-EEA State~~ Third country issuers

5.11.1 R An *issuer* whose registered office is in a ~~non-EEA State~~ *third country* will be treated as meeting equivalent requirements to those set out in *DTR 5.8.12 R (2)* (*issuer* to make public notifications of major shareholdings by close of third day following receipt) provided that the period of time within which the notification of the major holdings is to be effected to the *issuer* and is to be made public by the *issuer* is in total equal to or shorter than seven *trading days*.

[**Note:** article 19 of the *TD implementing Directive*]

5.11.2 R An *issuer* whose registered office is in a ~~non-EEA State~~ *third country* will be treated as meeting equivalent requirements in respect of treasury *shares* to those set out in *DTR 5.5.1R* provided that:

(1) if the *issuer* is only allowed to hold up a maximum of 5% of its own *shares* to which voting rights are attached, a notification

requirement is triggered under the law of the ~~third country~~ third country whenever this the maximum threshold of 5% of the voting rights is reached or crossed;

- (2) if the *issuer* is allowed to hold up to maximum of between 5% and 10% of its own *shares* to which voting rights are attached, a notification requirement is triggered under the law of the ~~non-EEA State~~ third country whenever this maximum threshold and or the 5% threshold of the voting rights are reached or crossed;
- (3) if the *issuer* is allowed to hold more than 10% of its own *shares* to which voting rights are attached, a notification requirement is triggered under the law of the ~~non-EEA State~~ third country whenever the 5% or 10% thresholds of the voting rights are reached or crossed. Notification above the 10% threshold is not required for this purpose.

[**Note:** article 20 of the *TD implementing Directive*]

- 5.11.3 R An *issuer* whose registered office is in a ~~non-EEA State~~ third country will be treated as meeting equivalent requirements to those set out in *DTR* 5.6.1R (Disclosure by *issuers* of total voting rights) provided that the *issuer* is required under the law of the ~~non-EEA State~~ third country to disclose to the public the total number of voting rights and capital within 30 calendar days after an increase or decrease of such total number has occurred.

[**Note:** article 21 of the *TD implementing Directive*]

- 5.11.4 R An *issuer* whose registered office is in a ~~non-EEA State~~ third country is exempted from *DTR* 5.5.1R, *DTR* 5.6.1R and *DTR* 5.8.12R(2) if:
- (1) the law of the ~~non-EEA State~~ third country in question lays down equivalent requirements; or
  - (2) the *issuer* complies with requirements of the law of a ~~non-EEA State~~ third country that the *FCA* considers as equivalent.

[**Note:** article 23(1) of the *TD*]

- 5.11.5 G The *FCA* maintains a published list of ~~non-EEA State~~ third countries, for the purpose of ~~article 23.1 of the TD~~ *DTR* 5.11.4R, whose laws lay down requirements equivalent to those imposed upon *issuers* by this chapter, or where the requirements of the law of that ~~non-EEA State~~ third country are considered to be equivalent by the *FCA*. Such *issuers* remain subject to the following requirements of *DTR* 6:

...

...

## 6 Continuing obligations and access to information

## 6.1 Information requirements for issuers of shares and debt securities

### Application

- 6.1.1 R (1) Subject to the exemptions set out in *DTR 6.1.16R - DTR 6.1.19R* this section applies in relation to an *issuer* whose ~~Home State is the United Kingdom~~ transferable securities are admitted to trading.

...

...

- 6.1.4 R An *issuer of shares or debt securities* must ensure that all the facilities and information necessary to enable holders of *shares or debt securities* to exercise their rights are available in the ~~Home State~~ United Kingdom and that the integrity of data is preserved.

[Note: articles 17(2) and 18(2) of the TD]

...

- 6.1.15 R ~~If only holders of debt securities whose denomination per unit amounts to at least 100,000 euros (or an equivalent amount) are to be invited to a meeting, the issuer may choose as a venue any EEA State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that EEA State.~~ [deleted]

[Note: article 18(3) of the TD]

### ~~Non-EEA State~~ Third country exemption

- 6.1.16 R An *issuer* whose registered office is in a ~~non-EEA State~~ third country is exempted from *DTR 6.1.3R to DTR 6.1.15R* if:
- (1) the law of the ~~non-EEA State~~ third country in question lays down equivalent requirements; or
  - (2) the *issuer* complies with requirements of the law of a ~~non-EEA State~~ third country that the *FCA* considers as equivalent.

[Note: article 23(1) of the *TD*]

- 6.1.17 G The *FCA* maintains a published list of ~~non-EEA State~~ third countries, for the purpose of ~~article 23.1 of the TD~~ *DTR 6.1.16R*, whose laws lay down requirements equivalent to those imposed upon *issuers* by this chapter, or where the requirements of the law of that ~~non-EEA State~~ third country are considered to be equivalent by the *FCA*. Such *issuers* remain subject to the following requirements of *DTR 6*:

...



## Regional and local authority exemption

- 6.1.18 R A regional or local authority with securities admitted to trading is not required to comply with the following:

...

- (2) ~~DTR 6.1.14 R to DTR 6.1.15 R.~~

[**Note:** article 1(3) of the TD]

## Exemption for issuers of convertible securities, preference shares and depository receipts

- 6.1.19 R ~~DTR 6.1.3R to DTR 6.1.8R and DTR 6.1.12R to DTR 6.1.15R~~ DTR 6.1.14R do not apply to:

...

## 6.2 Filing information and use of language

## Application

- 6.2.1 R This section applies to:

- (1) ~~an issuer;~~
- (a) ~~whose transferable securities are admitted to trading; and~~
- (b) ~~whose Home State is the United Kingdom; and~~

...

...

## Language

- 6.2.4 R ~~If transferable securities are admitted to trading only in the United Kingdom and the United Kingdom is the Home State, regulated~~ Regulated information must be disclosed in English.

[**Note:** article 20(1) of the TD]

- 6.2.5 R ~~If transferable securities are admitted to trading in more than one EEA State including the United Kingdom and the United Kingdom is the Home State, regulated information must be disclosed:~~

- (1) ~~in English; and~~
- (2) ~~either in a language accepted by the competent authorities of each Host State or in a language customary in the sphere of international finance, at the choice of the issuer. [deleted]~~

~~[Note: article 20(2) of the TD]~~

- 6.2.6 R (1) ~~If transferable securities are admitted to trading in one or more EEA States excluding the United Kingdom and the United Kingdom is the Home State, regulated information must be disclosed either:~~
- ~~(a) in a language accepted by the competent authorities of those Host States; or~~
  - ~~(b) in a language customary in the sphere of international finance;~~
- (2) ~~either in a language accepted by the competent authorities of each Host State or in a language customary in the sphere of international finance, at the choice of the issuer. [deleted]~~

~~[Note: article 20(3) of the TD]~~

- 6.2.7 R If transferable securities are admitted to trading without the issuer's consent:
- (1) ~~DTR 6.2.4R to DTR 6.2.6R do~~ does not apply to the issuer; and
  - (2) ~~DTR 6.2.4R to DTR 6.2.6R apply~~ applies to the person who has requested such admission without the issuer's consent.

~~[Note: article 20(4) of the TD]~~

- 6.2.8 R ~~If transferable securities whose denomination per unit amounts to at least 100,000 euros (or an equivalent amount) are admitted to trading in the United Kingdom or in one or more EEA States, regulated information must be disclosed to the public in either a language accepted by the competent authorities of the Home State and Host States or in a language customary in the sphere of international finance, at the choice of the issuer or of the person who, without the issuer's consent, has requested such admission. [deleted]~~

~~[Note: article 20(6) of the TD]~~

English Language

- 6.2.9 G ~~English is a language accepted by the FCA where the United Kingdom is a Home State or Host State. [deleted]~~

### 6.3 Dissemination of information

Application

- 6.3.1 R This section applies to:
- (1) an issuer:
    - ~~(a)~~ whose transferable securities are admitted to trading; and

(b) ~~whose *Home State* is the *United Kingdom*;~~

[**Note:** article 21(1) of the TD]

(2) a *person* who has applied, without the *issuer's* consent, for the admission of its *transferable securities* to trading on a *regulated market*; ~~and~~

[**Note:** article 21(1) of the TD]

(3) ~~*transferable securities* that are *admitted to trading* only in the *United Kingdom* which is the *Host State* and not in the *Home State*.~~  
[deleted]

[**Note:** article 21(3) of the TD]

...

6.3.3A R ~~Where an *issuer* or *person* uses an *RIS* other than an *RIS* which is a:~~

(1) a *primary information provider*; or

(2) an *EEA approved incoming information society service*; or

(3) a *person* to whom *DTR* TP 1.22 applies, for as long as *DTR* TP 1.22 remains in force;

~~the *issuer* or *person* must comply with *DTR* 6.3.3BR.~~ [deleted]

6.3.3B R (1) ~~An *issuer* or *person* to which this rule applies must provide an annual written confirmation to the *FCA* that all *regulated information* disseminated by an *RIS* not specified in *DTR* 6.3.3AR (1) to *DTR* 6.3.3AR(3) in the previous financial year was disseminated in accordance with the minimum standards contained in *DTR* 6.3.4 R to *DTR* 6.3.8R.~~

(2) ~~The confirmation required by *DTR* 6.3.3BR(1) must:~~

(a) ~~be provided by:~~

(i) ~~in the case of an *issuer*, the audit committee or the body referred to in *DTR* 7.1.1R; or~~

(ii) ~~in the case of a *person* which is not an *issuer* but is a *body corporate*, the audit committee or the board of directors; or~~

(ii) ~~in the case of an *person* which is not an *issuer* or a *body corporate*, a *person* with corresponding powers to a *director*;~~

- (b) ~~set out the basis for making the confirmation, including the steps taken to determine its accuracy; and~~
- (c) ~~be supported by records which are:~~
  - (i) ~~sufficient to reasonably demonstrate the basis for making the confirmation; and~~
  - (ii) ~~capable of timely retrieval.~~

### ~~Address for correspondence~~

~~**Note:** The FCA's address for correspondence in relation to *DTR 6.3* is:~~

~~Primary Market Monitoring~~

~~Markets Division~~

~~The Financial Conduct Authority~~

~~12 Endeavour Square~~

~~London~~

~~E20 1JN~~

~~Fax: 020 7066 8349 [deleted]~~

- 6.3.3C G ~~In addition to the annual confirmation referred to in *DTR 6.3.3BR*, the FCA may request information from an *issuer* or *person* under section 89H of the Act on an ad hoc basis to verify that *regulated information* disseminated by an *RIS* not specified in *DTR 6.3.3R(1) to (3)* has been disseminated in accordance with *DTR 6.3.4R* to *DTR 6.3.8R*. [deleted]~~

- 6.3.4 R ~~*Regulated information* must be disseminated in a manner ensuring that it is capable of being disseminated to as wide a public as possible, and as close to simultaneously as possible in the *Home Member State* and in other *EEA States United Kingdom*.~~

~~[**Note:** article 12(2) of the *TD implementing directive*]~~

...

### ~~Disclosure of information in a *non-EEA State third country*~~

- 6.3.10 R (1) ~~Information that is disclosed in a *non-EEA State third country* which may be of importance to the public in the *EEA United Kingdom* must be disclosed in accordance with the provisions set out in *DTR 6.2* and *DTR 6.3*.~~

...

[**Note:** article 23(3) of the TD]

## 6.4 Disclosure of Home State

### Application

- 6.4.1 R In respect of *transferable securities* which are *admitted to trading on a regulated market*, this section applies to:
- (1) ~~an issuer whose Home State is the United Kingdom in accordance with the first indent of article 2.1(i)(i) of the TD; and~~
  - (2) ~~an issuer who chooses the United Kingdom as its Home State in accordance with:~~
    - (a) ~~the second indent of article 2.1(i)(i) of the TD; or~~
    - (b) ~~article 2.1(i)(ii) of the TD; or~~
    - (c) ~~article 2.1(i)(iii) of the TD. [deleted]~~

### Disclosure of Home State

- 6.4.2 R ~~An issuer must disclose that its Home State is the United Kingdom in accordance with DTR 6.2 and DTR 6.3. [deleted]~~

[**Note:** article 2.1(i) of the TD]

- 6.4.3 R ~~An issuer must disclose its Home State to the competent authority of:~~
- (1) ~~where applicable, the EEA State where it has its registered office;~~
  - (2) ~~the Home State; and~~
  - (3) ~~each Host State. [deleted]~~

[**Note:** article 2.1(i) of the TD]

- 6.4.4 R ~~Where an issuer has not disclosed its Home State as defined by the second indent of article 2.1(i)(i) of the TD or article 2.1(i)(ii) of the TD in accordance with DTR 6.4.2R and DTR 6.4.3R within a period of three months from the date the issuer's securities are first admitted to trading on a regulated market, the Home State shall be:~~

- (1) ~~the EEA State where the issuer's securities are admitted to trading on a regulated market; or~~
- (2) ~~where the issuer's securities are admitted to trading on regulated markets situated or operating within more than one EEA State, those EEA States shall be the issuer's Home State until a subsequent~~

choice of a single *Home State* has been made and disclosed by the issuer in accordance with *DTR 6.4.2R* and *DTR 6.4.3R*. [deleted]

[~~Note~~: article 2.1(i) of the *TD*]

**6**  
**Annex**  
**1R**

**Classes and sub-classes of regulated information**

	<b>Classification of regulated information</b>	<b>Description</b>
1.	Periodic regulated information	
1.1	Annual financial and audit reports	all information disclosed under <del>article 4</del> of the <i>Transparency Directive</i> <i>DTR 4.1</i>
1.2	Half yearly financial reports and audit reports/limited reviews	all information disclosed under <del>article 5</del> of the <i>Transparency Directive</i> <i>DTR 4.2</i>
1.3	Payments to governments	all information disclosed under <del>article 6</del> of the <i>Transparency Directive</i> <i>DTR 4.3A</i>
2.	Ongoing regulated information	
2.1	<del>Home Member State</del> [deleted]	all information disclosed under <del>article 2(1)(i)</del> of the <i>Transparency Directive</i> [deleted]

2.2	Inside information	all information disclosed under article 17 or article 19 of the <i>Market Abuse Regulation</i>
2.3	Major shareholding notifications	all information disclosed under <del>article 12 of the</del> <i>Transparency Directive</i> <u>DTR 5.1.2R</u>
2.4	Acquisition or disposal of the issuer's own shares	all information disclosed under <del>article 14 of the</del> <i>Transparency Directive</i> <u>DTR 5.5.1R</u>
2.5	Total number of voting rights and capital	all information disclosed under <del>article 15 of the</del> <i>Transparency Directive</i> <u>DTR 5.6.1R</u>
2.6	Changes in the rights attaching to the classes of shares or securities	all information disclosed under <del>article 16 of the</del> <i>Transparency Directive</i> <u>DTR 6.1.9R or DTR 6.1.10R</u>
3.	Additional regulated information required to be disclosed under the laws of <del>a Member State</del> <u>the United Kingdom</u>	

3.1	Additional regulated information required to be disclosed under the laws of a <del>Member State</del> <u>the United Kingdom</u>	all information not falling within the sub-classes set out in points 1.1 to 1.3 and in points 2.1 to 2.6, but which the <i>issuer</i> , or any other <i>person</i> who has applied for the admission of securities to trading on a <i>regulated market</i> without the <i>issuer's</i> consent, has disclosed under <i>LR</i> or <i>DTR</i>
-----	---	---

## 7 Corporate Governance

### 7.1 Audit committees

Audit committees and their functions

...

7.1.3 R An *issuer* must ensure that, as a minimum, the relevant body must:

...

- (6) ~~except when article 16(8) of the *Audit Regulation* is applied,~~ be responsible for the procedure for the selection of *statutory auditor(s)* and recommend the *statutory auditor(s)* to be appointed in accordance with article 16 of the *Audit Regulation*.

[**Note:** article 39(6) of the *Audit Directive*]

...

### 7.2 Corporate governance statements

...

7.2.6 R The corporate governance statement must contain the information required by paragraph 13(2)(c), (d), (f), (h) and (i) of Schedule 7 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) (information about share capital ~~required under~~



Directive 2004/25/EC (the Takeover Directive)) where the *issuer* is subject to the requirements of that paragraph.

[**Note:** article 20(1)(d) of the *Accounting Directive*]

...

## 8 Primary Information Providers

...

### 8.2 Approval as a primary information provider

#### Application for approval as a primary information provider

8.2.1 R A *person* wishing to be included on the *list of primary information providers*, must apply to the *FCA* for approval as a *primary information provider* by submitting the following to the *FCA*:

...

(2) details of all the arrangements that it has established or it intends to establish with *media operators* in the *United Kingdom* ~~and other~~ *EEA States* for the dissemination of *regulated information*;

...

...

### 8.4 Continuing obligations

#### Arrangements with media operators

8.4.1 R A *primary information provider* must establish and maintain adequate arrangements with *media operators* in the *United Kingdom* ~~and other~~ *EEA States* for the dissemination of *regulated information*.

8.4.2 R The purpose of *DTR* 8.4.1R is to ensure that a *primary information provider* can disseminate *regulated information* to as wide a public as possible, as close to simultaneously as possible, in the *United Kingdom* ~~and other~~ *EEA States*. In considering whether a *primary information provider* has satisfied the requirements in *DTR* 8.4.1R, the *FCA* will consider the number and nature of arrangements that the *primary information provider* has with *media operators*.

...

## TP 1 Disclosure and transparency rules

## Transitional Provisions

(1)	(2) Material to which the Transitional Provision applies	(3)	(4) Transitional Provision		(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...						
3	4.1.6 and 4.2.4	R	An <i>issuer</i> need not prepare its financial statement in accordance with <i>DTR</i> 4.1.6R or <i>DTR</i> 4.2.4R for any financial year beginning before 1 January 2007 if:		From 20 January 2007	
			(a)	the <i>issuer's</i> registered office is in a <i>non-EEA State</i> ; and		
			(b)	the <i>issuer</i> prepares its financial statements in accordance with internationally accepted standards. [deleted]		
			[Note: article 23.2 TD]			
...						
4	4.2.4	R	(1)	This provision applies to an <i>issuer</i> :	From 20 January 2007	
			(a)	whose <i>debt securities</i> only are admitted to trading; and		
			(b)	whose <i>Home State</i> is the <i>United</i>		

				<u>Kingdom whose home Member State for the purposes of the Transparency Directive was, immediately before exit day, the United Kingdom</u>		
			(2)	An issuer is not required to disclose financial statements in accordance with DTR 4.2.4R(1) for the financial year beginning on or after 1 January 2006.		
				[Note: article 30.1 TD]		
...						
20	DTR 6.1.15R	R	Where only holders of <i>debt securities</i> whose denomination per unit amount to at least 50,000 euros or for <i>debt securities</i> denominated in a currency other than euro, the value of such denomination per unit is equivalent to 50,000 euros at the date of issue, are to be invited to a meeting, the issuer may choose as a venue any <i>EEA State</i> , provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that <i>EEA State</i> , and only where those <i>debt securities</i> have already been admitted to trading on a regulated market in the EU before 31 December 2010.	From 1 July 2012 for as long as the <i>debt securities</i> to which (20) applies are outstanding.	1 July 2012	

			[deleted] [Note: article 18 TD]		
21	<i>DTR</i> 6.2.8R	R	Where <i>debt securities</i> whose denomination per unit amount to at least 50,000 euro, or for <i>debt securities</i> denominated in a currency other than euro, the value of such denomination per unit is equivalent to 50,000 euros at the date of issue, and such <i>debt securities</i> are <i>admitted to trading</i> in one or more <i>EEA States</i> , <i>regulated information</i> must be disclosed to the public in either a language accepted by the competent authorities of the <i>Home State</i> and <i>Host States</i> or in a language customary in the sphere of international finance, at the choice of the <i>issuer</i> or of the <i>person</i> who, without the <i>issuer's</i> consent, has requested such admission. [deleted] [Note: article 20 TD]	From 1 July 2012 for as long as the <i>debt securities</i> to which (21) applies are outstanding.	<del>1 July 2012</del>
...					
26	<i>DTR</i> 6.4.2R, <i>DTR</i> 6.4.3R and <i>DTR</i> 6.4.4R	R	For an <i>issuer</i> whose securities are already admitted to trading on a <i>regulated market</i> and whose choice of <i>Home State</i> as referred to in the second indent of article 2.1(i)(i) of the <i>TD</i> or in article 2.1(i)(ii) of the <i>TD</i> has not been disclosed prior to 27 November 2015, the period of three months will start on 27 November 2015.  An <i>issuer</i> that has made a choice of <i>Home State</i> as	From 26 November 2015	26 November 2015

			referred to in the second indent of article 2.1(i)(i) of the <i>TD</i> , or in article 2.1(i)(ii) or article 2.1(i)(iii) of the <i>TD</i> and has communicated that choice to the <i>competent authorities</i> of the <i>Home State</i> prior to 27 November 2015 is exempted from the requirements under <i>DTR 6.4.2R</i> and <i>DTR 6.4.3R</i> , unless such an <i>issuer</i> chooses another <i>Home State</i> after 27 November 2015. [deleted]		
27	<i>DTR 1B.1.3R</i> and <i>DTR 7.1</i>	R	(1) <del><i>DTR 1B.1.3R</i> and <i>DTR 7.1</i> do not apply to an <i>issuer</i> in respect of a financial year beginning before 17 June 2016.</del>  (2) <del>In respect of a financial year beginning before 17 June 2016 an <i>issuer</i> must instead comply with the requirements in <i>DTR App 1</i> for that financial year unless it is an <i>issuer</i> listed in <i>DTR App 1.1.4</i>.</del> [expired]	From 17 June 2016 to 30 September 2018	17 June 2016
...					
<u>31</u>	<u><i>DTR 4.1.6R</i></u>	<u>R</u>	(1) <u><i>DTR 4.1.6R</i> does not apply to an <i>issuer</i> in respect of a financial year beginning before <i>exit day</i>.</u>	<u>From <i>exit day</i></u>	<u><i>Exit day</i></u>
			(2) <u>In respect of a financial year beginning before <i>exit day</i>:</u>		
			(a) <u>if an <i>issuer</i> is required to prepare consolidated</u>		

					accounts, the audited financial statements must comprise:		
					(i) consolidated accounts prepared in accordance with <i>EU-adopted IFRS</i> , and		
					(ii) accounts of the parent company prepared in accordance with the law of the <i>United Kingdom</i> (if the issuer is incorporated in the <i>United Kingdom</i> ) or with the national law of the <i>EEA State</i> in which the issuer is incorporated (if the issuer is incorporated in the <i>EEA</i> ).		

				(b) <u>if an issuer is not required to prepare consolidated accounts, the audited financial statements must comprise accounts prepared in accordance with the law of the United Kingdom (if the issuer is incorporated in the United Kingdom) or with the national law of the EEA State in which the issuer is incorporated (if the issuer is incorporated in the EEA).</u>		
<u>32</u>	<u>DTR 4.1.7R (4)</u>	<u>R</u>	(1)	<u>DTR 4.1.7R(4) does not apply to an issuer which is a UK-traded third country company within the meaning of section 1241 of the Companies Act 2006 in respect of a financial year beginning before exit day.</u>	<u>From exit day</u>	<u>Exit day</u>
			(2)	<u>In respect of a financial year beginning before exit day, an issuer which is a UK-traded third country company within the meaning of section 1241 of</u>		

				the Companies Act 2006 must ensure that the person who provides the audit report is:		
				(a) on the register of third country auditors kept for the purposes of regulation 6 of the Statutory Auditors and Third Country Auditors Regulations 2013 (SI 2013/1672); or		
				(b) eligible for appointment as a <i>statutory auditor</i> under section 1212 of the Companies Act 2006; or		
				(c) an EEA auditor within the meaning of paragraph 20A of Schedule 10 to the Companies Act 2006.		
33	<u>DTR 4.2.4R(1)</u>	R	(1)	<u>DTR 4.2.4R(1) does not apply to an issuer in respect of a financial year beginning before <i>exit day</i>.</u>	<u>From <i>exit day</i></u>	<u><i>Exit day</i></u>
			(2)	<u>In respect of a financial year beginning before <i>exit day</i>, if an issuer is required to prepare</u>		



				<u>consolidated accounts, the condensed set of financial statements must be prepared in accordance with IAS 34 as contained in EU-adopted IFRS.</u>		
<u>34</u>	<u>DTR 4.2.10R(4)</u>	<u>R</u>	<u>(1)</u>	<u>DTR 4.2.10R(4) does not apply to an issuer in respect of a financial year beginning before exit day.</u>	<u>From exit day</u>	<u>Exit day</u>
			<u>(2)</u>	<u>In respect of a financial year beginning before exit day, a person making a responsibility statement will satisfy the requirement in DTR 4.2.10R(3)(a) to confirm that the condensed set of financial statements gives a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer (or the undertakings included in the consolidation as a whole) by including a statement that the condensed set of financial statements have been prepared in accordance with:</u>		
			<u>(a)</u>	<u>IAS 34 as contained in EU-adopted IFRS; or</u>		
			<u>(b)</u>	<u>for UK issuers not using EU-</u>		

				<u>adopted IFRS, Financial Reporting Standard 104: Interim Financial Reporting issued by the Financial Reporting Council; or</u>		
				(c) <u>for all other issuers not using EU-adopted IFRS, a national accounting standard relating to interim reporting,</u>		
				<u>provided always that a person making such a statement has reasonable grounds to be satisfied that the condensed set of financial statements prepared in accordance with such a standard is not misleading.</u>		
<u>35</u>	<u>DTR 1B.1.3R (1) and DTR 7.1</u>	<u>R</u>	(1)	<u>DTR 1B.1.3R(1) does not apply to an issuer in respect of a financial year beginning before exit day.</u>	<u>From exit day</u>	<u>Exit day</u>
			(2)	<u>In respect of a financial year beginning before exit day DTR 7.1 does not apply to any issuer which is a subsidiary undertaking of a</u>		

				<u>parent undertaking where the parent undertaking is subject to:</u>		
				(a) <u>DTR 7.1, or to requirements implementing article 39 of the Audit Directive in any EEA State; and</u>		
				(b) <u>articles 11(1), 11(2) and 16(5) of the Audit Regulation, or to articles 11(1), 11(2) and 16(5) of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.</u>		

...

**Appendix 1 Audit Committees for certain issuers [deleted]**

~~DTR App  
1.1.1~~

App 1.1.1	In respect of a financial year beginning before 17 June 2016, <i>DTR TP 27</i> requires an <i>issuer</i> to comply with the requirements in this appendix in relation to their audit committee unless it is an <i>issuer</i> listed in App 1.1.4.		
App 1.1.2	To assist <i>issuers</i> , this appendix adopts the text of <i>DTR 7.1</i> before it was amended by the Disclosure Rules and Transparency Rules Sourcebook (Statutory Audit Amending Directive) Instrument 2016 in order to cover <i>issuers</i> in respect of a financial year beginning before 17 June 2016.		
App 1.1.3	7.1	<b>Audit committees</b>	
	Audit committees and their functions		
	7.1.1	R	An <i>issuer</i> must have a body which is responsible for performing the functions set out in <i>DTR 7.1.3R</i> . At least one member of that body must be independent and at least one member must have competence in accounting and/or auditing.
	7.1.2	G	The requirements for independence and competence in accounting and/or auditing may be satisfied by the same member or by different members of the relevant body.
	7.1.3	R	An <i>issuer</i> must ensure that, as a minimum, the relevant body must:
			(1) monitor the financial reporting process;
			(2) monitor the effectiveness of the <i>issuer's</i> internal control, internal audit where applicable, and risk management systems;
			(3) monitor the statutory audit of the annual and consolidated accounts;
			(4) review and monitor the independence of the <i>statutory auditor</i> , and in particular the provision of additional services to the <i>issuer</i> .
	7.1.4	R	An <i>issuer</i> must base any proposal to appoint a <i>statutory auditor</i> on a recommendation made by the relevant body.
	[Note: Article 41.3 of the <i>Audit Directive</i> ]		
	7.1.5	R	The <i>issuer</i> must make a statement available to the public disclosing which body carries out the

			functions required by <i>DTR 7.1.3R</i> and how it is composed.
	[ <del>Note: Article 41.5 (part) of the <i>Audit Directive</i></del> ]		
	7.1.6	G	An <i>issuer</i> may include the statement required by <i>DTR 7.1.5R</i> in any statement it is required to make under <i>DTR 7.2</i> (Corporate governance statements).
	7.1.7	G	In the <i>FCA's</i> view, compliance with provisions A.1.2, C.3.1, C.3.2, C.3.3 and C.3.8 of the <i>UK Corporate Governance Code</i> will result in compliance with <i>DTR 7.1.1R</i> to <i>DTR 7.1.5R</i> .
App 1.1.4	This appendix does not apply to:		
	(1)	any <i>issuer</i> which is a <i>subsidiary undertaking</i> of a <i>parent undertaking</i> where the <i>parent undertaking</i> is subject to <i>DTR 7.1</i> , or to requirements implementing Article 41 of the <i>Audit Directive</i> in any other <i>EEA State</i> ; or	
	[ <del>Note: Article 41.6(a) of the <i>Audit Directive</i></del> ]		
	(2)	any <i>issuer</i> the sole business of which is to act as the issuer of <i>asset backed securities</i> provided the entity makes a statement available to the public setting out the reasons for which it considers it is not appropriate to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee; or	
	[ <del>Note: Article 41.6(c) of the <i>Audit Directive</i></del> ]		
	(3)	a <i>credit institution</i> whose <i>shares</i> are not admitted to trading and which has, in a continuous or repeated manner, issued only <i>debt securities</i> provided that:	
		(a)	the total nominal amount of all such <i>debt securities</i> remains below 100,000,000 Euros; and
		(b)	the <i>credit institution</i> has not been subject to a requirement to publish a prospectus in accordance with section 85 of the <i>Act</i> .
	[ <del>Note: Article 41.6(d) of the <i>Audit Directive</i></del> ]		

**EXITING THE EUROPEAN UNION: REGULATORY GUIDES (AMENDMENTS)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000;
  - (2) regulation 120 (Guidance) of the Payment Services Regulations 2017; and
  - (3) regulation 60 (Guidance) of the E-Money Regulations 2011.

**Commencement**

- B. Part 2 of Annex B enters into force on [1 April 2019], immediately after the changes made by the Claims Management Instrument 2018 (FCA 2018/56) come into force.
- C. The remainder of this instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to material outside the Handbook**

- D. The following material outside the Handbook listed in column (1) below is amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
The Enforcement Guide (EG)	Annex A
The Perimeter Guidance Manual (PERG)	Annex B
The Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD)	Annex C
The Unfair Contract Terms Regulatory Guide (UNFCOG)	Annex D
The Wind-down Planning Guide (WDPG)	Annex E
The MiFID 2 Guide	Annex F

**Citation**

- E. This instrument may be cited as the Exiting the European Union: Regulatory Guides (Amendments) Instrument 2019.

By order of the Board  
[date]

**Editor's notes**

- (1) The near-final instrument relates to the statutory instruments set out in Annex 4 of the accompanying Policy Statement and other matters arising from the UK's withdrawal from the EU.
- (2) We will set out our approach in due course for any additional amendments which are required as a result of further statutory instruments.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 29 March 2019. This instrument also includes amendments to correct deficiencies implementing the new framework for Claims Management Companies, in force from 1 April 2019.

## Annex A

### Amendments to the Enforcement Guide (EG)

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

## 1 Introduction

### 1.1 Overview

...

1.1.2 In the areas set out below, the *Act* expressly requires the *FCA* to prepare and publish statements of policy or procedure on the exercise of its enforcement and investigation powers and in relation to the giving of *statutory notices*.

...

(3-A) section 131FA requires the *FCA* to publish a statement of its policy on the conduct of certain interviews in response to requests from ~~EEA~~ overseas regulators; and

...

...

## 2 The FCA's approach to enforcement

...

### 2.2 Case selection and referral criteria

...

2.2.6 In all cases, before it proceeds with an investigation, the *FCA* will satisfy itself that there are grounds to investigate under the statutory provisions that give the *FCA* powers to appoint investigators. Another consideration will be whether the *FCA* ~~is under a Community obligation to take~~ has any agreements in place regarding taking action on behalf of, or otherwise ~~to provide~~ providing assistance to, ~~an authority from another EU member state~~ other authorities. *EG* 2.5.1 discusses the position where other authorities may have an interest in a case. If the statutory test is met, the *FCA* will consider what is the most efficient and effective way of achieving its statutory objectives of protecting consumers, enhancing market integrity and promoting competition. A referral to Enforcement for an investigation will be made if the *FCA* considers that an investigation, rather than an alternative regulatory response, is the right course of action given all the circumstances. Enforcement action and other regulatory tools can be used together and are not mutually exclusive. To assist in making the decision to refer a matter for investigation, the *FCA* has developed referral criteria that set out a range of



factors it may consider when deciding whether to appoint enforcement investigators. The criteria are not exhaustive, and all the circumstances of a particular case are taken into account. Not all the criteria will be relevant to every case, and additional considerations may apply in certain cases. Any one of the factors alone may warrant the appointment of investigators and in some cases, including cases where *breaches* are self-reported, the misconduct may be so serious that there is no credible alternative to referral.

...

## **2.6 Assisting overseas regulators**

2.6.1 The *FCA* views co-operation with its overseas counterparts as an essential part of its regulatory functions. Section 354A of the *Act* imposes a duty on the *FCA* to take such steps as it considers appropriate to co-operate with others who exercise functions similar to its own. This duty extends to authorities in the UK and overseas. In fulfilling this duty the *FCA* may share information which it is not prevented from disclosing, including information obtained in the course of the *FCA*'s own investigations, or exercise certain of its powers under *Part XI* of the *Act*. Further details of the *FCA*'s powers to assist overseas regulators are provided at *EG* 3.7.1 – 3.7.4 (Investigations to assist overseas authorities), *EG* 3.8.1 – 3.8.4 (Information requests and investigations to assist ~~EEA~~ overseas regulators in relation to short selling), ~~*EG* 3.8A (Information requests and entry of premises under warrant to assist EEA regulators in relation to the Market Abuse Regulation)~~, *EG* 4.7.1 (Use of statutory powers to require the production of documents, the provision of information or the answering of questions), *EG* 4.11.9 – 4.11.11 (Interviews in response to a request from an overseas regulator ~~or EEA regulator~~), and *EG* 8.6.1 – 8.6.8 (Exercising the power under section 55Q to vary or cancel a firm's Part 4A permission, or to impose requirements on a firm in support of an overseas regulator: the *FCA*'s policy). The *FCA*'s statement of policy in relation to interviews which representatives of overseas regulators ~~or EEA regulators~~ attend and participate in is set out in *DEPP* 7.

...

## **3 Use of information gathering and investigation powers**

...

### **3.2A Information requests (section 122A)**

3.2A.1 The *FCA* may use its section 122A power to require information and documents from an *issuer*, a *person discharging managerial responsibilities* or a *person* closely associated with a *person discharging managerial responsibilities* to support its supervisory and its enforcement functions, including those under the *Market Abuse Regulation* ~~or any directly applicable EU regulation made under the *Market Abuse*~~.

...

### 3.2B Information requests (section 122B)

3.2B.1 The *FCA* may use its section 122B power to require information and documents from a person to support both its supervisory and its enforcement functions under the *Market Abuse Regulation* or any ~~directly applicable EU regulation made under the *Market Abuse Regulation*, supplementary market abuse legislation (as defined in Part 8 of the *Act*) or under the *auction regulation*.~~

~~[Note: see Regulation 6 and Schedule 1 to the *RAP Regulations* for application of the power in relation to functions under the *auction regulation*]~~

...

### 3.4 Investigations into general and specific concerns (sections 167 and 168)

3.4.1 Where the *FCA* has decided that an investigation is appropriate (see chapter 2) and it appears to it that there are circumstances suggesting that contraventions or offences set out in section 168 may have happened, the *FCA* will normally appoint investigators pursuant to section 168. Where the circumstances do not suggest any specific breach or contravention covered by section 168, but, the *FCA* still has concerns about a *firm*, an *appointed representative*, or a recognised investment exchange ~~or an unauthorised incoming ECA provider~~, such that it considers there is good reason to conduct an investigation into the nature, conduct or state of the *person's* business or a particular aspect of that business, or into the ownership or control of an *authorised person*, the *FCA* may appoint investigators under section 167.

...

### 3.7 Investigations to assist overseas authorities (section 169)

...

3.7.2 ~~If the overseas regulator is a competent authority and makes a request in pursuance of any Community obligation, section 169(3) states that the *FCA* must, in deciding whether or not to exercise its investigative power, consider whether the exercise of that power is necessary to comply with that obligation. [deleted]~~

3.7.3 Section 169(4) and (5) set out factors that the *FCA* may take into account when deciding whether to use its investigative powers. ~~However, these provisions do not apply if the *FCA* considers that the use of its investigative powers is necessary to comply with a Community obligation.~~

...

### 3.8 Information requests and investigations to assist EEA overseas regulators in relation to short selling

...

3.8.3 The *FCA*'s power to conduct investigations to assist ~~EEA~~ *overseas regulators* in respect of the *short selling regulation* is contained in section 131FA of the *Act*. The section provides that at the request of an ~~EEA~~ *overseas regulator* or ESMA, the *FCA* may either use its power under section 131E to require the production of information, or appoint a person to investigate any matter.

3.8.4 ~~Section 131FA states that the *FCA* must, in deciding whether or not to exercise its investigative power, consider whether the exercise of that power is necessary to comply with an obligation under the *short selling regulation*.~~  
[deleted]

EG 3.8A is deleted in its entirety. The deleted text is not shown but the section is marked deleted as shown below.

**3.8A Information requests and entry of premises under warrant to assist EEA regulators in relation to the Market Abuse Regulation or the auction regulation** [deleted]

Amend the following as shown.

## **4 Conduct of investigations**

...

### **4.7 Use of statutory powers to require the production of documents, the provision of information or the answering of questions**

4.7.1 The *FCA*'s standard practice is generally to use statutory powers to require the production of documents, the provision of information or the answering of questions in interview. This is for reasons of fairness, transparency and efficiency. It will sometimes be appropriate to depart from this standard practice, for example:

...

- (2) In the case of third parties with no professional connection with the financial services industry, such as the victims of an alleged fraud or misconduct, the *FCA* will usually seek information voluntarily.
- (3) In some cases, the *FCA* is asked by *overseas regulators* or ~~EEA regulators~~ to obtain documents or conduct interviews on their behalf.

In these cases, the *FCA* will not necessarily adopt its standard approach as it will consider with the *overseas regulator* ~~or EEA regulator~~ the most appropriate method for obtaining evidence for use in their country.

...

#### 4.11 Approach to interviews and interview procedures

...

Interviews in response to a request from an overseas regulator or EEA regulator

4.11.9 Where the *FCA* has appointed an investigator in response to a request from an *overseas regulator* ~~or EEA regulator~~, it may, under sections 169(7) or 131FA of the *Act* ~~respectively~~, direct the investigator to allow a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation. However, the *FCA* may only use this power if it is satisfied that any information obtained by an *overseas regulator* ~~or EEA regulator~~ as a result of the interview will be subject to safeguards equivalent to those in Part XXIII of the *Act* (sections 169(8) and 131FA ~~respectively~~).

4.11.10 The factors that the *FCA* may take into account when deciding whether to make a direction under section 169(7) include the following:

...

- (4) costs, ~~where no Community obligation is involved~~, and the availability of resources; and

...

4.11.11 Under sections 169(9) and 131FA respectively, the *FCA* is required to prepare a statement of policy with the approval of the Treasury on the conduct of interviews attended by representatives of *overseas regulators* ~~or EEA regulators~~. The statement is set out in *DEPP 7*.

...

EG 6.3 is deleted in its entirety. The deleted text is not shown but the section is marked deleted as shown below.

## 6 Publicity

...

### 6.3 Decisions against ECA providers ~~[deleted]~~

...

Amend the following as shown.

## 7 Financial penalties and other disciplinary sanctions

...

### 7.2 Alternatives to sanctions

7.2.1 The *FCA* also has measures available to it where it considers it is appropriate to take protective or remedial action. These include:

...

(4) where the *FCA* considers it necessary for the purpose of the exercise by it of functions under the *Market Abuse Regulation* or any ~~directly applicable EU regulation made under the *Market Abuse Regulation*~~ supplementary market abuse legislation (as defined in Part 8 of the *Act*), the *FCA* may suspend trading in a *financial instrument* under section 122I of the *Act*;

(4a) ~~where the *FCA* considers it necessary for the purpose of the exercise by it of functions under the *auction regulation* the *FCA* may suspend trading in *emission auction products* under section 122I of the *Act*;~~  
~~[Note: see Regulation 6 and Schedule 1 to the *RAP Regulations* for power in relation to *emission auction products*] [deleted]~~

(5) where there are reasonable grounds for suspecting that a provision of Part VI of the *Act*, a provision contained in the *prospectus rules*, or any other provision that was made in accordance with the *Prospectus Directive* has been infringed, the *FCA* may:

- (a) suspend or prohibit the offer to the public of transferable securities as set out in section 87K of the *Act*; or
- (b) suspend or prohibit admission of transferable securities to trading on a regulated market as set out in section 87L of the *Act*;

...

## 8 Variation and cancellation of permission and imposition of requirements on the *FCA*'s own initiative and intervention against incoming firms

...

## 8.6 Exercising the power under section 55Q to vary or cancel a firm's Part 4A permission or to impose requirements on a firm in support of an overseas regulator: the FCA's policy

8.6.1 The *FCA* has a power under section 55Q to vary, or alternatively cancel, a *firm's Part 4A permission*, or to impose requirements on a *firm*, in support of an *overseas regulator*. Section 55Q(4), (5) and (6) set sets out matters the *FCA* may, or must, take into account when it considers whether to exercise these powers. ~~The circumstances in which the *FCA* may consider varying a *firm's Part 4A permission* or imposing requirements in support of an *overseas regulator* depend on whether the *FCA* is required to consider exercising the power in order to comply with a Community obligation. This reflects the fact that under section 55Q, if a relevant *overseas regulator* acting under prescribed provisions has made a request to the *FCA* for the exercise of its *own initiative power* to vary or cancel a *Part 4A permission* or to impose requirements, the *FCA* must consider whether it must exercise the power in order to comply with a Community obligation.~~

8.6.2 ~~Relevant Community obligations which the *FCA* may need to consider include those under the Capital Requirements Directive, the *Solvency II Directive*, the Investment Services Directive/Markets in Financial Instruments Directive, the Insurance Distribution Directive and the *Market Abuse Regulation*. Each of these legislative acts imposes general obligations on the relevant *EEA competent authority* to cooperate and collaborate closely in discharging their functions under the legislative acts. [deleted]~~

8.6.3 ~~The *FCA* views this cooperation and collaboration as essential to effective regulation of the international market in financial services. It will therefore exercise its *own initiative powers* wherever:~~

- ~~(1) an *EEA Competent authority* requests it to do so; and~~
- ~~(2) it is satisfied that the use of the power is appropriate (having regard to the considerations set out at paragraphs 8.2.1 to 8.2.6) to enforce effectively the regulatory requirements imposed under the *Single Market Directives* or other Community obligations. [deleted]~~

8.6.4 The *FCA* will actively consider ~~any other~~ requests for assistance from ~~relevant *overseas regulators* (that is requests in relation to which it is not obliged to act under a Community obligation).~~ Section 55Q, which sets out matters the *FCA* may take into *account* when it decides whether to vary or cancel a *firm's Part 4A permission* or to impose *requirements* on a *firm* in support of the *overseas regulator*, applies in these circumstances.

...

EG 8.7 is deleted in its entirety. The deleted text is not shown but the section is marked deleted as shown below.

**8.7 The FCA’s policy on exercising its power of intervention against incoming firms under section 196 of the Act [deleted]**

Amend the following as shown.

**9 Prohibition Orders and withdrawal of approval**

...

**9.3 Prohibition orders and withdrawal of approval - approved persons**

...

9.3.2 When the *FCA* decides whether to make a *prohibition order* against an *approved person* and/or withdraw their approval, the *FCA* will consider all the relevant circumstances of the case. These may include, but are not limited to those set out below.

...

(3) Whether, and to what extent, the *approved person* has:

...

(b) been knowingly concerned in a contravention by the relevant *firm* of a requirement imposed on the *firm* by or under the *Act* (including the *Principles* and other *rules*), the *AIFMD UK regulation* or any qualifying ~~EU~~ provision specified, or of a description specified, for the purpose of section 66(2) by the Treasury by order.

...

**10 Injunctions**

...

**10.2 Section 380 (injunctions for breaches of relevant requirement<sup>9</sup>) and section 381 (injunctions in cases of market abuse): the FCA’s policy**

<sup>9</sup>Under sections 380(6)(a) and (7)(a), a ‘relevant requirement’ in relation to an application by the appropriate regulator means a requirement: which is imposed by or under the *Act* or by a qualifying ~~EU~~ provision specified, or of

a description specified, for the purpose of subsection 380(6) by the Treasury by order; or which is imposed by or under any other Act and whose contravention constitutes an offence mentioned in section 402(1) of the *Act*; or which is imposed by the *AIFMD UK regulation*. The definition of “appropriate regulator” is set out in subsections 380(8) to (12) of the *Act*.

...

EG 10.5 is deleted in its entirety. The deleted text is not shown but the section is marked deleted as shown below.

## **10.5 Section 198: the FCA’s policy [deleted]**

Amend the following as shown.

## **11 Restitution and redress**

...

### **11.5 Other relevant powers**

11.5.1 The *FCA* may apply to the court for an *injunction* if it appears that a *person*, whether *authorised* or not, is reasonably likely to breach a relevant requirement<sup>12</sup>, or engage in *market abuse*. It can also apply for an *injunction* if a *person* has breached one of those requirements or has engaged in *market abuse* and is likely to continue doing so.

<sup>12</sup>Under section 380(6)(a) and (7)(a), a ‘relevant requirement’ in relation to an application by the appropriate regulator means a requirement: which is imposed by or under the *Act* or by a qualifying ~~EU~~ provision specified, or of a description specified, for the purpose of section 380(6) by the Treasury by order; or which is imposed by or under any other Act and whose contravention constitutes an offence mentioned in section 402(1) of the *Act*; or which is imposed by the *AIFMD UK regulation*. The definition of “appropriate regulator” is set out in section 380(8) to (12) of the *Act*.

11.5.2 The *FCA* may consider taking disciplinary action using a range of powers as well as seeking restitution, if a *person* has breached a relevant requirement<sup>13</sup> of the *Act* or ~~any directly applicable Community regulation or decision under *MiFID* or the *UCITS Directive* or the *auction regulation*, *onshored regulation*,~~ or has engaged in *market abuse*.

<sup>13</sup>Under section 204A(2), a ‘relevant requirement’ in relation to an application by the appropriate regulator means a requirement: which is



imposed by or under the *Act* or by a qualifying EU provision specified, or of a description specified, for the purpose of section 204A(2) by the Treasury by order or which is imposed by the *AIFMD UK regulation*. The definition of “appropriate regulator” is set out in section 204A(3) of the *Act*.

...

## **13 Insolvency**

...

### **13.7 Petitioning for compulsory winding up of a company already in voluntary winding up**

...

13.7.4 ~~Where the *FCA* is requested by a *Home State regulator* of an *EEA firm* or a *Treaty firm* to present a petition for the compulsory winding up of that firm, the *FCA* will first need to consider whether the presentation of the petition is necessary in order to comply with a Community obligation. [deleted]~~

...

EG 14.3 is deleted in its entirety. The deleted text is not shown but the section is marked deleted as shown below.

## **14 Collective Investment Schemes**

...

**14.3 Exercise of the powers in respect of recognised schemes: section 267 of the Act - power to suspend promotion of a scheme recognised under section 264: the FCA’s policy [deleted]**

EG 19.8 and 19.9 are deleted in their entirety. The deleted text is not shown but the sections are marked deleted as shown below.

...

## **19 Non-FSMA powers**

...

**19.8 Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 [deleted]**

**19.9 Electronic commerce activity directions: the FCA’s policy [deleted]**

Amend the following as shown.

**19.10 Enterprise Act 2002**

...

19.10.2 The Enterprise Act identifies two types of breach which trigger the Part 8 enforcement powers. These are referred to as:

- (1) “domestic infringements”, which are breaches of particular UK enactments or of contractual or tortious duties, in each case if they occur in the course of a business and in relation to goods or services supplied or sought to be supplied:
  - (a) to or for a person in the UK; or
  - (b) by a person with a place of business in the UK; and
- (2) “~~Community Schedule 13~~ infringements”, which are breaches of the EU legislation listed in Schedule 13 to the Enterprise Act, ~~if directly effective, or of national laws, whether of the UK or not, giving effect to that EU legislation, even where it is directly effective, including provisions of those national laws that provide additional protections, beyond but permitted by that EU legislation.~~

In both cases the breach must, to trigger those powers, harm the collective interests of *consumers*.

19.10.3 ~~The Community legislation falling within the FCA’s scope under the Enterprise Act is:~~

- ~~the Unfair Terms in Consumer Contracts Directive;<sup>17</sup>~~
- ~~the Comparative and Misleading Advertising Directive;<sup>18</sup>~~
- ~~the E-Commerce Directive;<sup>19</sup>~~
- ~~the Distance Marketing Directive;<sup>20</sup>~~
- ~~the Unfair Commercial Practices Directive;<sup>21</sup> and~~
- ~~the Consumer Credit Directive.<sup>22</sup>~~

<sup>17</sup>~~Directive 93/13/EEC~~

<sup>18</sup>~~Directive 97/55/EC~~

<sup>19</sup>~~Directive 2000/31/EC~~

<sup>20</sup>~~Directive 2002/65/EC~~

<sup>21</sup>~~Directive 2005/29/EC~~

<sup>22</sup>~~Directive 2008/48/EC~~

[deleted]

19.10.4 The *FCA* has powers under Part 8 of the Enterprise Act both as a “designated enforcer” in relation to domestic and ~~Community~~ Schedule 13 infringements and as a “~~CPC~~ Schedule 13 enforcer” which gives the *FCA* and other ~~CPC~~ Schedule 13 enforcers additional powers in relation to Schedule 13 ~~Community~~ infringements under the CRA so that they can meet their obligations as “competent authorities” under Regulation (EC) No.2006/2004 ~~on co-operation between national authorities responsible for enforcement of consumer protection laws (the CPC Regulation).~~

The *FCA*’s powers as a designated enforcer

19.10.5 As a designated enforcer, the *FCA* has the power to apply to the courts for an enforcement order which requires a *person* who has committed a domestic or ~~Community~~ Schedule 13 infringement or, as to the latter, is likely to commit such an infringement:

- (1) not to engage, including through a company and, as to a domestic infringement, whether or not in the course of business, in the conduct which constituted, or is likely to constitute, the infringement;
- (2) to publish the order and/or a corrective statement;
- (3) to offer compensation or other redress, including the right to terminate relevant contracts, to affected *consumers*;
- (4) where such *consumers* cannot be practically identified, to take measures in the collective interests of *consumers*;
- (5) to take measures intended to prevent or reduce the risk of the relevant conduct occurring or being repeated; and/or
- (6) to take measures intended to enable *consumers* to choose more effectively between *persons* supplying or seeking to supply goods or services;

although it should be noted that the remedies listed under (3) to (6) inclusive are only applicable to conduct taking place or likely to occur after the relevant provisions of the *CRA* came into force.

19.10.6 The *FCA* may also apply, if necessary without notice, for interim enforcement orders where immediate temporary prohibition of the relevant conduct is expedient pending full consideration by the court. Such interim orders can also be sought pre-emptively in relation to ~~Community~~ Schedule 13 infringements, but again only preventing conduct in the course of business.

...

- 19.10.11 The Enterprise Act also makes provision for enforcers and courts to accept undertakings from *persons* who have committed breaches or, in respect of ~~Community~~ Schedule 13 infringements, are considered likely to do so. The undertaking confirms that the *person* will not, amongst other things, commence, continue or repeat the conduct which constituted or, as to a ~~Community~~ Schedule 13 infringement, would constitute the breach, although, as above, such a pre-emptive prohibition will only apply to conduct in the course of business. The undertaking may also confirm that the *person* will compensate consumers and/or take the other measures described in paragraph 19.10.5, above. There is a general expectation that, if a breach of applicable legislation or of a relevant duty is committed, or if a ~~Community~~ Schedule 13 infringement is likely to be committed, enforcers will seek an undertaking from the *person* in question before applying to court for an enforcement order.

...

The FCA's powers as a ~~CPC~~ Schedule 13 enforcer

- 19.10.13 In addition to its powers as a designated enforcer under the Enterprise Act, the *FCA* also has powers, in its capacity as a "~~CPC~~ Schedule 13 enforcer" under the CRA and, therefore, only in respect of ~~Community~~ Schedule 13 infringements, to enter commercial premises with or without a warrant. The *FCA* must give at least two working days' notice of its intention to enter such premises without a warrant unless that is not reasonably practicable. If the *FCA* cannot give a notice in advance, it must produce the notice on the day the premises are entered.

Use of enforcement powers under Enterprise Act

...

- 19.10.15 ~~Further information about the FCA's powers under the CPC Regulations is provided at paragraphs 19.13.1 to 19.13.5 below. [deleted]~~

...

## 19.11 Financial Services (Distance Marketing) Regulations 2004

- 19.11.1 These Regulations ~~give~~ gave effect to the Distance Marketing Directive.<sup>24</sup> Under the Regulations, the *FCA* can enforce breaches of the Regulations concerning "specified contracts". Specified contracts are certain contracts for the provision of financial services which are made at a distance and do not require the simultaneous physical presence of the parties to the contract.

<sup>24</sup>Directive 2002/65/EC

...

## 19.12 Financial Conglomerates and Other Financial Groups Regulations 2004

19.12.1 These Regulations ~~implement~~ implemented in part the Financial Conglomerates Directive,<sup>25</sup> which ~~imposes~~ imposed certain procedural requirements on the *FCA* as a competent authority under the Directive. These Regulations also ~~make~~ made specific provision about the exercise of certain supervisory powers in relation to financial conglomerates.

<sup>25</sup>Directive 2002/87/EC

19.12.2 The *FCA*'s powers to vary a firm's *Part 4A permission* or to impose requirements under sections 55J and 55L of the *Act* ~~have been~~ were extended under these Regulations. The *FCA* is able to use these powers where it is desirable to do so for the purpose of:

supervision in accordance with the ~~Financial Conglomerates Directive~~ *Financial Groups Directive Regulations*;

acting in accordance with specified provisions of the ~~Capital Requirements Directive~~ *Capital Requirements Regulations 2013*; and

acting in accordance with specified provisions of ~~that implemented or supplemented~~ the *Solvency II Directive*.

...

EG 19.13 is deleted in its entirety. The deleted text is not shown but the section is marked deleted as shown below.

## 19.13 The Consumer Protection Co-operation Regulation [~~deleted~~]

Amend the following as shown.

## 19.14 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

...

19.14.2 The *FCA* is responsible for monitoring and enforcing compliance with the *Money Laundering Regulations* not only by authorised firms who are within the *Money Laundering Regulations*' scope, but also by what the Regulations describe as "Annex I financial institutions". These are businesses which are not otherwise authorised by us but which carry out certain of the activities which were listed in Annex I of the Banking Consolidation Directive<sup>28</sup>, ~~now~~ then in Annex I of the ~~CRD~~ Capital Requirements Directive, the relevant text of which is set out in Schedule 2 of the *Money Laundering Regulations*. The

activities include lending (e.g. forfeiters and trade financiers), financial leasing, and safe custody services. Annex I financial institutions are required to register with the *FCA*.

<sup>28</sup>Money service businesses are also outside the definition of “Annex I financial institution”, which is set out in Regulation 55(2) of the *Money Laundering Regulations*.

[Note: Directive 2013/36/EU]

19.14.2A The *FCA* is also responsible for monitoring and enforcing compliance with the Funds Transfer Regulation by payment service providers specified under regulation 62(1) of the *Money Laundering Regulations*.

[Note: Regulation (EU) No 2015/847 on information accompanying transfer of funds as amended by the Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018 (SI 2019/XXXX)]

19.14.3 The *Money Laundering Regulations* add to the range of options available to the *FCA* for dealing with anti-money laundering and anti-terrorist financing failures. These options include:

- to prosecute a relevant person, including but not limited to an authorised firm; ~~or an Annex I financial institution or an auction platform~~, as well as any responsible officer;
- to fine or censure a relevant person, including but not limited to an authorised firm; ~~or an Annex I financial institution or an auction platform~~, as well as any officer knowingly concerned in the breach, under regulation 76 of the *Money Laundering Regulations*;
- to cancel, suspend or impose limitations or other restrictions on the authorisation or registration of an authorised person or payment service provider, under regulation 77 of the *Money Laundering Regulations*; and

to impose a temporary or permanent prohibition on an officer knowingly concerned in a breach by a relevant person, including an authorised firm or Annex I financial institution, or a payment service provider, under regulation 78 of the *Money Laundering Regulations*.

...

## **19.19 Insurance Accounts Directive (Lloyd’s Syndicate and Aggregate Accounts) Regulations 2008**

19.19.1 The Lloyd’s Accounting Regulations ~~implement~~ implemented the Audit and Accounts Directives in relation to the Lloyd’s insurance market. They ~~aim~~ aimed to increase the transparency of the accounts published by Lloyd’s syndicates by imposing requirements in relation to the preparation and disclosure of the accounts. The Regulations give the *FCA* the power to institute criminal proceedings for an offence committed under the Regulations.

...

**19.20 Payment Services Regulations 2017**

...

19.20.4 The *FCA* also has the power to prohibit or restrict the carrying out of certain *regulated activities* by *EEA authorised payment institutions* and *EEA registered account information service providers*. [deleted]

...

**19.21 The conduct of investigations under the Payment Services Regulations**

...

19.21.3 The *Payment Services Regulations* also apply much of Part 13 of the *Act*. The effect of this is that the *FCA* has the power to deal with an *EEA authorised payment institution* or an *EEA registered account information service provider* (‘incoming firm’) that is likely to contravene a requirement which is imposed on it by or under the *Payment Services Regulations*. Under the *Payment Services Regulations* the *FCA* will be able to use the power of intervention to:

- (1) impose a requirement on an incoming *firm* as it considers appropriate; and
- (2) impose a variation on the permissions of an incoming *firm*. [deleted]

...

**19.23 Electronic Money Regulations 2011**

...

19.23.2 In addition to its powers that apply to *authorised electronic money institutions*, generally the *FCA* has the power to prohibit or restrict the carrying out of certain *regulated activities* by *EEA authorised electronic money institutions*. [deleted]

...

EG 19.24 is deleted in its entirety. The deleted text is not shown but the section is marked deleted as shown below.

**19.24 Cross-Border Payments in Euro Regulations 2010 [deleted]**

EG 19.25 is deleted in its entirety. The deleted text is not shown but the section is marked deleted as shown below.

## **19.25 Recognised Auction Platforms Regulations 2011 [deleted]**

Amend the following as shown.

## **19.26 Derivatives, Central Counterparties and Trade Repositories Regulations 2013**

19.26.1 The *FCA* has information gathering and sanctioning powers under the *Act* which are applicable to breaches of *EMIR requirements* by *authorised persons* or *recognised bodies*. The *OTC derivatives, CCPs and trade repositories regulation* adds to the powers available to the *FCA* for dealing with breaches of *EMIR requirements* and sets out information gathering and sanctioning powers enabling the *FCA* to investigate and take action for breaches of the *EMIR requirements* by *non- authorised counterparties* and for certain breaches of the *OTC derivatives, CCPs and trade repositories regulation* by *authorised persons*. Such powers under the *OTC derivatives, CCPs and trade repositories regulation* or the *Act* do not extend to breaches of article 11(3) and (4) of *EMIR* by PRA-*authorised financial counterparties*. The *FCA* has additional powers in relation to trade repositories under the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (see *EG 19.40*).

...

## **19.27 Alternative Investment Fund Managers Regulations 2013**

19.27.1 The *AIFMD UK regulation* ~~transposes~~ transposed *AIFMD* and ~~makes~~ made the necessary changes to *UK* legislation in relation to the implementation of the *EuSEF regulation*, the *EuVECA regulation*, the *ELTIF regulation* and the *Money Market Funds regulation*. It ~~provides~~ provided new and updated powers in relation to both existing and new managers of *AIFs*, whether authorised or registered.

19.27.2 The *AIFMD UK regulation* includes information gathering and sanctioning powers that enable the *FCA* to investigate and take action for breaches of the regulations and ~~directly applicable EU regulations~~ *onshored regulations*. Specific standalone powers are in the *AIFMD UK regulation* for *unauthorised AIFMs*, by applying relevant sections of the *Act*. Amendments to the *Act*, including those made under the ~~Financial Services and Markets Act (Qualifying EU Provisions) Order 2013~~ Financial Services and Markets Act (Qualifying EU Provisions) Order 2013 (as amended by the Financial



Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (SI 2019/XXXX), extend certain *FCA* powers (e.g. disciplinary powers, injunctions and restitution) so that they apply to contraventions of requirements of the *AIFMD UK regulation* and to contraventions of ~~directly applicable EU regulations~~ onshored regulations.

Information gathering and investigation powers

...

19.27.4 The ~~new~~ powers under the *AIFMD UK regulation* include powers of direction and the power to revoke the registration of *small registered UK AIFMs*, (including a ~~*SEF manager* or *RVECA manager*~~ *EuSEF manager* or a *EuVECA manager* and, in some circumstances, ~~EEA managers of a *qualifying social entrepreneurship fund* or a *qualifying venture capital fund*~~), the registration of ~~*qualifying social entrepreneurship funds* or *qualifying venture capital funds*~~ or the authorisation of a money market fund.

19.27.5 The *FCA* will respect the principle of proportionality when taking action against ~~*EuSEF* or *EuVECA managers*~~ *SEF managers* or *RVECA managers* for breaches identified in articles 22 and 21 of the ~~directly applicable *EuSEF regulation* and *EuVECA regulation*~~ *SEF regulation* or *RVECA regulation*, respectively. The *FCA* may take action to ensure compliance with the regulations or prohibit the use of the designation of ~~*EuSEF manager* or *EuVECA manager*~~ *SEF manager* or *RVECA manager* and revoke registration of such managers. The prohibition route is more likely to apply to serious breaches of the ~~EU regulations~~ onshored regulations such as in situations where:

- registration has been obtained through false statements or any other irregular means; or
- there are grounds for concern over the behaviour of a ~~*EuSEF manager* or a *EuVECA manager*~~ *SEF manager* or *RVECA manager* in the management of a ~~*qualifying social entrepreneurship fund* *SEF* or a *qualifying venture capital fund* *RVECA*~~, respectively.

...

## 19.30 The Mortgage Credit Directive Order

19.30.1 The Mortgage Credit Directive (MCD) ~~allows~~ allowed for an exemption not to apply the MCD to buy-to-let lending if there is was in place an appropriate framework for the regulation of these mortgages. The Mortgage Credit Directive Order 2015 (MCDO) is the vehicle through which the framework for “consumer buy-to-let” (CBTL) mortgages ~~has been~~ was established in order to comply with the MCD.

...

## 19.32 The Payment Accounts Regulations 2015

19.32.1 The *Payment Accounts Regulations 2015* (“the *PARs*”) ~~implement~~ implemented the Payment Accounts Directive. They entitle *consumers* who hold a payment account (such as a current account) to receive certain information about the fees and charges applied to that account. They also entitle *consumers* to use a switching service which meets certain minimum standards, if they wish to change their payment account to another provider.

...

## 19.34 Markets in Financial Instruments Regulations 2017

19.34.1 The *MiFI Regulations* in part ~~implement~~ implemented *MiFID*. The *FCA* has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the *MiFI Regulations* (including requirements imposed on persons subject to the *MiFI Regulations* by *MiFIR* and any ~~directly applicable EU regulation~~ onshored regulation which was an EU regulation made under *MiFIR* or *MiFID*). The *MiFI Regulations* impose requirements on:

- (1) *persons* holding positions in relevant contracts for commodity derivatives trading on *trading venues* and for *economically equivalent OTC contracts*, whether or not the *persons* are authorised; and
- (2) exempt *investment firms* providing services in *algorithmic trading*, *direct electronic access* or acting as a general clearing member or in relation to the synchronisation of business clocks.

The *MiFI Regulations* also give the *FCA* the powers to investigate and enforce breaches of article 28 of *MiFIR* and any ~~directly applicable EU regulation~~ onshored regulation which was an EU regulation made under *MiFIR*.

...

## 19.35 Data Reporting Services Regulations 2017

19.35.1 The *DRS Regulations* ~~implement~~ implemented *MiFID*. The *FCA* has investigation and enforcement powers in relation to both criminal and non-criminal breaches of the *DRS Regulations* (including requirements imposed on *persons* subject to the *DRS Regulations* by *MiFIR* and any ~~directly applicable EU regulation~~ onshored regulation which was an EU regulation made under *MiFIR* or *MiFID*). The *DRS Regulations* impose requirements on *data reporting services providers* (“*DRSPs*”) which are entities authorised or verified to provide services of:

- (1) publishing trade reports (“*APA*”);
- (2) reporting details of transactions (“*ARM*”); and
- (3) collecting trade reports (“*CTP*”).

...

### **19.36 The Packaged Retail and Insurance-based Investment Products Regulations 2017**

19.36.1 The Packaged Retail and Insurance-based Investment Products Regulations ~~implement~~ implemented the *PRIIPs Regulation* (before it was brought into *UK law*). The *FCA* has investigative and enforcement powers in relation to both criminal and civil breaches of the Packaged Retail and Insurance-based Investment Products Regulations, *PRIIPs Regulation* and any ~~directly applicable EU regulation~~ onshored regulation which was an EU regulation made under the *PRIIPs Regulation*. The *PRIIPs Regulation* imposes requirements on both authorised and unauthorised *persons* who manufacture, advise on, market or sell a *PRIIP*.

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### **19.37 UK Benchmarks Regulations 2018**

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19.37.1 The *UK Benchmarks Regulations 2018* in part ~~implement~~ implemented the *benchmarks regulation* (before it was brought into *UK law*). The *FCA* has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the *UK Benchmarks Regulations 2018* (including requirements imposed on *persons* subject to the *UK Benchmarks Regulations 2018* by the *benchmarks regulation* and any ~~directly applicable EU regulation~~ onshored regulation which was an EU regulation made under the *benchmarks regulation*). Our powers in relation to Miscellaneous BM *persons* are set in the *UK Benchmarks Regulations 2018*.

...

### **19.38 UK Securitisation Regulations**

19.38.1 The *UK Securitisation Regulations* ~~implement~~ implemented the *Securitisation Regulation* (before it was brought into *UK law*). The *FCA* has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the *UK Securitisation Regulations*, *Securitisation Regulation* and any ~~directly applicable EU regulation~~ onshored regulation which was an EU regulation made under the *Securitisation Regulation*.

19.38.2 The *Securitisation Regulation* and the *UK Securitisation Regulations* seek to make the securitisation market work more effectively. They aim to address some of the harms to investors identified in these markets following the financial crisis, including the lack of adequate disclosure, and the misalignment between issuers' and investors' interests. The new framework consolidates existing requirements and strengthens the legislation on securitisation. The *Securitisation Regulation* and the *UK Securitisation Regulations* promote transparency and appropriate due diligence by investors for securitisation investments. They create a framework for simple,

transparent and standardised (STS) securitisations. This framework will help to reduce the harm from investors making badly-informed decisions because they fail to understand and appropriately analyse the risks in their securitisation investments.

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## 20 Enforcement of the Consumer Credit Act 1974

### 20.1 Introduction

20.1.1 The *CCA Order* gives the *FCA* the power to enforce the *CCA* through the application of its investigation and sanctioning powers in the *Act* by reference to the contravention of *CCA Requirements* and criminal offences under the *CCA*. The *FCA*'s investigation and sanctioning powers include the following:

power to censure or fine an approved person, or impose a suspension or a restriction on their approval under section 66 of the *Act*, for being knowingly concerned in a contravention by the relevant *authorised person* of a *CCA Requirement*;

power to require information and documents, under section 165 of the *Act*, if reasonably requires in connection with the exercise of the functions conferred on it by the *CCA Order*;

power to appoint an investigator under section 167 of the *Act* for reasons related to its functions under the *CCA Order*;

power to appoint an investigator under section 168 of the *Act* where there are circumstances suggesting that an offence under the *CCA* may have been committed or that a person may have failed to comply with a *CCA Requirement*;

~~power to impose a requirement under section 196 of the *Act* on an *incoming firm* by reference to the contravention or likely contravention of a *CCA Requirement*;~~

power to censure (under section 205 of the *Act*) or fine (under section 206 of the *Act*) an authorised person, or impose a suspension or restriction on their permission (under *section 206A* of the *Act*) for the contravention of a *CCA Requirement*;

power to apply to the court for an injunction under section 380 of the *Act* by reference to the contravention or likely contravention of a *CCA Requirement*;

power to apply to the court for a restitution order under section 382 of the *Act* by reference to the contravention of a *CCA Requirement*;

power to impose a restitution requirement under section 384 of the *Act* by reference to the contravention of a *CCA Requirement*; and

power to prosecute under section 401 of the *Act* an offence committed under the *CCA*.

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**Appendix 2 Guidelines on investigation of cases of interest or concern to the Financial Conduct Authority and other prosecuting and investigating agencies**

**App 2.1 Purpose, status and application of the guidelines**

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Indicators for deciding which agency should take action

App 2.1.9 The following are indicators of whether action by the *FCA* or one of the other agencies is more appropriate. They are not listed in any particular order or ranked according to priority. No single feature of the case should be considered in isolation, but rather the whole case should be considered in the round.

(a) Tending towards action by the *FCA*

Where the suspected conduct in question gives rise to concerns regarding market confidence or protection of consumers of services regulated by the *FCA*.

Where the suspected conduct in question would be best dealt with by:  
 criminal prosecution of offences which the *FCA* has powers to prosecute by virtue of the Financial Services and Markets Act 2000 (“the 2000 Act”) (See Appendix paragraph 1.4) and other incidental offences;  
 civil proceedings under the 2000 Act (including applications for injunctions, restitution and to wind up firms carrying on regulated activities);  
 regulatory action which can be referred to the *Tribunal* (including proceedings for market abuse); and  
 proceedings for breaches of Part VI of the *Act*, of *Part 6 rules* or the *Prospectus Rules* or a provision that was otherwise made in accordance with the *Prospectus Directive*.

Where the likely defendants are *authorised persons*, *approved persons* or *conduct rules staff*.

Where the likely defendants are issuers or sponsors of a security admitted to the official list or in relation to which an application for listing has been made.

Where there is likely to be a case for the use of *FCA* powers which may take immediate effect (e.g. powers to vary the permission of an authorised firm or to suspend listing of securities).

Where it is likely that the investigator will be seeking assistance from overseas regulatory authorities with functions equivalent to those of the *FCA*.

Where any possible criminal offences are technical or in a grey area whereas regulatory contraventions are clearly indicated.

Where the balance of public interest is in achieving reparation for victims and prosecution is likely to damage the prospects of this.

Where there are distinct parts of the case which are best investigated with regulatory expertise.

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### **Appendix 3**      **Appendix to the guidelines on investigation of cases of interest or concern to the financial conduct authority and other prosecuting and investigating agencies**

#### **App 3.1**      **The FCA**

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App 3.1.3      Under the 2000 Act the *FCA* has powers to investigate concerns including:

- regulatory concerns about authorised *firms* and individuals employed by them;
  - suspected contraventions of the *Market Abuse Regulation* or any ~~directly applicable EU regulation made under the *Market Abuse Regulation*~~ supplementary market abuse legislation (as defined in Part 8 of the Act) ~~or for contraventions of the *auction regulation*;~~
- [~~Note: see Regulation 6 and Schedule 1 to the *RAP Regulations* for powers in relation to contraventions of the *auction regulation*]~~
- suspected misleading statements and practices under s.397 of the 2000 Act and Part 7 of the Financial Services Act 2012;
  - suspected *insider dealing* under of Part V of the Criminal Justice Act 1993;
  - suspected contraventions of the general prohibition under s.19 of the 2000 Act and related offences;
  - suspected offences under various other provisions of the 2000 Act (see below);
  - suspected breaches of Part VI of the *Act*, of *Part 6 rules* or the *prospectus rules* or a provision that was otherwise made in accordance with the *Prospectus Directive*.

The *FCA*'s powers of information gathering and investigation are set out in Part XI of the 2000 Act and in s.97 in relation to its Part VI functions.

App 3.1.4      The *FCA* has the power to take the following enforcement action:

- discipline authorised firms under Part XIV of the 2000 Act and approved persons and other individuals under s.66 of the 2000 Act;
- impose penalties on persons that perform *controlled functions* without approval under s.63A of the 2000 Act;

- impose civil penalties under s.123 of the 2000 Act;  
~~[Note: see Regulation 6 and Schedule 1 to the RAP Regulations for the application of this power and those below to contraventions of the auction regulation]~~
- temporarily prohibit an individual from exercising management functions in *MiFID investment firms* or from dealing in *financial instruments* ~~or emissions auction products~~ on their own account or on the account of a third party, under s.123A(2) of the 2000 Act;
- ~~temporarily prohibit an individual from making a bid, on his or her own account or the account of a third party, directly or indirectly, at an auction conducted by a recognised auction platform under s.123A(2) of the 2000 Act;~~
- permanently prohibit an individual from exercising management functions in *MiFID investment firms* under s.123A(3) of the 2000 Act;
- suspend the permission of an *authorised person* or impose limitations or other restrictions in relation to the carrying on of a *regulated activity* by an *authorised person* under s.123B of the 2000 Act;
- prohibit an individual from being employed in connection with a *regulated activity*, under s.56 of the 2000 Act;
- apply to Court for *injunctions* (or interdicts) and other orders against persons contravening relevant requirements (under s.380 of the 2000 Act) or engaging in *market abuse* (under s.381 of the 2000 Act);
- petition the court for the winding up or administration of companies, and the bankruptcy of individuals, carrying on *regulated activities*;
- apply to the court under ss.382 and 383 of the 2000 Act for restitution orders against persons contravening relevant requirements or persons engaged in *market abuse*;
- require restitution under s.384 of the 2000 Act of profits which have accrued to authorised persons contravening relevant requirements or persons engaged in *market abuse*, or of losses which have been suffered by others as a result of those *breaches*;
- (except in Scotland) prosecute certain offences, including under the Money Laundering Regulations 2007, the Transfer of Funds (Information on the Payer) Regulations 2007, Part V Criminal Justice Act 1993 (insider dealing), Part 7 of the Financial Services Act 2012 and various offences under the 2000 Act including (Note: The *FCA* may also prosecute any other offences where to do so would be consistent with meeting any of its statutory objectives): carrying on *regulated activity* without authorisation or exemption, under s.23;
- making false claims to be authorised or exempt, under s.24;
- promoting investment activity without authorisation, under s.25;
- breaching a prohibition order, under s.56;

- failing to co-operate with or giving false information to *FCA* appointed investigators, under s.177;
- failing to comply with provisions about influence over authorised persons, under s.191;
- making misleading statements and engaging in misleading practices, under s.397;
- misleading the *FCA*, under s.398;
- various offences in relation to the *FCA*'s Part VI function;
- Fine, issue public censures, suspend or cancel listing for breaches of the Listing Rules by an issuer; and
- Issue public censures or cancel a sponsor's approval.



## Annex B

### Amendments to the Perimeter Guidance Manual (PERG)

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

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

#### 1 Introduction to the Perimeter Guidance Manual

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#### 1.4 General guidance to be found in PERG

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1.4.2 G Table: list of general guidance to be found in *PERG*.

Chapter:	Applicable to:	About:
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...

PERG 13: Guidance on the scope of <u>the UK</u> <u>provisions</u> <u>which</u> <u>implemented</u> <u>MiFID</u> and <u>CRD IV</u>	Any UK person who needs to know whether <i>MiFID</i> or the <i>CRD</i> and <del>EU</del> <u>UK</u> <i>CRR</i> (which allow <u>provisions</u> <u>which correspond</u> <u>to the recast CAD</u> to continue to apply to certain firms) <del>as</del> <del>implemented in</del> <del>the UK</del> apply to him	the scope of <u>the UK provisions which implemented</u> <u>MiFID</u> and the <i>CRD</i> and <del>EU</del> <u>UK</u> <i>CRR</i> .
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#### 2 Authorisation and regulated activities

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#### 2.2 Introduction

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- 2.2.4 G The rest of this chapter provides a high level guide through the questions set out in *PERG 2.2.3G*. It aims to give an overall picture but in doing so it necessarily relies on the reader referring to *UK* statutory provisions ~~and European legislation~~ to fill in the detail (which can be extensive).

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## 2.4 Link between activities and the United Kingdom

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- 2.4.3 R Section 418 of the *Act* (Carrying on regulated activities in the United Kingdom) takes this one step further. It extends the meaning that ‘in the United Kingdom’ would ordinarily have by setting out ~~five~~ additional cases. The *Act* states that, in these ~~five~~ cases, a person who is carrying on a *regulated activity* but who would not otherwise be regarded as carrying on the activity in the *United Kingdom* is, for the purposes of the *Act*, to be regarded as carrying on the activity in the *United Kingdom*.
- (1) ~~The first case is where a UK based person carries on a regulated activity in another EEA State in exercise of rights under a Single Market Directive or the auction regulation. [deleted]~~
  - (2) ~~The second case consists of the marketing in another EEA State of a UK based collective investment scheme by the scheme’s manager where the scheme in question is one to which the UCITS Directive applies. [deleted]~~
  - (3) The ~~third~~ case is where a *regulated activity* is carried on by a *UK-based person* and the day-to-day management of the activity is the responsibility of an establishment in the *United Kingdom*.
  - (4) The ~~fourth~~ case is where a *regulated activity* is carried on by a *person* who is not based in the *United Kingdom* but is carried on from an establishment in the *United Kingdom*. This might occur when each of the stages that make up a *regulated activity* (such as *managing investments*) takes place in different countries. For example, a person’s management is in country A, the assets are held by a nominee in country B, all transactions take place in country B or country C but all decisions about what to do with the investments are taken from an office in the *United Kingdom*. Given that the investments are held, and all dealings in them take place, outside the *United Kingdom* there may otherwise be a question as to where the *regulated activity* of *managing investments* is taking place. For the purposes of the *Act*, it is carried on in the *United Kingdom*.
  - (5) ~~The fifth case, inserted by the ECD Regulations is, in effect, where an electronic commerce activity is carried on, from an establishment in the United Kingdom, in another EEA State. [deleted]~~

...

2.4.7 G ~~Electronic commerce activities, other than insurance business falling within the scope of the Solvency II Directive, provided by an incoming ECA provider will not be regulated activities (see PERG 2.9.18G(2)).~~ [deleted]

...

- 2.4.10 G (1) The requirement to be authorised to carry on the *regulated activity* of *administering a benchmark* gives effect to the authorisation and registration regime under article 34 of the *benchmarks regulation*.
- (2) Article 34 only requires a *person* to be authorised or registered in the *UK* ~~(as opposed to elsewhere in the EU)~~ if that *person* is *located* in the *UK*.
- (3) Accordingly, the FCA considers that where a person (P) administers a benchmark in the *UK* but P is not located in the *UK*:
- (a) P does not carry on the *regulated activity* of *administering a benchmark* from an establishment maintained by P in the *UK* for the purposes of section 418 of the *Act*; and
- (b) P would not otherwise be regarded as carrying on that *regulated activity* in the *UK*.
- (4) *Located* is defined in the *Glossary* and has the same meaning as it does in the *benchmarks regulation*.

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## 2.5 Investments and activities: general

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Modification of certain exclusions as a result of MiFID, the IDD and the Mortgage Credit Directive

2.5.3 G The application of certain of the exclusions considered in *PERG 2.8* (Exclusions applicable to certain regulated activities) and *PERG 2.9* (Regulated activities: exclusions applicable to certain circumstances) is modified in relation to *persons* who are subject to the UK provisions which implemented MiFID, the *Insurance Distribution Directive* and the *MCD*. The reasons for this and the consequences of it are explained in *PERG 2.5.4G* for MiFID, *PERG 5* (Guidance on insurance distribution activities), for the *Insurance Distribution Directive* and *PERG 4.10A* for the *MCD*.

Investment services and activities

2.5.4 G ~~It remains the Government's responsibility to ensure the proper implementation of MiFID.~~ Certain *persons* subject to the requirements of the UK provisions which implemented MiFID must be brought within the scope of regulation under the *Act*. A core element of *MiFID* is the concept

of investment firm. An *investment firm* is any *person* whose regular occupation or business is the provision of one or more *investment services* to third parties or the performance of one or more *investment activities* on a professional basis. An *investment firm* is not subject to the UK provisions which implemented MiFID requirements if it falls within one or more of the exemptions in ~~article 2~~ MiFID Part 1 of Schedule 3 of the Regulated Activities Order. Further information about these exemptions is contained in PERG 13.5. To the extent that an *investment firm* falls within one of these exemptions, it will not be a *MiFID investment firm*. Where a firm is not a *MiFID investment firm* because one or more of the exemptions in ~~article 2~~ Part 1 of Schedule 3 of the Regulated Activities Order apply, it may still be carrying on *regulated activities* and therefore require *authorisation* unless it is an *exempt person*.

2.5.4A G ~~Prior to exit day, The the UK has~~ exercised part of the optional exemption in article 3 of *MiFID*. This is now set out in regulation 8 of the *MiFI Regulations*. Further information about this exemption is contained in Q48 to 53 in PERG 13.5. The investment services to which ~~article 3 apply~~ regulation 8 of the MiFI Regulation applies (namely reception and transmission of orders and investment advice in relation to either *transferable securities* or units in collective investment undertakings) correspond to regulated activities (see PERG 13 Annex 2 Tables 1 and 2).

2.5.5 G For persons who are *MiFID investment firms*, the activities that must be caught by the *Regulated Activities Order* are those that are caught by the UK provisions which implemented MiFID. To achieve this result, some of the exclusions in the Order (that will apply to *persons* who are not caught by *MiFID*) have been made unavailable to *MiFID investment firms* when they provide or perform *investment services and activities*. A “*MiFID investment firm*”, for these purposes, includes *credit institutions* to which the UK provisions which implemented MiFID applies (see PERG 13, Q5 and 9); *collective portfolio management investment firms* providing the services of *portfolio management* and *personal recommendations* in relation to *financial instruments* or the ancillary service of safekeeping and administration in relation to units of collective investment undertakings; and *AIFM investment firms* providing the ancillary service of reception and transmission of orders in relation to *financial instruments*. The same exclusions are also unavailable to *third country investment firms* when they provide *investment services and activities*. Article 4(4) of the *Regulated Activities Order* (Specified activities: general) lists a number of exclusions that must be disregarded. These relate to the exclusions concerned with:

...

...

Insurance distribution or reinsurance distribution

2.5.6 G The *IDD* ~~is was~~ in part ~~been~~ implemented through various amendments to the *Regulated Activities Order*. These ~~include~~ included article 4(4A) (Specified activities: general) which ~~precludes~~ precluded a *person* who, for

remuneration, takes up or pursues *insurance distribution* or *reinsurance distribution* in relation to a risk or commitment situated in from making use of certain exclusions. Post exit day, this provision has been amended to refer to a risk or commitment situated in the United Kingdom. In other cases, some of the exclusions provided in relation to particular *regulated activities* are unavailable where the activity involves a *contract of insurance*. This is explained in more detail in *PERG 5* (Insurance distribution activities).

Wider definition of certain specified investments when carrying on some kinds of ~~EU~~ MiFID business

- 2.5.7 G Some specified investments are defined so that certain products only come within that specified investment when a person is providing services under certain ~~EU~~ legislation in relation to that product.
- 2.5.8 G When *PERG 2.5.7G* applies, the product is only treated as falling within the definition of the *specified investment* concerned if (in relation to that product):
- (1) one of the following *persons*:
    - (a) a *MiFID investment firm*; or
    - (b) a *third country investment firm*; or
    - (c) a *CRD credit institution*; or
    - (d) a credit institution that would qualify to be a CRD credit institution if its registered or head office were in the ~~EEA~~ United Kingdom;

provides or performs *investment services and/or activities* on a professional basis; or
  - (2) a *UCITS investment firm* is providing certain *investment services and/or activities* under the UK provisions which implemented article 6.3 of the UCITS Directive (provision of services in addition to UCITS management); or
  - (3) a *market operator* (or someone who would be a market operator if it was based in the ~~EEA~~ United Kingdom) is providing the *investment services and/or activities* of operating a *multilateral trading facility* or *organised trading facility* (these activities are described in Q24 and Q24A in *PERG 13.3*); or
  - (4) an *AIFM investment firm* is providing services under the UK provisions which implemented article 6.4 of the AIFMD (provision of services in addition to AIF management).

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## 2.6 Specified investments: A broad outline

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### ~~Greenhouse gas emission~~ Emission allowances

- 2.6.19D G (1) ~~There are two specified investments relating to the scheme for greenhouse gas emission allowance trading within the EU:~~
- (a) ~~the first kind comprises emission allowances that are auctioned as financial instruments or two-day emissions spots (together, emissions auction products); and~~
  - (b) ~~the second kind is an emission allowance itself, subject to (2)). [deleted]~~
- (2) ~~An emission allowance is only a specified investment under (1)(b) if PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of EU business) applies.~~
- (3) ~~An emission allowance can also be the underlying for an option, future or contract for differences.~~
- 2.6.19E G ~~The emissions auction product specified investment relates only to the regulated activity of bidding in emissions auctions (whereby a bid is received, transmitted and submitted on an auction platform) and captures the two forms of allowance products that may be auctioned under article 4(2) of the auction regulation: a two-day spot or a five-day future. [deleted]~~
- 2.6.19F G ~~See PERG 2.7.6DG for more about.~~
- (1) ~~how the RAO deals with the overlap between emission allowances and emissions auction products; and~~
  - (2) ~~whether these products are a security, a contractually based investment or a relevant investment. [deleted]~~
- 2.6.19G G ~~Some other points about emission allowances are:~~
- (1) ~~Emission allowance means an allowance as defined in article 3(a) of Directive 2003/87/EC which established the scheme for greenhouse gas emission allowance trading within the EU. That article provides that an allowance is an allowance to emit one tonne of carbon dioxide equivalent during a specified period, only valid for the purpose of meeting the requirements of Directive 2003/87/EC and only transferable in accordance with the provisions of that directive (emission allowance).~~
  - (2) ~~A two-day spot is defined by reference to article 3(3) of the auction regulation. That article provides that a two-day spot is an allowance auctioned for delivery at an agreed date no later than the second~~

~~trading day from the day of the auction (*two-day emissions spot*).~~  
~~[deleted]~~

- (3) ~~A *financial instrument* is defined as any instrument listed in Section C of Annex I to MiFID.~~ ~~[deleted]~~
- (4) ~~The distinction between *emission allowances* that are auctioned as *financial instruments* and those auctioned as two-day spots is no longer relevant as all *emissions auction products* are *financial instruments*. When this part of the *Regulated Activities Order* was brought into force, a *two-day emissions spot* was not a *financial instrument*. Changes in EU legislation since then mean that it is one now.~~ ~~[deleted]~~

## Options

2.6.20 G The specified investment category of options comprises:

- (1) *options* to acquire or dispose of *securities* or *contractually based investments*, currency and certain precious metals and *options* to acquire or dispose of such *options*. *Options* to buy or sell other types of *commodity* will only fall within this *specified investment* category if they are *options* to buy or sell futures, or *options* to buy or sell *contracts for differences*, which are based on other *commodities*. But *options* to buy or sell other types of *commodity* may be *contracts for differences* (see PERG 2.6.23G);
- (2) *options* to acquire or dispose of other property and falling within paragraphs 5, 6, 7 or 10 of ~~Section C of Annex 1 to MiFID~~ Part 1 of Schedule 2 to the *Regulated Activities Order* (see article 83(2) of the *Regulated Activities Order* and PERG 13, Q33A to Q34 for guidance about these instruments), but only where they are options to which PERG 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of ~~EU~~ MiFID business) applies; and
- (3) options to acquire or dispose of an option to which (2) applies, but only where PERG 2.5.7G applies (see article 83(1)(e) of the *Regulated Activities Order*).

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## Futures

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2.6.22A G As with options, there is an additional category of instruments which are *futures* only in limited circumstances. These are contracts as described in PERG 2.6.21G:

- (1) that would not be regarded as having been entered into for investment purposes because they fail one of the tests mentioned in *PERG 2.6.22G*;
- (2) that:
  - (a) fall within paragraph 4 of ~~Section C of Annex 1 to MiFID~~ Part 1 of Schedule 2 to the Regulated Activities Order and relate to currencies (see *PERG 13, Q31A to Q31S* for *guidance* about these derivatives); or
  - (b) fall within paragraphs 5, 6, 7 or 10 of ~~Section C of Annex 1 to MiFID~~ Part 1 of Schedule 2 to the Regulated Activities Order (see *PERG 13, Q33A to Q34* for *guidance* about these derivatives); and
- (3) to which *PERG 2.5.7G* (Wider definition of certain specified investments when carrying on some kinds of ~~EU~~ MiFID business) applies

See article 84(1A)-(1D) of the *Regulated Activities Order*

...

#### Contracts for differences

- 2.6.23 G The *specified investment* category of *contracts for differences* covers:
- (1) rights under *contracts for differences*;
  - (2) rights under other contracts whose purpose or pretended purpose is to secure a profit or avoid a loss by reference to fluctuations in certain factors; and
  - (3) derivative contracts for the transfer of credit risk (not within (1) or (2)) falling within paragraph 8 or 9 of ~~Section C of Annex 1 to MiFID~~ Part 1 of Schedule 2 to the Regulated Activities Order (see *PERG 13, Q31* for *guidance* about these instruments), but only where *PERG 2.5.7G* (Wider definition of certain specified investments when carrying on some kinds of ~~EU~~ MiFID business) applies.

The factors mentioned in (2) include the value or price of property of any description or an index or any ‘other factor designated in the contract’. This catches a wide range of factors.

...

- 2.6.24A G (1) A binary or other fixed outcomes bet is also treated as *contract for differences*. This is defined as something that meets the following conditions:



- (a) it is a derivative contract of a binary or other fixed outcomes nature;
- (b) it is not covered by *PERG* 2.6.23G(1) or (2);
- (c) it is settled in cash;
- (d) it is a *financial instrument* that falls within paragraphs 4, 5, 6, 7 or 10 of ~~Section C of Annex 1 to MiFID~~ Part 1 of Schedule 2 to the Regulated Activities Order (see *PERG* 13, Q31A to Q34 for guidance about these instruments); and
- (e) one of the following requirements is met:
  - (i) *PERG* 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of ~~EU~~ MiFID business) applies; or
  - (ii) a person is *making arrangements with a view to transactions in investments* in relation to it.

...

#### Rights under a regulated mortgage contract

- 2.6.27 G In accordance with article 61(3)(a) of the *Regulated Activities Order*, a *regulated mortgage contract* is a contract which, at the time it is entered into, satisfies the following conditions:
- (1) the contract is one where the lender provides credit to an individual or trustees (the “borrower”);
  - (2) the obligation of the borrower to repay is secured by a mortgage on land: ~~in the EEA; and~~
    - (a) in relation to a contract entered into before *exit day*, means land in the United Kingdom or, if the contract was entered into on or or after 21 March 2016, within the territory of an EEA state;
    - (b) in relation to a contract entered into on or after *exit day*, means land in the United Kingdom; and
  - (3) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling.

Detailed guidance on this is set out in *PERG* 4.4 (Guidance on regulated activities connected with *mortgages*). However, generally, the definition of *regulated mortgage contract* does not include certain loans to commercial borrowers, second charge loans by a credit union, exempt consumer buy-to

let mortgage contracts (see *PERG* 4.4.31G) and second charge bridging loans (see *PERG* 4.4.1-AG).

...

## 2.7 Activities: a broad outline

...

- 2.7.6B G The *RAO* and the *auction regulation* together generate three broad categories of *person* in relation to bidding for *emission allowances* on an *auction platform*:
- (1) The first category consists of an *investment firm* to which *MiFID* applies, a *CRD credit institution* and a third country credit institution where the *firm* is bidding on behalf of its *clients* or on its own account for *emissions auction products*. For these purposes a third country credit institution refers to a *credit institution* that would qualify to be a *CRD credit institution* if its registered or head office were in the *EEA*.
  - (1A) The first category also consists of a *person* that is exempt from *MiFID* under article 2(1) (j) where it is bidding on behalf of a client of its main business or bidding on its own account (further information on the article 2(1) (j) exemption from *MiFID* is in *PERG* 13.5, Q44).
  - (1B) A *person* in this first category is entitled to bid on an *auction platform* but requires *permission* from the *FCA* for bidding in *emissions auctions* to do so.
  - (2) The second category consists of operators or aircraft operators bidding on their own account as well as group entities or business groupings of those operators or public bodies or state owned entities of Member States that control any of those operators (as set out in article 18 of the *auction regulation*). A *person* or entity in this category is entitled to bid on an *auction platform* but does not require *permission* from the *FCA* to do so as a result of an exclusion from the *regulated activity* of *bidding in emissions auctions* in article 24B of the *RAO*.
  - (3) The third category consists of all other *persons*. The *auction regulation* prevents an *auction platform* from granting these *persons* admission to bid. A *person* in this category is not entitled to bid on an *auction platform* and the *FCA* is not able to grant such a *person* *permission* to do so.
  - (4) Article 24B(2) of the *RAO* includes in the second category (see (2)) an *investment firm* to which *MiFID* applies, a *CRD credit institution* or a third country *credit institution* where it is bidding on its own account for *emissions auction products* that are not *financial*

*instruments* under *MiFID*. This part of the *RAO* no longer has effect as all *emissions auction products* are now *financial instruments*. When it was brought into force, a *two-day emissions spot* was not a *financial instrument*. [deleted]

- 2.7.6C G A *person* may fall into both the first and the second category. For example, a *person* might be both exempt from *MiFID* under article 2(1)(j) (within the first category) and be a group entity of an operator (within the second category). In this case, that *person* does not require *permission* for activities that cause that *person* to fall into the second category because those activities are excluded from the activity of *bidding in emissions auctions*. [deleted]
- 2.7.6D G (1) As explained in *PERG 2.6.19DG*, an emission allowance and an emissions auction product are both specified investments. The *Regulated Activities Order* deals with this as follows. [deleted]
- (2) A *person* in the first category in *PERG 2.7.6BG* requires permission from the FCA for bidding in emissions auctions but does not require any other permission to do so. [deleted]
- (3) A *person* in the second category in *PERG 2.7.6BG* does not require any permission from the FCA for bidding. [deleted]
- (4) Article 24A(2) of the *RAO* is the main provision that deals with (2) and (3). It provides that *bidding in emissions auctions* does not form part of any other *regulated activity* and so a *person* seeking to carry on bidding activity will only require *permission* for *bidding in emissions auctions* to do so and will not require *permission* for any other *regulated activities*. Except for this exclusion, in the FCA's view, *bidding in emissions auctions* would broadly equate to the following *regulated activities*:
- (a) dealing in investments as principal;
  - (b) dealing in investments as agent;
  - (c) arranging (bringing about) deals in investments; or
  - (d) making arrangements with a view to transactions in investments. [deleted]
- (5) An *emission allowance* is a *security*. This means that any *person* wishing to carry out any activity in relation to it will need to consider whether any of the *regulated activities* relating to *securities* apply (subject to (8)).
- (6) A derivative on an *emission allowance* is potentially a *contractually based investment* and a *relevant investment*. Therefore any *person* wishing to carry out any activity in relation to it will need to consider whether any of the *regulated activities* relating to

*contractually based investments* and *relevant investments* apply (subject to (8)).

- (7) ~~An *emission allowance* auctioned under the *auction regulation*, as well as being a *specified investment* in its own right (an *emissions auction product*) may also be included in the *emission allowance* category of *specified investment* (subject to (8)). It is unlikely to be a *contractually based investment* or a *relevant investment*. [deleted]~~
- (8) ~~However (as explained in (2) to (4)), for a *firm* that is bidding under the *auction regulation*:~~
- ~~(a) the only *regulated activity* is *bidding in emissions auctions*; and~~
- ~~(b) the only *specified investment* is an *emissions auction product*. [deleted]~~
- (9) ~~(7) means that a *person* may need *permission* to carry out activities in relation to *emission allowances* that are auctioned under the *auction regulation* other than bidding activities, such as:~~
- ~~(a) buying and selling them in the secondary market; or~~
- ~~(b) advising a client about buying or selling them. [deleted]~~
- (10) ~~Where (9) applies, the *specified investment* involved will be an *emission allowance* or one of the *contractually based investments*. The *emissions auction product* category of *specified investment* is only relevant to the *regulated activity* of *bidding in emissions auctions*. [deleted]~~
- (11) ~~(9) applies to a *person* in (2) or (3) as well as anyone else wanting to carry out such activities. [deleted]~~

...

Operating a UK multilateral trading facility

...

2.7.7DA G The definition of a UK multilateral trading facility covers:

- (1) a multilateral trading facility ~~*MiFID*~~ as defined by article 2(1)(14A) of *MiFIR* (see *PERG* 13, Q24) operated by an *investment firm*, a *credit institution* or a *market operator*; or
- (2) a facility which:
- (a) is operated by an *investment firm*, a *credit institution* or a *market operator* that is set up outside the ~~*EEA*~~ United Kingdom; and

- (b) would come within (1) if its operator was set up in the ~~EEA~~ United Kingdom.

...

Operating a UK multilateral trading facility

...

2.7.7DC G The definition of an UK organised trading facility covers:

- (1) an UK organised trading facility as defined by ~~MiFID~~ article 2(1)(15A) of MiFIR (see *PERG* 13, Q24A) operated by an *investment firm*, a *credit institution* or a *market operator*; or
- (2) a facility which:
- (a) is operated by an *investment firm*, a *credit institution* or a *market operator* that is set up outside the ~~EEA~~ United Kingdom; and
- (b) would come within (1) if its operator was set up in the ~~EEA~~ United Kingdom.

...

Managing a UK UCITS, managing an AIF, and establishing etc collective investment schemes

...

2.7.13B G The activity of *managing a UK UCITS* is derived from the *UCITS Directive*. A person will manage a UK UCITS where they carry on *collective portfolio management* of a UK UCITS. A UK UCITS is a type of *collective investment scheme* which is authorised by a ~~competent authority in an EEA State~~ the FCA as meeting the requirements under the UK provisions which implemented UCITS Directive.

...

2.7.13G G ~~Operators, trustees or depositaries of UCITS established in other EEA States are also authorised persons under Schedule 5 of the Act if those schemes are recognised schemes for the purposes of section 264 of the Act.~~  
[deleted]

...

## 2.8 Exclusions applicable to particular regulated activities

...

Accepting deposits

- 2.8.2 G ~~Three~~ Two exclusions apply to the *regulated activity* of *accepting deposits*. The first is that a deposit taker providing its services as an *electronic e-commerce activity* from another *EEA State* into the *United Kingdom* (see ~~PERG 2.9.18G~~) does not carry on a *regulated activity*. The ~~second~~ first relates to a *firm* with a *Part 4A permission* to *manage an AIF* or *manage a UK UCITS* (see *PERG 2.9.22G* (Managers of UK UCITS and AIFs)). There is also excluded from *accepting deposits* any activity which is carried on by a local authority (see *PERG 2.9.23G*). In addition to the situations that are excluded from being ‘*deposits*’ (see *PERG 2.6.2G* to *PERG 2.6.4G*), several *persons* are *exempt persons* in relation to the *regulated activity* of *accepting deposits* (see *PERG 2.10.8G* (2)).

#### Effecting and carrying out contracts of insurance

- 2.8.3 G The following *activities* are excluded from both the *regulated activities* of *effecting* and *carrying out contracts of insurance*.
- (1) In specified circumstances, the activities of an *EEA firm* when participating in a Community co-insurance operation are excluded. A Community co-insurance operation is defined in the *Solvency II Directive*.
  - (2) In specified circumstances, activities that are carried out in connection with the provision of on-the-spot accident or breakdown assistance for cars and other vehicles (such as repairs, vehicle retrieval, delivery of parts or fuel) are excluded.
  - (3) ~~*Electronic commerce activities provided by an incoming ECA provider where those activities are outside the scope of the Solvency II Directive* (see *PERG 2.9.18G*). [deleted]~~
  - (4) Activities carried on by a *firm* with a *Part 4A permission* to *manage an AIF* or *manage a UK UCITS*, where they are in connection with, or for the purposes of, *managing an AIF* or *managing a UK UCITS* (see *PERG 2.9.22G* (Managers of UK UCITS and AIFs)).

#### Dealing in investments as principal

- 2.8.4 G The *regulated activity* of *dealing in investments as principal* applies to specified transactions relating to any security or to any *contractually based investment* (apart from rights under *funeral plan contracts* or rights to or interests in such contracts). The activity is cut back by exclusions as follows.
- ...
- (6) A *person* will not be treated as carrying on the activity of *dealing in investments as principal* if, in specified circumstances (outlined in *PERG 2.9*), he enters as principal into a transaction:

...

(g) ~~as an incoming ECA provider (see PERG 2.9.18G); [deleted]~~

...

(i) that involves a *contract of insurance* covering large risks situated outside the ~~EEA~~ United Kingdom (see PERG 2.9.19G);

...

(7) ~~An activity that might otherwise be both *dealing in investments as principal* and *bidding in emissions auctions* is specifically excluded from *dealing in investments as principal* as a result of article 24A(2) of the RAO which provides that the activity of *bidding in emissions auctions* does not form part of any other regulated activity (see PERG 2.7.6DG). [deleted]~~

...

#### Dealing in investments as agent

2.8.5 G The *regulated activity of dealing in investments as agent* applies to specified transactions relating to any *security* or to any *relevant investment* (apart from rights under *funeral plan contracts* or rights to or interests in such rights). In addition, the activity is cut back by exclusions as follows.

...

(3) In addition, exclusions apply in specified circumstances (outlined in PERG 2.9 (*Regulated activities: exclusions available in certain circumstances*)) where a person enters as agent into a transaction:

...

(g) ~~as an incoming ECA provider (see PERG 2.9.18G); [deleted]~~

(4) ~~An activity that might otherwise be both *dealing in investments as agent* and *bidding in emissions auctions* is specifically excluded from *dealing in investments as agent* as a result of article 24A(2) of the RAO which provides that the activity of *bidding in emissions auctions* does not form part of any other regulated activity (see PERG 2.7.6DG). [deleted]~~

...

#### Arranging deals in investments and arranging a home finance transaction

...

- 2.8.6A G The exclusions in the *Regulated Activities Order* that relate to the various *arranging activities* are as follows.
- (-1) ~~Under Article 24A(2), an activity that would otherwise be both *arranging and bidding in emissions auctions* is specifically excluded from *arranging* because the activity of *bidding in emissions auctions* does not form part of any other *regulated activity* (see *PERG 2.7.6DG*). [deleted]~~
- ...
- (3) The following exclusions from both article 25(1) and (2) (outlined in *PERG 2.9*) apply in specified circumstances where a *person* makes arrangements:
- ...
- (g) ~~as an *incoming ECA provider* (see *PERG 2.9.18G*); [deleted]~~
- ...
- (k) that involve a *contract of insurance* covering large risks situated outside the ~~*EEA United Kingdom*~~ (see *PERG 2.9.19G*);

...

#### Operating an electronic system in relation to lending

- 2.8.6D G An activity of a kind specified below is excluded from the regulated activity of operating an electronic system in relation to lending:
- ...
- (2) ~~The exclusion for *electronic commerce activities by an incoming ECA provider* (see *PERG 2.9.18G*) also applies to the *regulated activity of operating an electronic system in relation to lending*. [deleted]~~

...

#### Managing investments

- 2.8.7 G The activities of *persons* appointed under a power of attorney are excluded under article 38 of the *Regulated Activities Order*, from the *regulated activity of managing investments*, if specified conditions are satisfied. The exclusion only applies where a *person* is not carrying on *insurance distribution* or *reinsurance distribution* and is subject to further limitations discussed below. In addition, the following exclusions (outlined in *PERG 2.9*) apply in specified circumstances where a *person* manages assets:



...

- (4) ~~as an incoming ECA provider (see PERG 2.9.18G); [deleted]~~

...

Assisting in the administration and performance of a contract of insurance

...

- 2.8.7B G The following exclusions from *assisting in the administration and performance of a contract of insurance* also apply to a *person* in specified circumstances:

...

- (3) ~~as an incoming ECA provider (see PERG 2.9.18G); [deleted]~~

...

- (6) that involve a *contract of insurance* covering large risks situated outside the *EEA United Kingdom* (see PERG 2.9.19G); or

...

Debt adjusting, debt counselling, debt collecting and debt administration

- 2.8.7C G ...

- (6) The exclusions relating to ~~*electronic commerce activities by an incoming ECA provider (see PERG 2.9.18G)*~~ and for activities carried on by a *local authority* (see PERG 2.9.23G) or an insolvency practitioner (see PERG 2.9.25G) also apply to these *regulated activities*.

...

Safeguarding and administering investments

- 2.8.8 G The exclusions from the regulated activity of safeguarding and administering investments are as follows.

...

- (4) The following exclusions apply in specified circumstances where a *person* safeguards and administers assets (or arranges for another to do so):

...

- (f) ~~as an incoming ECA provider (see PERG 2.9.18G); [deleted]~~

...

## Sending dematerialised instructions

- 2.8.9 G Exclusions from the regulated activity of sending dematerialised instructions apply in relation to certain types of instructions sent in the operation of the system maintained under the Uncertificated Securities Regulations 2001 (SI 2001/3755). The various exclusions relate to the roles played by participating issuers, settlement banks and network providers (such as Internet service providers) and to instructions sent in connection with takeover offers (as long as specified conditions are met). In addition, the following exclusions (outlined in *PERG 2.9*) apply in specified circumstances where a person sends dematerialised instructions:

...

- (3) ~~as an incoming ECA provider (see *PERG 2.9.18G*); [deleted]~~

...

Managing a UK UCITS, managing an AIF and establishing etc collective investment schemes

- 2.8.10 G (1) ~~The exclusion for incoming ECA providers (see *PERG 2.9.18G*) applies to the range of activities specified as being regulated in relation to AIFs and collective investment schemes (see *PERG 2.7.13AG*). The exclusion for business angel-led capital funds (see *PERG 2.9.20G*) applies to the activities of managing an AIF, managing a UK UCITS and establishing, operating and winding up a collective investment scheme. There is a third exclusion for insolvency practitioners (see *PERG 2.9.25G*).~~

...

## Establishing etc pension schemes

- 2.8.11 G ~~Three~~ Two exclusions apply to the range of activities specified as being regulated in relation to *stakeholder pension schemes* and *personal pension schemes*. ~~The first relates to incoming ECA providers (see *PERG 2.9.18G*).~~ The ~~second~~ first relates to *firms* with a Part 4A permission to *manage an AIF* or *manage a UK UCITS* (see *PERG 2.9.22G* (Managers of UK UCITS and AIFs)). The ~~third~~ second relates to insolvency practitioners (see *PERG 2.9.25G*).

...

## Advising on investments

...

2.8.12A G Advice given by an unauthorised person in relation to a *home finance transaction* or *advising on regulated credit agreements* for the acquisition of land in the circumstances referred to in *PERG 2.8.6AG* (5)(a) or (b) (Arranging deals in investments and arranging a home finance transaction) is also excluded. In addition:

(1) the following exclusions apply in specified circumstances where a person is *advising on investments*, *advising on regulated credit agreements* for the acquisition of land or *advising on a home finance transaction*:

...

(c) ~~as an incoming ECA provider (see *PERG 2.9.18G*); [deleted]~~

...

#### Lloyd's activities

2.8.13 G ~~*Electronic commerce activities provided by an incoming ECA provider are excluded from the regulated activities that relate expressly to business carried on at Lloyds (see *PERG 2.9.18G*). A firm with a Part 4A permission to manage an AIF or manage a UK UCITS is also excluded from carrying on a regulated activity if the person carries on that activity in connection with, or for the purposes of, managing an AIF or managing a UK UCITS (see *PERG 2.9.22G*). Otherwise the only exclusions that apply concern the regulated activity of arranging deals in its application to business carried on at Lloyd's.*~~

...

#### Entering funeral plan contracts

2.8.14 G *Entering as provider into a funeral plan contract* is not treated as a regulated activity where:

...

(3) ~~it is provided as an electronic commerce activity by an incoming ECA provider (see *PERG 2.9.18G*); or [deleted]~~

...

#### Administering regulated mortgage contracts

2.8.14B G The following exclusions apply in specified circumstances where a person is *administering a home finance transaction*:

...

- (3) ~~as an incoming ECA provider (see PERG 2.9.18G) [deleted]~~

...

#### Regulated credit agreements

...

- 2.8.14ZB G ~~Activities carried on by an EEA authorised payment institution or an EEA authorised electronic money institution exercising passport rights in the United Kingdom in accordance with article 16(3) of the Payment Services Directive (in the latter case, as applied by article 6 of the Electronic Money Directive) are excluded from the regulated activities of entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement. [deleted]~~

- 2.8.14ZC G (1) ~~The exclusion for electronic commerce activities by an incoming ECA provider (see PERG 2.9.18G) applies to entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement. [deleted]~~

...

#### Regulated consumer hire agreements

- 2.8.14Z D G (1) ~~The exclusions for electronic commerce activities provided by an incoming ECA provider and an activity carried on by a local authority (see PERG 2.9.23G) also apply~~ applies ~~to the regulated activities of entering into a regulated consumer hire agreement as owner and exercising, or to having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement.~~

#### Providing credit information services or credit references

- 2.8.14C G (1) ~~The exclusions relating to activities carried on by members of the legal profession (see PERG 2.8.6CG(6)), and to electronic commerce activities by an incoming ECA provider (see PERG 2.9.18G) apply~~ applies ~~to providing credit information services and providing credit references.~~

#### Agreeing

- 2.8.15 G A person who agrees to carry on certain other regulated activities (which is itself a regulated activity see PERG 2.7.21G) does not require authorisation where the person concerned is an overseas person and the agreement is reached as a result of a legitimate approach (see PERG 2.9.12G). For this exclusion to apply, the agreement must be one to arrange deals, manage investments, assist in the administration and performance of a contract of insurance, safeguard and administer investments or send dematerialised

~~instructions. The provision of *electronic commerce activities* by an *incoming ECA provider* is also excluded from the *regulated activity* of agreeing to carry on certain other *regulated activities* (see *PERG 2.7.21G*). But this is not the case where the agreement relates to the *regulated activity* of *effecting or carrying out contracts of insurance* falling under the *Solvency II Directive* (see *PERG 2.8.3G*). This is still a *regulated activity* when provided as an *electronic commerce activity*.~~

...

## 2.9 Regulated activities: exclusions applicable in certain circumstances

2.9.1 G The various exclusions outlined below deal with a range of different circumstances.

- (1) Each set of circumstances described in *PERG 2.9.3G* to *PERG 2.9.17G* has some application to several *regulated activities* relating to *securities, structured deposits, relevant investments or home finance transactions*. They have no effect in relation to the separate *regulated activities* of *accepting deposits, issuing electronic money, effecting or carrying out contracts of insurance, bidding in emissions auctions, advising on syndicate participation at Lloyd's, managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's or entering as provider into a funeral plan contract*. Within each set of circumstances, the *Regulated Activities Order*, in Chapter XVII of Part II of the Order, makes separate provision for each *regulated activity* affected. This is necessary because each exclusion has to be tailored to reflect the different nature of the *regulated activity* involved and the different language required (for example, some activities involve entering directly into transactions while others relate to the provision of services).
- (2) ~~The exclusion described in *PERG 2.9.18G* relates to *electronic commerce activities* provided by an *incoming ECA provider*. This exclusion applies to all *regulated activities* except *effecting or carrying out contracts of insurance*. [deleted]~~

...

### Overseas Persons

...

- 2.9.17B G
- (1) The exclusion for *overseas persons* described in *PERG 2.9.17G* does not apply to an *investment firm* or *credit institution* set up in a third country that has been found equivalent under article 46 or 47 of *MiFIR*, as described in more detail in the rest of this paragraph.
  - (2) Article 46 of *MiFIR* has a mechanism under which ~~ESMA~~ the FCA may register a *third country investment firm* or a *third country credit*

*institution without a branch in the ~~EEA~~ United Kingdom.*  
 Registration allows the *third country investment firm* or *third country credit institution* to provide certain services to certain customers within the ~~EEA~~ *United Kingdom* without the need for further authorisation by an ~~EEA State~~ *the United Kingdom*.

- (3) (2) only applies where the ~~European Commission Treasury~~ has made a formal assessment that the legal and supervisory arrangements of that third country ensure that *investment firms* and *credit institutions* authorised in that third country comply with legally binding prudential and conduct of business requirements which have equivalent effect to the UK provisions which implemented MiFID, MiFIR and CRD.
- (4) ~~Under article 47 of MiFIR an investment firm or credit institution that:~~
- (a) ~~has a branch in an EEA State and is authorised in that EEA State; and~~
  - (b) ~~is set up in a third country that is subject to an equivalence assessment in (3);~~
- ~~may provide certain services to certain clients in other EEA States without the need for further authorisation. [deleted]~~
- (5) The exclusion for *overseas persons* described in PERG 2.9.17G does not apply to *investment services or activities* provided by an *investment firm* or *credit institution* in (1) if:
- (a) it is registered as described in (2); or
  - (b) ~~its branch is authorised in an EEA State other than the United Kingdom as described by (4); or [deleted]~~
  - (c) it provides the *investment services or activities* at the initiative of certain ~~EEA~~ *United Kingdom*-based clients.
- (6) However, (5) only applies from three years after the equivalence decision in (3). For the first three years following the equivalence decision, the exclusion for *overseas persons* described in PERG 2.9.17G continues to apply in the normal way.
- (7) The purpose of the three year period is to implement article 54 of *MiFIR* (transitional provisions) under which the Act the national regimes of EEA States will continue to apply for three years after the equivalence decision in (3).
- (8) There are currently no special provisions in the *Act* or related legislation such as the *Regulated Activities Order* dealing expressly and specifically with the treatment of *third country investment firms* and *third country credit institutions* under the *general prohibition*

after the overseas persons exclusion is switched off at the end of the three year period in (6).

#### Incoming ECA providers

- 2.9.18 G (1) ~~In accordance with article 3(2) of the *E-Commerce Directive*, all requirements on persons providing *electronic commerce activities* into the *United Kingdom* from the *EEA* are lifted, where these fall within the co-ordinated field and would restrict the freedom of such a firm to provide services. The coordinated field includes any requirement of a general or specific nature concerning the taking up or pursuit of *electronic commerce activities*. Authorisation requirements fall within the coordinated field. The services affected are generally those provided electronically, for example through the Internet or solicited e-mail.~~
- (2) ~~The *Regulated Activities Order* was amended by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (Electronic Commerce Directive) Order 2002 (SI 2002/2157). This Order creates a general exclusion from *regulated activities* (except for the *regulated activities* of *effecting or carrying out contracts of insurance*). Where activities consist of *electronic commerce activities*, an *incoming ECA provider* will not require *authorisation* for such activities in the *United Kingdom*. This does not extend to the regulated activity of *effecting or carrying out contracts of insurance* falling under the *Solvency II Directive* (see *PERG 2.8.3G*). However, services provided off-line in the *United Kingdom* (that is, other than as an *electronic commerce activity*) by such a firm which amount to *regulated activities* still require *authorisation*.~~
- (3) ~~*Incoming ECA providers* should note that notification requirements under the *Single Market Directives* still apply (see *SUP 13A*).  
[deleted]~~

#### Insurance distribution activities

- 2.9.19 G The exclusions in this group apply to certain regulated activities involving certain contracts of insurance. The exclusions and the regulated activities to which they apply are as follows.
- ...
- (3) The third exclusion applies to certain general insurance contracts covering large risks where the risk is situated outside the *EEA United Kingdom*. This exclusion applies where the regulated activities concerned are:
- (a) *dealing in investments as agent*;
- (b) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments*;

- (c) *assisting in the administration and performance of a contract of insurance; and*
- (d) *advising on investments.*

...

#### Business Angel-led Enterprise Capital Funds

- 2.9.21 G The exclusions apply, in general terms:
- (1) to a body corporate with limited liability:
    - (a) that is formed in accordance with the law of, and having its registered office, central administration or principal place of business in, ~~an EEA State~~ the United Kingdom;
    - (b) that operates a business angel-led enterprise capital fund, being a fund that invests only in securities of unlisted companies and whose participants are made up solely of persons of a specified kind; and
    - (c) whose members are limited to persons of a specified kind.

## 2.10 Persons carrying on regulated activities who do not need authorisation

...

- 2.10.14 G The *regulated activities* that may be carried on in this way are restricted by an Order made by the Treasury under section 327(6) of the *Act* (Exemption from the general prohibition) (the *Non-Exempt Activities Order*). Accordingly, under that section, a *person* may not by way of business carry on any of the following activities without *authorisation*:

...

- (3A) ~~*bidding in emissions auctions*~~; [deleted]

...

- (3C) *acting as the trustee or depositary of a UK UCITS*

...

...

## 2 Annex Regulated activities and the permission regime

2

<p><b>Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]</b></p>
---



...	....
<b>Bidding in emissions auctions</b>	
(ac) <del>bidding in emissions auctions [deleted]</del>	<del>emissions auction products</del>
...	...
Notes to Table 1	
...	
<p>Note 1C:</p> <p><del>Although MiFID business bidding (part of bidding in emissions auctions) is designated investment business, it is not separately listed in this table under designated investment business because bidding in emissions auctions is already referred to above.</del></p>	
...	

...

### 3A Guidance on the scope of the Electronic Money Regulations 2011

#### 3A.1 Introduction

##### Q1. What is the purpose of these questions and answers ('Q&As') and who should be reading them?

The purpose of these Q&As is to help *persons* to consider whether they fall within the scope of the *Electronic Money Directive* which repealed and replaced an earlier Electronic Money Directive (2000/46/EC). ~~The *Electronic Money Directive* is given effect in the *United Kingdom* by the *Electronic Money Regulations*.~~ The Q&As are intended to help these *persons* consider whether they need to be authorised or registered for the purposes of *electronic money* issuance in the *United Kingdom*.

The *Electronic Money Regulations* implemented the *Electronic Money Directive* in the *United Kingdom*. The *Electronic Money Regulations* create a separate authorisation and registration regime for issuers of *electronic money* that are not *full credit institutions*, *credit unions* or municipal banks:

- the conditions for authorisation as an *authorised electronic money institution* are set out at regulation 6 of the *Electronic Money Regulations*;
- *small electronic money institutions* have less stringent capital requirements than *authorised electronic money institutions*; however, they need to be registered in accordance with regulation 13 of the *Electronic Money Regulations*;
- *full credit institutions*, *credit unions* and municipal banks are exempt from requiring authorisation and registration under the *Electronic Money*

*Regulations* but must have a *Part 4A permission for issuing electronic money* and are subject to some of the conduct of business requirements in the *Electronic Money Regulations*.

A reference in this chapter to:

- individual regulations is a reference to the *Electronic Money Regulations* unless otherwise stated; and
- ‘municipal bank’ means a company which, immediately before 1st December 2001, fell within the definition in section 103 of the Banking Act 1987.

The Q&As that follow are set out in the following sections:

- General issues (*PERG 3A.2*)
- The definition of electronic money (*PERG 3A.3*)
- Small electronic money institutions, mixed businesses, distributors, agents and exempt bodies (*PERG 3A.4*)
- Exclusions (*PERG 3A.5*)
- Territorial scope (*PERG 3A.6*)
- Transitional arrangements (*PERG 3A.7*)

### 3A.2 General issues

#### **Q2. Why does it matter whether or not we fall within the scope of the Electronic Money Regulations?**

It matters because if you issue *electronic money* in the *United Kingdom* and do not fall within an exclusion or exemption you must be:

- an *authorised electronic money institution*; or
- a *small electronic money institution*; or
- ~~an *EEA authorised electronic money institution*; or~~
- a *credit institution*; or
- the Post Office Limited; or
- the Bank of England ~~or a central bank~~ when not acting in its capacity as a monetary authority; or

- other public authority; or
- a government department or local authority when acting in its capacity as a public authority; or
- a *credit union*, municipal bank or the National Savings Bank.

Otherwise you risk committing a criminal offence under regulation 63.

### **Q3. How much can we rely on these Q&As?**

The answers given in these Q&As represent the *FCA*'s views but the interpretation of financial services legislation is ultimately a matter for the courts. How the scope of *Electronic Money Regulations* affects the regulatory position of any particular *person* will depend on their individual circumstances. If you have doubts about your position after reading these Q&As, you may wish to seek legal advice. The Q&As do not purport to be exhaustive and are not a substitute for reading the relevant legislation. In addition to *FCA* guidance, some of the *Electronic Money Directive* provisions (from which the *Electronic Money Regulations* are derived) may be the subject of guidance or communications by the European Commission.

...

### **Q5. I intend to issue electronic money in the United Kingdom. How does the authorisation and registration process apply to me?**

It depends on a number of factors:

- i) Unless you are a person falling within ii) to iv) below you must apply under the *Electronic Money Regulations* for either:
  - authorisation to be an *authorised electronic money institution* (see regulation 6 for the relevant conditions); or
  - registration to be a *small electronic money institution* (see regulation 13).
- ii) If you are a *credit union*, municipal bank or a ~~UK or non-EEA~~ *full credit institution*:
  - authorisation and variation of permission remains that imposed by Part 4A of the *Act*. This means you will need to have a separate *Part 4A permission* in order to issue *electronic money*;
  - where you issue *electronic money* you will be subject to the provisions on issuance and redeemability of *electronic money* in the *Electronic Money Regulations*;
  - note that you may also be subject to the conduct of business requirements in the *Payment Services Regulations*.

If your head office is located in an ~~EEA state other than the United Kingdom~~ you cannot apply for authorisation or registration under the ~~Electronic Money Regulations~~. However, you may be entitled to issue ~~electronic money in the United Kingdom as an EEA authorised electronic money institution~~, in which case the Competent Authority in your Home State will be responsible for your authorisation.

Government departments, local authorities, the Post Office Limited and the National Savings Bank cannot apply for authorisation or registration under the *Electronic Money Regulations* but they must give notice to the *FCA* if they issue or propose to issue *electronic money*.

Transitional arrangements may also be relevant, see *PERG 3A.7*.

...

...

### **3A.4 Small electronic money institutions, mixed businesses, distributors, agents and exempt bodies**

...

#### **Q18. We satisfy the conditions for registration as a small electronic money institution - does that mean we have to register as one?**

Not necessarily, there are other options available to you.

If you register as a *small electronic money institution*, you cannot acquire passport rights under the ~~Electronic Money Directive~~. So you may wish to become an ~~authorised electronic money institution~~ if you wish to take advantage of a passport.

If your business does not currently exceed the thresholds referred to in the first two bullets at Q17, but you expect that it will, you may also wish to apply for authorisation rather than registration.

...

#### **Q20. We are a branch of a firm which has its head office outside the ~~EEA UK~~. If we became an electronic money institution can we also engage in mixed business?**

Yes, but you can only provide *payment services* that are linked to the issuance of *electronic money*. You cannot undertake any of the other *payment services*.

...

#### **Q22. We distribute and redeem electronic money. What is the scope of our activities under the regulations?**

In some *electronic money* schemes an originator creates *electronic money* and then sells it to banks and other distributors. The latter then sell the *electronic money* to the public. In our view reference to the issuer of *electronic money* in the *Electronic Money Regulations* is a reference to the originator and not the distributor.

So, provided you are not:

- issuing *electronic money* yourself; or
- acting as an agent for an *electronic money institution*, see Q21;

you do not need to be authorised or registered under the *Electronic Money Regulations*. However, the *electronic money institution* that is acting as your principal should notify the *FCA* that you are acting as a distributor, see regulations 26 and 37 and Schedule 1.

You should also bear in mind that if, in distributing and redeeming *electronic money*, your activities amount to *payment services* you will need to consider whether you are required to be authorised or registered under the *Payment Services Directive Regulations*, see *PERG 15* for further guidance.

**Q23. We have been registered by one of our principals as an agent under the Payment Services Regulations. If we wish to act as agent for an electronic money institution as well will we need to be registered again?**

Yes. If your principal is an *electronic money institution*, it is its responsibility to apply for registration on your behalf even if you have been registered as agent under the *Payment Services Regulations*. ~~Assuming your principal is not an EEA firm, you~~ You are required to be registered on the *Financial Services Register* before you provide *payment services* for your principal, subject to any relevant transitional provisions which may delay or avoid the need for registration. ~~If your principal is an EEA firm, your principal will need to comply with the relevant Home State legislation relating to your appointment, and your Home State competent authority will need to notify the FCA.~~

...

...

**3A.6 Territorial scope**

**Q29. We are a non-EEA UK firm with a branch in the United Kingdom and we wish to issue electronic money. Can we apply for authorisation or registration?**

Yes. You may apply to be an *authorised electronic money institution* if you are a body corporate (regulation 6(4)(b)). However, you cannot apply to be a *small electronic money institution* unless your head office is in the *United Kingdom* (regulation 13(9)).

## 4 Guidance on regulated activities connected with mortgages

...

### 4.4 What is a regulated mortgage contract?

The definition of “regulated mortgage contract”

4.4.1 G Article 61(3)(a) of the *Regulated Activities Order* defines a *regulated mortgage contract* as a contract which, at the time it is entered into, satisfies the following conditions:

- (1) ...
- (2) the contract provides for the obligation of the borrower to repay to be secured by a mortgage on land ~~in the EEA~~, where “land” for this purpose means:
  - (a) in relation to a contract entered into before *exit day*, land in the *United Kingdom* or, if the contract was entered into on or after 21 March 2016, within the territory of an *EEA State*; and
  - (b) in relation to a contract entered into on or after *exit day*, land in the *United Kingdom*; and

...

...

Land ~~in the EEA~~

4.4.5 G The condition set out in *PERG* 4.4.1G(2) means that a *regulated mortgage contract* must be secured on land ~~in the EEA~~, where “land” for this purpose means:

- (1) in relation to a contract entered into before *exit day*, land in the *United Kingdom* or, if the contract was entered into on or or after 21 March 2016, within the territory of an *EEA State*; and
- (2) in relation to a contract entered into on or after *exit day*, land in the *United Kingdom*.

Contracts which involve taking security over moveable property therefore cannot be *regulated mortgage contracts*. So a contract secured on a caravan will not be a *regulated mortgage contract*, unless the contract also involves a mortgage over the land on which the caravan stands.

...

Type of security

4.4.16 G A mortgage has a wide meaning for the purpose of the definition of a *regulated mortgage contract*. It includes:

...

(3) (in Scotland) a heritable security; ~~and~~

(4) ~~security commonly used in another EEA State for loans secured on residential property. [deleted]~~

...

Exclusion for housing association and other housing authority loans

4.4.28C G A contract is excluded from the definition of *regulated mortgage contract* if, at the time it is entered into, it meets the following conditions:

(1) ...

(2) if entered into on or after 21 March 2016:

(a) ~~it is an agreement of a kind to which the MCD does not apply by virtue of article 3(2) of the MCD~~ an agreement to which section 423A(3) of the Act applies (in other words, it is an agreement listed in *PERG* 4.10A.5G(1) to (6); or it is a *credit agreement* which relates to the deferred payment, free of charge, of an existing debt and is not secured by a *legal or equitable mortgage*); or

...

...

#### 4.10 Exclusions applying to more than one regulated activity

Exclusion: Activities carried on in the course of a profession or non-investment business

...

4.10.4A G (1) The exclusion in article 67 of the Regulated Activities Order (Activities carried on in the course of a profession or non-investment business) does not apply if applying the exclusion would take activities ~~covered by~~ within the scope of the MCD (or which would be within such scope if carried out in an EEA State, or in relation to a customer in an EEA State or an agreement secured on residential land in an EEA State) outside the definition of certain *regulated mortgage activities*.

(2) Please see *PERG* 4.10A (Activities ~~regulated under~~ within scope of the Mortgage Credit Directive) for more details.

...

Exclusion: Trustees, nominees and personal representatives

...

- 4.10.8A G (1) The exclusion in article 66 of the Regulated Activities Order (Trustees, nominees and personal representatives) does not apply if applying the exclusion would take activities ~~covered by~~ within the scope of the MCD (or which would be within such scope if carried out in an EEA State, or in relation to a customer in an EEA State or to an agreement secured on residential land in an EEA State) outside the definition of certain *regulated mortgage activities*.
- (2) Please see *PERG 4.10A (Activities regulated under within scope of the Mortgage Credit Directive)* for more details.

...

Exclusion: Local authorities

- 4.10.10 G There are exclusions that apply, in relation to each of the *regulated mortgage activities* and to *advising on regulated credit agreements for the acquisition of land*, if the *person* carrying on the activity is a local authority or a wholly owned subsidiary of a *local authority*. They can be found in article 72G of the Regulated Activities Order, but only apply where:
- (a) ...
- (b) the relevant agreement is entered into on or after 21 March 2016 and:
- (i) the agreement is ~~of a kind to which the MCD does not apply by virtue of article 3(2) of the MCD~~ one to which section 423A(3) of the Act applies (in other words, it is an agreement listed in *PERG 4.10A.5G(1) to (6)*; or it is a *credit agreement* which relates to the deferred payment, free of charge, of an existing debt and is not secured by a *legal or equitable mortgage*); or

...

...

4.10A ~~Activities regulated under~~ within scope of the Mortgage Credit Directive

General treatment for activities ~~regulated under~~ within scope of the Mortgage Credit Directive

- 4.10A.1 G Article 4(4B) of the *Regulated Activities Order* says that certain exclusions in the *Regulated Activities Order* do not apply in certain cases; briefly, those are cases which were covered by the MCD as it applied to the United Kingdom before exit day, and the effect of the legislation which refers to



those cases has been preserved. This section explains the situations in which this applies. References in this section to agreements or activities covered by, regulated under or within the scope of the MCD should be read as including reference to agreements or activities which would be within such scope if secured on residential land in an EEA State, or carried out in an EEA State or in relation to a customer in an EEA State.

...

#### 4.10B Regulation of buy to let lending

...

What does buy-to-let credit agreement mean?

- 4.10B.5 G (1) *A buy-to-let credit agreement* means either:
- (a) a contract that at the time it is entered into has the following characteristics:
    - (i) ...
    - (ii) the contract provides for the obligation of the borrower to repay to be secured by a mortgage on land in the *EEA United Kingdom*;
- ...

...

...

Link to the legislation which implemented the Mortgage Credit Directive

- 4.10B.15 G (1) The definitions of *CBTL arranger* and *CBTL adviser* are largely the same as those under the legislation which implemented the Mortgage Credit Directive MCD.
- (2) There is *guidance* on these terms in *PERG 4.10A* (Activities ~~regulated under~~ within scope of the Mortgage Credit Directive).

...

...

Exempt consumer buy-to-let contracts

...

- 4.10B.21 G A contract is excluded from the definition of *regulated mortgage contract* if, at the time it is entered into, it meets the following conditions:

- (1) ...
- (2) it is either:
  - (a) of a kind ~~to which~~ outside the scope of the *Mortgage Credit Directive* does not apply *MCD* by virtue of the exclusions summarised in *PERG* 4.10A.5G(1) to (8); or
- ...

#### 4.11 Link between activities and the United Kingdom

...

Legislative provisions: definition of “regulated mortgage contract“

- 4.11.3 G A contract is only a regulated mortgage contract if the land is: ~~in the EEA~~
- (1) in relation to a contract entered into before *exit day*, land in the United Kingdom or [, if the contract was entered into on or after 21 March 2016,] within the territory of an *EEA State*; and
  - (2) in relation to a contract entered into on or after *exit day*, land in the United Kingdom,

(see *PERG* 4.4.5 G (Land ~~in the EEA~~)).

Legislative provisions: section 418 of the Act

...

- 4.11.5 G For the purposes of *regulated mortgage activities*, sections 418~~(2)~~, (4), (5), ~~(5A)~~ and (6) are relevant, as follows:
- (1) ~~Section 418(2) refers to a case where a *UK-based person* carries on a *regulated activity* in another *EEA State* in the exercise of rights under a *Single Market Directive*. The only *Single Market Directives* which are relevant to mortgages are the *CRD* and the *MCD*. [deleted]~~
  - ...
  - (4) ~~Section 418(5A) refers to the case where an *electronic commerce activity* is carried on with or for a *person* in an *EEA State* from an establishment in the *United Kingdom*. See further *PERG* 4.11.21G (*E-Commerce Directive*). [deleted]~~

...

Territorial scenarios: general

...

4.11.9 G Simplified summary of the territorial scope of the regulated mortgage activities for contracts entered into on or after *exit day*, to be read in conjunction with the rest of this section.

[Note: readers wishing to understand the territorial scope of the regulated mortgage activities for contracts entered into before *exit day* may wish to refer to the version of this *guidance* as at the date on which the relevant contract was entered into.]

This table belongs to *PERG* 4.11.8G.

The tables in *PERG* 4.11.9G are deleted in their entirety and replaced with the following. The deleted tables are not shown but the new text is shown below, with underlining.

		<u>Individual borrower resident and located:</u>	
		<u>in the <i>United Kingdom</i></u>	<u>outside the <i>United Kingdom</i></u>
<u>Service provider carrying on regulated activity from establishment in the <i>United Kingdom</i></u>	<u>land in the <i>United Kingdom</i></u>	<u>Yes</u>	<u>Yes</u>
	<u>land outside the <i>United Kingdom</i></u>	<u>No</u>	<u>No</u>
<u>Service provider carrying on regulated activity from establishment outside the <i>United Kingdom</i></u>	<u>land in the <i>United Kingdom</i></u>	<u>Yes</u>	<u>No</u>
	<u>land outside the <i>United Kingdom</i></u>	<u>No</u>	<u>No</u>
<u>Yes = <i>authorisation</i> or exemption required</u>			
<u>No = <i>authorisation</i> or exemption not required</u>			

...

Service provider overseas: general

...

4.11.12A G ~~If the service provider is a *UK firm* exercising its rights under a *Single Market Directive* by providing services from another *EEA State*, section 418 of the *Act* means that the services are treated as being carried on in the. This factor is not covered further in the remainder of this section. [deleted]~~

Service provider overseas: arranging regulated mortgage contracts

4.11.13 G When a person is arranging (bringing about) regulated mortgage contracts or making arrangements with a view to regulated mortgage contracts from overseas, the question of whether he will be carrying on regulated activities in the United Kingdom will depend on the relevant circumstances. In the FCA's view, factors to consider include:

- (1) the territorial limitation in the definition of *regulated mortgage contract* so that regulation only applies if the land is in the ~~EEA~~ United Kingdom;

...

...

Service provider overseas: entering into a regulated mortgage contract

...

4.11.17 G In the FCA's view, in circumstances other than those excluded by article 72(5D) of the *Regulated Activities Order*, the need for an overseas lender to be authorised or to have an exemption will depend on the location of the land. This is because of:

- (1) the territorial limitation in the definition of *regulated mortgage contract* so that regulation only applies if the land is in the ~~EEA~~ United Kingdom;
- (2) ...
- (3) practical issues of conveyancing; a lender is likely to use the services of a lawyer or licensed conveyancer operating from the *United Kingdom* ~~or the other EEA State in question~~, who enters into the *regulated mortgage contract* as agent for the lender in the *United Kingdom* ~~or the other EEA State in question~~; and

...

Service provider overseas: administering a regulated mortgage contract

...

4.11.19 G In the FCA's view, in circumstances other than those excluded by article 72(5E) of the *Regulated Activities Order*, the need for an overseas administrator to be authorised or to have an exemption will depend on the location of the land. This is because:

- (1) the territorial limitation in the definition of *regulated mortgage contract* so that regulation only applies if the land is in the ~~EEA~~ United Kingdom;
- (2) when administrators notify borrowers resident in the *United Kingdom* ~~or the other EEA State in question~~ of matters pursuant to a

*regulated mortgage contract*, such notification is likely to be carried on in the *United Kingdom* ~~or the other EEA State in question~~;

- (3) the steps involved in collecting or recovering payments will generally include giving notice to the borrower at his address in the *United Kingdom* ~~or the other EEA State in question~~;
- (4) legal action to recover sums due under *regulated mortgage contracts* will in many cases require proceedings before courts in the *United Kingdom* ~~or the other EEA State in question~~, either to enforce *regulated mortgage contracts* subject to the jurisdiction of these courts or to register and enforce judgements obtained elsewhere, in the case of contracts subject to non-UK jurisdictions; and

...

...

~~E-Commerce Directive~~

- 4.11.21 G ~~The E-Commerce Directive removes restrictions on the cross-border provision of services by electronic means, introducing a *country of origin* approach to regulation. This requires EEA States to impose their requirements on the outward provision of such services and to lift them from inward providers. The E-Commerce Directive contains only a few exceptions, termed derogations, from this principle. The E-Commerce Directive defines an e-commerce service (termed an information society service) as any service, normally provided for remuneration, at a distance, by electronic means, and at the individual request of the recipient of the service. So, for example, it includes services provided over the internet, by solicited e-mail, and interactive digital television. [deleted]~~

~~Distance marketing directive~~

- 4.11.22 G ~~The FCA will be responsible for implementing the Distance Marketing Directive for those firms and activities it regulates. The FCA and the Treasury agree that the Distance Marketing Directive is intended to operate on a *country of origin* basis, except where a firm is marketing into the UK from an establishment in an EEA State which has not implemented the Directive. [deleted]~~

...

**4.13 Other exemptions**

...

- 4.13.5 G ...

Type of <i>regulated mortgage contract</i>	Explanation
--	-------------

Exempted under article 3(2) <u>Out of scope of the Mortgage Credit Directive <i>MCD</i> by virtue of article 3(2)</u>	...
...	...

...

#### 4.14 Mortgage activities carried on by professional firms

...

- 4.14.2A G *PERG* 4.10A (Activities ~~regulated under~~ within scope of the Mortgage Credit Directive) explains that some of these exclusions do not apply to activities which fall ~~under~~ within the scope of the *MCD*.

...

### 5 Guidance on insurance distribution activities

...

#### 5.2 Introduction

...

Approach to implementation of the *IDD*

...

- 5.2.6 G The *United Kingdom* ~~has~~ implemented the *IDD* (and the *IMD* before it), in part, through secondary legislation, which applies pre-existing *regulated activities* (slightly amended) in the *Regulated Activities Order* to the component elements of the *insurance distribution* and *reinsurance distribution* definitions in the *IDD* (see *PERG* 5.2.5G and the text of *IDD* articles 2.1(1), 2.1(2) and 2.2 in *PERG* 5.16).

...

- 5.2.9 G It is the scope of the *Regulated Activities Order* rather than the *IDD* which will determine whether a *person* requires *authorisation* or exemption. However, the scope of the activities set out in the *IDD* is relevant to the application of certain exclusions under the *Regulated Activities Order* (see, for example, the commentary on article 67 in *PERG* 5.11.9G (Activities carried on in the course of a profession or non-investment business)).

...

#### 5.3 Contracts of insurance

...

- 5.3.5 G The *Regulated Activities Order* does not define a *reinsurance* contract. The essential elements of the common law description of a *contract of insurance* are also the essential elements of a *reinsurance* contract. Whilst the terms derived from the IDD addresses address insurance and *reinsurance* separately, throughout this *guidance* the term ‘contract of insurance’ (italicised or otherwise) also applies to contracts of *reinsurance*.

...

#### Large risks

- 5.3.8 G Large risks situated outside the ~~EEA UK~~ are also excluded (described in more detail at *PERG* 5.11.16 G (Large risks)). The location of the risk or commitment may be determined by reference to the ~~EEA State~~ State in which the risk is situated, ~~defined in article 13(13) of the Solvency II Directive~~ or the ~~EEA State~~ State of the commitment, ~~defined in article 13(14) of the Solvency II Directive~~. Broadly put, this is:
- (1) for insurance relating to buildings and/or their contents, the ~~EEA State~~ State in which the property is situated;
  - (2) for insurance relating to vehicles, the ~~EEA State~~ State of registration;
  - (3) for policies of four months or less duration covering travel or holiday risks, where the *policy* was taken out;
  - (4) in all other cases (including those determined by reference to the ~~EEA State~~ State of the commitment), the ~~EEA State~~ State where the policyholder has his habitual residence, or if the policyholder is a legal person, where his establishment, to which the contract relates, is situated.

...

### 5.6 The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance

...

Exclusion: article 33B (Provision of information – contracts of insurance)

- 5.6.4B G In broad terms, article 33B of the *Regulated Activities Order* excludes from article 25 (*arranging*) activities that consist of:
- (1) the provision of information about a potential policyholder to:
    - (a) a relevant insurer (as defined in article 39B(2) of the *Regulated Activities Order*) or

- (b) an insurance intermediary (as defined in ~~article 2(1)(3) of the IDD~~ article 33B(4) of the *Regulated Activities Order*) or
  - (c) an *IDD reinsurance intermediary*; or
- (2) the provision of information to a potential policyholder about:
- (a) a *contract of insurance*; or
  - (b) a relevant insurer (as defined in article 39B(2) of the *Regulated Activities Order*) or insurance intermediary (as defined in ~~article 2(1)(3) of the IDD~~ article 33B(4) of the *Regulated Activities Order*) or *IDD reinsurance intermediary*,

where the provider of the information does not take any step other than the provision of information to assist in the conclusion of a *contract of insurance*.

- 5.6.4C G The exclusion in *PERG 5.6.4BG* will be of assistance to persons who would otherwise be carrying on the *regulated activity* of *arranging*. This exclusion ~~is intended~~ was introduced to give effect to article 2.2 of the *IDD* (the text of which is reproduced in *PERG 5.16.2G(2)*) which refers to the ‘mere’ provision of this information without taking any additional steps not being considered to constitute *insurance distribution*. In the *FCA*’s view, the effect of this, and the reference in article 2.2(c) of the *IDD* to ‘data and information on potential policyholders’, is that the exclusion in *PERG 5.6.4BG* covers those situations where a *person* provides existing information they hold on potential policyholders (for example their name and contact details) but does not extend to information they obtain from other means such as pre-purchase questioning.

...

- 5.7.8 G A ‘relevant insurer’ for the purposes of article 39B means:
- (1) an *authorised person* who has *permission* for *effecting and carrying out contracts of insurance*; or
  - (2) a member of the Society of Lloyd’s or the members of the Society of Lloyd’s taken together; or
  - (3) ~~an EEA firm that is an insurer; or~~ [deleted]
  - (4) a reinsurer, being a *person* whose main business consists of accepting risks ceded by a person falling under ~~(1), (2) or (3)~~ (1) or (2) or a person who is established outside the *United Kingdom* and who carries on the activity of *effecting and carrying out contracts of insurance*.

...



...

## 5.11 Other aspects of exclusions

5.11.1 G This part of the *guidance* deals with:

...

(3) exclusions which are disapplied where a *person* carries on *insurance distribution*; and

...

(c) large risks (article 72D (Large risks contracts where risk situated outside the ~~EEA~~ *United Kingdom*));

(d) activities carried on by *firms* with a *Part 4A permission* to ~~manage a UCITS~~ *manage a UK UCITS* or *manage an AIF* (article 72AA (Managers of UCITS and AIFs));

...

...

5.11.2 G Several exclusions that would have the effect of restricting the scope of the *regulated activities* referred to in this *guidance* are disapplied or modified. This was in order to properly implement *IDD*.

...

5.11.7 G Article 4(4A) of the *Regulated Activities Order* (Specified activities: general) disapplies certain exclusions where a *person*, for remuneration, takes up or pursues *insurance distribution* or *reinsurance distribution* (as defined in articles 2.1(1), 2.1(2) and 2.2 of the *IDD* (see *PERG* 5.2.5G (Approach to implementation of the *IDD*) and *PERG* 5.16.2G) in relation to a risk or commitment located in the *United Kingdom*. In relation to a contract of insurance entered into before exit day, article 4(4A) applies in relation to a risk or commitment located in the *United Kingdom* or an *EEA State*. The relevant exclusions which are disapplied are:

...

## 5.12 Link between activities and the United Kingdom

Introduction

...

5.12.4 G Table: Territorial issues relating to overseas insurance intermediaries carrying on *insurance distribution activities* in or into the *United Kingdom*

---

	Needs Part 4A permission	<del>Schedule 3 EEA passport rights available</del>	Overseas persons exclusion available
<del>Registered EEA-based intermediary with UK branch (registered office or head office in another EEA State)</del>	No	Yes	No
<del>Registered EEA-based intermediary with no UK branch providing cross-border services</del>	No	Yes	Potentially available [see Note]
Third country intermediary operating from branch in the UK	Yes	No	No
Third country intermediary providing services in (or into) the UK	Yes unless overseas persons exclusion applies	No	Potentially available
<del>This does not, however, affect the firm's authorisation under Schedule 3 to the Act (see PERG 5.12.9G to PERG 5.12.10G (Passporting)).</del>			
<del>For EEA based intermediaries this table assumes that the insurance distribution activities are within the scope of the IDD.</del>			

5.12.7 G Section 418 of the Act extends the meaning that ‘carry on regulated activity in the *United Kingdom*’ would normally have by setting out additional cases in which a *person* who would not otherwise be regarded as carrying on the activity in the *United Kingdom* is to be regarded as doing so. Each of the following cases thus amounts to carrying on a *regulated activity* in the *United Kingdom*:

- (1) ~~where a UK-based person carries on a regulated activity in another EEA State in the exercise of rights under a Single Market Directive [deleted];~~
- (2) where a UK-based *person* carries on a *regulated activity* and the day-to-day management of the activity is the responsibility of an establishment in the *United Kingdom*;
- (3) where a *regulated activity* is carried on by a person who is not based in the *United Kingdom* but is carried on from an establishment maintained by him in the *United Kingdom*; and

- (4) ~~where an *electronic commerce activity* is carried on with or for a person in an *EEA State* from an establishment in the *United Kingdom*. [deleted]~~

In each of these cases it is irrelevant where the person with whom the activity is carried on is situated.

...

- 5.12.10 G The *overseas person* exclusion is available to *persons* who do not have a permanent place of business in the *United Kingdom* and so is of relevance to third country intermediaries (~~that is, non *EEA* based intermediaries~~) who carry on *insurance distribution activities* in, or into, the *United Kingdom* (for example with or through authorised insurance brokers and insurance *undertakings* operating in the Lloyd's market).

How should persons be authorised?

- 5.12.11 G *UK-based persons* must obtain *Part 4A permission* in relation to their *insurance distribution activities* in the *United Kingdom* as one of the following:
- (1) a *body corporate* whose registered office is situated in the *United Kingdom*; or
  - (2) a *partnership* or unincorporated association whose head office is situated in the *United Kingdom*; or
  - (3) an individual (that is, a sole trader) whose residence is situated in the *United Kingdom*.

~~The *United Kingdom* will, in each case, be the *Home State* for the purposes of the *IDD* for insurance or reinsurance intermediaries (see further in connection with the *E-Commerce Directive* in *PERG 5.12.15G* to *PERG 5.12.17G* (*E-Commerce Directive*)).~~

- 5.12.12 G Non-*UK-based persons* wishing to carry on *insurance distribution activities* in the *United Kingdom* must:
- (1) ~~qualify for *authorisation* by exercising passport rights (see section 31 (Authorised persons) and schedule 3 (EEA passport rights) to the Act and *PERG 5.12.13G* to *PERG 5.12.14G* (Passporting)); or [deleted]~~

...

Passporting

- 5.12.13 G ~~The effect of the *IDD* is that any *EEA* based insurance intermediaries doing business within the Directive's scope must first be registered in their home *EEA State* before carrying on *insurance distribution* in that *EEA*~~

~~State or other EEA States. For these purposes, an EEA-based insurance intermediary is either:~~

- ~~(1) a legal person with its registered office or head office in an EEA State other than the United Kingdom; or~~
- ~~(2) a natural person resident in an EEA State other than the United Kingdom.~~

~~Registered EEA-based insurance intermediaries wishing to establish branches in the United Kingdom or provide services on a cross-border basis into the United Kingdom can do so by notifying their Home State regulator which in turn notifies the FCA. This enables the intermediary to acquire passporting rights for business within the Directive's scope (so excluding insurance distribution activities relating to connected contracts or connected travel insurance contracts) under Schedule 3 to the Act. SUP 13A (Qualifying for authorisation under the Act) has general guidance on the exercise of passporting rights by EEA firms. [deleted]~~

- 5.12.14 G ~~On the other hand, non EEA-based Non-UK-based insurance intermediaries wishing to establish a branch in the UK for the purpose of carrying on insurance distribution activities may only do so with Part 4A permission.~~

#### E-Commerce Directive

- 5.12.15 G ~~The E-Commerce Directive removes restrictions on the cross-border provision of services by electronic means, introducing a country of origin approach to regulation. This requires EEA States to impose certain requirements on the outward provision of such services and to lift them from inward providers. The E-Commerce Directive defines an e-commerce service (termed an information society service) as any service, normally provided for remuneration, at a distance, by electronic means, and at the individual request of the recipient of the service. So, for example, it includes services provided over the internet, by solicited e-mail, and interactive digital television. [deleted]~~
- 5.12.16 G ~~The E-Commerce Directive does not remove the IDD requirement for persons taking up or pursuing insurance distribution for remuneration to be registered in their Home State. Nor does it remove the requirement for EEA-based intermediaries to acquire passporting rights in order to establish branches in the United Kingdom (see PERG 5.12.7G in relation to electronic commerce activity carried on from an establishment in the United Kingdom) or provide services on a cross-border basis into the United Kingdom where the relevant activity is carried on in the United Kingdom. An example of electronic commerce activity provided on a cross-border basis into the United Kingdom could be a recommendation in a (solicited) e-mail from an EEA-based intermediary to a UK-based customer to buy a particular contract of insurance. [deleted]~~

- 5.12.17 G ~~Put shortly, the *E-Commerce Directive* relates to services provided into the *United Kingdom* from other *EEA States* and from the *United Kingdom* into other Member States. In broad terms, such cross-border insurance distribution services provided by an *EEA firm* into the *United Kingdom* (via *electronic commerce activity* or distance means) will generally be subject to *IDD* registration in, and conduct of business regulation of, the intermediary's *EEA State* of origin. By contrast, insurance distribution services provided in the *United Kingdom* will be subject to *UK* conduct of business regulation, although the requirement for registration will again depend upon the intermediary's *EEA State* of origin. [deleted]~~

### 5.13 Appointed representatives

...

- 5.13.5 G A person may wish to become an *appointed representative* in relation to one or more of the *insurance distribution activities* specified in the *Appointed Representatives Regulations* (see table in *PERG 5.13.4G*). If so, the person must be appointed under a written contract by an *authorised person*, who has *permission* to carry on those *regulated activities* and who accepts responsibility for the *appointed representative's* actions when acting for them. *SUP 12.4* (What must a firm do when it appoints an appointed representative or an ~~EEA~~ FCA registered tied agent?) and *SUP 12.5* (Contracts: required terms) set out the detailed requirements that must be met for an appointment to be made. In particular, an *appointed representative* will not be able to commence an *insurance distribution activity* until that *appointed representative* is included on the *Financial Services Register* for such activities.

#### Persons who are already appointed representatives

- 5.13.6 G Where a person (A), who is already an *appointed representative*, proposes to start to carry on any *insurance distribution activities*, A will need to consider the following matters.
- (1) ...
  - (2) ...
  - ...
  - (e) If A's activities are limited to introducing, A should consider the specific *Handbook* provisions relating to *introducer appointed representatives* (see *SUP 12* (What must a firm do when it appoints an appointed representative or an ~~EEA~~ FCA registered tied agent?)).

...

### 5.15 Illustrative tables

...

## 5.15.4 G Types of activity – are they regulated activities and, if so, why?

Type of activity	Is it a regulated activity?	Rationale
...		
MID-TERM ADJUSTMENTS AND ASSIGNMENTS		
...	...	As the assignment of rights under a <i>contract of insurance</i> (as opposed to the creation of new <i>contracts of insurance</i> ) does not fall within <del>the</del> <i>IMD insurance distribution</i> , article 67 is of potential application (see <i>PERG 5.11.9G</i> to <i>PERG 5.11.12G</i> ).
...		

...

**8 Financial promotion and related activities**

...

**8.2 Introduction**

...

8.2.9 G Because of the *United Kingdom's* exit from the *EU*, the Treasury amended the *Financial Promotion Order*. This included the amendment or removal of certain exemptions in the *Financial Promotion Order* that had previously been in place to take account of the *United Kingdom's* membership of the *EU*. Where those amendments are relevant to the *guidance* in this Chapter the *FCA* has amended the *guidance* accordingly. The Treasury also made transitional provision so that nothing in those amendments to the *Financial Promotion Order* will cause a *communication* to breach the restriction in section 21, if the *communication* is required under a contact entered into before *exit day*, and it would not have constituted a breach if it had been made before *exit day*.

[Note: see Part 4 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (SI 2019/XXXX)]

...

**8.8 Having an effect in the United Kingdom**

...

- 8.8.3 G ~~Where communications by *persons* in another *EEA State* are made to or directed at *persons* in the *United Kingdom* account must be taken of the effect of any relevant EU Directives. For example, the *E-Commerce Directive* will, with limited exceptions, prevent the *United Kingdom* from imposing restrictions on incoming *financial promotions* in information society services. The Treasury has given effect to this through the *Financial Promotion Order* (see *PERG* 8.12.38G). Other potentially relevant directives include the Television Without Frontiers Directive (89/552/EEC). This prevents the *United Kingdom* from restricting the re-transmission in the *United Kingdom* of television broadcasts from other *EEA States*. The *Financial Promotion Order* does not have any specific provisions about the Television Without Frontiers Directive. However, it is not intended to block incoming television programmes from other *EEA States*. The FCA will take this into account in interpreting the *Financial Promotion Order* and enforcing the restriction in section 21 of the *Act*. [deleted]~~

...

## 8.12 Exemptions applying to all controlled activities

...

### Financial promotions to overseas recipients (article 12)

...

- 8.12.4 G The exemption applies whether or not the *financial promotion* is made from the *United Kingdom*. However, there is the exception that, if it is an *unsolicited real time financial promotion*, it must be made from a place outside the *United Kingdom* and be for the purposes of a business carried on entirely outside the *United Kingdom*. ~~To give effect to the principle of *country of origin* regulation of information society services as required by the *E-Commerce Directive*, article 12(7) of the *Financial Promotion Order* prevents the exemption applying to an outgoing electronic commerce communication.~~

...

### Mere conduits (article 18 and 18A)

- 8.12.18 G The purpose of these exemptions is to ensure that, subject to certain conditions, the restriction in section 21 of the *Act* does not apply to those who merely transport the *financial promotions* of other *persons*. Obvious examples here are postal and Internet service providers, courier companies and telecommunications companies. *PERG* 8.6.5G explains that such *persons* may not be regarded as *communicating a financial promotion* simply because they have distributed it. Article 18 (Mere conduits) does not apply to the *person* who causes the mere conduit to make the

communication. Neither does it apply where the *financial promotion* is an *electronic commerce communication* ~~that is, or will be, communicated from an establishment in the United Kingdom to a person in an EEA State other than the United Kingdom.~~ A person acting as a mere conduit for *financial promotions* of this kind will, however, be able to use article 18A (Outgoing electronic commerce communications: mere conduits, caching and hosting). Article 18A is not subject to the conditions that apply to other forms of mere conduit (as referred to in *PERG* 8.12.19G and *PERG* 8.12.20G). However, it does require compliance with the relevant conditions in articles 12(1), 13(1) and 14(1) of the *E-Commerce Directive* regulation 17(1), 18 or 19 of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013) that relate to the liability of intermediary service providers.

...

#### Incoming electronic commerce communications (article 20B)

8.12.38 G ~~Article 20B gives effect to the provisions of the *E-Commerce Directive* by exempting *electronic commerce communications* made from an establishment in an EEA State other than the United Kingdom to an ECA recipient in the United Kingdom. However, article 20B does not apply to the following communications:~~

- (1) ~~an advertisement by the operator of a UCITS of units in that scheme; or~~
- (2) ~~an invitation or inducement to enter into a contract of insurance where~~
  - (a) ~~it is made by an undertaking which has received official authorisation for direct insurance in line with article 14 of the *Solvency II Directive*; and~~
  - (b) ~~the insurance falls within the scope of the *Solvency II Directive*; or~~
- (3) ~~an unsolicited communication made by electronic mail.~~

~~For the purposes of (3), a communication is unsolicited unless it is made in response to an express request from its recipient. [deleted]~~

...

#### 8.14 Other financial promotions

...

#### Nationals of EEA States other than the United Kingdom (article 36)

8.14.18 G ~~This exemption allows a person in another EEA State who lawfully carries on a controlled activity in that State to promote into the United Kingdom.~~



~~The terms of the exemption are that the promotion must comply with the rules in COBS 4, MCOB 3A or CONC 3 (as relevant). Care should be taken as any failure to satisfy any of the relevant requirements of these rules may mean that this exemption is not satisfied and that the *financial promotion* may breach section 21 if it has not been *approved* and no other exemption applies to it. The *FCA* recommends that anyone seeking to rely on this exemption either seeks professional advice or contacts the *FCA* before *communicating* the *financial promotion*. This exemption does not apply to *unsolicited real time financial promotions*. [deleted]~~

...

High new worth companies, unincorporated associations and trusts (article 49)

...

- 8.14.27 G To be a sophisticated investor for the purposes of article 50, the recipient of a *financial promotion* must have a current certificate from an *authorised person* stating that he has enough knowledge to be able to understand the risks associated with the description of investment to which the *financial promotion* relates. ~~Where the *financial promotion* is an outgoing electronic commerce communication, the certificate may be signed by a *person* who is entitled, under the law of an *EEA State* other than the *United Kingdom*, to carry on *regulated activities* in that *EEA State*.~~ The *FCA* considers that a ‘description of investment’ relates to a category of *investments* with similar characteristics. Examples are given below.

...

...

Common interest group of a company (article 52)

...

- 8.14.31 G The exemption is subject to certain conditions. In broad terms, these are that the *financial promotion* must be accompanied by an indication:

...

- (3) that any *person* who is in doubt about the investment should consult an *authorised person*; and

...

~~Where the *financial promotion* is an outgoing electronic commerce communication, the reference in (3) to an *authorised person* includes a *person* who is entitled, under the law of an *EEA State* other than the *United Kingdom*, to carry on *regulated activities* in that *EEA State*.~~

...

## 8.19 Additional restriction on the promotion of life policies

8.19.1 G Article 10 of the *Financial Promotion Order* (Application to qualifying contracts of insurance) precludes any of the exemptions from applying to a *financial promotion* which invites or induces a *person* to enter into a *life policy* with a *person* who is not:

- (1) an *authorised person*; or
- (2) an exempt *person* who is exempt in relation to *effecting* or *carrying out contracts of insurance* of the class to which the promotion relates; or
- (3) ~~a company with its head office or a branch or agency in another EEA State and which is entitled to carry on in that country the class of insurance business being promoted; or [deleted]~~
- (4) a *company* authorised in one of the following countries or states to carry on the class of *insurance business* being promoted:

...

...

## 8.20 Additional restriction on the promotion of collective investment schemes

8.20.1 G Where *collective investment schemes* are concerned additional restrictions are placed on their promotion to ensure that only those which are regulated are promoted to the general public. This is achieved by a combination of sections 21 and 238 (Restrictions on promotion) of the *Act* as explained in *PERG* 8.20.2G. A *regulated collective investment scheme* is:

- (1) an *authorised unit trust scheme*; or
- (1A) an *authorised contractual scheme*; or
- (2) an *investment company with variable capital*; or
- (3) ~~a scheme recognised under section 264 of the Act (Schemes constituted in other EEA States); or [deleted]~~
- (4) [deleted]
- (5) a *scheme* recognised under section 272 of the *Act* (Individually recognised overseas schemes).

...

## 8.21 Company statements, announcements and briefings

...

## Article 59: Annual accounts and directors' report

- 8.21.11 G Article 59 is capable of applying to *financial promotions* in *company* statements and briefings where they are accompanied by:
- (1) the whole or any part of the annual accounts of the *company* (provided it is not an *open-ended investment company*); or
  - (2) any report prepared and approved by the directors of such a *company* under sections 414A and 414D of the Companies Act 2006 (strategic reports) or sections 415 and 419 of that Act (directors' reports), ~~or corresponding legislation in another EEA State.~~
- ...

...

## Article 70: Promotions included in listing particulars, etc

- 8.21.20 G Article 70 applies to a *non-real time financial promotion* included in:
- (1) *listing particulars*; or
  - (2) *supplementary listing particulars*; or
  - (3) a prospectus or supplementary prospectus approved in line with *Prospectus Rules* ~~or by the competent authority of another EEA State (provided the requirements of section 87H of the Act are met)~~ – including part of such a prospectus or supplementary prospectus; or
  - (4) any other document required or permitted to be published by *listing rules* or *Prospectus Rules*.

Article 70 also applies to a *non-real time financial promotion* comprising the final terms of an offer or the final offer price or amount of *securities* which will be offered to the public and that complies with ~~articles 5(4), 8(1) and 14(2) of the Prospectus Directive~~ PR 2.2.7R to PR 2.2.9AR, PR 2.3.2R, PR 3.2.4R and PR 3.2.4AR as those rules have effect on exit day.

The comments in *PERG* 8.21.14G about when something is required or permitted to be published apply also to (4).

...

## 8.36 Illustrative tables

...

- 8.36.6 G Application of Exemptions to Forms of Promotions

Financial Promotion Order		Applies to		
Article No.	Title and PERG 8 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
...				
20B	<del>Incoming electronic commerce communications (8.12.38G)</del>	*	*	*
...				
36	<del>Nationals of EEA States other than United Kingdom (8.14.18G)</del>		*	*
...				

...

### 8.37 AIFMD Marketing

#### Introduction and purpose

8.37.1 G (1) Part 6 (Marketing) of the AIFMD *UK* regulation contains restrictions on an AIFM or an investment firm marketing an AIF. Such a person may not market an AIF in the *UK* or Gibraltar unless the relevant conditions set out in the AIFMD *UK* regulation are met.

(2) The purpose of this section is to give *guidance* on:

...

(f) the interaction between the *marketing* of an AIF and the UK provisions which implemented the prospectus directive (see *PERG* 8.37.15G).

...

(3) ~~No guidance has been provided by the European Commission or ESMA on the meaning of *marketing* in AIFMD and, therefore, this *guidance* is subject to any future clarification from these (or other) European bodies. This means that other *EEA States* may take a different view on the meaning of *marketing* in AIFMD. [deleted]~~

...

## Restrictions on an AIFM marketing an AIF

8.37.2 G Regulations 49 and 50 place restrictions on an *AIFM marketing an AIF*. These regulations provide that the following types of *AIFM* may not *market* the following types of an *AIF* in the *UK* unless the conditions summarised below are met.

- (1) The conditions that need to be met vary depending on whether the *AIF* falls within regulation 57(1) or not. An *AIF* falls within this regulation if it is:
- (a) a *feeder AIF* that is a *UK AIF*, a *Gibraltar AIF* or an EEA *AIF*, the master *AIF* of which is either managed by a ~~non-EEA AIFM~~ *non-UK AIFM* or is a ~~non-EEA AIF~~ *non-UK AIF*, and where the *feeder AIF* is managed by a full-scope UK AIFM or a full-scope Gibraltar AIFM; or
  - (b) ~~a non-EEA AIFM or is a non-EEA AIF; or [deleted]~~
  - (c) a ~~non-EEA AIF~~ *non-UK AIF* which is managed by a full-scope UK AIFM or a full-scope Gibraltar AIFM.

~~Such AIFs are not entitled to benefit from the marketing passport under AIFMD and are subject to the national private placement provisions in respect of their marketing.~~

- (2) Regulation 49 (Marketing by full scope EEA AIFMs of certain AIFs) provides that a ~~full-scope EEA AIFM~~ full-scope Gibraltar AIFM may not market an *AIF* that does not fall within regulation 57(1) in the *UK* unless:
- (a) when *marketing* to a *professional client*, the *FCA* has received a regulator's notice regarding the marketing of the *AIF*, in accordance with Schedule 3 to the Act, as it applies in relation to Gibraltar AIFMs and Gibraltar AIFs (~~EEA passport rights~~); or
  - (b) when *marketing* to a *retail client*:
    - (i) the *FCA* has received a regulator's notice regarding the *marketing* of the *AIF*, Schedule 3 to the Act, as it applies in relation to Gibraltar AIFMs and Gibraltar AIFs (~~EEA passport rights~~); or
    - ...
- (3) Regulation 50 (Marketing by AIFMs of other AIFs) provides that:
- ...

- (b) the following types of *AIFM* may not *market* the following types of *AIF* unless the *AIFM* has complied with the national private placement provisions set out in chapter 3 (National private placement) of Part 6 of the *AIFMD UK regulation* (see FUND 10.5 (National private placement)):

...

- (ii) a ~~full-scope EEA AIFM~~ full-scope Gibraltar AIFM of an *AIF* falling within regulation 57(1); and
- (iii) a ~~non-EEA AIFM non-UK AIFM~~ (ie a ~~small non-EEA AIFM~~ small non-UK AIFM or an ~~above-threshold non-EEA AIFM~~ above-threshold non-UK AIFM) of a *UK AIF*, an ~~EEA AIF~~ or a ~~non-EEA AIF~~ non-UK AIF.

...

The circumstances in which an *AIFM* or an investment firm markets an *AIF*

- 8.37.4 G (1) Regulation 45 (References in this part to an *AIFM* or an investment firm marketing an *AIF*) provides that:
- (a) an *AIFM* *markets* an *AIF* when the *AIFM* makes a direct or indirect offering or placement of *units* or *shares* of an *AIF* managed by it to an investor domiciled or with a registered office in ~~an EEA State~~ the United Kingdom or Gibraltar, or when another person makes such an offering or placement at the initiative of, or on behalf of, the *AIFM*; and
- (b) an *investment firm* *markets* an *AIF* when it makes a direct or indirect offering or placement of *units* or *shares* of the *AIF* to an investor domiciled or with a registered office in ~~an EEA State~~ the United Kingdom or Gibraltar at the initiative of, or on behalf of, the *AIFM* of that *AIF*.

...

...

Communications with investors in relation to draft documentation

- 8.37.6 G (1) Under the UK provisions which implemented article 31 *AIFMD*, an *AIFM* is required to submit the documentation and information set out in the law that implemented Annex III to *AIFMD* with its application for permission to market an *AIF* managed by it and to notify ~~their competent authority~~ the FCA of any material changes to this documentation and information. Therefore, the prescribed documentation and information should be in materially final form before the *AIFM* may apply for permission to market an *AIF*. Any communications relating to this draft documentation do not, in our

view, fall within the meaning of an ‘offer’ or ‘placement’ for the purposes of the law that relates to the regulation of *AIFMs* in the ~~UK~~ *AIFMD United Kingdom*, as the *AIFM* cannot apply for permission to *market* the *AIF* at this point. For example, a promotional presentation or a pathfinder version of the private placement memorandum would not constitute an offer or placement, provided such documents cannot be used by a potential investor to make an investment in the *AIF*. However, a *unit* or *share* of the *AIF* should not be made available for purchase as part of the capital raising of the *AIF* on the basis of draft documentation in order to circumvent the *marketing* restriction.

- (2) In our view, the position for draft documentation set out in (1) should apply to marketing under ~~article 32 of AIFMD~~ and the national private placement provisions. ~~However, as there is no European guidance on the meaning of marketing, other EEA States may take a different view.~~
- (3) Regard should be had to national law in relation to a communication which does not amount to an offering or a placement. In the *UK*, consideration needs to be given to whether such a communication is a *financial promotion* (see *PERG* 8.37.14G). ~~If a UK AIFM is marketing in another EEA State using the marketing passport in article 32 AIFMD, regard should be had to the national law of that EEA State, as the arrangements for marketing are a matter for the Host State in accordance with article 32(5) of AIFMD (unless the communication is an information society service in which case regard should be had to the law of the country of origin).~~

...

#### Territorial scope of the marketing restrictions

- 8.37.10 G (1) The restrictions on the *marketing* of an *AIF* in regulations 49 to 51 only apply to *marketing* that takes place in the *UK*. In addition, under regulation 45, an *AIFM* or an *investment firm* only *markets* an *AIF* if the investor is domiciled in ~~an EEA State~~ the United Kingdom or Gibraltar or has its registered office in ~~an EEA State~~ the United Kingdom or Gibraltar.
- (2) Under regulation 2(2)(a) (Interpretation), the reference to ‘domicile’ should be construed in line with its meaning in *AIFMD*, ~~ie its meaning under EU law~~. This may be different to the domicile of an investor for tax purposes.

**[Note: see section 6 of the *EUWA*]**

#### Marketing at the initiative of the investor

- 8.37.11 G ...

- (2) A confirmation from the investor that the offering or placement of *units of shares* of the *AIF* was made at its initiative, should normally be sufficient to demonstrate that this is the case, provided this is obtained before the offer or placement takes place. However, *AIFMs* and *investment firms* should not be able to rely upon such confirmation if this has been obtained to circumvent the requirements of the legislation that implemented AIFMD.

...

The interaction between marketing and the prospectus directive

- 8.37.15 G (1) The UK provisions which implemented the prospectus directive ~~has~~ ~~were not been~~ amended by the UK provisions which implemented the AIFMD and closed-ended AIFs that are making an offer of securities to the public as defined in the *prospectus directive* need to comply with the requirements under the UK provisions which implemented both Directives.
- (2) However, where the *AIF* is required to publish a *prospectus* under *section 85* of the *Act* ~~or the equivalent provision implementing article 3 of the Prospectus Directive in the AIF's Home State~~, only information referred to in *FUND 3.2.2R* and *FUND 3.2.3R* that is additional to that contained in the *prospectus* needs to be disclosed, either separately or as additional information in the *prospectus*.

## 9 Meaning of open-ended investment company

### 9.1 Application and Purpose

...

Other guidance that may be relevant

- 9.1.5 G ~~*Open-ended investment companies* constituted in other *EEA States* which are seeking to exercise rights conferred by the *UCITS Directive* should refer to *COLL 9* (Recognised schemes) for *guidance* on the requirements of *section 264* of the *Act* (Schemes constituted in other *EEA States*). Those seeking to exercise rights under *AIFMD* should refer to *FUND 10* (Operating on a cross-border basis). [deleted]~~

...

### 9.6 The investment condition (section 236(3) of the Act): general



...

- 9.6.5 G Certain matters are to be disregarded in determining whether the investment condition is satisfied. Section 236(4) of the *Act* states that, for these purposes, no account is to be taken of any actual or potential redemption or repurchase of *shares* or *securities* under:

...

- (3) ~~corresponding provisions in force in another EEA State; or [deleted]~~
- (4) provisions in force in a country or territory ~~other than an EEA State~~ which the Treasury has, by order, designated as corresponding provisions (no orders have yet been made).

- 9.6.6 G ~~The FCA considers that the reference in PERG 9.6.5G(3) to corresponding provisions in force in another EEA State will include provisions that derive from the maintenance of capital requirements of the Second Council Directive on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies (77/91/EEC). [deleted]~~

...

#### 10.4A The application of requirements which implemented EU directives

Q41A Are pension scheme trustees and administration service providers likely to be subject to authorisation under the UK provisions which implemented the Markets in Financial Instruments Directive or subject to the UK provisions which implemented the Directive on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms?

This is possible, but in many instances it is likely that pension scheme trustees and service providers will either not be providing an investment service for the purposes, or otherwise be exempt under the exemptions which were set out in article 2.1 of the Markets in Financial Instruments Directive, but have been onshored in Part 1 of Schedule 3 to the Regulated Activities Order. The following table expands on this in broad terms.

As for the UK provisions which implemented the CRD, ~~this~~ these will only apply to persons who are *MiFID investment firms* or *CRD credit institutions*.

Detailed guidance on the scope of the UK provisions which implemented the MiFID and the *CRD* and ~~EU~~ UK CRR is in *PERG 13*.

In the table below, references to relevant paragraphs of Article 2.1 of MIFID should be read as the equivalent exemptions which have been onshored in Part 1 of Schedule 3 to the Regulated Activities Order, or, in respect of Article 3 of MIFID, which can now be found in regulation 8 of the MiFI Regulations.

...

#### 12.4 The application of requirements which implemented EU directives

Q24 Do the changes in the scope of regulated activities concerning pension schemes that took effect on 6 April 2007 have any implications for pension scheme trustees or service providers under the UK provisions which implemented the Investment Services Directive ~~(or, in future, the~~ or the UK provisions which implemented the Markets in Financial Instruments Directive) ~~or the Insurance Mediation Distribution Directive~~?

In general terms, if a pension scheme trustee or service provider did not need to be authorised under the *Investment Services Directive* prior to 6 April 2007 he should not need to be authorised for carrying on the same activities after that date. This is because rights under a personal pension scheme are not a financial instrument under ~~the~~ that Directive and establishing, operating or winding up a personal pension scheme is not an investment service under the Directive. This ~~will~~ is also be the case under the Markets in Financial Instruments Directive ~~when it replaces~~ which replaced the Investment Services Directive ~~later in late~~ late 2007. ~~But this is subject to the fact that investment advice will become an investment service for the first time. Guidance on the application of the Investment Services Directive to the activities of pension scheme trustees and service providers generally is in Chapter 10.4A of PERG. Draft g~~ Guidance on the changes in regulatory scope that will be caused by the implementation of the Markets in Financial Instruments Directive

was issued as Annex 5 to Consultation Paper 06/9 (~~Organisation systems and controls~~) and will form Chapter 13 to *PERG* the scope of MIFID as implemented into UK law can be found in PERG 13.

Similarly, a pension scheme trustee or service provider who was not subject to regulation under the *Insurance Mediation Directive* prior to 6 April 2007 will not become subject to regulation purely as result of the changes in regulatory scope that took effect on 6 April 2007. Detailed guidance on the application of that Directive (as replaced by the Insurance Distribution Directive) to pension scheme trustees and service providers is in Chapters 10.4 and 10.4A of *PERG*.

...

## 13 **Guidance on the scope of the UK provisions which implemented MiFID and CRD IV**

### 13.1 **Introduction**

13.1 The purpose of this chapter is to help *UK* firms consider:

- whether they fall within the scope of the UK provisions which implemented Markets in Financial Instruments Directive 2014/65/EU ('MiFID') and therefore are subject to the ~~its~~ requirements derived from it;
- how their existing *permissions* correspond to related MiFID derived concepts;
- whether the UK provisions which implemented CRD and the EU-CRR UK CRR apply to them, and for certain firms, whether the provisions which correspond to the recast CAD continue to apply to them; and
- if so, which category of investment firm they are for the purposes of the ~~transposition of the~~ the provisions which correspond to the recast CAD or the UK provisions which implemented CRD and the EU-CRR UK CRR.

...

### **Background**

MiFID ~~replaces~~ replaced the Markets in Financial Instruments Directive 2004/39/EC (MiFID 1), which in turn replaced the Investment Services Directive (ISD).

~~MiFID is complemented by regulation (EU) No. 600/2014 on markets in financial instruments ('MiFIR'). MiFID and MiFIR are supplemented by "Level 2 measures". The most relevant for the purposes of this chapter are Commission Delegated Regulation (EU) 2017/565 (the MiFID Org Regulation) and Commission Delegated Regulation (EU) 2017/592 (regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business). These implementing measures amplify and supplement certain of the concepts and requirements specified in MiFID and MiFIR.~~

### **MiFID onshoring in UK legislation and the FCA Handbook**

The *United Kingdom*'s onshoring of the directive takes the form of a combination of legislation made by HM Treasury, in the form of a number of statutory instruments, and rules contained in the FCA Handbook and the PRA Rulebook. "Onshoring", for these purposes, refers to the process by which law deriving from EU legislation at exit date is retained or adapted, post exit date.

The Treasury legislation is set out in the following statutory instruments as amended by the Exit Regulations, in particular:

- Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 ('MiFI regulations'), SI 2017/701;
- Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 2001 ('RAO Amendment Order'), SI 2017/488 2001/544.

The FCA Handbook complements the Treasury legislation, referred to above.

### **Transitional onshoring provisions**

The effect of section 3 of the European Union (Withdrawal) Act 2018 is that "direct EU legislation" became part of *UK* law, as at exit day (and is known as "retained EU law" in accordance with section 6 of the same legislation). As such, MiFIR and all directly applicable regulations made under MiFID and MiFIR including the MiFID Org Regulation (Commission Delegated Regulation 2017/565), the MiFIR Delegated Regulation (Commission Delegated Regulation 2017/567) and technical standards became part of *UK* law, as at exit date.

Each of these pieces of legislation is subject to the power in section 8 of the European Union (Withdrawal) Act 2018 to deal with deficiencies arising out of the *United Kingdom*'s withdrawal from the EU. The Treasury has exercised this power in the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (the 'Exit Regulations') to amend each of the following:

- MiFIR
- MiFID Org Regulation
- MiFIR Delegated Regulation
- Data Reporting Services Regulations
- The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017

A reference to any of the above in the remaining text of this chapter is to the legislation as amended by the Exit Regulations.

### **MiFID scope**

The scope aspects of MiFID are primarily addressed through the *Regulated Activities Order* ('RAO') and *PERG 2* focuses on the scope of regulated activities under the RAO and includes materials on the effect that the *UK* provision

which implemented MiFID has had on the *RAO*. This chapter focuses more on the underlying MiFID investment services and activities, as well as the exemptions.

Where a firm's regular occupation or business is providing one or more *investment services* to third parties or performing investment activities in relation to MiFID financial instruments on a professional basis, it is a firm to which UK provisions which implemented MiFID applies unless it is exempt.

Broadly, the exemptions from MiFID are likely to be relevant to insurers, group treasurers, professional firms to which *Part XX* of the *Act* applies, many *authorised professional firms*, professional investors who invest only for themselves, pension schemes, depositaries and operators of collective investment schemes or other collective investment undertakings (such as investment trusts), journalists, and commodity producers and traders. The exemptions are subject to conditions and limitations described in more detail below (see *PERG* 13.5).

The Treasury's implementation of the article 3 MiFID exemption, onshored in regulation 8 of the *MiFI Regulations*, is likely to be relevant to many financial advisers (see Q50) including some corporate finance advisers. It may also be relevant to some venture capital firms. The Treasury legislation enables firms falling within the scope of the exemption to elect to be subject to the requirements derived from of MiFID and thereby acquire passport rights (see Q52).

In each case, it will be for firms and individuals to consider their own circumstances and consider whether they fall within the relevant exemptions. A firm which takes the benefit of one or more of the exemptions in article 2 or 3 MiFID, onshored in Part 1 of Schedule 3 to the Regulated Activities Order and Regulation 8 of the *MiFI Regulations*, may nevertheless require authorisation under the *Act* (see *PERG* 2).

In addition to *investment firms*, the UK provisions which implemented MiFID is are also relevant to *credit institutions* providing investment services or performing investment activities (see Q5), to *AIFMs* to which the UK provisions which implemented article 6.4 of *AIFMD* applies (in other words, *AIFM investment firms*) and to *UCITS management companies* to which the UK provisions which implemented article 6.4 of the *UCITS Directive* applies (in other words, *UCITS investment firms*).

This guidance is concerned with the scope of the UK provisions which implemented MiFID and does not address the question of whether an investment firm that falls within the scope of the UK provisions which implemented MiFID is providing a MiFID investment service as opposed to an investment activity.

#### **CRD IV**

Investment firms subject to the UK provisions which implemented MiFID, including those who fall within the article 3 MiFID exemption, onshored in regulation 8 of the *MiFI Regulations*, but opt not to take advantage of it, are subject to the requirements of the UK provisions which implemented *CRD* and the ~~EU~~ *CRR UK CRR*. There are special provisions for certain commodities firms as well as firms whose MiFID investment services and activities are limited to only one or more of the following investment services and activities:

- execution of orders on behalf of clients;
- portfolio management;
- giving investment advice; or
- receiving and transmitting client orders, and

who are not permitted to hold client money or securities nor are authorised to provide ancillary service (1) referred to in Section B of Annex 1 to MiFID, onshored in Part 3A of Schedule 2 to the *Regulated Activities Order* (which is safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management).

*Collective portfolio management investment firms* (a term that is used to refer to both *AIFM investment firms* and *UCITS investment firms*) are subject to the requirements of the UK provisions which implemented CRD and the EU-CRR UK CRR, unless they are firms whose *MiFID* investment services and activities are limited to those in the preceding paragraph.

Under the *UK* implementation of the *CRD* and the EU-CRR UK CRR, the level of capital an investment firm subject to MiFID requires is determined by the type of investment services and activities it provides or performs, its scope of permission and any limitations or requirements attaching to that permission (see *PERG* 13.6). A firm relying on an article 2 or 3 MiFID exemption, onshored in Part 1 of Schedule 3 to the *Regulated Activities Order* and Regulation 8 of the *MiFI Regulations*, is not subject to *CRD* and the EU-CRR UK CRR.

### **How does this document work?**

This document is made up of Q and As divided into the following sections:

- General (*PERG* 13.2);
- Investment services and activities (*PERG* 13.3);
- Financial instruments (*PERG* 13.4);
- Exemptions from MiFID derived provisions (*PERG* 13.5);
- The CRD IV (*PERG* 13.6); and
- Flow charts, tables and lists (*PERG* 13 Annex 1, *PERG* 13 Annex 2, *PERG* 13 Annex 3, *PERG* 13 Annex 4).

We have also included guidance in the form of flow charts to help firms decide whether the UK provisions which implemented MiFID and the *CRD* and the EU-CRR UK CRR (which allow provisions which correspond to the recast CAD to apply to certain firms) apply to them as well as permission maps indicating which regulated activities and *specified investments* correspond to MiFID investment

services, activities and MiFID financial instruments (see *PERG* 13 Annex 1, *PERG* 13 Annex 2 and *PERG* 13 Annex 3.

Article and recital references are to MiFID (Level 1 measures) unless otherwise stated. References to categories of MiFID investment services and activities and MiFID financial instruments adopt the structure of Annex 1 MiFID: for example, A1 refers to “reception and transmission of orders in relation to one or more financial instruments” and C1 relates to “transferable securities”.

While these provisions have been “onshored”, we have, unless otherwise stated, retained the references in this chapter, and its annexes, to the provisions in MiFID and other relevant directives such as CRD, UCITS directive and AIFMD for ease of reference. As a result, where the context requires, any references to a directive, its articles or recitals, which could be read as having continuing effect, should be read as a reference to ‘the UK provisions which implemented’ that directive or the relevant article. In addition, any reference which adopts the structure of Annex 1 of MiFID, for example by referring to A1 or C1, should be read as a reference to the relevant corresponding paragraph as onshored in Schedule 2 of the *Regulated Activities Order*.

...

## 13.2 General

### Q1. Why does it matter whether or not we fall within the scope of MiFID?

Depending on whether or not you fall within the scope of MiFID, you may be subject to:

- domestic legislation implementing MiFID (for example, FCA rules);
- “direct EU legislation” directly applicable, which became part of UK law as at exit date in accordance with section 3 of the European Union (Withdrawal) Act 2018, and is known as “retained EU law” in accordance with section 6 of the same legislation. made by the European Commission (such as, *MiFIR*, *EU CRR* *UK CRR* and all directly applicable EU regulations made under them or under MiFID); and
- domestic legislation implementing the CRD (see *PERG* 13.6).

~~The question is also relevant to whether you can exercise passporting rights in relation to investment services or activities – only firms to which MiFID applies can do so.~~

...

### Q3. How much can we rely on these Q and A’s?

The answers given in these Q and As represent the FCA’s views but the interpretation of financial services legislation is ultimately a matter for the courts. How the scope of MiFID and the *CRD* and the *EU CRR* *UK CRR* affect the regulatory position of any particular person will depend on his individual

circumstances. If you have doubts about your position after reading these Q and As, you may wish to seek legal advice. The Q and As are not a substitute for reading the relevant the UK provisions which implemented in MiFID, the CRD and the EU UK CRR (and the provisions which correspond to the recast CAD for certain firms), the MiFID implementing measures and The Treasury's implementing legislation.

Moreover, MiFID, the CRD and the EU UK CRR are were subject to guidance and communications by the European Commission, the European Securities and Markets Authority ('ESMA') and the European Banking Authority ('EBA'), we have now issued guidance on how this will be treated after exit day

[**Note:** link to the relevant guidance is to be inserted].

...

#### **Q4. We provide investment services to our clients – does MiFID apply to us?**

Yes if you are:

- an “investment firm” and the exemptions in MiFID do not apply to you; or
- a “tied agent” as defined by MiFID.

If you are a non-EU UK firm, for example the *UK* branch of a US firm, MiFID does not apply to you. However, if MiFID would have applied to you if you had been incorporated or formed in the EU United Kingdom, you will be a third country investment firm under the FCA's rules. As a result, certain MiFID based requirements will apply to you.

See the flow charts in Annex 1 for further information and *PERG* 13.5 for guidance relating to exemptions. See Q7 and 8 for guidance on whether you are an investment firm and Q11 for guidance relating to tied agents.

#### **Q5. We are a credit institution. How does MiFID apply to us?**

If you are an ~~EEA~~ credit institution, article 1.3 MiFID provides that selected MiFID provisions apply to you, including organisational and conduct of business requirements, when you are providing investment services to your clients or performing investment activities. In our view, MiFID will apply when you are providing ancillary services in conjunction with investment services. Where you provide ancillary services on a standalone basis, MiFID will not apply in relation to those services. Article 1.3 MiFID is reflected in paragraph (2) of the *Handbook* definition of “MiFID investment firm”.

In addition, article 1.4 MiFID provides that various MiFID provisions apply when selling or advising clients about structured deposits (see Q34B). Article 1.4 MiFID is reflected in paragraph (2) of the FCA Handbook definition of “MiFID investment firm”.

...

#### **Q.11 How will we know whether we are a tied agent (article 4.1(29))?**



A tied agent under MiFID is a similar concept to an appointed representative under the Act. A tied agent does not require authorisation for the purposes of MiFID, just as an appointed representative does not require authorisation under the Act. In our view, you will only be a tied agent if your principal is an investment firm (including a credit institution) to which MiFID applies. So, if you act for a principal that is subject to an exemption in article 2 of MiFID, you are not a tied agent for the purposes of MiFID although you may be an appointed representative for domestic purposes. You will still not require authorisation under MiFID, either because you are not performing investment services and activities or, if you are, because you fall within an exemption in article 2 of MiFID.

MiFID says that firms exempt under article 3 should be subject to requirements which are at least analogous to the MiFID regime for tied agents of investment firms. This has been implemented in the UK through the appointed representative regime. If you are an appointed representative of a principal who is exempt under article 3 you will also be exempt under MiFID. Q48 to Q53 deal with the article 3 exemption.

Assuming your principal is an investment firm to which MiFID applies, if you are registered as an appointed representative on the Financial Services Register and carry on the activities of arranging (bringing about) deals in investments or advising on investments, in either case in relation to MiFID financial instruments, you are likely to be a tied agent for the purposes of article 4.1(29).

~~It is possible for a UK representative to be a tied agent of an incoming EEA firm, in which case if the representative is established in the UK it will also be a branch of its principal. However, it~~ It is not possible for a tied agent to provide investment services on behalf of more than one investment firm to which MiFID applies.

Further material on appointed representatives and tied agents is contained in chapter 12 of our Supervision Manual ('SUP').

### 13.3 Investment Services and Activities

#### Q.12 Where do we find a list of MiFID services and activities?

~~The list in Section A of Annex 1 to of MiFID has been onshored in Part 3 of Schedule 2 to the Regulated Activities Order.~~ There are nine investment services and activities in ~~Part 3 Section A~~ (A1 to A9 ~~have now been onshored in paragraph 1 to paragraph 9~~). ~~However, as explained in PERG 13.1 above, for ease of reference we have retained the references to the relevant MiFID provisions in this chapter.~~ Article 4 MiFID defines some of them in more detail:

- investment advice (article 4.1(4) MiFID);
- execution of orders on behalf of clients (article 4.1(5) MiFID);
- dealing on own account (article 4.1(6) MiFID); and
- portfolio management (article 4.1(8) MiFID).

A further provision relating to investment advice is contained in article 9 of the *MiFID Org Regulation*.

As explained in *PERG* 13.1, this chapter only covers the MiFID activities dealt with through the authorisation regime under the Act. The other activities covered by MiFID and MiFIR are not dealt with in section A of Annex 1, as onshored in Part 3 of Schedule 2 of the *Regulated Activities Order*.

...

**Q.26 We are an investment firm – can we apply for passporting rights that include ancillary services?**

~~Yes, but only if:~~

- ~~• you carry on the ancillary services together with one or more investment services and activities; and~~
- ~~• where the ancillary service is also a *regulated activity*, you have a permission enabling you to carry on those activities.~~

~~You will not be able to apply for passporting rights in respect of ancillary services only. In our view, this does not restrict the ability of credit institutions to exercise passporting rights under the *CRD* which correspond to ancillary services under MiFID (for example, the activity of safekeeping and administration of securities in Annex 1 paragraph 12 of the *CRD*). [deleted]~~

## 13.4 Financial instruments

### Introduction

**Q27. Where do we find a list of MiFID financial instruments?**

~~The list in Section C of Annex 1 to MiFID has been onshored in Part 1 of Schedule 2 to the *Regulated Activities Order*. There are eleven categories of financial instruments in section C, which have been onshored in Part 1 (C1 to C11, which have been onshored in paragraph 1 to paragraph 11). However, as explained in *PERG* 13.1 above, for ease of reference we have retained the references to the relevant MiFID provisions in this chapter. Transferable securities (C1) and money market instruments (C2) are defined in article 4. Some financial instruments are further defined in the *MiFID Org Regulation*.~~

...

### Derivatives: general

**Q30. Which types of derivative fall within MiFID scope?**

The following derivatives fall under MiFID:

- derivative instruments relating to securities, currencies, interest rates, emission allowances or certain other underlyings (see Q31A to Q31S);
- commodity derivatives (see Q32 to Q33C);
- derivative instruments for the transfer of credit risk (see Q31);

- financial contracts for differences (these are included in paragraph 9 of Section C of Annex 1 to MiFID, onshored in paragraph 10 of Part 1 of Schedule 2 of the *Regulated Activities Order*); and
- derivatives on miscellaneous underlyings (see Q34).

The scope of these derivatives does not extend to sports spread bets.

...

## Commodity derivatives

### Q.32 Which types of commodity derivatives fall within MiFID scope?

Broadly speaking, the following commodity derivatives fall within the scope of MiFID:

- a derivative relating to a commodity derivative, for example, an option on a commodity future (C4);
- cash-settled commodity derivatives (as explained in more detail in Q33A) (C5);
- physically settled commodity derivatives traded on certain markets or facilities (as explained in more detail in Q33B)(C6); and
- other commodity derivatives capable of physical settlement and not for commercial purposes or wholesale energy products traded on an *EU OTF* that must be physically settled (as explained in more detail in Q33C) (C7).

The definition of commodity derivative in MiFIR also includes derivatives falling into C10 of Section A of Annex 1 to MiFID, onshored in paragraph 10 of Part 1 of Schedule 2 of the *Regulated Activities Order* (see the answer to Q34 for this type of derivative).

...

### Q33B. Can you tell me more about category C6 commodity derivatives?

This type of commodity derivative is one that:

- can be physically settled; and
- is traded on a UK regulated market, ~~an~~ UK MTF or ~~an~~ UK OTF.

The category C6 type of commodity derivative excludes a wholesale energy product traded on ~~an~~ UK OTF that must be physically settled. The *MiFID Org Regulation* defines physical settlement in more detail.

Article 6 of the *MiFID Org Regulation* has special definitions for what types of oil, coal and wholesale energy products are included in the C6 category of commodity derivative.

A contract that can be physically settled but which is not traded on a regulated market, MTF or OTF might still fall within the C5 or C7 category of commodity derivative even though it falls outside category C6.

**Q33C. Can you tell me more about category C7 commodity derivatives (recital 5 to, and article 7 of, the MiFID Org Regulation)?**

This type of commodity derivative is one that meets all the following conditions:

- It can be physically settled.
- It is not a C6 commodity derivative.
- It is not a spot contract. A spot contract means one under the terms of which delivery is scheduled to be made within the longer of the following periods:
  - two trading days; or
  - the period generally accepted in the market for that commodity, asset or right as the standard delivery period.

For these purposes a contract is not a spot contract where, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed within the spot period described earlier in this answer.

- It meets one of the following criteria:
  - it is traded on a ~~non-EEA~~ third country trading venue that performs a similar function to a regulated market, an MTF or an OTF (an “equivalent third country trading venue”); or
  - it is expressly stated to be traded on, or is subject to the rules of, a UK regulated market, ~~an~~ a UK MTF, ~~an~~ a UK OTF or an equivalent third country trading venue; or
  - it is equivalent to a contract traded on a UK regulated market, UK MTF, UK OTF or equivalent third country trading venue. Equivalence is judged by reference to the price, the lot, the delivery date and other contractual terms such as quality of the commodity or place of delivery.
- It is standardised so that the price, the lot, the delivery date and other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

Certain contracts entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network are excluded from the C7 category of commodity derivative.

The category C7 type of commodity derivative also excludes a wholesale energy product traded on an EU OTF that must be physically settled. The *MiFID Org Regulation* defines physical settlement in more detail.

### Miscellaneous derivatives (C10)

#### Q34. What derivatives fall into the C10 category?

...

A contract of insurance or reinsurance is not a C10 commodity derivative (recital 6 to the MiFID Org Regulation). Neither is a contract falling under one of the other paragraphs of section C of Annex 1 to MiFID, onshored in part 1 of Schedule 2 of the *Regulated Activities Order*.

### Emission allowances

#### Q34A. How are emission allowances treated?

They are covered in the following ways:

- ~~Article 6(5) of the auction regulation deems as an investment service or activity the reception, transmission and submission of a bid for a financial instrument on an auction platform by an investment firm to which MiFID applies or a CRD credit institution.~~
- ~~The auction regulation regulates bids for allowances in the form of two-day spot contracts or five-day futures.~~
- ~~The auction regulation allows the following to bid:~~
  - ⊖ ~~aircraft operators and others referred to in (5) below;~~
  - ⊖ ~~investment firms and credit institutions; and~~
  - ⊖ ~~a person exempt under article 2(1)(j) of MiFID (see Q44 to Q45 for more on this exemption).~~
- An emission allowance is itself a financial instrument (C11).
- An option, future, swap, forward rate agreement or any other derivative contract relating to emission allowances is included as a C4 derivative.

It is not always clear how all this ~~overlapping legislation~~ fits together but in the FCA's view, it works like this:

- (1) ~~An emission allowance auctioned as a five-day future or a two-day spot contract is regulated under the auction regulation. [deleted]~~
- (2) The five-day future auction product is a financial instrument and is regulated under MiFID. It is included under C4 and C11.

- (3) The two-day spot contract product is also a financial instrument. It is included under C11. It is therefore also regulated under MiFID.
- (4) In the FCA's view an emission allowance (~~including when auctioned under the auction regulation~~) will not come within C1.
- (5) ~~The auction regulation provides certain exemptions for aircraft operators and operators of plant and other installations. These exemptions continue to apply whether or not a MiFID exemption is available, but only for bidding activities covered by the auction regulation. [deleted]~~
- (6) ~~Thus for example, article 18 of the auction regulation allows business groupings of operators in (5) to submit bids. The MiFID exemption in (12) below may not cover all such persons but they are still entitled to submit bids under the auction regulation without obtaining MiFID authorisation. [deleted]~~
- (7) ~~The mere fact of being exempt under MiFID does not allow someone to bid under the auction regulation. The auction regulation regulates who can and cannot bid. [deleted]~~
- (8) ~~The auction regulation covers the reception, transmission and submission of a bid. This corresponds to the MiFID activities of the reception and transmission of orders in relation to one or more financial instruments, execution of orders on behalf of clients and dealing on own account. [deleted]~~
- (9) ~~Therefore the auction regulation activities of receiving, transmitting and submitting a bid are all also covered by MiFID, whether the emission allowance is auctioned as a five day future or a two day spot contract. However, a person exempt under (5) is not subject to MiFID when bidding (subject to (10)). [deleted]~~
- (10) ~~If a person who is allowed to bid under the auction regulation is authorised under MiFID (because for example it wants to carry out other activities for which it needs MiFID authorisation), MiFID will apply to its bidding activities. [deleted]~~
- (11) ~~The MiFID activities that apply to a product covered by the auction regulation are not limited to the bidding activities listed in paragraph (8) of this list. All the MiFID investment services and activities apply to emission allowances auctioned as a financial instrument. Therefore, for example, giving personal recommendations about bids for emission allowances (including bids) is covered by MiFID. Anyone wishing to carry out such activities will need to be authorised as a MiFID firm, unless some other exemption is available.~~
- (12) Article 2.1(e) of MiFID exempts an operator with compliance obligations under Directive 2003/87/EC (Emissions Trading Scheme) from MiFID.

- (a) ~~The exemption covers some of the same ground as the exemption in the auction regulation described in (5) to (7) above. However this overlap neither extends nor narrows the effect of the auction regulation exemption. [deleted]~~
- (b) ~~The article 2.1(e) exemption also covers activities not covered by the auction regulation. So, for example, the article 2.1(e) exemption covers buying and selling the underlying emission allowance or the five-day future or two-day spot auction product in the secondary market. [deleted]~~
- (c) See the answer to Q35A for more details about the conditions of the exemption.

## 13.5 Exemptions from MiFID

### Q35. Where do we find the list of MiFID exemptions?

~~The exemptions found in articles 2 and 3 MiFID, have been onshored in Part 1 of Schedule 3 to the Regulated Activities Order and Regulation 8 of the MiFI Regulations. However, as explained in *PERG* 13.1 above, for ease of reference we have retained the references to the relevant MiFID provisions in this chapter.~~

...

### Q45. What is an ancillary activity for the purposes of the commodities exemption?

You can find the meaning of ‘ancillary’ for the purposes of the commodities exemption described in the answer to Q44 in ~~Commission Delegated Regulation (EU) 2017/592~~ MiFID RTS 20 (regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business).

This answer does not give a full summary as the definition is too detailed for *PERG*. Instead this answer summarises the broad approach.

There are two tests. The exemption only applies if you meet both tests. Both are based on commodities trading activities in the EEA.

The first test looks at the size of trading activities of members of your group in various asset classes. For each class, this is calculated by comparing their trading activities in that class with the overall trading activity in the EEA for that class.

The asset classes are made up of emission allowances and various types of commodity derivatives. The emission allowances asset class includes emission allowances to which the exemption for emission allowances in article 2.1(e) (see the table in the answer to Q35A) applies ~~and any bidding under the auction regulation.~~

For this test to be met, the trading level of persons within your group needs to be below the maximum amount for each asset class. There is a different maximum amount for each class.

Certain privileged transactions are excluded from the calculation:

- intra-group transactions that serve group-wide liquidity or risk management purposes;
- transactions in derivatives that reduce risks directly relating to commercial activity or treasury financing activity in accordance with criteria set out in Commission Delegated Regulation (EU) 2017/592 MiFID RTS 20 (regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business);
- transactions in commodity derivatives and emission allowances entered into to fulfil obligations to provide liquidity on a *trading venue*, where such obligations are required by:
  - regulatory authorities in accordance with ~~EEA~~ domestic law;
  - national laws, regulations and administrative provisions; or
  - those *trading venues*; and
- transactions executed by a group member authorised under MiFID or the CRD or with a corresponding Part 4A permission.

The second test has two calculation methods. If the result of either calculation is that you fall below the specified threshold, you meet the second test.

- One method is based on the size of group trading activities in commodity derivatives and emission allowances.
- The second measure compares the estimated capital employed for carrying out commodity derivative and emission allowance activities with group capital.

...

#### **Q49. Which firms might fall within this exemption?**

The exemption applies to persons who meet all the following conditions:

...

- they transmit orders only to one or more of the following:
  - other MiFID investment firms;
  - credit institutions authorised under the *CRD*;



- branches of third country investment firms or credit institutions which are subject to, and comply with, prudential rules considered by the *appropriate regulator* to be at least as stringent as those laid down in MiFID, MiFID, the *CRD* or the ~~EU CRR~~ UK CRR;
- collective investment undertakings or their managers authorised under the law of an ~~EEA State~~ the United Kingdom to market units to the public;
- EU incorporated investment companies the securities of which are listed or dealt in on a United Kingdom regulated market, for example investment trust companies.

...

**Q50. We are (or previously were) an IFA and have a permission which covers (i) arranging (bringing about) deals in investments; (ii) making arrangements with a view to transactions; and (iii) advising on investments, in each case in relation to securities but not derivatives. We are not permitted to hold client money or investments and do not have dealing or managing permissions in relation to MiFID financial instruments. Are we exempt?**

The FCA expects so, assuming you do not:

- carry on activities outside your permission; or
- transmit orders to persons other than those listed in Q49 (for example, you will fall outside the exemption if you transmit orders directly to collective investment schemes whose units cannot be marketed to the public in ~~any EEA State~~ the UK either because they are unregulated schemes or ~~EEA~~ non-UK authorised collective investment schemes); or
- place MiFID financial instruments without a firm commitment basis (see Q22 and Q23).

We would generally not expect IFAs to be placing MiFID financial instruments without a firm commitment basis as we associate placing of financial instruments with situations where a company or other business vehicle wishes to raise capital for commercial purposes, and in particular with primary market activity.

...

**Q52. If we fall within the exemption does this prevent us from acquiring passporting rights under MiFID?**

~~No. Firms which would otherwise be exempt can apply to opt into MiFID regulation with a view to acquiring passport rights (although they would then become subject to the requirements of MiFID, including certain enhanced prudential requirements – see Q58 and Q59). [deleted]~~

**Q53. What is the practical effect of exercising the optional exemption for those firms falling within its scope?**

You are not a firm to which MiFID applies and so are not a *MiFID investment firm* for the purposes of the Handbook. As such you are not subject to the requirements of the *CRD* as transposed in the Handbook and the ~~*EU CRR UK CRR*~~ and cannot exercise passporting rights.

Article 3.2 of MiFID applies certain MiFID requirements to firms making use of the article 3 exemption. These are implemented in the *Handbook* and the Act.

...

**13.6 CRD IV**

...

**Q55. Are we subject to the CRD and the ~~EU CRR~~ UK CRR?**

Only *investment firms* subject to the requirements of *MiFID* are subject to the requirements of the *CRD* and the ~~*EU CRR UK CRR*~~ (which allow provisions which correspond to the recast CAD to apply for certain firms). This includes *collective portfolio management investment firms* (see Q6, Q6A and Q63).

Despite being subject to the requirements of MiFID, broadly speaking, if you are one of the following investment firms, *CRD* and the ~~*EU CRR UK CRR*~~ will only apply to you in a limited way:

- a firm whose main business consists exclusively of providing *investment services or activities* in relation to commodity derivatives or C10 derivatives, or both, and to whom the ISD would not have applied. If you fall into this category, you will fall within a transitional regime under which you will not be subject to the capital requirements of the ~~*EU CRR UK CRR*~~ or *CRD* but will be subject to other requirements (see Q57); or
- a firm that is only authorised to provide investment advice or receive and transmit orders, or both, without holding client money or securities and does not provide the ancillary service (1) referred to in Section B of Annex I to MiFID, onshored in Part 3A of Schedule 2 to the Regulated Activities Order, which is safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management. If you fall into this category, you will be an *exempt CAD firm* and only subject to base capital requirements under the *CRD* (see Q58 and Q59 below); or

...

If you fall into this category, you may be a *BIPRU firm* and as such would not be subject to the capital requirements of the ~~*EU CRR UK CRR*~~ or *CRD* but would instead be subject to other requirements (see Q58A).

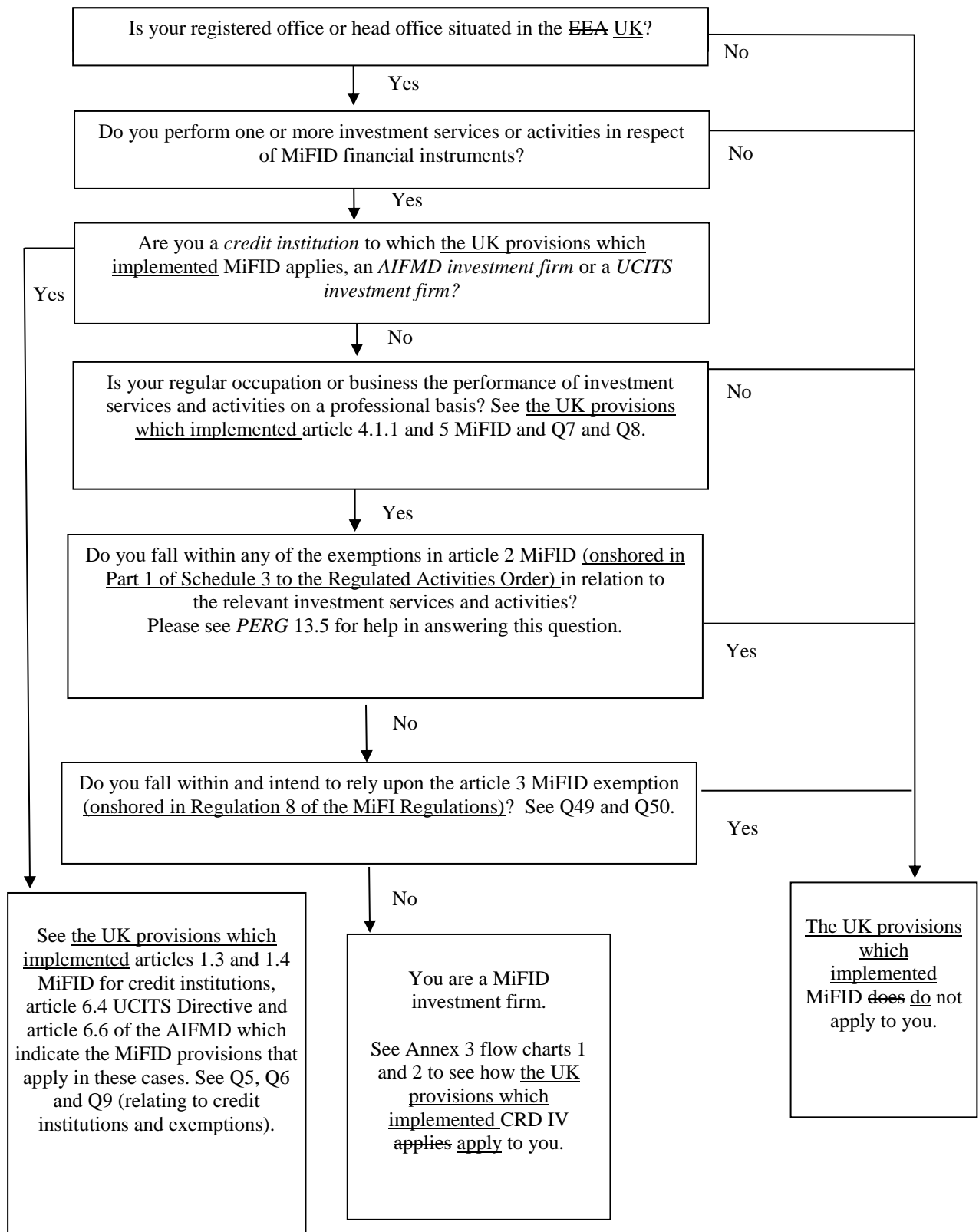
If you are an investment firm to which an exemption in either article 2 or article 3 MiFID applies (see *PERG* 13.5 and *PERG* 13 Annex 1 flow chart 2), you are not

subject to the CRD and the ~~EU CRR~~ UK CRR. However, if you potentially fall within the article 3 exemption, but decide to opt into MiFID regulation, ~~for instance to acquire passporting rights (see Q52)~~, you are subject to the CRD and the ~~EU CRR~~ UK CRR. If you do so, you are an *exempt CAD firm* (see Q58 and Q59).

There is also an exemption under the ~~EU CRR~~ UK CRR for local firms.

## 13 Annex 1

**Flow chart 1 – Does Do the UK provisions which implemented MiFID apply to us?**



### 13 Annex 2

The list of MiFID investment services in Section A of Annex 1 of MiFID, has been onshored in Part 3 of Schedule 2 to the Regulated Activities Order and the list of MiFID instruments in Section C of Annex 1 to MiFID has been onshored in Part 1 of Schedule 2 to the Regulated Activities Order. However, as explained in PERG 13.1 above, for ease of reference we have retained the references to the relevant MiFID provisions in this Annex.

Table 1 – MiFID Investment services and activities and the Part 4A permission regime

MiFID Investment Services and Activities	Part 4A permission	Comments
<p>A1- Reception and transmission of orders in relation to one or more financial instruments</p>	<p>Arranging (bringing about) deals in investments (article 25(1) RAO)</p> <p><del>Bidding in emissions auctions (article 24A RAO)</del></p>	<p>Generally speaking, only firms with permission to carry on the activity of arranging (bringing about) deals in investments in relation to securities and contractually based investments which are financial instruments can provide the service of reception and transmission. This is because a service must bring about the transaction if it is to amount to reception and transmission of orders.</p> <p>The activity of arranging (bringing about) deals in investments is wider than A1, so a firm carrying on this regulated activity will not always be receiving and transmitting orders.</p> <p>See Q13, Q14 and Q34A for further guidance.</p>
<p>A2- Execution of orders on behalf of clients</p>	<p>Dealing in investments as agent (article 21 RAO)</p> <p>Dealing in investments as principal (article 14 RAO)</p> <p><del>Bidding in emissions auctions (article 24A RAO)</del></p>	<p>Usually, where a firm executes orders on behalf of clients it will need permission to carry on the activity of dealing in investments as agent. Where a firm executes client orders on a true back-to-back basis or by dealing on own account, it also needs permission to carry on the activity of dealing in investments as principal.</p> <p>See Q15, Q15A and 34A for further guidance.</p>

C6- Options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a <u>United Kingdom</u> regulated market, <del>an</del> a <u>UK</u> MTF or <del>an</del> a <u>UK</u> OTF	commodity option and option on a commodity future  commodity future  contract for differences (excluding spread bet, a rolling spot forex contract and a binary bet)  binary bet	
...		
<p><b>Note:</b> The activity of bidding in emissions auctions can form part of A1, A2 or A3. In terms of the permission regime, bidding in emissions auctions does not form part of any other regulated activity (see <i>PERG 2.7.7CG</i>) and so a firm must have a separate permission to undertake that activity.</p>		

**Table 2 - MiFID financial instruments and the Part 4A permission regime**

MiFID financial instrument	Part 4A permission category	Commentary
...		
C6- Options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a <u>United Kingdom</u> regulated market, <del>an</del> a <u>UK</u> MTF or <del>an</del> a <u>UK</u> OTF	commodity option and option on a commodity future  commodity future  contract for differences (excluding spread bet, a rolling spot forex contract and a binary bet)  binary bet	C6 instruments will generally be either commodity futures or commodity options, depending on their structure. Those instruments with a cash settlement option may also be contracts for differences.  For further guidance see Q33B.
...		

## 15 Guidance on the scope of the Payment Services Regulations 2017

### 15.1 Introduction

The purpose of this chapter is to help businesses in the *UK* consider whether they fall within the scope of ~~the Second Payment Services Directive 2015/2366/EC (PSD2), as given effect to in~~ the Payment Services Regulations 2017 (the ‘PSRs 2017’). The PSRs 2017 create a separate authorisation and registration regime which differs from the authorisation requirements under the Financial Services and Markets Act. In particular, it is aimed at helping these businesses consider whether they need to be separately authorised or registered for the purposes of providing payment services in the UK. References to individual regulations are to the PSRs 2017, unless otherwise stated.

#### Background

~~The PSRs 2017 implemented the Second Payment Services Directive (2015/2366/EC) (PSD2) in the United Kingdom. The PSRs 2017 PSD2 provides the legal framework for the operation of a single market in payment services. This includes a harmonised~~ provide an authorisation regime, ~~designed to establish a single licence for payment service providers which are neither deposit-takers nor electronic money institutions.~~

The relevant payment services, ~~as transposed in the PSRs 2017,~~ are set out fully in Annex 2 to this chapter and include, amongst other things, services relating to the operation of payment accounts (for example, cash deposits and withdrawals from current accounts and flexible savings accounts), execution of payment transactions, card issuing, merchant acquiring, and money remittance. ~~The Directive~~ PSRs 2017 focuses on electronic means of payment including direct debit, debit card, credit card, standing order, mobile or fixed phone payments and payments from other digital devices as well as money remittance services; ~~it does~~ they do not apply to cash-only transactions or paper cheque-based transfers.

~~PSD2~~ The PSRs 2017 also creates authorisation and registration regimes for firms who provide holders of online payment accounts with payment initiation services and account information services.

~~Authorised payment institutions and registered account information service providers can provide services on a cross-border basis, using passport rights acquired under PSD2.~~

...

#### Scope

...

Generally speaking, depending on the nature and size of its activities, a business to which the PSRs 2017 apply (other than a credit institution ~~or~~; an electronic money institution, ~~an EEA authorised payment institution or an EEA authorised electronic money institution~~ and their agents) will need to be: authorised by the FCA as an authorised payment institution; or registered as a “small payment institution”; or registered as a registered account information services provider; or registered as an agent of an authorised payment institution, ~~EEA authorised payment institution~~, a small payment institution or a registered account information services provider.

...

The PSRs 2017 also provide for the appointment of agents by authorised payment institutions, small payment institutions and registered account information services providers. These agents are not required to be authorised under regulation 6 but they are required to be registered on the Financial Services Register by their principal (or each of their principals). ~~When the agent’s principal is an EEA authorised payment institution, it needs to be registered on the register of the Home State of that payment institution.~~ A business can also provide payment services as an agent of a credit institution, in which case there are no registration requirements under the PSRs 2017. Electronic money institutions can provide payment services through agents, in which case the registration requirements of the Electronic Money Regulations 2011 apply (see *PERG 3A*).

...

### **Transitionals**

Subject to the exclusions and exemptions outlined above, a person (other than ~~an EEA payment services provider and its agents~~, a credit institution, an electronic money institution and certain other specified bodies such as the Post Office) is caught by the authorisation and registration requirements of the PSRs 2017 when it provides payment services, as a regular occupation or business activity, in or from the UK. That said, there are important transitional provisions which delay the need for businesses authorised or registered under the Payment Services Regulations 2009 to re-apply for authorisation or registration under the PSRs 2017, before and during an initial period after the commencement of regulation on 13 January 2018. There is also a transitional provision applying to providers of account information services and payment initiation services which were providing those services before 12 January 2016 – see 15.7.

...

## **15.2**

### **General**

#### **Q1. Why does it matter whether or not we fall within the scope of the PSRs 2017?**



Broadly, when you provide payment services, as a regular occupation or business activity, in the *UK* and these services do not fall within an exclusion or exemption, you must be:

- an authorised payment institution; or
  - ~~an EEA authorised payment institution; or~~
  - a small payment institution; or
  - a registered account information services provider ~~or an EEA registered account information service provider; or~~
  - a credit institution (either one with a Part 4A permission to accept deposits) ~~or an EEA credit institution where it is exercising passport rights under paragraph 4 of Annex 1 to the CRD; or~~
  - an electronic money institution ~~or an EEA authorised electronic money institution; or~~
  - the Post Office Limited, Bank of England, ~~a central bank~~ or government departments and local authorities; or
  - an exempt person (that is a credit union, municipal bank and the National Savings Bank)
- ...

### **Q3. How much can we rely on these Q&As?**

The answers given in these Q&As represent the FCA's views but the interpretation of financial services legislation is ultimately a matter for the courts. How the scope of the PSRs 2017 affects the regulatory position of any particular person will depend on his individual circumstances. If you have doubts about your position after reading these Q&As, you may wish to seek legal advice. The Q&As do not purport to be exhaustive and are not a substitute for reading the relevant legislation. In addition to FCA guidance, some PSD2 provisions (from which the PSRs 2017 are derived) may be the subject of guidance or communications by the European Commission or the European Banking Authority.

### **Q4. We are a UK firm not authorised under FSMA providing payment services to our clients, as a regular business activity. Are we required to be authorised or registered under the regulations?**

Yes, unless the exclusions or exemptions in the regulations apply to you or you are an electronic money institution, ~~an EEA authorised electronic money institution~~, the Post Office Limited or an agent of a credit institution or electronic money institution. If this is not the case, you need to be:

- authorised by the FCA as an authorised payment institution; or
- registered as a small payment institution; or
- registered as an account information services provider; or
- registered as an agent of an authorised payment institution, ~~EEA authorised payment institution~~ or a small payment institution.

...

#### **Q7. We are a credit institution. Do the PSRs 2017 apply to us?**

Yes. If you are a credit institution, you will be subject to the conduct of business requirements in the PSRs 2017 to the extent that you provide payment services. The authorisation process applying to ~~UK and non-EEA~~ credit institutions remains that imposed by Part 4A of the Act. Authorised credit institutions will do not though need to apply for a separate Part 4A permission, in order to provide payment services. In other words, if a *UK* credit institution has a Part IV permission to carry on the regulated activity of accepting deposits, it will not need to be separately authorised to provide payment services in the *UK*. However, credit institutions intending to provide account information services or payment initiation services should have regard to the notification requirements in *SUP* 15.8. The *UK* branch of a non-~~EEA~~ *UK* credit institution with a Part 4A permission to accept deposits is also authorised to provide payment services in the *UK*.

~~An EEA credit institution wishing to provide payment services through a UK branch must exercise its passport rights under paragraph 4 of the Annex to the CRD. Similarly, a UK credit institution which wishes to provide payment services in other Member States may exercise its CRD passport rights to do so.~~

#### **Q8. We are an electronic money institution. Do the PSRs 2017 apply to us?**

Yes. If you are an electronic money institution, you will be subject to the conduct of business requirements in the PSRs 2017. If you are a credit institution, a credit union or a municipal bank, issuing electronic money is a regulated activity and you will require permission under the Act (see *PERG* 2.6.4A). The authorisation and registration requirements for any other person intending to issue electronic money are governed by the Electronic Money Regulations (see *PERG* 3A for guidance on the scope of the Electronic Money Regulations). If you are an authorised or small electronic money institution ~~or an EEA authorised electronic money institution~~, the PSRs 2017 introduce a transitional provision into the Electronic Money Regulations which affects your right to continue to provide services in the *UK* after 12 July 2018 – see *PERG* 3A.7.

...

**Q12. We provide electronic foreign exchange services to our customers/clients. Will this be subject to the PSRs 2017?**

...

By contrast, we would not expect the conduct of business provisions (including the right of cancellation) in the Payment Services Regulations to apply to a spot or forward fx transaction itself. That said, the electronic transmission, for example, by a bank on behalf of a customer to an fx services provider is likely to be subject to the ~~PSD~~ PSRs 2017, because this is a transfer of funds executed by the bank. Similarly, the onward payment by a bank or fx services provider, on behalf of a client, to a third party of currency purchased in an fx transaction may amount to a payment service.

If you are a small payment institution or an authorised payment institution under the PSRs 2017, you may provide foreign exchange services that are closely related and ancillary to your payment services. However, that does not allow you to provide foreign exchange derivative services that would otherwise require authorisation under ~~MiFID~~ FSMA. You therefore need to consider the availability of ~~MiFID~~ exclusions for your foreign exchange business (see *PERG 13 Q31K*).

...

### 15.3

#### **Payment Services**

**Q14. Where do we find a list of payment services?**

In Schedule 1 Part 1 to the PSRs 2017. There are eight payment services, set out in full in Annex 2 to this chapter (including six activities which were payment services under the PSD regulations and the two new activities of payment initiation services and account information services). References to categories of payment services below adopt the structure of Schedule 1 to the PSRs 2017: for example, paragraph (1)(f) refers to “money remittance”.

The payment service referred to in paragraph (1)(g) of Schedule 1 to the PSD regulations does not appear as a separate payment service in the PSRs 2017. Telecommunications, IT system or network operators with a paragraph (1)(g) permission should consider which permission(s) they require under the PSRs 2017, such as executing a payment transaction within (1)(c) or issuing a payment instrument under (1)(e). If the services within your paragraph 1(g) permission are also of the type described in paragraph 1(c), under the transitional provisions in regulation 152 of the PSRs 2017 you will be treated as an authorised payment institution, subject to the requirement to provide us (~~or your home state competent authority if you are an EEA firm~~) with evidence, by 13 January 2020, that you hold the required own funds.

...

**Q20A We are applying to become an authorised payment institution. Do we also need to be authorised under FSMA in order to issue credit cards?**

...

This is not necessarily the case, however, if you do not provide credit to individuals or relevant recipients of credit, or if the credit agreements are exempt agreements or an exclusion applies. ~~There is, for example, a specific FSMA exclusion for activities carried on by an EEA authorised payment institution exercising passport rights in the United Kingdom in accordance with article 18(4) of the Payment Services Directive. Those activities are excluded from the regulated activities of entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement (see PERG 2.8.14ZBG and article 60JA of the FSMA Regulated Activities Order).~~

...

#### **15.4 Small payment institutions, agents and exempt bodies**

**Q26. What criteria must we meet to be a “small payment institution”?**

The conditions are set out in regulation 14 and include the following:

...

if you are a body corporate you must satisfy us that any close links you have with another person are not likely to prevent our effective supervision of you. If it appears to us that you have any close links that are subject to the laws, regulations or administrative provisions of a territory outside of the *EEA UK* (“the foreign provisions”) you must satisfy us that neither the foreign provisions, nor any deficiency in their enforcement, would prevent our effective supervision of you;

...

**Q27. We satisfy the conditions for registration as a small payment institution - does that mean we have to register as one?**

No, there are other options available to you. ~~If you register as a small payment institution, you cannot acquire passport rights under the regulations, so you may wish to become an authorised payment institution if you wish to take advantage of the passport.~~ You may also choose to become an agent of a payment services provider.

**Q28. We only wish to be an agent. Do we need to apply to the FCA and/or PRA for registration?**

No. If your principal is a payment institution, it is its responsibility to register you as its agent. ~~Assuming your principal is not an EEA firm, you~~ You are required to be registered on the Financial Services Register before you provide payment services. ~~If your principal is an EEA firm, your principal will need to comply with the relevant Home State legislation relating to your appointment. You will not be able to provide payment services in the UK on behalf of an EEA firm unless it has also complied with the relevant requirements for the exercise of its passport rights.~~

...

**Q29. We are an agent of a credit institution for the purpose of providing payment services. Do we need to apply to the FCA and/or PRA for registration?**

No. If you are such an agent of a credit institution which is permitted to provide payment services in the *UK*, you are not required to be registered under the PSRs 2017. A credit institution will be permitted to provide payment services if it has a Part 4A permission to accept deposits, ~~or if it is an EEA credit institution exercising passport rights under paragraph 4 of Annex I to the Fourth Capital Requirements Directive.~~

...

**15.5 Negative scope/exclusions**

...

**Q40. Which types of payment card could fall within the so-called “limited network” exclusion (see PERG 15, Annex 3, paragraph (k))?**

...

- (d) ~~are valid only in a single EEA State~~ the United Kingdom, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer.

...

**15.6 Territorial scope**

**Q45. We are a UK payment institution - when will we need to make a passport notification?**

~~You will need to make a notification if you intend to exercise passport rights either for the purposes of:~~

- ~~• establishment (for example, setting up a branch in another EEA State); or~~

- ~~providing services in another EEA State.~~

~~As to the circumstances in which you may need to exercise these rights, this gives rise to issues of interpretation both under the PSRs 2017 and the local law of the EEA State in which you wish to do business. Our guidance below relates only to the PSRs 2017 and may differ from the approach in other EEA States. We cannot give guidance on the local law of other EEA States and you may therefore wish to take professional advice if you think your business is likely to be affected by these issues (for instance, if you are soliciting clients in other EEA States).~~

~~As regards the provision of payment services in other EEA States and passport notification, in our view the Commission Interpretative Communication (Freedom to provide services and the interest of the general good in the Second Banking Directive (97C 209/04)) provides a useful starting point, in particular because payment services form part of the CRD passport. On this basis, we would identify the following factors as being relevant to whether you need to make a passport notification.~~

~~Factors indicating the provision of payment services in another EEA State and the need for passport notification~~

~~The establishment of a physical presence (for example, offices) in another EEA State, for use by you, triggers the need for an establishment notification. The appointment of an agent established in another EEA State is likely to amount to an exercise of a right of establishment where the agent (a) has a permanent mandate in relation to payment services, (b) is subject to your management and control and (c) is able to provide payment services on your behalf. The installation of an ATM in another EEA State, where the ATM is your only presence in that other EEA State, gives rise to the need for a services (and not an establishment) notification.~~

~~Actions which are not sufficient alone to constitute cross-border services into another EEA State and the need for passport notification~~

~~The act of executing direct debits/standing orders/credit transfers from the UK where the payee is located in another EEA State. The act of remitting money from the UK to a payee in another EEA State. The act of executing a payment transaction to a payee located in another EEA State upon receipt of an instruction from the payer received by e-mail, text, or other electronic means (for example, internet banking). Where you provide an execution service enabling your credit or debit cardholders to use their credit card/debit card within the territory of another EEA State, for example for the purposes of a hotel bill (see the services in *PERG 15 Annex 2*, paragraphs (c) and (d)). [deleted]~~

**Q46. We are a non-EEA UK payment institution providing payment services to UK customers from a location outside the EEA UK. Do we require authorisation or registration under the regulations?**

No. When considering whether you fall within the scope of the PSRs 2017, our starting point is to consider whether a ~~UK~~ an EEA payment services provider would be providing cross-border services in analogous circumstances (for example, when it provides payment services to EEA customers ~~from a location in the UK~~ in an EEA State other than the place in which it is located).

As regards the provision of cross-border payment services between EEA States, in our view the Commission Interpretative Communication (Freedom to provide services and the interest of the general good in the Second Banking Directive (97C 209/04)) provides a useful starting point, in particular because payment services form part of the CRD passport.

Accordingly, we would not generally expect a payment services provider incorporated and located outside the ~~EEA~~ UK to be within the scope of the regulations, if all it does is to provide internet-based and other services to UK customers from that location. ~~A non-EEA payment institution for these purposes would include firms incorporated in the Isle of Man or Channel Islands, both of which are outside the scope of the Second Payment Services Directive.~~

## 15.7 Transitional provisions

**Q47. We are a provider of account information and payment initiation services who was providing those services before 12 January 2016. Can we continue to provide those services after the PSRs 2017 come into force?**

Yes, initially. Providers of account information services and payment initiation services which were providing those services before 12 January 2016 and which continue to provide such services immediately before 13 January 2018 will be able to continue to do so after that date without registration or authorisation until the ~~EBA's~~ Regulatory Technical Standards on strong customer authentication and common and secure communication apply. However, while provided in reliance on this transitional provision, those services will be treated under the PSRs 2017 as if they were not account information services or payment initiation services. More information can be found in Chapters 3 and 17 of our Approach Document.

...

## 15 Annex 3 Schedule 1 Part 2 to the PSRs 2017: Activities which do not constitute payment services

...

(k)	Services based on specific payment instruments that can only be used in a limited way and meet one of the following conditions:
-----	---

...		
(iv)	are valid only in a <del>single EEA State</del> <u>the United Kingdom</u> , are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer,	
...		

...

## 16 Scope of the Alternative Investment Fund Managers ~~Directive~~ Regime

### 16.1 Introduction

#### Question 1.1: What is the purpose of the questions and answers in this chapter?

The purpose is to consider the scope of regulated activities specifically relating to the Alternative Investment Fund Managers Directive 2011/61/EU (“*AIFMD*”) as it was implemented in the UK through the RAO. The *AIFMD* regime in the *United Kingdom* is based on the *AIFMD* and the *AIFMD level 2 regulation* as well as other UK legislation, including the *AIFMD UK regulation*.

#### Question 1.2: What are the regulated activities specifically relating to *AIFMD*?

The *regulated activities* that specifically relate to the *AIFMD* regime in the *United Kingdom* are:

...

#### Question 1.3: What are the main ~~European~~ measures dealing with the scope?

~~As well as *AIFMD* itself, they are~~ They are the UK provisions which implemented the *AIFMD*, which include:

- (1) ~~Commission delegated regulation (EU) No 231/2013 the *AIFMD level 2 regulation*, supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (the *AIFMD level 2 regulation*); and~~
- (2) the ESMA document “Guidelines on key concepts of the *AIFMD*” (the *ESMA AIFMD key concepts guidelines ESMA/2013/611*); and
- (3) the *AIFMD UK regulation* which largely implemented the *AIFMD* in the UK.



...

## 16.2 What types of funds and businesses are caught?

### Question 2.1: What is the basic definition of an AIF?

~~An~~ For the purposes of the *AIFMD* regime in the *United Kingdom*, an *AIF* is a collective investment undertaking, including investment compartments of such an undertaking, which:

- (1) ...
- (2) ~~does not require authorisation pursuant to article 5 of the *UCITS Directive*~~ is not a *UK UCITS*.

The key elements of the definition are:

...

- (6) an *AIF* does not include ~~an undertaking that requires authorisation under article 5 of the *UCITS Directive*~~. a *UK UCITS*.

...

### Question 2.2: Does an AIF have to take a particular legal form?

No.

...

- It does not matter where the *AIF* is formed. It may be formed under the laws of ~~any EEA State (including any part of the *UK*) or the *United Kingdom*~~ or any ~~*non-EEA state*~~ other country.

...

### Key elements of the definition

#### Capital raising

...

### Question 2.12: Is a fund that only allows a single investor always outside the definition of an AIF?

No. Under the *ESMA AIFMD Key Concepts*, an undertaking which is prevented by its national law, the rules or instruments of incorporation, or any other provision or arrangement of binding legal effect, from raising capital from more

than one investor should be regarded as an undertaking which raises capital from a number of investors if the sole investor:

...

- (2) consists of an arrangement or structure which in total has more than one investor for the purposes of the UK provisions which implemented the AIFMD.

...

### Defined investment policy

**Question 2.13: What indicative criteria could be taken into account in determining whether or not an undertaking has a defined investment policy?**

...

Under Following the approach in the ESMA AIFMD key concepts guidelines, leaving full discretion to make investment decisions to the legal person managing an undertaking should not be used to circumvent the UK provisions of that implemented AIFMD. Part of the definition of an *AIF* is that there should be a defined investment policy. It is our view that this guidance is aimed at arrangements that whilst in form do not meet the definition, may in practice do so. For example, say that the manager has a legal discretion that is too wide to meet the definition of a defined investment policy but publishes a detailed investment policy (which is not legally binding) and leads the investors to expect that it will follow it. Under the approach in *ESMA AIFMD key concepts guidelines* that fund may still be an *AIF*.

### Collective investment undertaking

...

**Question 2.23: What are financial assets for the purpose of Question 2.22?**

Financial assets include investments under the UK provisions which implemented MiFID and investment life insurance contracts; real estate is not considered a financial asset.

...

**Question 2.25: What is the justification for the approach in the answers to Questions 2.15 (What is the basic definition of a collective investment undertaking?) to 2.23 (What are financial assets for the purpose of Question 2.22)?**

...

Such a wide interpretation would be unreasonable. It would be unreasonable to say that a detailed statement of commercial objects turns an undertaking into a CIU. It would be contrary to the early recitals of AIFMD. The exclusion for holding companies (see Questions 6.2 to 6.5) may not apply because the business may not be acting through subsidiaries. Therefore, it is necessary to consider the policy objectives of the AIFMD regime in the United Kingdom.

The AIFMD regime in the United Kingdom is aimed at funds. ~~This is shown by the title of the Directive itself.~~ The lists of the main types of undertaking covered by the UK provisions which implemented AIFMD in the answer to Question 2.28 (What are the commonest types of AIFs?) are taken from formal EU documents, which assist in analysing AIFMD's the intended scope of the UK provisions which implemented AIFMD.

...

The reason for looking at whether an undertaking is set up as a fund is that it helps to make the distinction required by the AIFMD regime in the United Kingdom between a fund that invests in non-financial assets and an undertaking with a general commercial or industrial purpose and to reflect the fact that the AIFMD regime is aimed at funds.

However, it is clear from AIFMD and the EU documents referred to in the answer to Question 2.28 that private equity, hedge funds and venture capital funds are intended to be within the scope of the UK provisions that implemented AIFMD and the AIFMD regime in the United Kingdom. AIFMD expressly refers to these types of funds in a number of places.

Also, a fund controlling a business is more than an investor, as it is in a position to control and run that business. Indeed, one of the benefits of a private equity fund is that it can restructure and improve businesses of target companies for the long term. These funds may need an extensive staff to carry on the business of the fund. It is clear though that a fund that takes over a business can still be an AIF, as the UK provisions that implemented AIFMD has detailed requirements for AIFs that do that.

Another point is that, as far as financial businesses are concerned, it is not a question of identifying businesses that should not be subject to financial services legislation, as many financial services businesses that do not fall within the scope of the AIFMD regime in the United Kingdom are regulated under the UK provisions that implemented MiFID instead.

Therefore, the distinctions in the answers to Question 2.19 (Does that mean that if my undertaking deals in non-financial assets it can't be a CIU?) to 2.21 (Please give some further examples of factors to take into account when deciding whether an undertaking is set up like a fund) do not work for all the types of undertakings to which the AIFMD regime in the United Kingdom is meant to apply. The distinction between an undertaking with a general commercial or industrial purpose and a financial purpose made by the *ESMA AIFMD key concepts*

*guidelines* (see the answer to Question 2.18) is the key to reconciling the aim of excluding ordinary businesses and regulating funds.

...

### Overview of the AIF definition

**Question: 2.26: Could you give a brief overview of how I should go about applying the guidance in *PERG 2.2* in deciding whether AIFMD applies?**

- (1) Apply the ~~Directive~~ definition in the *AIFMD UK regulation* to see if it gives a clear answer. If it does, there is no need to go further.

...

**Question: 2.27: Should all the factors be considered together?**

Yes. As the *ESMA AIFMD key concepts guidelines* point out, appropriate consideration should be given to the interaction between the individual concepts of the definition of an *AIF*. An undertaking should not be considered an *AIF* unless all the elements in the definition (summarised in the answer to Question 2.1 (What is the basic definition of an *AIF*?)) are present. For example, undertakings which raise capital from a number of investors, but not with a view to investing it in accordance with a defined investment policy, should not be considered *AIFs* for the purposes of the *United Kingdom's AIFMD regime*.

...

**Examples of schemes that are AIFs and of ones that are likely not to be AIFs**

...

**Question 2.31: Is a timeshare scheme covered?**

No. Arrangements do not amount to an *AIF* if the rights of the investors are rights under a timeshare contract or a long-term holiday product contract as defined in the Holiday Products, Resale and Exchange Contracts Regulations 2010, because these are already regulated ~~under other European legislation~~.

...

**Question 2.40: Are individual investment management agreements caught?**

In principle, No.

An *AIF* is an investment undertaking which pools together capital raised from investors to invest it on a collective basis. The management of a portfolio of investments or other property on an individual client-by-client basis is covered by

UK provisions that implemented MiFID rather than the AIFMD regime in the United Kingdom.

...

**Question 2.44: Can an issue of debt securities be an AIF?**

...

~~Further guidance from ESMA or the European Commission may be given in due course. However, given~~ Given that the list of the main types of undertaking covered by *AIFMD* taken from the Commission impact assessment referred to in the answer to Question 2.28 (What are the commonest types of AIFs?) does not mention debt instruments of this kind, it seems likely that they were not meant to be caught. ~~Pending any future clarification at the EU level, we~~ We shall assume that an SPV issuing debt securities in the way described in the answer to this question will not be an *AIF* if the arrangements meet the exclusion in paragraph 5 of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (Debt securities).

...

**Question 2.46: Is a joint venture caught?**

Not normally.

There is no exclusion for joint ventures in the UK provisions which implemented AIFMD. However, recital (8) of AIFMD confirms that they are not covered. Therefore, to decide what undertakings are excluded as joint ventures, one must identify the principles on which the recital appears to be based. Another reason for looking at the underlying principles is that the term ‘joint venture’ does not have a precise legal meaning ~~in EU law or a commonly accepted meaning across the legal systems of all Member States.~~

...

**Question 2.50: Are family investment vehicles AIFs?**

No. There is no specific exclusion for family investment vehicles in the ~~operative parts of the~~ UK provisions which implemented AIFMD. Recital (7) of *AIFMD* says that a family office vehicle that invests the private wealth of investors without raising external capital is not an *AIF*. To decide what undertakings are excluded as family investment vehicles, one must identify the principles on which the recital appears to be based. The recital is making a distinction between external and internal capital. In our view this recital is based on the part of the *AIF* definition that requires capital to be raised. The recital explains that the *AIF* definition does not cover an arrangement in which the persons raising and providing capital are the same. Based on this, features of a family investment vehicle are likely to include:

(1) ...

...

**Question 2.51: What happens if a family group invests alongside others investors?**

The *ESMA AIFMD key concepts guidelines* say that the fact that a member of a pre-existing group invests alongside investors not being members of a pre-existing group, should not have the consequence that the part of the *AIF* definition requiring the raising of capital is not fulfilled. Whenever such a situation does arise, all the investors should enjoy full rights under the AIFMD regime in the United Kingdom. If a family group invests in an undertaking alongside other investors and the undertaking meets the other parts of the *AIF* definition, that undertaking is an *AIF* and the family members are treated as investors with the same protections under the AIFMD regime in the United Kingdom as other investors. However, please also see the answer to Question 2.52 (Is a co-investment vehicle caught?).

...

**Question 2.52: Is a co-investment vehicle caught?**

...

In our view, a co-investment vehicle of the type covered by this question should not be seen as an *AIF*. If the manager or employees only make a nominal investment, there is no *AIF* as nominal investments should be disregarded (see the answer to Question 2.11 (Is a fund that only allows a single investor caught?)). Even if the investment is more than nominal, the undertaking only raises capital from a single external investor, which is the institutional investor. Please see the answer to Question 2.50 (Are family investment vehicles *AIFs*?) as to why the *FCA* believes that the concept of an external investor is part of the AIFMD regime in the United Kingdom.

In addition, in our view, an investment by the manager should not normally change an undertaking into an *AIF*. The purpose of the AIFMD regime in the United Kingdom is to protect the investors from whom capital is raised as referred to in the answer to Question 2.1 (What is the basic definition of an *AIF*?) and Question 2.10 (You say that an undertaking needs to raise capital to be an *AIF*. What does capital raising involve?) by regulating, among others, the manager. In our view, this means that co-investment by the manager should not generally affect the status of an undertaking as an *AIF*.

...

**Question 2.54: Is an arrangement for multiple participation by a number of funds in a single investment, a single *AIF*?**

...

It is also necessary to take into account the UK provisions which implemented article 26 of AIFMD (Obligations for AIFMs managing AIFs which acquire control of non-listed companies and issuers: Scope), which contemplates that several AIFs may agree jointly to acquire control of a non-listed company without that resulting in all the AIFs being considered as a single AIF.

...

**Question 2.57: Is a firm that deals in financial instruments on its own account caught?**

As explained in the answer to Question 43 in *PERG* 13.5 (Exemptions from MiFID), CIUs are specifically exempt from the UK provisions which implemented MiFID, as are their depositaries and managers. An AIF is a CIU and an AIFM is a manager.

However, that does not mean that a company that buys and sells financial instruments for its own account is covered by the UK's AIFMD regime rather than covered by the UK provisions which implemented MiFID, or rather than excluded from both *AIFMD* and *MiFID*.

...

**Question 2.58: Is a bank or insurer caught?**

An undertaking authorised under the UK provisions which implemented the Solvency II Directive or the *CRD* will not be an AIF.

...

**Investment compartments**

**Question 2.63: Is each investment compartment a separate AIF?**

...

Another argument against this alternative approach is the requirement in the UK provisions which implemented article 5(1) of AIFMD that each AIF have a single AIFM. It would be difficult to meet that requirement if each compartment is subject to the management of the manager of the overall fund. It would also seem unlikely that the UK provisions which implemented AIFMD would get round that problem by implicitly prohibiting funds from having an overall manager.

...

## Other general points

### Question 2.66: Does the interpretation of a CIU in *PERG 16* apply to MiFID?

*PERG 16* is not intended to cover the meaning of a collective investment undertaking in UK provisions which implemented other *EU* Directives. This reflects the fact that the *ESMA AIFMD key concepts guidelines* do not apply to the UK provisions that implemented MiFID.

## 16.3 Managing an AIF

...

### Question 3.7: What effect does delegation have?

...

This answer reflects the AIFMD regime in the United Kingdom, which envisages that generally an *AIFM* may delegate functions without the delegate becoming the *AIFM* in place of the original manager, or the delegate becoming the *AIFM* alongside the original manager, in breach of the requirement that there be only one *AIFM*.

### Question 3.8: Does this mean that delegation can never affect who is doing the regulated activity of managing an AIF?

...

This raises four questions. First, whether an *AIFM* that delegates in such a way as to make itself into a letter-box entity is still carrying on the *regulated activity of managing an AIF*. This is dealt with in Question 3.9. Secondly, whether the delegate is carrying on the *regulated activity of managing an AIF*. This is dealt with in Question 3.10. The third question is whether this only applies when the UK provisions which implemented article 20 of *AIFMD* (which contains the letter-box entity provisions elaborated by article 82) applies. This is dealt with by Question 3.12. The fourth question is what the test for a letter-box entity is. This is dealt with in Question 3.13.

### Question 3.9: Does delegation by the manager mean that it is no longer carrying on the regulated activity of managing an AIF?

The fact that article 82 of the *AIFMD level 2 regulation* says that a letter-box entity shall no longer be considered to be the manager of the *AIF* would appear to mean that an *AIFM* that delegates in this way is no longer managing an *AIF*. However, in our view, an *AIFM* that delegates in such a way as to make itself into



a letter-box entity is still carrying on the *regulated activity of managing an AIF*. The following points support this:

...

- (4) The UK provisions which implemented Article article 20 of AIFMD (which contains the letter-box entity provisions elaborated by article 82) ~~deals~~ deal with regulating how an *AIFM* should manage its *AIF*.

...

**Question 3.10: Does delegation by the manager mean that the delegate is carrying on the regulated activity of managing an AIF?**

The factors listed in the answer to Question 3.9 (Does delegation by the manager mean that it is no longer carrying on the regulated activity of managing an AIF?) support the view that a delegate of a letter-box entity does not *manage an AIF*. However, despite this, we believe that a delegation by the *AIFM* to a delegate can result in the delegate managing an *AIF* if the delegation results in the *AIFM* becoming a letter-box entity.

- (1) Recital (9) of *AIFMD* confirms that the letter-box entity provision is an anti-avoidance provision preventing circumvention of the UK provisions which implemented AIFMD by means of turning the *AIFM* into a letter-box entity. A provision of this kind reflects a more general principle that rights originally given by the UK provisions which implemented European law (such as the right of a manager to delegate or the right of a delegate to carry on its business without being authorised as an *AIFM*) should not be abused. It is important to know who the real manager of an *AIF* is, so as to know whether ~~an EEA State~~ an overseas regulator is responsible for its supervision or whether the *AIF* is managed from outside the ~~EEA~~ United Kingdom. If the real manager is not *managing an AIF*, it may not be carrying on any *regulated activity* and may not fall under any ~~EEA~~ financial services regulation, even though effective implementation of *AIFMD* would ~~require~~ have required the situation to be regularised.

...

**Question 3.12: Do the answers to Questions 3.7 to 3.11 apply just to delegation by a full-scope UK AIFM?**

No. For example, they would be relevant to whether a delegate in the *UK* is *managing an AIF* if it accepts a delegation from an overseas manager. We take this approach for the following reasons.

- (1) The arguments in Question 3.10 (Does delegation by the manager mean that the delegate is carrying on the regulated activity of managing an AIF?) are also in favour of the view that the effect of

delegation on a delegate should not be confined to delegation by an authorised *AIFM*. In any case, it would be anomalous for delegation to affect who is *managing an AIF* only when the UK provisions which implemented article 20 of AIFMD ~~applies~~ apply, particularly given that article 82 is, in our view, an anti-avoidance provision (see the answer to Question 3.10).

...

**Question 3.13: What is the test for a letter-box entity?**

In our view, the test of whether delegation results in the delegate *managing an AIF* is decided by article 82 of the *AIFMD level 2 regulation* in circumstances when article 82 and the UK provisions which implemented article 20 of AIFMD apply to the delegating *AIFM*.

When the UK provisions which implemented article 20 ~~does~~ do not apply we look at whether the delegation is to such a degree that the manager can no longer be considered to be carrying out the activities in the answer to Question 3.1 (What does managing an AIF mean?). We take the various factors elaborated in article 82 into account but they will not necessarily decide the matter because article 82 is, on its face, linked to article 20 and article 51ZC(3) of the RAO does not specifically refer to article 20 or 82.

...

**Question 3.16: Can an AIF in the form of a limited partnership under the Limited Partnerships Act 1907 appoint its general partner as the AIFM?**

...

On the face of it the answer should be No. The starting position is that if an *AIF* is managed by the body that has responsibility for governing it under the legislation under which the *AIF* is formed, the *AIF* is internally managed, particularly if there is no governing body that appoints and supervises the manager and the manager is a member of that *AIF*. A general partner is a partner and there will usually be no governing body separate from the general partner. Under this approach, a limited partnership would be internally managed, which would be contrary to the AIFMD regime in the United Kingdom, as an *AIFM* must be a legal person and an English and Welsh limited partnership is not a legal person.

...

**16.4 Acting as a depositary of an AIF**

...

**Question 4.2: What does depositary mean?**

For the purposes of paragraphs (1) to (3) of the answer to Question 4.1, depositary means:

- (1) a person appointed in compliance with the requirement for the *AIFM* to appoint a depositary in the UK provisions which implemented article 21.1 of AIFMD; or
- (2) ...
- ...

**Question 4.3: The AIFMD allows the depositary to delegate some functions to a third party. Is that third party acting as the depositary of an AIF?**

No. The UK provisions which implemented Article article 21 of AIFMD envisages envisage that a depositary remains the sole depositary even if, in accordance with that article, it delegates certain of its functions.

...

**16.6 Exclusions**

**Question 6.1: What exclusions from the regulated activities specific to AIFs are there?**

The following table lists the exclusions. Some exclusions are relevant to the definition of an *AIF*, some to the definition of an *AIFM* and some to both.

Table: exclusions		
Entities that are not <i>AIFs</i>	<i>Persons excluded from the definition of managing an AIF</i>	Where further <i>Handbook</i> material can be found
An institution for occupational retirement provision which <del>falls within the scope of Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement</del> <u>is an occupational pension scheme, within the meaning of section 1(1) of the Pension Schemes Act 1993</u>	An institution for occupational retirement provision which <del>falls within the scope of Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement</del> <u>provision, including, where applicable, the authorised entities responsible for managing such institutions and acting</u>	Question 2.32

	on their behalf referred to in article 2.1 of that directive, or the investment managers appointed pursuant to article 19.1 of that directive, in so far as they do not manage <i>AIFs</i> , <u>is an occupational pension scheme, within the meaning of section 1(1) of the Pension Schemes Act 1993</u>	
...		
	An <i>AIFM</i> , the registered office of which is not in an <del>EEA State</del> <u>the United Kingdom</u>	Question 8.3
...		
<p>Note 2: In general the meaning of <i>AIF</i> in the RAO is the one in the <i>AIFMD UK Regulation</i>. The exclusions from the <i>AIF</i> definition noted in this table come from the <i>AIFMD UK Regulation</i>. <del>However, the RAO article dealing with <i>managing an AIF</i> says that any expression used in that article which is not defined in the <i>AIFMD UK Regulation</i> and is used in <i>AIFMD</i> has the same meaning as in that directive. This makes no difference as, in our view, the <i>AIFMD UK Regulation</i> implements <i>AIFMD</i>.</del></p>		

**Question 6.2: Is a holding company subject to the AIFMD regime in the United Kingdom?**

...

For these purposes, a holding company means a company with shareholdings in one or more other companies, the commercial purpose of which is to carry out a business strategy(s) through its subsidiaries, associated companies or participations in order to contribute to their long-term value and which is either a company:

- (1) operating on its own account and whose shares are admitted to trading on a regulated market in the ~~European Union~~ United Kingdom; or

...

**Question 6.3 How wide does the holding company exclusion go?**

Broadly speaking, therefore, an undertaking will be able to use the holding company exclusion if:

...

(2) ...

...

However, the exclusion envisages that an undertaking, whose main purpose is generating returns for its investors by means of divestment of its subsidiaries or associated companies, may still be excluded from the AIFMD regime in the United Kingdom if its shares are listed.

...

The question then is how the recital and the exclusion are to be reconciled.

There is guidance on this on the *AIFMD* section of the European Commission's webpages "Questions on Single Market Legislation". The answer to Question ID 1146 says that the definition has to be read as a whole and jointly with recital (8). Consequently, private equity as such should not be deemed to be a holding company. The concept of "operating on its own account" should also be interpreted in the context of the requirement that the shares of such holding company are admitted to trading on ~~an EU~~ regulated market in the United Kingdom. Hence, says the guidance, this means that a holding company is a separate legal entity that carries out the business of owning and holding equity shares of other companies without the intent to dispose of such shares. Such business is done on the own account of the holding company and not on behalf of a third party. The answer says that the exemption is meant to cover "large corporates such as Siemens or Shell".

...

(3) ...

...

(6) the AIF's shares are admitted to trading on a regulated market in the ~~European Union~~ United Kingdom.

...

**Question 6.4: Is the holding company exclusion always available where the fund holds controlling stakes in the businesses in which it invests so that the businesses are its subsidiaries?**

...

The European Commission's Q&A about *AIFMD* say (Question ID 1146) that it is inherent in the concept of a holding company that all operations apart from those related to the ownership of shares and assets are done via its subsidiaries, associated companies or participations. In our view, the exemption is available only to the extent that the undertaking is acting as a holding company. It does not matter if the undertaking carries out other activities but any such activities will not get the benefit of the holding company exclusion. Those activities should be entirely ancillary to its role as a holding company or otherwise outside the scope of the *AIFMD* regime in the *United Kingdom*. Thus, for example, a holding company may also provide services to other members of the group such as raising capital through the capital markets, treasury functions and human resources services.

...

...

## 16.8 Territorial scope

...

### Question 8.3: Can the AIF activities be carried on by an overseas firm?

As explained in the answer to Question 6.1 (What exclusions from the regulated activities specific to AIFs are there?), the *regulated activity of managing an AIF* does not apply to an *AIFM* whose registered office is not in ~~an EEA State~~ the *United Kingdom*. Regulation 81 of the *AIFMD UK Regulation* restricts the scope of this exclusion from the date that ~~the EU~~ HM Treasury brings in certain further legislation relating to ~~non-EU AIFs~~ non-UK AIFs and *AIFMs*.

The *regulated activity* of acting as a depositary of an *AIF* can apply to a person whose registered or head office is outside the *UK*.

...

**Part 2: Comes into force on 1 April 2019, immediately after the changes made by the Claims Management Instrument 2018 (FCA 2018/56) come into force**

## 2 Authorisation and regulated activities

...

### 2.8 Exclusions applicable to particular regulated activities

...

Regulated claims management activity

2.8.14D G The *Regulated Activities Order* excludes a number of activities from *regulated claims management activity*. The exclusions include:

...

(3) exclusion from *seeking out, referrals and identification of claims or potential claims* for providers of referrals who meet all the following conditions (article 89V):

...

(e) the introducer, in obtaining and referring those details, has complied with ~~the provisions of the Data Protection Act 2018,~~ the Privacy and Electronic Communications (EC Directive) Regulations 2003, ~~the General Data Protection Regulation (EU)~~ *data protection legislation* and the *Unfair Trading Regulations* (but this condition does not apply in the case of a referral to a legal practitioner, or to a firm, *organisation*, or *body corporate* that carries on the activity through legal practitioners); and

...

## 8 Financial promotion and related activities

...

### 8.14 Other financial promotions

...

[*Editor's note:* PERG 8.14.18G is deleted in Part [1] of this instrument with effect from 29 March 2019 at 11 p.m. The effect of this deletion is that the amendments made to PERG 8.14.18G by instrument FCA 2018/56 could not take effect. We are showing the provision as [deleted] here for clarity and completeness.]

Nationals of EEA States other than the United Kingdom (article 36)

8.14.18 G [deleted]

## Annex C

### Amendments to the Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD)

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

...

#### *Distributor responsibilities*

1.25

...

<b>Notes:</b>	
(1)	The Guide represents our view based on the law, regulation and other circumstances that exist as at the publication date, but also takes into account changes to the Handbook including those <del>to implement</del> <u>that implemented</u> the Markets in Financial Instruments Directive (MiFID).
...	



## Annex D

### Amendments to the Unfair Contract Terms Regulatory Guide (UNFCOG)

In this Annex, striking through indicates deleted text.

#### 1 The Unfair Contract Terms and Consumer Notices Regulatory Guide

...

#### 1.3 The CRA

Terms and notices to which the CRA applies

1.3.1 G (1) ...

(2) Terms or notices cannot be reviewed for fairness within the meaning of the *CRA* if they reflect:

(a) mandatory statutory or regulatory provisions; or

(b) the provisions or principles of an international convention to which the *United Kingdom* ~~or the EU~~ is a party.

## Annex E

### Amendments to the Wind-down Planning Guide (WDPG)

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

## 2 Application and interpretation

### 2.1 Application and interpretation

- 2.1.1 G This guide aims to assist *FCA* solo-regulated *firms* authorised with a *Part 4A permission* ~~and for which the *FCA* is the *Home State regulator*~~ with wind-down planning. It is not relevant where a *firm* is already in administration or liquidation, nor is it directly relevant to recovery strategies a *firm* may engage in as part of its recovery plan. While the guide does not impose any obligation on a *firm* to create a wind-down plan, it shows what an effective wind-down plan might include.

...

## 3 The concept and process of wind-down planning

### 3.1 What is wind-down planning?

...

- 3.1.6 G We know that some *firms* may have carried out similar planning exercises under different but related regulatory processes (e.g. *ICAAP*, *RRD*). This guide does not replace or re-interpret those processes. However, *firms* may want to take this guide into account to further strengthen their wind-down planning as well as to consider how consistent these processes are with one another.

[**Note:** Internal Capital Adequacy Assessment Process (*ICAAP*) is for *firms* which are subject to the UK provisions which implemented CRD IV / BIPRU. Some of these *firms* are also subject to the UK provisions which implemented the Recovery and Resolution Directive (*RRD*).]

...

### 3.4 Effective risk management

...

- 3.4.6 G *Firms* may consider potential options for recovery in the face of adverse business conditions, such as selling part of the business or seeking a capital injection. This is known as *recovery planning*. Even if a *firm* has carried out *recovery planning*, wind-down planning can still be relevant as there is no guarantee that recovery options would save the *firm's* business.

[**Note:** Some *firms* are required to prepare *recovery plans*, i.e. those subject to the UK provisions which implemented the Recovery and Resolution Directive (RRD).]

## Annex F

### The MiFID 2 Onshoring Guide (M2G)

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

#### 1 **Implementation Onshoring for Trading Venues & Data Reporting Service Providers**

##### 1.1 **Background**

1.1.1 This guide sets out an overview of the FCA’s approach to ~~transposition~~ onshoring of the recast Markets in Financial Instruments Directive 2 (MiFID 2) in the MAR and REC sourcebooks, ~~by explaining how they fit within the context of the overall implementation of the legislation at a UK and EU level.~~ “Onshoring”, for these purposes, refers to the process by which law deriving from EU legislation at exit day is retained or adapted, post exit day. This guide focuses on the regulatory regime in MiFID 2 for UK trading venues (as defined by article 4(1)(24) ~~MiFID 2(16A)~~ MiFIR: this term comprises UK regulated markets, multilateral trading facilities and organised trading facilities, but not systematic internalisers) and UK data reporting services providers (DRSPs)).

1.1.2 ~~MiFID 2 is made up of MiFID (2014/65/EU) and the Markets in Financial Instruments Regulation (MiFIR – 600/2014/EU). MiFID is addressed to all Member States and being a directive is binding as to the result to be achieved, albeit leaving the choice of form and methods of implementation to national authorities. The UK has implemented the directive through a combination of primary legislation, secondary legislation and regulatory rules. As an EU regulation, MiFIR is binding in its entirety and directly applicable, its content becomes law in the UK without the need for domestic legislative intervention.~~ [deleted]

1.1.3 MiFID 2 enables the Commission to make secondary legislation in several places. That legislation takes the form of a combination of delegated acts (for example as provided for in article 4(2) MIFID to specify elements of the definitions), regulatory technical standards (RTS) and implementing technical standards (ITS). Delegated acts under MiFID 2 are both drafted and made by the Commission, after it receives advice from the European Securities and Markets Authority (ESMA), and may take the form of either directives or directly applicable regulations. As for RTS and ITS, these are prepared in draft by ESMA and subject to public consultation, before endorsement and making by the Commission; both take the form of regulations and so are directly applicable. RTS and ITS feature, in particular, in the MiFID 2 provisions relating to trading venues and DRSPs. After exit day, in the United Kingdom, in broad terms, the former role of the Commission is discharged by the Treasury and ESMA’s functions are performed by the FCA. For further details, see the Financial Regulators’

Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.

- 1.1.4 You can be subject to a MiFID derived or MiFIR requirement, even if you are not an authorised financial institution. ~~This is the effect of article 1 MiFID and article 1 MiFIR.~~ In the case of article 1 MiFID, this regulation 30 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 applies algorithmic trading requirements to certain persons exempt under MiFID, where they are members of a regulated market or multilateral trading facility (article 1(5) MiFID). Similarly, article 1 MiFIR requires non-financial counterparties above the clearing threshold in article 10 of the European Market Infrastructure Regulation (‘EMIR’) (Regulation 648/2012/EU. See our EMIR webpage (<https://www.fca.org.uk/markets/emir>) for further details about non-financial counterparties and the clearing threshold) to comply with the obligations in Title V MiFIR. This means trading certain classes of derivatives on organised venues only, UK regulated markets, UK multilateral trading facilities (MTFs), UK organised trading facilities (OTFs) and permitted third country venues (article 28 MiFIR). EEA venues are treated as third country venues for these purposes.

## **1.1A Transitional onshoring provisions**

1.1A.1 The effect of section 3 of the European Union (Withdrawal) Act 2018 is that “direct EU legislation” became part of UK law, as at exit day (and is known as “retained EU law” in accordance with section 6 of the same legislation). As such, MiFIR and all directly applicable regulations made under MiFID and MiFIR, including the MiFID Org Regulation (Commission Delegated Regulation 2017/565), the MiFIR Delegated Regulation (Commission Delegated Regulation 2017/567) and technical standards became part of UK law, as at exit day.

1.1A.2 Each of these pieces of legislation is subject to the power in section 8 of the European Union (Withdrawal) Act 2018 to deal with deficiencies arising out of the United Kingdom’s withdrawal from the EU. The Treasury has exercised this power in the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (the ‘Exit Regulations’) to amend each of the following:

- MiFIR;
- MiFID Org Regulation;
- MiFIR Delegated Regulation;
- Data Reporting Services Regulations; and
- The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.

A reference to any of the above in the remaining text of this guide is to the legislation as amended by the Exit Regulations.

## 1.2 **MiFID implementation onshoring in UK legislation and the FCA Handbook**

1.2.1 The UK's implementation onshoring of the directive takes the form of a combination of legislation made by HM Treasury, in the form of a number of statutory instruments, and rules contained in the FCA Handbook and the PRA Rulebook.

1.2.2 The Treasury legislation is set out in the following statutory instruments as amended by the Exit Regulations, ~~(links to statutory instruments relate to the instrument when made and users may need to update their searches of the relevant legislation):~~

- Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 ~~{('MiFI regulations')}~~, SI 2017/701: <http://www.legislation.gov.uk/ukxi/2017/701/contents/made>
- The Data Reporting Services Regulations 2017 ('DRS regulations'), SI 2017/699: <http://www.legislation.gov.uk/ukxi/2017/699/made>
- Financial Services and Markets Act 2000 (Regulated Activities) ~~(Amendment) Order 2017 2001~~ ('RAO Amendment Order'), SI ~~2017/488 2001/544~~: <http://www.legislation.gov.uk/ukxi/2017/488/contents/made>
- **The MiFI regulations amend** Part XVIII FSMA and the Recognition Requirements Regulations ('RRRs') applying to recognised investment exchanges. This includes implementing the regulatory regimes relating to a market operator operating an organised trading facility and data reporting services, as well as obligations in regard to the management body and systems and controls. It also includes applying algorithmic trading requirements in relation to unauthorised entities and position management requirements for trading venues on which commodity derivatives are traded. ~~The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013, SI 2013/419 is updated by the MiFI regulations so that FCA supervisory and enforcement powers under FSMA may be applied in the event of breach of MiFIR and regulations made under MiFID and MiFIR.~~
- **The RAO Amendment Order imposes reflects** scope changes arising out of MiFID, notably the ~~new~~ investment service of operating an organised trading facility and the extension of "financial instruments" to include emission allowances. The onshoring amendments to Part 1 of Schedule 2 to the RAO essentially preserve

the pre-exit day scope of regulation relating to physically-settled power forward contracts.

1.2.3 The amendments to the The FCA Handbook ~~complement~~ complements the Treasury legislation, referred to above, so for example:

- REC contains, in REC 2, extracts of the RRRs ~~as amended by the MiFI regulations~~ and ‘Notes’ signposting ~~further directly applicable technical standards made under MiFID or MiFIR~~ which are relevant to recognised investment exchanges’ compliance with certain RRRs. These include having adequate systems and controls for algorithmic trading (see REC 2.5), and sufficient price transparency to ensure fair and orderly trading (see REC 2.6). ~~Where REC 2 previously copied out EU legislation which has been repealed by MiFID or MiFIR, this has now been deleted and, where appropriate, replaced with a simple reference to the equivalent MiFID or MiFIR provision.~~
- REC 3, which contains ~~existing~~ FCA rules requiring certain notifications to be made by RIEs to the FCA, ~~has been amended to include~~ also includes ‘Notes’ signposting ~~further new~~ notification requirements set out in the ~~amended~~ RRRs or ~~directly applicable technical standards made under MiFID or MiFIR.~~
- MAR 5 ~~is amended to apply~~ applies the MiFID requirements on systems and controls for algorithmic trading to MTFs, including requirements in the areas of systems resilience, algorithmic market-making, tick sizes and clock synchronisation. It is also ~~amended to align~~ aligns further the organisational requirements on MTFs with those for regulated markets, in the areas of conflicts of interest and risk management, and the management of technical operations. Rules on the suspension and removal of financial instruments also align with those for regulated markets. ~~The rules concerning pre and post-transparency are removed, given the directly applicable nature of these requirements imposed by MiFIR, while chapter contains~~ guidance on the ability to register an MTF as an SME Growth Market ~~is new.~~
- MAR 5A ~~introduces~~ imposes a regime for OTFs. OTFs are distinguished from MTFs and regulated markets by the requirement for discretionary order execution and by trading only being permitted on these venues in bonds, structured finance products, emission allowances or derivatives. Restrictions on proprietary and matched principal trading applicable to MTFs and regulated markets are more relaxed for OTFs. In other respects, however, the regulation of these venues aligns with that for MTFs, and also, therefore, substantially with that for regulated markets.
- MAR 6 ~~is amended to remove areas relating to systematic internalisers that are now covered by directly applicable regulations—in particular, by Title III of MiFIR. The notification requirement for~~ relates to systematic internalisers ~~remains, however,~~ and the

article 27(3) MiFID execution quality publication requirement (applying to systematic internalisers, amongst other execution venues). This requirement has been incorporated preserved as part of onshoring as a rule (see MAR 6.3A).

- ~~MAR 7 concerning disclosure of over the counter trades conducted by systematic internalisers is deleted because this subject matter is now covered by Title III of MiFIR.~~
- MAR 7A ~~transposes~~ corresponds to article 17 of the recast MiFID ~~for authorised firms~~. It imposes systems and controls and notification requirements on firms engaging in algorithmic trading, as well as providing for market making obligations where a firm engages in a high-frequency algorithmic trading technique. It also imposes systems and controls and notification requirements on firms providing direct electronic access services. The services of a general clearing member are ~~now~~ also subject to ~~new~~ rules, of a similar nature.
- MAR 9 provides directions and guidance applicable to the operation of the ~~new~~ data reporting services regime, set out in the DRS regulations.

...

1.2.4 More generally, where requirements in MiFID ~~have been transposed in~~ correspond to FCA rules, the source of the corresponding requirement is referred to below the relevant provision, for example MAR 5A.3.5: -

5A.3.5 R A firm must not engage in:

- (1) *matched principal trading* on an *OTF* operated by it except in bonds, *structured finance products*, *emission allowances* and *derivatives* which have not been declared subject to the clearing obligation in accordance with article 5 of *EMIR*, where the client has consented; or
- (2) *dealing on own account* on an *OTF* operated by it, excluding *matched principal trading*, except in sovereign debt instruments for which there is not a liquid market.

[**Note:** article 20(2) and (3) of *MiFID*]

1.2.5 ~~Amendments to the~~ The scope of MIFID ~~are~~ is the subject of guidance in PERG 2 and 13.

### 1.3 Markets in Financial Instruments Regulation ('MiFIR')

1.3.1 ~~Although MiFIR is a separate piece of legislation, recital 7 of the recast MiFID notes 'both instruments should form the legal framework governing~~



~~the requirements applicable to investment firms, regulated markets, data reporting services providers and third country firms providing investment services or activities in the Union. The Directive should therefore be read together with that Regulation<sup>2</sup>. [deleted]~~

1.3.2 ~~As MiFIR is directly applicable, we have not copied out its content into the Handbook. This means that, for example, the previous Handbook material in REC 2 and MAR 5 relating to transparency requirements for recognised investment exchanges and MTFs under the existing MiFID have been deleted and the new MiFIR provisions referenced instead in the relevant sections of REC 2 and MAR 5. [deleted]~~

1.3.3 MiFIR as onshored also provides for delegated acts and technical standards on amongst other things:

- price transparency for equity and derivative instruments, see REC 2, MAR 5 and MAR 5A;
- straight-through processing of clearing for derivative instruments, see REC 2, MAR 5 and MAR 5A; and
- transaction reporting, see SUP 17A.

#### 1.4 ~~MIFID 2 technical~~ **Technical standards and delegated acts**

1.4.1 ~~MiFID 2 also requires the Commission, in certain places, to adopt technical standards, submitted by ESMA. These technical Technical standards, which take the form of regulatory technical standards or implementing technical standards, are, as their names suggest, technical in nature and according to articles 10 and 15 of the ESMA regulation (1095/2010/EU) (see <http://data.europa.eu/eli/reg/2010/1095/oj>) ‘... shall not imply strategic decisions or policy choices’.~~

...

1.4.3 ~~Given their directly applicable nature and length, we~~ We have not copied out the onshored technical standards into the Handbook, but instead adopted the signposting convention illustrated above. The technical standards appear on the FCA website

1.4.4 In addition to enabling the FCA and PRA to make technical standards, ~~MiFID II~~ the Exit Regulations also ~~contains onshore~~ delegated acts prepared by the Commission, itself, in the form of regulations (see, for example, references to the MiFID Org Regulation (Commission Delegated Regulation (EU) 2017/565) and the MiFIR Delegated Regulation (EU) 2017/567).

#### 1.5 **ESMA Guidelines**

1.5.1 In addition to being required to submit draft technical standards to the Commission, ~~where required by MiFID and MiFIR, ESMA may be required~~

to issue guidelines, for example, on the requirements for the management body of a market operator and a data reporting services provider. ~~[deleted]~~

...

- 1.5.3 As a general practice, when the FCA ~~decides~~ decided to comply with the guidelines issued by ESMA it ~~will signpost~~ signposted a reference to these by means of a note at the beginning of the relevant section of the Handbook. ~~Although the FCA is required to notify ESMA whether it will comply or intends to comply with the guidelines, with reasons for any non-compliance, financial market participants are not required to report to ESMA (for notification of regulatory breaches by firms to the FCA, see, generally, SUP 15). The FCA have issued non-handbook guidance setting out the FCA's approach to ESMA guidelines after exit day. The guide can be found on the FCA website at [URL to be added].~~

## 1.6 Third country firms

- 1.6.1 MiFIR and the ~~EU~~ onshored regulations ~~made under MiFID 2~~ forming part of "retained EU law" (see M2G 1.1A.1G) apply to ~~EU UK firms and EEA firms (when adopted by the EEA states)~~. For the UK branches of ~~non-EEA non-UK~~ firms (third country firms), these regulations are not of general application and it is necessary to ensure, ~~via domestic measures~~, that these branches do not receive more favourable treatment than their ~~EU UK~~ counterparts (see ~~Recital 109 of the recast MiFID~~). A new rule, GEN 2.2.22AR, is included for this purpose.

- 1.6.2 MiFIR, the MiFIR Delegated Regulation and the MiFID Org Regulation apply to EEA firms with temporary Part 4A permissions to the extent specified in the Exit Regulations. Technical standards deriving from MiFID apply to these firms to the extent provided for by GEN 2.2.29R.

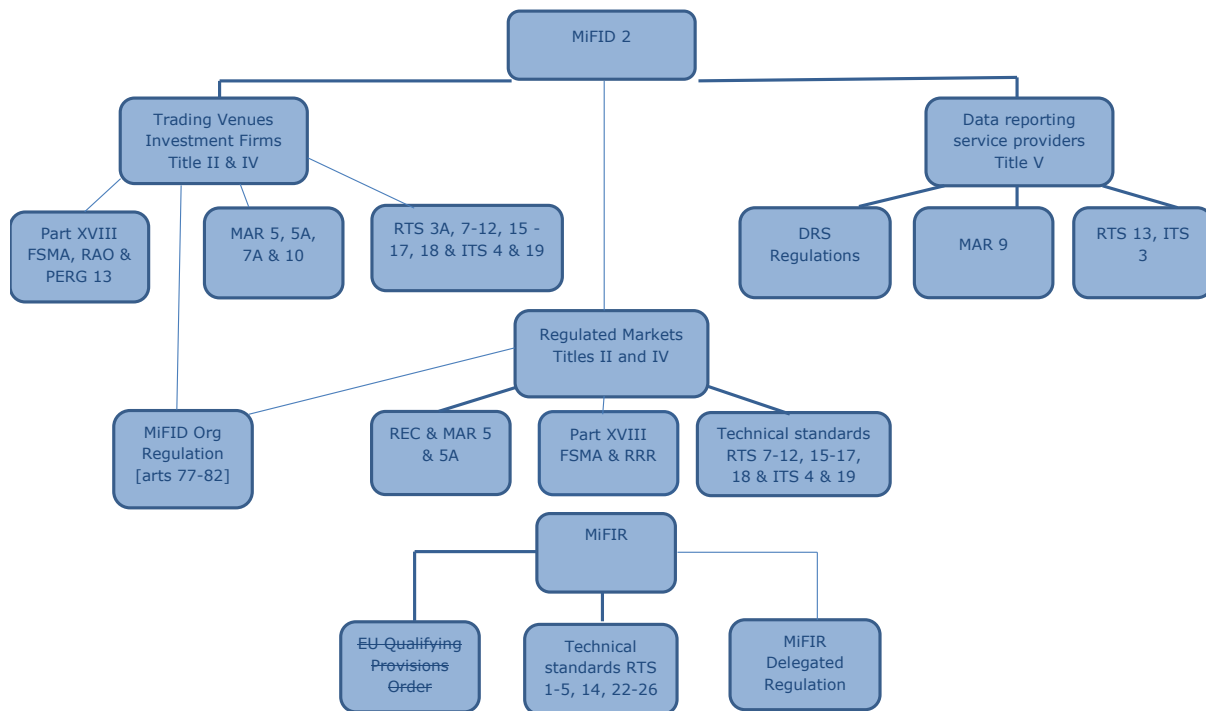
## 1.7 Overview

- 1.7.1 The diagram in M2G 1 Annex 1 provides an overview of trading venue and DRSP requirements ~~deriving from MiFID 2~~ and the location of their implementation. The references to "technical standards" are to those described in the FCA Handbook Glossary. ~~The technical standards can be accessed from the Commission website.~~
- 1.7.2 In addition to MAR and other requirements noted in the overview, firms operating an MTF or OTF will be subject to other ~~MiFID~~ requirements applying elsewhere in the Handbook, notably in SYSC, COBS and SUP 17A.
- 1.7.3 SUP 17A sets out rules and guidance for transaction reporting and supply of reference data: it also cross-refers to the relevant ~~EU~~ legislation in articles 26 and 27 MiFIR and MiFID RTS 22 and 23 (~~see Glossary (MiFID 2) Instrument 2017 (FCA 2017/36) at https://www.handbook.fca.org.uk/instrument/2017/FCA\_2017\_36.pdf~~). It further confirms that we will allow operators of trading venues and investment firms to use third party

technology providers when supplying financial instrument reference data to the FCA.

**1 Annex 1 MiFID and Market Infrastructure: An Overview**

Annex 1 An overview of MiFID and Market Infrastructure:



...

## 2 **Implementation for Onshoring of senior management arrangements and systems and controls obligations**

### 2.1 **Background**

2.1.1 This guide sets out an overview of the FCA's approach to the ~~transposition~~ onshoring of the Markets in Financial Instruments Directive II (MiFID II) in the SYSC sourcebook. ~~It explains how this fits within the context of the overall implementation of the legislation at EU and UK levels.~~ The guide focuses on the regulatory regime for UK firms and is aimed at UK MiFID investment firms, that is investment firms authorised that would require authorisation under MiFID and credit institutions carrying on MiFID business, and MiFID Optional exemption firms. The latter comprise advisers or arrangers who do not hold client money or assets and meet other conditions imposed under article 3 MiFID II, so as to be exempt from the Directive's full application. See PERG 13 Q49, ~~as updated by the Conduct, Perimeter Guidance and Miscellaneous Provisions (MiFID 2) Instrument 2017, FCA 2017/39.~~

2.1.2 ~~MiFID II (2014/65/EU) is addressed to all Member States and is binding as to the result to be achieved, albeit leaving the choice and method to national authorities. The UK has implemented the Directive via a combination of primary legislation, secondary legislation and regulatory rules. [deleted]~~

2.1.3 MiFID II contains revised senior management and systems and controls obligations relating to firms. With the exception of one aspect of the

~~implementation of the whistleblowing obligations in MiFID II by way of contained in primary legislation, transposition onshoring of the MiFID II Level 1 requirements~~ takes the form of regulatory rules. The relevant FCA rules are mainly contained in SYSC but PRA-authorized firms will also be subject to rules in the General Organisational Requirements in the PRA Rulebook.

2.1.4 ~~MiFID II also enables the European Commission to make secondary legislation which is of particular importance in the case of systems and controls. The Commission Delegated Regulation 2017/565 of 25 April 2016 (the MiFID Org Regulation (see <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0565>)), as onshored by the Exit Regulations, contains detailed organisational requirements for those firms to which it applies, including authorised MiFID investment firms and credit institutions. These ‘Level 2’ obligations supplement the more general systems and controls obligations in MiFID II itself. As an EU regulation, the MiFID Org Regulation is binding in its entirety and directly applicable, and it becomes law in the UK without the need for domestic legislation.~~

2.1.5 ~~Many of the obligations in the MiFID Org Regulation feature in the MiFID implementing Directive (2006/73/EC) and so were implemented in SYSC by way of regulatory rules. The use of a regulation in MiFID II to impose many detailed requirements necessitates revisiting the corresponding rules in SYSC implementing MiFID and adapting the structure of SYSC. [deleted]~~

## 2.2 ~~MiFID I implementation and SYSC [deleted]~~

2.2.1 ~~The main Handbook sourcebook for implementing the MiFID requirements in relation to the management body, general organisational requirements, conflicts of interest and whistleblowing is SYSC. As regards the obligations on the management body, general organisational requirements and conflicts of interest, the corresponding requirements in MiFID I were implemented using the ‘common platform’. The common platform requirements in SYSC 4 to 10 covered the following areas:~~

- ~~● SYSC 4 (General organisational requirements including persons who effectively direct the business and responsibility of senior personnel);~~
- ~~● SYSC 5 (Employees, agents and other relevant persons);~~
- ~~● SYSC 6 (Compliance, internal audit and financial crime);~~
- ~~● SYSC 7 (Risk control);~~
- ~~● SYSC 8 (Outsourcing);~~
- ~~● SYSC 9 (Record keeping);~~
- ~~● SYSC 10 (Conflicts of interest).~~

2.2.2 ~~The common platform was initially devised to ensure that a single set of requirements apply to firms subject to MiFID and CRD, as opposed to~~

similar, but different, regulatory requirements arising from these Directives being imposed upon the same business functions. A unified set of requirements is simpler and more cohesive for firms, and was supported in consultation responses. The common platform requirements in SYSC 4-10 were then adapted and extended to non-MiFID firms, including investment advisers and arrangers subject to the article 3 MiFID exemption. The adaptation of the common platform requirements took the form of applying various rules as guidance to these firms, as set out in the application tables in SYSC 1 Annex 1 Part 3.

...

## 2.4 **MiFID II implementation onshoring and SYSC**

2.4.1 The combination of senior management and systems and controls requirements for firms in a directive and regulation means that FCA rules are ~~still required in order used to implement~~ onshore the provisions in the directive. As such, the approach to ~~implementation onshoring of~~ MiFID II retains the familiar approach of the common platform ~~but adapts the existing structure of SYSC in and~~ the following ~~principal~~ ways:

- ~~updates~~ the application of common platform requirements in SYSC 1 Annex 1 Part 3 and ~~creates a new~~ Table B for MiFID optional exemption firms;
- ~~creates a new~~ rule which has the effect, amongst other things, of extending the application of certain parts of the MiFID Org Regulation to all of a UK MiFID investment firm's designated investment business, MiFID or otherwise (SYSC 1 Annex 1 2.8AR) (in the Handbook, the definition of 'MiFID investment firm' captures any UK firm to which MiFID would apply if the United Kingdom were a Member State);
- ~~creates a new~~ rule which extends the application of the MiFID Org Regulation in relation to general organisational requirements, compliance, risk management, internal audit, responsibility of senior management, remuneration policies and practices and outsourcing to all of a MiFID optional exemption firm's designated investment business, by way of rule or guidance depending on the individual provision (SYSC 1 Annex 1 3.2CR discussed further in M2G 2.5);
- ~~uses~~ signposting references in the application provisions to individual SYSC chapters to identify the relevant articles of the MiFID Org Regulation which supplement the rules implementing the MiFID requirements. These are also listed in ~~the new~~ Table C in SYSC 1 Annex 1;
- ~~creates a new~~ chapter (SYSC 10A) on recording telephone conversations and electronic communications ~~to implement new obligations imposed by MiFID II, supplemented by the MiFID Org Regulation~~;

- ~~creates a new section (SYSC 18.6) on the whistleblowing obligations imposed upon MiFID investment firms and which includes a signposting mechanism pointing firms to similar obligations in derived from other single market legislation; and~~
- ~~creates a new section (SYSC 19F) to implement a new obligation in respect of remuneration and performance management of sales staff.~~

...

## 2.8 Other firms- Collective portfolio management investment firms and authorised professional firms

This short summary focuses only on MiFID II ~~transposition~~ onshoring and not obligations arising under other single market legislation.

2.8.1 A collective portfolio management investment firm ('CPMI') ~~is a firm which is subject to authorisation under UCITS or AIFMD which does MiFID business, in accordance with article 6 UCITS directive or article 6 AIFMD. A CPMI takes the forms form of a 'UCITS investment firm' or an 'AIFM investment firm', as defined in the FCA Handbook Glossary. A UCITS investment firm is subject to the common platform requirements as set out in Column A+ in SYSC 1 Annex 1 Table A. An AIFM investment firm is subject to the requirements listed in Column A in SYSC 1 Annex 1 Table A in relation to their MiFID business. ...~~

2.8.2 Authorised professional firms ~~exempt from MiFID II under article 2(1)(c) of the directive~~ falling within the exemption in paragraph 1(d) of Part 1 of Schedule 3 to the RAO will be subject to common platform requirements as set out in Column B in SYSC 1 Annex 1 Table A. If they satisfy the criteria of a MiFID optional exemption firm (in accordance with Chapter 1 of Part 2 of the MiFI regulations) they will be subject to the provisions in the SYSC 1 Annex 1 Part 3 Table B column A. If they fall within both the ~~article 2(1)(c) and 3 exemptions in paragraph 1(d) of Part 1 of Schedule 3 to the RAO and Chapter 1 of Part 2 of the MiFI regulations,~~ they are entitled to comply only with the common platform requirements relating to article 2(1)(c) exempt firms in Column B in SYSC 1 Annex 1 Table A. Where they ~~are~~ would be required to be authorised by MiFID II, they will be subject to common platform requirements in Column A in SYSC 1 Annex 1 Table A and other SYSC requirements as a UK MiFID investment firm, except to the extent indicated otherwise (including SYSC 1 Annex 1 2.5R).

...

## 2.9 Other organisational requirements

2.9.1 In addition to the SYSC obligations outlined above, firms will find MiFID II-related organisational requirements in respect of complaints handling in DISP, client money and assets (CASS) and product governance obligations in PROD. Firms will also remain subject to ~~domestic~~ obligations in the form of

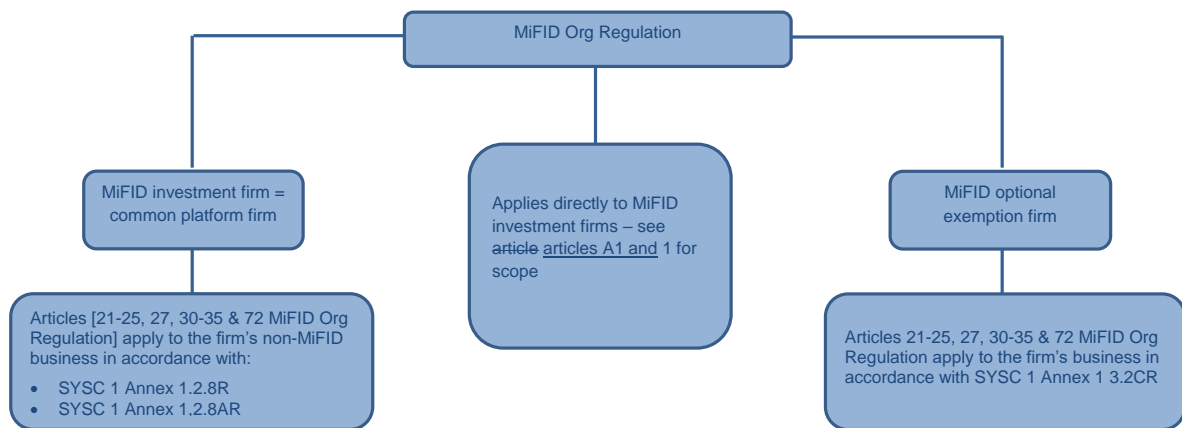
the relevant senior management, certification, COCON and approved persons requirements.

**2 Annex 1 Overview**

Annex 1 ...

The diagram focuses on the position of UK MiFID investment firms (other than CPMI and authorised professional ~~firm~~ firms) and MiFID optional exemption firms.

**MiFID II Organisational requirements for firms**





**EXITING THE EUROPEAN UNION: REDRESS SOURCEBOOKS (AMENDMENTS)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;
  - (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000;
  - (3) regulation 120 (Guidance) Payment Services Regulations 2017; and
  - (4) regulation 60 (Guidance) Electronic Money Regulations 2011.

**Commencement**

- B. This instrument comes into force on [29 March 2019 at 11 p.m.]

**Amendments to the Handbook**

- C. The Consumer Redress Schemes sourcebook (CONRED) is amended in accordance with Annex A to this instrument.
- D. The Compensation sourcebook (COMP) is amended in accordance with Annex B to this instrument.

**Citation**

- D. This instrument may be cited as the Exiting the European Union: Redress Sourcebooks (Amendments) Instrument 2019.

By order of the Board  
[date]

**Editor's notes**

- (1) The near-final instrument relates to the statutory instruments set out in Annex 4 of the accompanying Policy Statement and other matters arising from the UK's withdrawal from the EU.
- (2) We will set out our approach in due course for any additional amendments which are required as a result of further statutory instruments.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 29 March 2019.

## Annex A

### Amendments to the Consumer Redress Schemes sourcebook (CONRED)

In this Annex, striking through indicates deleted text.

#### 1           **General**

...

#### 1.4           **Scope of a consumer redress scheme**

...

1.4.2       G    A consumer redress scheme could apply to all *authorised persons*, *electronic money issuers* or *payment service providers* or to a specified description of *authorised person*, *electronic money issuer* or *payment service provider*. This means the *FCA* could create a scheme that applied to a named list of firms. ~~Given that a scheme can apply to *authorised persons*, it could also apply to *incoming EEA firms* that are authorised under Schedule 3 to the *Act*. However, the *FCA* would need to consider on a case by case basis the extent to which this was both practicable and appropriate (having regard to the division of responsibilities between *Home* and *Host State regulators* under the various *EU Directives* that apply to financial services firms).~~

...

1.4.9       G    The section 404 power could be used in relation to non-UK consumers if they are protected by the underlying law (e.g. some *FCA rules* apply to *UK firms* doing business in another *EEA State*).

...

## Annex B

### Amendments to the Compensation sourcebook (COMP)

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

#### INTRO Foreword

##### 1

**(This Foreword to the Compensation sourcebook does not form part of COMP.)**

...

~~Chapter 14 Participation by EEA firms~~

~~This chapter sets out the way the FSCS deals with incoming EEA firms who may choose to top-up into the FSCS to supplement the compensation available from their home state scheme.~~

#### 1.1 Application, Introduction, and Purpose

...

Introduction

...

- 1.1.8 G *COMP* 1 consists of *guidance* which is aimed at giving an overview of how this sourcebook works. The provisions of *COMP* 2 to *COMP* 14 12A cover who is eligible, the amount of compensation and how it might be paid.

...

#### 2 The FSCS

##### 2.1 Application and Purpose

...

Purpose

- 2.1.2 G In order to carry out its functions and put into effect the provisions set out in *COMP* 3 – *COMP* 14 12A (which deal with determining whether compensation is payable, calculating the amount of compensation that should be paid, and making levies on *firms*), the *FSCS* needs to have a variety of powers. The purpose of this chapter is to set out these powers, and the restrictions upon them.

...

## 5 Protected claims

...

### 5.5 Protected investment business

...

#### Territorial scope condition

- 5.5.2 R The territorial scope condition is that the *protected investment business* was carried on from:
- (1) an establishment of the *relevant person* in the *United Kingdom*; ~~or~~
  - (2) a ~~branch of a UK firm which is:~~
    - (a) a *MiFID investment firm* established in another *EEA State*; ~~or~~
    - (b) a *UCITS management company* established in another *EEA State* (but only in relation to *managing investments* (other than *advising on investments* or *safeguarding and administering investments*); [deleted]

and the *claim* is an *ICD claim*; ~~or~~
  - (3) both (1) and (2); ~~or~~ [deleted]
  - (4) ~~(a) a UK branch of an EEA UCITS management company; or~~
    - (b) an establishment of such an *EEA UCITS management company* in its *Home State* from which *cross border services* are being carried on; [deleted]

and in either case the *management company* is providing *collective portfolio management services* for a *UCITS scheme* but only if the *claim* relates to that activity; ~~or~~
  - (5) an establishment of an *incoming EEA AIFM* in another *EEA State* if the *claim* relates to providing *AIFM management functions* on a *cross border services* basis for an *authorised AIF*. [deleted]

#### Managers and depositaries of funds

- 5.5.3 R The conditions referred to in *COMP 5.5.1R* for a manager or *depository* of a *fund* are:
- (1) for the activities of *managing an AIF*, *managing a UK UCITS* or *establishing, operating or winding up a collective investment scheme*, the *claim* is in respect of an investment in:

...

...

...

## 5.6 Protected home finance mediation

...

5.6.2 R *COMP* 5.6.1R applies only if the *protected home finance mediation* was carried on by a *relevant person*:

- (1) with a *customer* who was a resident in the *United Kingdom*; ~~or~~
- (2) ~~from an establishment maintained by the *relevant person* (or its *appointed representative*) in the *United Kingdom* with a *customer* who was resident elsewhere in the *EEA*;~~

at the time the *protected home finance mediation* was carried on.

...

## 5.7 Protected non-investment insurance distribution

....

5.7.2 R *COMP* 5.7.1R only applies if the conditions in (1) and (2) are satisfied:

- (1) the *protected non-investment insurance distribution* was carried on from:
  - (a) an establishment of the *relevant person* in the *United Kingdom*; ~~or~~
  - (b) ~~a branch of a *UK firm* established in another *EEA State* in the exercise of an *EEA right* derived from the *IDD*; and~~
- (2) the claimant making the *claim* (or where *COMP* 3.2.4R applies, the *customer* on behalf of whom a *firm* makes a *claim*) dealt initially, with a view to entering into a *relevant general insurance contract* or a *pure protection contract* but not a *long-term care insurance contract* or a *reinsurance contract*, with an intermediary that was:
  - (a) established in the *United Kingdom*; ~~or~~
  - (b) ~~a branch of a *UK firm* established in another *EEA State* in the exercise of an *EEA right* derived from the *IDD*.~~

5.7.3 G The *FSCS* will not cover a *claim* against an intermediary or a *successor* of an intermediary that meets the criteria of ~~either *COMP* 5.7.2R(2)(a) or *COMP* 5.7.2R(2)(b)~~ where the claimant was introduced to that intermediary by an intermediary that does not meet the criteria of ~~either *COMP* 5.7.2R(2)(a) or *COMP* 5.7.2R(2)(b)~~.

- 5.7.4 G ... However, *COMP 5.7.2R* has the effect that a *claim* in respect of a *relevant person* further up the chain carrying on *protected non-investment insurance mediation* in accordance with *COMP 5.7.2R(1)(a)* may be covered by the *FSCS* if the claimant dealt initially with a *UK intermediary* that is not a *relevant person*.

...

## 6 Relevant persons and successors in default

...

### 6.2 Who is a relevant person?

...

- 6.2.3 G *A pre-exit incoming EEA firm may be a participant firm in respect of acts or omissions before exit day that give rise to a claim against it.*

### 6.3 When is a relevant person in default?

...

- 6.3.3 R The *FSCS* may determine a *relevant person* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim*), and the *relevant person* is the subject of one or more of the following proceedings in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction):

...

- (2) a determination by the *relevant person's Home State regulator FCA or the PRA* that the *relevant person* appears unable to meet *claims* against it and has no early prospect of being able to do so;

...

...

### 6.3A When is a successor in default?

...

- 6.3A.3 R The *FSCS* may determine a *successor* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim* against a *successor* that is a *MiFID investment firm*), and the *successor* is the subject of one or more of the following proceedings in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction):

...

- (2) a determination by the ~~successor's Home State regulator~~ FCA or the PRA that the *successor* appears unable to meet *claims* against it and has no early prospect of being able to do so; or

...

...

## 7 Assignment or subrogation of rights

...

### 7.3 Automatic subrogation

...

Rights and obligations against the relevant persons, successors and third parties

...

#### 7.3.10 R (1) The *FSCS* may determine that:

...

that claimant shall be treated as having irrevocably and unconditionally appointed the chairman of the *FSCS* for the time being to be his attorney and agent and on his behalf and in his name or otherwise to do such things and execute such deeds and documents as may be required under such laws of the *United Kingdom*, ~~another EEA State~~ or any other state or law-country to create or give effect to such assignment or transfer or otherwise give full effect to those powers.

...

...

## 10 Limits on the amount of compensation payable

...

### 10.2 Limits on compensation payable

...

Table limits

...

#### 10.2.5 G *COMP* 12.4.4R includes further limits relating to certain *ICD* claims against certain incoming EEA firms pre-exit incoming EEA firms, where the act or omission giving rise to the claim arose before exit day. These reflect



the *Investor Compensation Directive*, which will continue to apply to *EEA State compensation schemes* after *exit day*, under which compensation may be payable by the ~~*incoming EEA firm's*~~ *pre-exit incoming EEA firm's Home State compensation scheme EEA State compensation scheme*.

...

**12 Calculating compensation**

...

**12.4 The compensation calculation**

Protected investment business: general

...

12.4.4 R If the claimant has an *ICD claim* against ~~an *incoming EEA firm*~~ *a pre-exit incoming EEA firm* which is a *MiFID investment firm* or, where applicable, a *successor* of such a *firm*, and the act or omission giving rise to the *ICD claim* arose before *exit day*, the *FSCS* must take account of the liability of the ~~*Home State compensation scheme*~~ *EEA State compensation scheme* in calculating the compensation payable by the *FSCS*. For the purposes of applying this rule, “*ICD claim*” and “*MiFID investment firm*” have the meaning they had immediately before *exit day*.

...

*COMP* 14 (Participation by EEA Firms) is deleted in its entirety. The deleted text is not shown but the chapter is marked [deleted] as shown below.

**14 Participation by EEA firms [deleted]**

Amend the following as shown.

**TP 1 Transitional Provisions**

TP 1.1 Transitional Provisions Table

(1)	(2)	(3)	(4)	(5)	(6)
	<b>Material to which the transitional provision applies</b>		<b>Transitional Provision</b>	<b>Transitional provision: dates in force</b>	<b>Handbook Provisions coming into force</b>
...					

42	<u>Amendments introduced by the Exiting the European Union: Redress Sourcebooks (Amendments) Instrument 2019</u>	<u>R</u>	<u>The changes referred to in column (2) do not apply in relation to a <i>relevant person</i> or a <i>successor</i> that was <i>in default</i> on or before <i>exit day</i>.</u>	<u>From <i>exit day</i> indefinitely</u>	<u><i>exit day</i></u>
43	<u>Amendments to <i>COMP 5.5.2R(2) – (3)</i> and <i>COMP 5.7.2R(1)(b)</i> and (2)(b) by the Exiting the European Union: Redress Sourcebooks (Amendments) Instrument 2019</u>	<u>R</u>	<u>The amendments referred to in column (2) only apply to acts or omissions by a <i>relevant person</i> after <i>exit day</i>.</u>	<u>From <i>exit day</i> indefinitely</u>	<u><i>exit day</i></u>
44	<u><i>COMP TP 43</i></u>	<u>G</u>	<u>The purpose of <i>COMP TP 43</i> is to ensure that the <i>FSCS</i> can pay compensation after <i>exit day</i> in respect of acts or omissions before <i>exit day</i> by a <i>branch</i> of a <i>UK firm</i> that was established in an <i>EEA State</i>.</u>		
45	<u><i>COMP 6.3.1R</i>, <i>6.3A.1R</i>, <i>9.2.2R</i>, <i>11.2.6</i>, <i>12.3.5R</i> and <i>12.3.6R</i></u>	<u>R</u>	<u>The defined terms “<i>ICD claim</i>” and “<i>MiFID investment firm</i>” in or under the provisions referred to in column (2) have the meaning they had immediately before <i>exit day</i> for any of the following purposes:  <u>(1) declaring <i>in default</i>, or</u>  <u>(2) postponing compensation where the <i>claim</i> is not an <i>ICD claim</i> against, or</u>  <u>(3) paying a lesser sum in final</u></u>	<u>From <i>exit day</i> indefinitely</u>	<u><i>exit day</i></u>

			<p>settlement where the <u>claim</u> is not an <u>ICD claim</u> against, or</p> <p>(4) <u>determining the quantification date</u> in respect of,</p> <p>a <u>pre-exit incoming firm</u>, or the <u>successor</u> of such a firm.</p>		
46	<p><u>Amendments and deletions in participant firm and COMP by the Exiting the European Union: Glossary (Amendments) Instrument 2019 and the Exiting the European Union: Redress Sourcebooks (Amendments) Instrument 2019 respectively</u></p>	<u>R</u>	<p><u>The amendments and deletions referred to in column (2) are disappplied, in relation to a claim against a pre-exit incoming EEA firm in respect of any act or omission by that firm before exit day, to the extent needed to enable the FSCS:</u></p> <p>(1) <u>to determine whether, had the claim been made immediately before exit day, the FSCS would have paid compensation in respect of it; and</u></p> <p>(2) <u>if so, to pay compensation in respect of that claim.</u></p> <p><u>For these purposes, where an amendment or deletion to a defined term is disappplied under this rule, that defined term has the meaning it had immediately before exit day.</u></p>	<u>From exit day indefinitely</u>	<u>exit day</u>

...

## Sch 2 Notification requirements

### Sch 2.1G

1.	The aim of the guidance in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting. In all cases, other than those concerning <del>Chapter 14</del> and the Transitional Provisions, the notification rules in <i>COMP</i> apply only to the <i>FSCS</i> (the scheme manager).
...	

## Sch 2.2G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>COMP</i> 14.2.1R	Application by eligible inward passporting <i>EEA</i> firm to obtain <i>top-up cover</i> into <i>compensation scheme</i>	That firm is qualifying incoming <i>EEA</i> firm. The sub-scheme(s) the firm wishes to participate in. Confirmation that the level or scope of cover offered by its home state scheme(s) is less than that available in the UK.	The <i>firm's</i> decision that it wishes to obtain <i>top-up cover</i> into the UK scheme.	N/A
<i>COMP</i> 14.4.5R	Termination of top-up cover	Statement that incoming <i>EEA</i> firm is terminating top-up cover	Decision by firm to resign from <i>FSCS</i>	6 months notice
<i>COMP</i> 14.4.6R	Termination of inward passporting <i>EEA</i> firm's top-up cover into <i>compensation scheme</i>	The firm's resignation from the <i>compensation scheme</i> and the level of <i>compensation</i> available to clients of the firm's UK branch following its decision to	Termination of firm's top-up cover	No later than six weeks after the end of the firm's participation in <i>compensation scheme</i>

		resign from FSCS		
--	--	---------------------	--	--

...

**Sch 5 Rights of action for damages**

...

Sch 5.2G

...

Chapter/ Appendix	Section/Annex	Paragraph	For private person?	Removed	For other person ?
...					
COMP 14.4.6R			<b>Yes</b>	<b>No</b>	<b>No</b>

**EXITING THE EUROPEAN UNION: MISCELLANEOUS (AMENDMENTS)  
INSTRUMENT 2019**

**Powers exercised**

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

**Commencement**

- B. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to the Handbook**

- C. The modules of the FCA’s Handbook of rules and guidance are amended in accordance with the Annex A to this instrument.

**Amendments to material outside the Handbook**

- D. The General Guidance on Benchmark Submission and Administration (BENCH) is amended in accordance with Annex B to this instrument.

**Citation**

- E. This instrument may be cited as the Exiting the European Union: Miscellaneous (Amendments) Instrument 2019.

By order of the Board  
[*date*]

**Editor's notes**

- (1) The near-final instrument relates to the statutory instruments set out in Annex 4 of the accompanying Policy Statement and other matters arising from the UK's withdrawal from the EU.
- (2) We will set out our approach in due course for any additional amendments which are required as a result of further statutory instruments.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 29 March 2019.

## Annex A

### Cross-cutting definitional changes

**Part 1:** In the following provisions, delete the references to ‘EU CRR’ and insert references to ‘UK CRR’.

#### Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

*SYSC 7.1.17R*

*SYSC 7.1.21R*

*SYSC 10.1.1R*

*SYSC 19D.1.9G*

*SYSC 19D.3.34R*

#### Fees manual (FEES)

*FEES 3.2.7R*

*FEES 3 Annex 6R*

*FEES 3 Annex 6AR*

#### General Prudential sourcebook (GENPRU)

*GENPRU 3.1.8R*

*GENPRU 3.1.36R*

*GENPRU 3.2.4G*

#### Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

*BIPRU 8.1.2AR*

*BIPRU 8.1.2BR*

*BIPRU 12.4.-1R*

*BIPRU TP 2 2.3G*



*BIPRU TP 15 15.3G*

*BIPRU TP 15 15.4R*

**Prudential sourcebook for Investment Firms (IFPRU)**

*IFPRU 1.1.4G*

*IFPRU 1.1.7G*

*IFPRU 1.1.16G*

*IFPRU 1.1.17G*

*IFPRU 1.4.1R*

*IFPRU 1.4.2G*

*IFPRU 2.2.7R*

*IFPRU 2.2.14R*

*IFPRU 2.2.18R*

*IFPRU 2.2.23R*

*IFPRU 2.2.28R*

*IFPRU 2.2.34R*

*IFPRU 2.2.37R*

*IFPRU 2.2.40G*

*IFPRU 2.2.50R*

*IFPRU 2.2.56G*

*IFPRU 2.2.70G*

*IFPRU 2.2.73G*

*IFPRU 2.3.4G*

*IFPRU 2.3.7G*

*IFPRU 2.3.8G*

*IFPRU 2.3.10G*

*IFPRU 2.3.20G*

*IFPRU 2.3.36G*

*IFPRU 2.3.50R*

*IFPRU 2.3.51R*

*IFPRU 2.3.52R*

*IFPRU 3.1.5G*

*IFPRU 3.1.6R*

*IFPRU 3.2.2G*

*IFPRU 3.2.3R*

*IFPRU 3.2.4G*

*IFPRU 3.2.10R*

*IFPRU 3.2.17R*

*IFPRU 3.2.18G*

*IFPRU 3.2.19G*

*IFPRU 3.2.20G*

*IFPRU 4.1.2G*

*IFPRU 4.2.1R*

*IFPRU 4.2.2G*

*IFPRU 4.2.3R*

*IFPRU 4.2.5G*

*IFPRU 4.2.7G*

*IFPRU 4.2.8G*

*IFPRU 4.2.9G*

*IFPRU 4.2.10G*

*IFPRU 4.2.11G*

*IFPRU 4.3.1G*

*IFPRU 4.3.2G*

*IFPRU 4.3.7G*

*IFPRU 4.3.10G*

*IFPRU 4.3.11G*

*IFPRU 4.3.14G*

*IFPRU 4.3.15G*

*IFPRU 4.3.16G*

*IFPRU 4.3.17G*

*IFPRU 4.4.1G*

*IFPRU 4.4.6G*

*IFPRU 4.4.7G*

*IFPRU 4.4.8G*

*IFPRU 4.4.9G*

*IFPRU 4.4.10G*

*IFPRU 4.4.11G*

*IFPRU 4.4.12G*

*IFPRU 4.4.13G*

*IFPRU 4.4.14G*

*IFPRU 4.4.15G*

*IFPRU 4.4.16G*

*IFPRU 4.4.17G*

*IFPRU 4.5.1G*

*IFPRU 4.5.3G*

*IFPRU 4.5.5G*

*IFPRU 4.5.6G*

*IFPRU 4.6.5G*

*IFPRU 4.6.8G*

*IFPRU 4.6.13G*

*IFPRU 4.6.22G*

*IFPRU 4.6.23G*

*IFPRU 4.6.24G*

*IFPRU 4.6.29G*

*IFPRU 4.6.31G*

*IFPRU 4.6.32G*

*IFPRU 4.7.3G*

*IFPRU 4.7.4G*

*IFPRU 4.7.5G*

*IFPRU 4.7.6G*

*IFPRU 4.7.7G*

*IFPRU 4.7.9G*

*IFPRU 4.7.10G*

*IFPRU 4.7.12G*

*IFPRU 4.7.13G*

*IFPRU 4.7.17G*

*IFPRU 4.7.19G*

*IFPRU 4.8.1G*

*IFPRU 4.8.2G*

*IFPRU 4.8.7G*

*IFPRU 4.8.12G*

*IFPRU 4.8.15G*

*IFPRU 4.8.16G*

*IFPRU 4.8.22G*

*IFPRU 4.8.23G*

*IFPRU 4.8.24G*

*IFPRU 4.8.25G*

*IFPRU 4.8.26G*

*IFPRU 4.8.28G*

*IFPRU 4.9.1G*

*IFPRU 4.10.1G*

*IFPRU 4.10.2G*

*IFPRU 4.11.2G*

*IFPRU 4.11.3G*

*IFPRU 4.11.8G*

*IFPRU 4.11.11G*

*IFPRU 4.11.14G*

*IFPRU 4.11.18G*

*IFPRU 4.11.19G*

*IFPRU 4.12.1R*

*IFPRU 4.12.3G*

*IFPRU 4.12.8G*

*IFPRU 4.12.10G*

*IFPRU 4.12.13G*

*IFPRU 4.12.24G*

*IFPRU 4.12.27G*

*IFPRU 4.12.32G*

*IFPRU 4.12.35G*

*IFPRU 4.12.37G*

*IFPRU 4.12.42G*

*IFPRU 4.13.1R*

*IFPRU 4.14.1R*

*IFPRU 4.14.2R*

*IFPRU 4.14.4G*

*IFPRU 4.14.5G*

*IFPRU 4.15.1G*

*IFPRU 5.2.2G*

*IFPRU 6.1.2G*

*IFPRU 6.1.3R*

*IFPRU 6.1.4R*

*IFPRU 6.1.15R*

*IFPRU 6.1.17G*

*IFPRU 6.2.1G*

*IFPRU 6.2.2G*

*IFPRU 6.2.8G*

*IFPRU 6.3.1G*

*IFPRU 6.3.3G*

*IFPRU 6.3.5G*

*IFPRU 6.3.12G*

*IFPRU 6.3.17G*

*IFPRU 6.3.18G*

*IFPRU 6.3.19G*

*IFPRU 6.3.25G*

*IFPRU 7.1.2G*

*IFPRU 7.1.5R*

*IFPRU 7.1.6R*

*IFPRU 8.1.2G*

*IFPRU 8.1.3R*

*IFPRU 8.1.4R*

*IFPRU 8.1.5R*

*IFPRU 8.1.6G*

*IFPRU 8.1.7G*

*IFPRU 8.1.8G*

*IFPRU 8.1.9G*

*IFPRU 8.1.10G*

*IFPRU 8.1.11G*

*IFPRU 8.1.14G*

*IFPRU 8.1.18G*

*IFPRU 8.1.19G*

*IFPRU 8.1.21G*

*IFPRU 8.2.1R*

*IFPRU 8.2.3G*

*IFPRU 8.2.4G*

*IFPRU 8.2.7R*

*IFPRU 8.2.8R*

*IFPRU 8.2.10R*

*IFPRU 10.4.1R*

*IFPRU 10.4.3R*

*IFPRU 10.6.5G*

*IFPRU 11.5.23G*

*IFPRU TP 1 1.4R*

*IFPRU TP 1 1.6R*

*IFPRU TP 1 1.8R*

*IFPRU* TP 1 1.9R

*IFPRU* TP 1 1.10R

*IFPRU* TP 1 1.11G

*IFPRU* TP 1 1.12G

*IFPRU* TP 3 3.2G

*IFPRU* TP 3 3.4R

*IFPRU* TP 3 3.5R

*IFPRU* TP 3 3.6R

*IFPRU* Sch 1(3)

*IFPRU* Sch 2(3)

**Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)**

*MIPRU* 4.2.5R

*MIPRU* 4.4.1R

**Interim Prudential sourcebook for Investment Businesses (IPRU(INV))**

*IPRU(INV)* 4.2.4G

*IPRU(INV)* 11.6.5G

*IPRU(INV)* 14.1.2R

**Supervision manual (SUP)**

*SUP* 15.3.11R

*SUP* 16.12.3-AG

*SUP* 16.12.3-BG

*SUP* 16.12.12R

*SUP* 16.12.13R

*SUP* 16.12.16R



*SUP 16.12.17R*

*SUP 16.12.23AR*

*SUP 16.12.24AR*

*SUP 16.12.26R*

*SUP 16.12.27R*

*SUP 16.16.3G*

*SUP 16 Annex 33BG*

*SUP 16 Annex 34BG*

**Collective Investment Schemes sourcebook (COLL)**

*COLL 5.6.7R*

*COLL 5.7.5R*

*COLL 6.6A.8R*

*COLL 6.6B.7G*

*COLL 6.6B.9G*

**Regulated Covered Bonds sourcebook (RCB)**

*RCB 1.1.6G*

*RCB 2.3.13G*

**Energy Market Participants Guide (EMPS)**

*EMPS 1.2.3G*

**Oil Market Participants Guide (OMPS)**

*OMPS 1.2.2G*

**The Perimeter Guidance Manual (PERG)**

*PERG 10.4A*

*PERG 13.2 (Q2.)*

*PERG 13.3 (Q16.)*

*PERG 13.6 (Q54., Q56., Q57., Q58A., Q61., Q63., Q64., Q66.)*

*PERG 13 Annex 3*

**Part 2:** In the following provisions, delete any references to ‘*manage a UCITS*’ or ‘*managing a UCITS*’ and insert references to ‘*manage a UK UCITS*’ or ‘*managing a UK UCITS*’, as appropriate.

**Fees manual (FEES)**

*FEES 4 Annex 1AR, Part 1*

**General Prudential sourcebook (GENPRU)**

*GENPRU 2.1.46R*

**Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)**

*BIPRU 1.1.3R*

*BIPRU 8.5.8G*

**Prudential sourcebook for Investment Firms (IFPRU)**

*IFPRU 1.1.3G*

*IFPRU 3.2.20G*

**Interim Prudential sourcebook for Investment Businesses (IPRU(INV))**

*IPRU(INV) 11.6.4R*

*IPRU(INV) 11.6.5G*

*IPRU(INV) 11.7.1G*

**Client Assets sourcebook (CASS)**

*CASS 6.1.16BAG*

**Supervision manual (SUP)**

*SUP 16.12.4R*

*SUP 16.23.2R*

**Collective Investment Schemes sourcebook (COLL)**

*COLL 6.9.9R*

**The Perimeter Guidance Manual (PERG)**

*PERG 2.5.1-AG*

*PERG 2.7.13EG*

*PERG 2.7.21G*

*PERG 2.8.4G*

*PERG 2.8.5G*

*PERG 2.8.6AG*

*PERG 2.8.7G*

*PERG 2.8.7BG*

*PERG 2.8.8G*

*PERG 2.8.9G*

*PERG 2.8.12AG*

*PERG 2.8.14G*

*PERG 2.8.14BG*

*PERG 2.9.10G*

*PERG 2.9.20G*

*PERG 2.9.22G*

*PERG 2.9.25G*

*PERG 2.10.14G*

*PERG 2 Annex 2*

*PERG 5.11.17G*

*PERG 9.10.10G*

*PERG 16.5G*

**Part 3:** In the following provisions, delete the references to ‘*UK ELTIF*’ or ‘*ELTIF*’ and insert references to ‘*LTIF*’.

**Fees manual (FEES)**

*FEES 1.1.2R*

*FEES 3.2.7R*

*FEES 3 Annex 2R*

*FEES 4.2.11R*

*FEES 4 Annex 4R*

**Dispute Resolution: Complaints sourcebook (DISP)**

*DISP 1.1.5R*

*DISP 1 Annex 2R*

*DISP 2.7.6R*

**Compensation sourcebook (COMP)**

*COMP 5.5.1R*

**Part 4:** In the following provisions, delete the references to ‘*EuSEF*’ and insert references to ‘*SEF*’.

**Conduct of Business sourcebook (COBS)**

*COBS 4.12.4R*

**Supervision manual (SUP)**

*SUP 15.3.29R*

*SUP 15.3.30D*

*SUP 15.3.31G*

*SUP 15 Annex 6R (list)*

*SUP 15 Annex 6FG*

**Decision Procedure and Penalties Manual (DEPP)**

*DEPP 2 Annex 1*

**Investment Funds sourcebook (FUND)**

*FUND 1.3.7G*

*FUND 3.12.7R*

**The Enforcement Guide (EG)**

*EG 19.27.4G*

*EG 19.27.5G*

**The Perimeter Guidance Manual (PERG)**

Heading above *PERG 8.37.12G*

*PERG 8.37.12G*

*PERG 8.37.13G*

**Part 5:** In the following provisions, delete the references to ‘*EuVECA*’ and insert references to ‘*RVECA*’.

**Conduct of Business sourcebook (COBS)**

*COBS 4.12.4R*

**Supervision manual (SUP)**

*SUP 15.3.29R*

*SUP 15.3.30D*

*SUP 15.3.31G*

*SUP 15 Annex 6R (list)*

*SUP 15 Annex 6FG*

**Decision Procedure and Penalties Manual (DEPP)**

*DEPP 2 Annex 1*

**Investment Funds sourcebook (FUND)**

*FUND 1.3.7G*

**The Enforcement Guide (EG)**

*EG 19.27.4G*

*EG 19.27.5G*

**The Perimeter Guidance Manual (PERG)**

Heading above *PERG 8.37.12G*

*PERG 8.37.12G*

*PERG 8.37.13G*

**Part 6:** In the following provisions, delete the references to ‘*acting as trustee or depositary of a UCITS*’ and insert references to ‘*acting as trustee or depositary of a UK UCITS*’.

**Fees manual (FEES)**

*FEES 4 Annex 1AR*

*FEES 6 Annex 3AR*

**Interim Prudential sourcebook for Investment Businesses (IPRU(INV))**

*IPRU(INV) 2.1.4G*

*IPRU(INV) 5.3.1R*

*IPRU(INV) 5.3.2R*

**Client Assets sourcebook (CASS)**

*CASS 1.4.6BG*

*CASS 6.1.1R*

*CASS 6.1.16FR*

*CASS 6.1.16IDR*

*CASS 6.1.16IEG*

*CASS 6.1.16IFG*

*CASS 6.6.41AG*

*CASS 6.6.57R*

*CASS 8.1.2AR*

*CASS 8.2.1R*

*CASS 10.1.1R*

**Supervision manual (SUP)**

*SUP 3.10.5R*

*SUP 16.12.4R*

*SUP 16.14.4R*

*SUP 16.23.2R*

**Collective Investment Schemes sourcebook (COLL)**

*COLL 6.6A.8R*

*COLL 6.6B.4G*

**The Perimeter Guidance Manual (PERG)**

*PERG 2.5.1-AG*

*PERG 2.7.13AG*

*PERG 2.7.13CG*

*PERG 2.7.21G*

*PERG 2.9.25G*

*PERG 2 Annex 2*



## Annex B

### Amendments to the General guidance on Benchmark Submission and Administration (BENCH)

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

#### 1.1 Application and purpose

...

- 1.1.3 G (1) The EU benchmarks regulation applied from 1 January 2018. The benchmarks regulation is the United Kingdom version of this EU regulation and applies from 1 January 2018 exit day.
- (2) Various changes were made to the *Regulated Activity Order* as a result of the EU benchmarks regulation. In particular:
- (a) ~~There is a~~ A new regulated activity of: *administering a benchmark* (article 63S of the *Regulated Activities Order*) was introduced.
- (b) The regulated activity of *administering a specified benchmark* ~~will cease~~ ceased to apply (subject to the transitional provisions described in *SUP* TP 10).
- (c) The regulated activity of *providing information in relation to a specified benchmark* ~~will cease~~ ceased to apply (subject to the transitional provisions described in *SUP* TP 10). However, *benchmark contributors* which *contribute input data* to a *BMR benchmark administrator* are still subject to various requirements in the *Handbook* and are subject to the *benchmarks regulation* when doing so.

...

...

#### 2.1 Parts of the Handbook applicable to regulated benchmark administrators and benchmark contributors

2.1.1 G ...

- (5) *Regulated benchmark administrators* are also reminded of their directly applicable obligations under the *benchmarks regulation* and ~~legislation made under that regulation~~ *onshored regulations* which were previously *EU regulations* made under the *EU benchmarks regulation*.

...

## 2.3 Guidance for benchmark users: articles 28 and 29 of the benchmarks regulation

...

### 2.3.2 G ...

- (2) The effect of the prohibition in article 29 is that, subject to the exclusions in article 2 of the *benchmarks regulation*, a *firm* which is a *supervised entity* may only use a *benchmark* in cases where:
- (a) if the benchmark administrator is *located* in the ~~EU~~ UK, the benchmark administrator is listed in the register maintained by ~~ESMA~~ the FCA under article 36 of the *benchmarks regulation*; or
  - (b) if the benchmark administrator is *located* outside the ~~EU~~ United Kingdom, ~~the benchmark administrator and the benchmark itself are~~ is listed in the register maintained by ~~ESMA~~ the FCA under article 36 of the *benchmarks regulation*.

[Note: Part 3, Chapter 2 of the *benchmarks regulation* provides for a temporary registration period, of two years beginning with *exit day*, during which a *firm* which is a *supervised entity* may also use a *benchmark* in cases where, if the benchmark administrator is *located* outside the *UK* but in the *EU*, has been authorised or registered by a competent authority of an *EEA State* under article 34 of the *EU benchmarks regulation* and is recorded on the *ESMA* register at 5pm on *exit day*, the benchmark administrator is listed in the register maintained by the *FCA* under article 36 of the *benchmarks regulation*.]

### 2.3.3 G In considering articles 28(2) and article 29, *firms* will need to consider the *benchmarks regulation* and ~~legislation made under that regulation~~ the onshored regulations which were previously *EU regulations* made under the *EU benchmarks regulation*. *Firms* should also note the points below.

- (1) “Use of a benchmark” is defined in article 3.1(7) of the *benchmarks regulation*. *ESMA* has provided guidance on that definition (when used in the context of the *EU benchmarks regulation*) in the form of “Q&As”. That guidance is available on *ESMA*’s website.

...

- (4) *ESMA* has produced guidance (in the form of “Q&As”) on various aspects of the *EU benchmarks regulation*. That guidance is available on *ESMA*’s website.

**EXITING THE EUROPEAN UNION: TEMPORARY PERMISSION AND  
FINANCIAL SERVICES CONTRACTS INSTRUMENT 2019****Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 137A (The FCA’s general rules);
    - (b) section 137B (FCA General rules: clients’ money, right to rescind etc);
    - (c) section 137R (Financial promotion rules);
    - (d) section 137SA (Rules to recover expenses - single financial guidance body);
    - (e) section 137SB (Rules to recover debt advice expenses incurred by the devolved authorities);
    - (f) section 137T (General supplementary powers);
    - (g) section 139A (Power of the FCA to give guidance);
    - (h) section 213 (The compensation scheme);
    - (i) section 214 (General);
    - (j) section 266 (Disapplication of rules);
    - (k) section 333T (Funding of action against illegal money lending);
    - (l) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority); and
  - (2) the following provisions of the Payment Services Regulations 2017 as amended by the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018:
    - (a) regulation 120 (Guidance); and
    - (b) regulation 35 of part 3 of schedule 3 (Power to charge fees); and
  - (3) the following provisions of the Electronic Money Regulations 2011 as amended by the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018:
    - (a) regulation 60 (Guidance); and
    - (b) regulation 12K of part 1A of Schedule 3 (Power to charge fees);

*[Editor’s note: the citation of the power in paragraph (4) is dependent on legislative provisions set out in regulations 206 and 208 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 which is presently before Parliament being made. This instrument will only be made once the amending legislation has been made.]*

- (4) [regulations 206 and 208 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019; and]
- (5) the relevant powers and related provisions referred to in schedule 4 to the General Provisions of the FCA Handbook.
- B. The rule-making provisions referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

### Commencement

- C. Part 2 of Annex C comes into force on [1 April 2019].
- D. The remainder of the instrument comes into force on [29 March 2019 at 11 p.m.] and immediately after the coming into force of the changes made by:
- (1) the Exiting the European Union: Glossary (Amendments) Instrument 2019 [FCA 2019/XX];
  - (2) the Exiting the European Union: Redress Sourcebooks (Amendments) Instrument 2019 [FCA 2019/XX];
  - (3) the Exiting the European Union: High Level Standards (Amendments) Instrument 2019 [FCA 2019/XX];
  - (4) the FCA instruments containing changes applicable to MiFID investment firms, trading venues and other persons to whom MiFID applies or applied;
  - (5) any other FCA instruments containing changes which are applicable to *TP firms* or which would be applicable to *TP firms* by virtue of this instrument.

### Amendments to the Handbook

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

(1)	(2)
Principles for Businesses (PRIN)	Annex A
General Provisions (GEN)	Annex B
Fees manual (FEES)	Annex C
Client Assets sourcebook (CASS)	Annex D
Compensation sourcebook (COMP)	Annex E
Credit Unions sourcebook (CREDS)	Annex F

### Notes

- F. In this instrument, notes shown as “*Editor’s note:*” or as “**Note:**” are intended for the convenience of the reader but do not form part of the legislative text.

### Citation

- G. This instrument may be cited as the Exiting the European Union: Temporary Permission and Financial Services Contracts Instrument 2019.

By order of the Board  
[*date*]

## Annex A

### Amendments to the Principles for Businesses (PRIN)

In this Annex underlining indicates new text.

#### 3 Rules about application

##### 3.1 Who?

...

3.1.9 R PRIN applies to a TP firm, except that Principle 4 only applies to the extent that a TP firm is subject to rules relating to capital adequacy.

3.1.10 R Only Principles 1, 2, 3, 7, 9 and 11 apply to a TP UCITS qualifier and a TP AIFM qualifier, and only with respect to the activities in PRIN 3.2.2R (Communication and approval of financial promotions).

3.1.11 G For the purposes of PRIN 3.1.9R, a TP firm should refer to GEN 2.2.30R and GEN 2.2.31G to determine which rules relating to capital adequacy apply to it.

...

##### 3.3 Where?

...

3.3.3 R Notwithstanding PRIN 3.3.1R, PRIN applies to:

- (1) a TP firm with respect to activities carried on from an establishment maintained by the firm (or its appointed representative) in the United Kingdom;
- (2) a TP firm with respect to services provided into the United Kingdom by the firm from an establishment in an EEA State; and
- (3) a TP AIFM qualifier or a TP UCITS qualifier with respect to the firm's activities in relation to the AIF or scheme in question, in the United Kingdom.

...

## Annex B

## Amendments to the General Provisions (GEN)

In Part 1 of this Annex underlining indicates new text and striking through indicates deleted text.

## Part 1

Amend the following as shown.

## 2.2 Interpreting the Handbook

...

~~EU~~ Onshored Regulations and third country firms

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

...

(2) Paragraph (1) does not apply:

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

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

...

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

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

2.2.22B G (1) The purpose of *GEN 2.2.22AR* is to ensure ~~consistency with the principle referred to in recital 109 to *MiFID*~~ that a *third country investment firm* should not be treated in a more favourable way than ~~an~~ EEA a *UK firm*. A *third country investment firm* does not, however,

~~benefit from passporting rights in the manner envisaged for *EEA firms* and its *authorisation* requires consideration of other issues, including the nature and extent of regulation provided by its *Home State regulator*.~~

...

## Part 2

In Part 2 of this Annex the text is new and not underlined.

Rules applying while a firm has temporary permission: the General Rules

- 2.2.26 R Unless the contrary intention appears, a *rule* does not apply to a *TP firm* except that:
- (1) A *rule* which imposed an obligation on a *person* immediately before *exit day* who becomes a *TP firm* continues to apply to the *TP firm* to the same extent and to the same activities to which the *rule* applied at that time.
  - (2) In addition, a *rule* which deals with a matter (in relation to an activity of a *TP firm* in either (3) or (4)) which immediately before *exit day* was reserved to the:
    - (a) *Home State* of the *firm* under an *EU* directive; or
    - (b) where applicable, *EEA state* where the *firm* has the establishment from which the service is provided, under an *EU* directive,
 also applies to a *TP firm* if and to the extent that that *rule*:
    - (i) applies to a *UK firm* (or other cognate expression) that carries on the same *regulated activity* as the *TP firm*; and
    - (ii) immediately before *exit day*, implemented a provision of an *EU* directive (disregarding any provision of a directive which allocates responsibility between different member states).
  - (3) A *TP firm* which carries on an activity from its *UK branch* or establishment (or that of its *appointed representative*) does not contravene a *rule* applied by (2) to the extent that:
    - (a) at the time the *firm* was required to comply with the *rule* (“the relevant time”), the *firm* (or its *appointed representative*) complied with or applied a provision which



- implements the same provision of the relevant directive reserved to its *Home State* and imposed by that state's law; and
- (b) the *firm's* compliance with or application of the provision covers the *firm's* activities provided from its *UK branch* or establishment (or that of its *appointed representative*).
- (4) A *TP firm* which carries on an activity other than from its *UK branch* or establishment (or that of its *appointed representative*) into the *United Kingdom* does not contravene a *rule* applied by (2) to the extent that:
- (a) at the time the *firm* was required to comply with the *rule* ("the relevant time"), the *firm* complied with or applied a provision which implements the same provision of the relevant directive reserved to its *Home State* (or, where (2)(b) applies, to the *EEA state* where it has the establishment from which the service is provided) and imposed by that state's law; and
- (b) the *firm's* compliance with or application of the provision covers the *firm's* activities into the *UK* (or that of its *appointed representative*).
- (5) Paragraph (3) or (4) does not apply unless a *TP firm* can demonstrate to the *FCA* that, at the relevant time, it complied with or applied a provision in (3) or (4) to the extent referred to there.
- (6) Where a *TP firm's Home State* (or, where applicable, the *EEA state* where it has the establishment from which the service is provided) exercises a national discretion expressly permitted by an *EU* directive not to apply a provision which would implement a provision of an *EU* directive referred to in (2) which the *FCA* has chosen to apply as a *rule*, the *TP firm* has no need to comply with or apply the *rule* in question.
- (7) A provision referred to in paragraph (3) or (4) includes a provision where an *EU* directive sets out a number of options, and the state referred to in paragraph (3) or (4) has chosen one or more such options different from those chosen by the *FCA* in order to implement the same provision.

#### Amendments to rules applied by the General Rules

- 2.2.27 R (1) A *rule* applied by *GEN 2.2.26R(1)* or *GEN 2.2.26R(2)*:
- (a) applies with any amendment made to the *rule* in question which comes into force on *exit day* to address an issue resulting from the *UK's* withdrawal from the *European Union*;

- (b) applies until it is deleted after *exit day*, or where a *rule* is amended or replaced after *exit day* it continues to apply as amended or replaced unless the *rule* states that it does not apply; and
  - (c) only applies to the *firm*'s activities carried on from a *UK branch* (maintained by the *firm* or by its *appointed representative*) or carried on other than from a *UK branch* into the *UK* (by the *firm* or its *appointed representative*).
- (2) Apart from in *COMP* and *FEES* 6, where a *rule* (or paragraph of a *rule*) applied by *GEN* 2.2.26R(1) or *GEN* 2.2.26R(2):
- (a) only applied to a *person* which passported into the *United Kingdom* under Schedule 3 or 4 to the *Act*; and
  - (b) is deleted on *exit day*;
- deletion is disregarded and it continues to apply to the *TP firm*; and references in the *rule* (or paragraph of the *rule*) to the *EU* or to an *EU* matter or thing are deemed to be references to the *UK* or a *UK* matter or thing, as the case may be.
- (3) Except where paragraph (4) applies, a *TP firm* does not have to comply with paragraph (1)(a) while and to the extent that the *FCA* directs that where the same *rule*:
- (a) begins to apply to a *firm* other than a *TP firm* (A) as a result of an exit instrument, the *rule* is not to apply to A; or
  - (b) applies to A differently from how it would but for an exit instrument, the obligation is modified so that A does not breach it if A complies with the *rule* as it applied immediately before *exit day*.
- (4) In relation to a matter subject to the *FCA*'s prudential transitional direction, paragraph (1)(a) does not apply while and to the extent that the *FCA* directs that where the same *rule*:
- (a) begins to apply to a *firm* other than a *TP firm* (A) as a result of an exit instrument, the *rule* is not to apply to A; or
  - (b) applies to A differently from how it would but for an exit instrument, the *rule* shall apply to A as it would have applied immediately before *exit day*.
- (5) In this *rule*:
- (a) the reference to the "FCA directs" refers to a direction made by the *FCA* under Part 7 of the Financial Services and

Markets Act 2000 (Amendment) (EU Exit) Regulations 2019;

- (b) the expressions “exit instrument” and “relevant obligation” have the meanings in Part 7 of those regulations;
- (c) the reference to the “FCA’s prudential transitional direction” is to a direction made under Part 7 of those regulations covering prudential matters set out in the direction.

#### Modification of rules applied by the General Rules in cases of conflict

- 2.2.28 R (1) Where a *rule* in *GEN 2.2.26R(1)* applies and:
- (a) as a result of an amendment which comes into force on *exit day* which removes a reference to a matter in relation to the *EEA*; and
  - (b) it is no longer practicable for the *TP firm* to comply with the *rule* because of the amendment,
- the *firm* may treat the *rule*, to the extent necessary, as if it continued to refer to a matter in relation to the *EEA*.
- (2) Where a *rule* applied by *GEN 2.2.26R(1)* contradicts a *rule* applied by *GEN 2.2.26R(2)*, to the extent necessary the *rule* in *GEN 2.2.26R(2)* does not apply.
- (3) Where as a result of the *UK’s* withdrawal from the *EU* different provisions (than those which applied to the *person* immediately before *exit day*) apply in an *EEA State* to a *TP firm* and if as a result of complying with a *rule* applied by *GEN 2.2.26R(2)* the *firm* would contravene a provision in that *EEA State*, the *rule* in *GEN 2.2.26R(2)*, to the extent necessary, does not apply.

#### MiFID technical standards

- 2.2.29 R (1) The provisions, as amended on or after *exit day*, in (2) apply to a *TP firm* which is an *EEA MiFID investment firm* as if it were a *MiFID investment firm* when the following conditions are met:
- (a) where it carries on *MiFID or equivalent third country business*; and
  - (b) that business is carried on from a *UK branch* (maintained by the *firm* or its *appointed representative*) or, where it is carried on other than from a *UK branch*, that business is provided into the *United Kingdom* (by the *firm* or its *appointed representative*).

- (2) The provisions referred to in (1) are technical standards deriving from previously adopted *EU regulations* under *MiFID* which are retained EU law, except:
- (a) those deriving from previously adopted *EU regulations* under article 7 of *MiFID*;
  - (b) those deriving from previously adopted *EU regulations* under article 32(2) and (3) of *MiFID* where they apply to a *firm* other than a *TP firm operating an organised trading facility* or acting as a *systematic internaliser* from a branch in the *United Kingdom*; or
  - (c) to the extent that their application to a *TP firm* would be inconsistent with the application to that *firm* of Chapter 5 of the *MiFID Org Regulation* or *MAR 10.4*.
- (3) A *TP firm* which carries on business from a *UK branch* (maintained by the *firm* or its *appointed representative*) does not contravene a *rule* applied by (1) to the extent that:
- (a) at the time the *firm* was required to comply with the *rule* (“the relevant time”), the *firm* complied with or applied the same provision of the relevant measure referred to in (2) applied by its *Home State*; and
  - (b) the *firm’s* compliance with or application of the provision covers the *firm’s* activities provided from the *UK branch* (maintained by the *firm* or its *appointed representative*).
- (4) A *TP firm* which carries on business other than from a *UK branch* into the *United Kingdom* (by the *firm* or its *appointed representative*) does not contravene a *rule* applied by (1) to the extent that:
- (a) at the time the *firm* was required to comply with the *rule* (“the relevant time”), the *firm* complied with or applied the same provision of the relevant measure referred to in (2) applied by its *Home State*; and
  - (b) the *firm’s* compliance with or application of the provision covers the *firm’s* or its *appointed representative’s* activities in the *UK*.
- (5) A *rule* in (3) or (4) does not apply unless a *TP firm* can demonstrate to the *FCA* that, at the relevant time, it complied with or applied a provision in (3) or (4) to the extent referred to there.
- (6) Neither of paragraphs (3) and (5) apply to *rules* applied by (1) which are provisions deriving from previously adopted *EU regulations* under article 27 of *MiFID*.

Rules and guidance applying while a firm has temporary permission – capital adequacy requirements

- 2.2.30 R (1) Nothing in *GENPRU*, *BIPRU*, *IFPRU*, *INSPRU*, *MIPRU*, *IPRU(FSOC)*, *IPRU(INS)* or *IPRU(INV)* applies to a *TP firm*, except for the provisions in (2).
- (2) To the extent a *TP firm* carries on the relevant *regulated activity*, the following apply by virtue of *GEN 2.2.26R*:
- (a) *INSPRU 1.5.33R*;
- (b) *MIPRU*;
- (c) *IPRU(FSOC)*; and
- (d) *IPRU(INV) 5, 6, 9, 12 and 13*, except that *rules* relating to capital adequacy in these chapters, which would apply to a *TP firm* through the operation of *GEN 2.2.26R(2)*, do not apply to that *TP firm*. Specifically, the financial resources requirements for *depositories* of *UCITS schemes* and *depositories* of certain *AIFs* in *IPRU(INV) 5*, and requirements involving the holding of professional indemnity insurance which relate to capital adequacy in *IPRU(INV) 9 and 13*.
- 2.2.31 G (1) *GEN 2.2.30R* operates by excluding the application of the sourcebooks contained in the Prudential Standards part of the *FCA Handbook*, except for the sourcebooks or parts of sourcebooks referred to in *GEN 2.2.30R(2)*.
- (2) The sourcebooks referred to in *GEN 2.2.30R(2)* contain *rules* that may apply to a *TP firm* either by virtue of *GEN 2.2.26R(1)* if they applied to that *firm* immediately before *exit day*, or *rules* that may apply to a *TP firm* by virtue of *GEN 2.2.26R(2)* if the conditions in that provision are met, and the *rule* does not relate to capital adequacy.
- (3) The approach in *GEN 2.2.30R* to applying *rules* relating to capital adequacy to a *TP firm* is generally to ensure that the *firm* is only subject to those *rules* that applied to it immediately before *exit day*. Therefore, a *TP firm* will not be subject to additional capital adequacy requirements to those that applied to the *firm* immediately before *exit day*.
- (4) The sourcebooks referred to in *GEN 2.2.30R(2)* contain some *rules* which do not relate to capital adequacy. Such *rules* may apply to *TP firms* by virtue of *GEN 2.2.26R*. Certain of these *rules* may apply to *TP firms* by virtue of *GEN 2.2.26R(2)*, as follows:

- (a) *rules* in *MIPRU* 2.2 (Allocation of the responsibility for insurance distribution activity or MCD credit intermediation activity);
  - (b) certain of the *rules* in *MIPRU* 3.2 (Professional indemnity insurance requirements);
  - (c) *rules* in *MIPRU* 5.2 (Use of intermediaries); and
  - (d) certain of the *rules* in *IPRU(INV)* 13.1 (Application, general requirements and professional indemnity insurance requirements).
- (5) The sourcebooks contained in the Prudential Standards part of the *FCA Handbook* are not the only sourcebooks which include *rules* relating to capital adequacy. For example, see the *rules* in *CONC* 10 and *MAR* 8. The capital adequacy requirements in such other sourcebooks may apply to a *TP firm* by virtue of *GEN* 2.2.26R, to the extent the *firm* carries on the relevant *regulated activity*. However, a *TP firm* will not be subject to additional capital adequacy requirements to those that applied to the *firm* immediately before *exit day*.
- (6) For the purpose of this *guidance*, *rules* relating to capital adequacy comprise *rules* relating to the adequacy of a *firm's* financial resources, including both capital resources and liquidity resources. However, *rules* relating to capital adequacy do not include *rules* involving the holding of professional indemnity insurance, except where such *rules* are tied to capital adequacy requirements by a form of optionality (for examples of such *rules*, see *IPRU(INV)* 9.2.4R and *IPRU(INV)* 13.1A.3R). Therefore, *rules* involving the holding of professional indemnity insurance may apply to a *TP firm* by virtue of *GEN* 2.2.26R, but if such *rules* are tied to capital adequacy requirements, they cannot apply by virtue of *GEN* 2.2.26R(2).

Rules applying while a firm has temporary recognition – general – TP UCITS qualifiers and TP AIFM qualifiers

- 2.2.32 R (1) Unless the contrary intention appears, a *rule* does not apply to a *TP UCITS qualifier* or a *TP AIFM qualifier*, except that in relation to a *scheme* or a *sub-fund* a *rule* which imposed an obligation on a *person* immediately before *exit day* who becomes a *TP UCITS qualifier* or a *TP AIFM qualifier* continues to apply to that *person* to the same extent and to the same activities to which the *rule* applied at that time.
- (2) (a) If after *exit day* a *person* becomes a *TP UCITS qualifier* in relation to a *new sub-fund* then, unless the contrary intention appears, a *rule* which would have imposed an obligation on that *person* immediately before *exit day* had that *new sub-fund*

been recognised under section 264 of the *Act* at that time applies to the *TP UCITS qualifier*.

- (b) A *rule* in (a) applies in relation to the *new sub-fund* to the same extent and to the same activities to which the *rule* would have applied had that *new sub-fund* been recognised under section 264 of the *Act*. immediately before exit day.

Amendments to rules applied to TP AIFM qualifiers and TP UCITS qualifiers

- 2.2.33 R (1) A *rule* applied by *GEN 2.2.32R*:
- (a) applies with any amendment made to the *rule* in question which comes into force on *exit day* arising from the *United Kingdom's* exit from the *European Union*;
- (b) applies until it is deleted after *exit day*, or, where a *rule* is amended or replaced after *exit day*, it continues to apply as amended or replaced unless the *rule* states that it does not apply; and
- (c) only applies to the *firm's* activities in relation to the *AIF* or the *scheme* in the *United Kingdom*.
- (2) Where a *rule* (or paragraph of a *rule*) applied by *GEN 2.2.32R*:
- (a) only applied to a *person* who was an authorised person by virtue of paragraph 1(1) of Schedule 5 to the *Act*; and
- (b) is deleted on *exit day*;
- deletion is disregarded and it continues to apply to the *TP UCITS qualifier* or *TP AIFM qualifier*; and references in the *rule* (or paragraph of the *rule*) to the *EU* or to an *EU* matter or thing are deemed to be references to the *UK* or a *UK* matter or thing, as the case may be.
- (3) A *TP UCITS qualifier* or a *TP AIFM qualifier* does not have to comply with paragraph (1)(a) while and to the extent that the *FCA* directs that where the same *rule*:
- (a) begins to apply to a *firm* other than a *TP firm*, *TP UCITS qualifier* or a *TP AIFM qualifier* (A) as a result of an exit instrument, it is not to apply to A; or
- (b) applies to A differently from how it would have but for an exit instrument, the obligation is modified so that A does not breach it if it complies with the *rule* as it applied immediately before *exit day*.
- (4) In paragraph (3):

- (a) the reference to the “FCA directs” is to a direction made by *FCA* under Part 7 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019;
- (b) the expressions “exit instrument” and “relevant obligation” have the meanings in Part 7 of those regulations.

Modification of rules applied to TP AIFM qualifiers and TP UCITS qualifiers

- 2.2.34 R (1) Where a *rule* in *GEN 2.2.32R* applies and:
- (a) as a result of an amendment which comes into force on *exit day* which removes a reference to a matter in relation to the *EEA*; and
  - (b) it is no longer practicable for the *TP UCITS qualifier* or the *TP AIFM qualifier* to comply with the *rule* because of the amendment,

the *TP UCITS qualifier* or the *TP AIFM qualifier* may treat the *rule*, to the extent necessary, as if it continued to refer to a matter in relation to the *EEA*.

- (2) If as a result of:
- (a) the *UK’s* withdrawal from the *EU*; and
  - (b) complying with a *rule* applied by *GEN 2.2.32R*,
- a *TP UCITS qualifier* or a *TP AIFM qualifier* would contravene a provision in its *Home State*, the *rule* applied by *GEN 2.2.32R* which caused the contravention, to the extent necessary, does not apply.

Guidance applying while a firm has temporary permission

- 2.2.35 R Unless the contrary intention appears, *guidance* does not apply to a *TP firm*, a *TP UCITS qualifier* or a *TP AIFM qualifier* except that:
- (1) *guidance* on or in connection with a *rule* applied by *GEN 2.2.26R(1)* applies to a *TP firm* to the same extent as that *rule*;
  - (2) *guidance* on or in connection with a *rule* applied by *GEN 2.2.26R(2)* applies to a *TP firm* to the same extent as that *rule*;
  - (3) *guidance* on or in connection with a *rule* applied by *GEN 2.2.32R* applies to a *TP UCITS qualifier* and a *TP AIFM qualifier* to the same extent as that *rule*; and
  - (4) to the extent that an enactment, other than a *rule*, applies to both a *TP firm* and a *firm* with a *Part 4A permission* granted by the *FCA* or *PRA*, *guidance* on, or in connection with, that enactment (or relevant



part of that enactment) applies to a *TP firm* to the same extent as it applies to a *firm* with Part 4A permission granted by the *FCA* or *PRA*. To the extent an enactment is modified for the purposes of the *EU Exit Passport Regulations*, *guidance* on, or in connection with, that enactment must be read subject to those modifications. This provision applies mutatis mutandis to *guidance* which applies to a *TP UCITS qualifier* or a *TP AIFM qualifier*.

## Purpose

- 2.2.36 G (1) The approach to what *rules* apply to *TP firms* is broadly to apply *rules* to *TP firms* which applied to them immediately prior to the *UK's* exit from the *EU*, whether those *rules* applied in the *United Kingdom* (as was the case for host state *rules*) or, where rules are directive-based, in the *firm's Home State* or, where relevant, the state where the *branch* is located from which the *firm's* service is provided.
- (2) The Glossary definitions of *TP firm* and *temporary permission* each include both *firms* that enter the temporary permission or temporary variation regime set out in Part 3 of the *EU Exit Passport Regulations* and *firms* that enter the financial services contracts regime set out in Part 6 of the *EU Exit Passport Regulations* on or after *exit day*.
- (3) *GEN 2.2.26R* (1) and *GEN 2.2.33R* refer to “a *rule* which imposed an obligation on a *person*”. This is to distinguish a *rule* which imposes substantive obligations from a *rule* which sets out the application of *rules*.
- (4) *GEN 2.2.26R* to *GEN 2.2.35R* apply *rules* and *guidance* to *firms* which before *exit day* had passporting rights by virtue of the Treaty on the Functioning of the European Union, or of that Treaty as applied by the Agreement on the European Economic Area signed at Oporto on 2 May 1992 whose parties consist of the EEA States.
- (5) The application of *rules* and *guidance* to *TP firms* under Part 3 of the *EU Exit Passport Regulations* must be read in the light of the purpose of *temporary permission* under Part 3 of those Regulations, which is to allow *TP firms* to continue to carry on *regulated activities* in the *United Kingdom*, or of the purpose of the temporary recognition regime for *TP UCITS qualifiers* or for *TP AIFM qualifiers* to continue to market funds in the *United Kingdom*. In each case that purpose takes into account that the legal framework underpinning cross border financial services has changed because the *Treaty*, EU regulations and EU directives no longer apply in the *United Kingdom* by virtue of EU law.
- (6) For a *TP firm* under Part 3 of the *EU Exit Passport Regulations* the scope of authorisation of an EEA-based *firm* which qualified for authorisation under Schedule 3 or 4 to the *Act* is preserved. Those

Regulations do not extend the means by which a *TP firm* can carry on *regulated activities* in the *United Kingdom*, which remain limited (leaving aside top-up permission) to those which were available under the Treaty on the Functioning of the European Union, for example, a *firm* carrying on *regulated activities* in the *United Kingdom* from an establishment outside of the *EEA* cannot rely upon this means to do so. For a *TP firm* under Part 6 of the *EU Exit Passport Regulations*, the scope of the *firm's permission* is further limited by what is permitted under regulation 33 or 40 of those *Regulations*.

- (7) The General Rules also apply where *regulated activities* have been amended on *exit day*, because the purpose of *temporary permission* is to enable *TP firms* to continue to carry on such *regulated activities* in the *United Kingdom*.
- (8) Part 6 of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 enables a *new sub-fund* to be a recognised scheme for the purposes of Part 17 of the *Act* in certain circumstances. Therefore, the purpose of *GEN 2.2.32R(2)* is to ensure that a *rule* applies to a *TP UCITS qualifier* in relation to a *new sub-fund* if that *rule* would have applied to the *sub-fund* had it been a scheme recognised under section 264 of the *Act* immediately before *exit day* (unless the contrary intention appears).
- (9) In relation to persons with *temporary EMI authorisation*, *temporary PI authorisation* and *temporary RAISP authorisation*, the specified directions, *rules* and *guidance* in *FEES 4A*, *7C* and *13A* apply to them. In addition, in relation to those *persons*, *rules* and *guidance* in *DISP* and *SUP* apply to them as they apply to *persons* that are authorised or registered in the *UK*.
- (10) A *person* with *temporary EMI authorisation* is deemed to be an *authorised electronic money institution* in accordance with regulation 2(a) of Part 1 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations*. As such, the provisions of the *Electronic Money Regulations* as amended by the *E-money and Payments Transitional Provisions Regulations* and subject to the exclusions set out in regulation 7 of the *E-money and Payments Transitional Provisions Regulations* apply to such *persons*.
- (11) This paragraph applies to *persons* with *temporary PI authorisation* and *temporary RAISP authorisation*:
  - (a) a *person* with *temporary PI authorisation* is deemed to be an *authorised payment institution* in accordance with regulation 14(2)(a)(i) of Part 2 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations*.
  - (b) a *person* with *temporary RAISP authorisation* is deemed to be a *Registered Account Information Service Provider* in

accordance with regulation 2(2)(a)(ii) of Part 2 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations*.

- (12) As such, the provisions of the *Payment Services Regulations* as amended by the *E-money and Payments Transitional Provisions Regulations* and subject to the exclusions set out in regulation 19 of the *E-money and Payments Transitional Provisions Regulations* apply to *persons* to whom paragraph (11) applies.
- (13) The Glossary definitions of *temporary EMI authorisation*, *temporary PI authorisation* and *temporary RAISP authorisation* each include both *persons* that enter the temporary permission regime set out in Parts 1 and 2 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations* and *persons* that enter the financial services contracts regime in accordance with regulation 12B and 26 of Parts 1A and 3 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations*.

#### The effect of the General Rules

- 2.2.37 G (1) The approach in these *rules* is a general one and does not apply where a *rule* states explicitly that a different provision applies to such a *firm* or that position is stated in relation to the *rule*.
- (2) The *FCA* has decided in certain cases specifically to apply rules to *TP firms*, for example:
- (a) in relation to the application of our Principles for Businesses (*PRIN*);
  - (b) in chapters 4A, 6, 7C, 7D and 13A, and at *rule 5.1.1CR*, of the Fees Manual (*FEES*);
  - (c) in the General Provisions (*GEN*) which relate to status disclosure;
  - (d) in the Client Assets sourcebook (*CASS*) at chapter 14;
  - (e) in the Compensation sourcebook (*COMP*);
  - (f) in chapters 1, 2 and 3 of the Dispute Resolution: Complaints sourcebook (*DISP*);
  - (g) in relation to the approved persons regime, such specific applications are largely to be found in the Supervision Manual (*SUP*) 10A; and
  - (h) in relation to the senior managers and certification regime, the main provisions so applied are listed in the Senior

Management Arrangements, Systems and Controls  
sourcebook (SYSC) at SYSC 23.3.3G.

- (3) The effect of *GEN 2.2.26R(1)* and *GEN 2.2.32R* also includes a *rule* which applied immediately before *exit day* to a *firm's* activity beyond the activity that was its permitted activity under Schedule 3 (or its permitted activity under Schedule 4 to the *Act* or beyond the activity that was permitted under paragraph 2(1) of Schedule 5 to the *Act*). For example, where such a *firm* had a *Part 4A permission* for that other activity before *exit day* (i.e. it had a top-up permission).
- (4) None of *GEN 2.2.26R(1)*, *GEN 2.2.26R(2)* and *GEN 2.2.32R* prevent changes being made to the *rules* that apply to such *firms* on and after *exit day*.
- (5) *GEN 2.2.26R(2)* refers to a *rule* which deals with a matter which immediately before *exit day* was reserved to the *Home State* of the *firm*. These *rules* include both *rules* that under an *EU* directive are always the responsibility of that state, such as *rules* concerning the safeguarding of client assets, and also *rules* the responsibility for which depends on whether the service or activity takes place at a *branch* in a state other than the *Home State* of the *firm* or is provided cross border from a *branch* or establishment in the *Home State*. For example, it would cover all of the *rules* which implement the provisions which are the responsibility of the *Home State* under, as the case may be, article 34 or article 35 of *MIFID*. *GEN 2.2.26R(2)(b)* and the words in (4) and (6) concerning the *EEA State* where the *TP firm* has its establishment will be applicable in a situation where an *EU* directive includes a country of origin provision (one which generally requires compliance with the law of the state where the establishment from which the service is provided), such as the *E-Commerce Directive* or the *Distance Marketing Directive*. In that case *GEN 2.2.26R(2)(b)* and the related words in (4) and (6) would apply to an *FCA rule* which deals with a matter reserved, under such a directive, to the law of the state where the *TP firm* has its establishment from which the service is provided, an example of which is the *rules* in *COBS 5.2*.
- (6) The effect of *GEN 2.2.26R(2)* is to apply a *rule* to the extent that the *rule* implemented an *EU* directive, notwithstanding that before *exit day* the matter was reserved to the *Home State* or to the state where the *branch* from which the service is provided is situated. A *rule* which the *FCA* imposes by virtue of a national discretion set out in a directive is to be taken as a *rule* which implements a directive. Where a *TP firm's* home state or, where relevant, the country of origin of the *firm's* establishment exercises a national discretion expressly permitted by a directive not to apply a provision, which the *FCA* has chosen to apply through a *rule*, the *firm* has no need to comply with or apply the *rule* in question. To the extent a *rule* goes beyond what is necessary to implement a directive, it does not apply

as a result of *GEN 2.2.26R(2)*. Therefore a more stringent *rule* applied by the *FCA* in relation to a minimum harmonisation EU directive would not be applied by *GEN 2.2.26R(2)*.

- (7) The General Rules set out in *GEN 2.2.26R* to *2.2.31G* do not address EEA fund managers which only market funds in the *UK* without carrying on any *regulated activity* here (e.g. without managing any funds). The definition of *TP firm* does not include a *person* which was a recognised scheme under section 264 of the *Act* and a *person* which exercised its right only to market an *AIF* in the *UK* in accordance with Schedule 3 to the *Act*. *Persons* when only marketing are defined for these *rules* and *guidance* as *TP UCITS qualifiers* and *TP AIFM qualifiers*, and are covered by *GEN 2.2.32R*, *2.2.33R*, *2.2.34R* and *2.2.35R*.
- (8) An example of a matter falling within *GEN 2.2.28R(1)* or *GEN 2.2.34R(1)* may be a *rule* which on *exit day* (as a result of an amendment made under the European Union (Withdrawal) Act 2018) then only refers to membership of a UK professional body. Where *GEN 2.2.28R(1)* or *GEN 2.2.34R(1)* applies, the *firm* may treat the *rule* in question as if it continued to refer to an EEA professional body.
- (9) In determining the *rules* that apply to them by virtue of *GEN 2.2.26R(1)*, *TP firms* may as a starting point find it helpful to refer to the table in *SUP 13A Annex 1* (Rules that apply to incoming EEA firms) as it applied immediately before *exit day*. However, the table will not apply in its entirety to each *TP firm*, for example, because a *TP firm* with top-up permission (see paragraph (3)) needs to continue to comply with *rules* that apply in relation to that activity, and specified *rules* referred to in the table were deleted on *exit day* and are not applied by the General Rules as set out in *GEN 2.2.27R(2)*), namely those in *COMP* and *FEES 6*.
- (10) In determining the *rules* that apply to them by virtue of *GEN 2.2.26R(2)*, *TP firms* may as a starting point find it helpful to refer to the table in *SUP 13A Annex 2G* (Matters reserved to the home state) as it applied immediately before *exit day*.
- (11) *GEN 2.2.27R(3)* concerns the use of the *FCA*'s standstill direction to disapply or modify certain obligations as a result of the operation of exit instruments. That direction does not apply to *rules* applied to *TP firms* by the general approach *rules*. *GEN 2.2.27R(3)* therefore achieves a similar result to the direction by disapplying the requirement in *GEN 2.2.27R(1)(a)* to comply with changes made to a *rule* in question which comes into force on *exit day* to address an issue resulting from the *UK*'s withdrawal from the *European Union*. Since *GEN 2.2.27R(3)* states that, where it applies, a *TP firm* does not have to comply with a *rule* as amended referred to in *GEN 2.2.27R(1)(a)*, it is open to the *TP firm* to comply with such a *rule* while the *FCA*'s standstill direction is in force. *GEN 2.2.33R(3)* has

the same effect in relation to *TP UCITS qualifiers* and *TP AIFM qualifiers*. In contrast, *GEN 2.2.27R(4)*, where it applies, has the effect that a *TP firm* has to comply with a prudential rule which applies to it as the rule was immediately before *exit day*.

Rules and guidance applying while a firm has temporary permission – tied agents

- 2.2.38 G (1) A *tied agent* that is an *appointed representative* may not start to act as a *tied agent* until it is included on the *Financial Services Register* (see section 39(1A) of the *Act*).
- (2) To ensure that a *tied agent* is included on the *Financial Services Register*, a *TP firm* should complete the Appointed representative appointment form in *SUP 12 Annex 3R* when appointing a *tied agent* to carry on *MiFID business* on its behalf in the *United Kingdom*.
- (3) A *TP firm* that terminates its relationship with a *tied agent* that was required to be notified to the *FCA* should complete the Appointed representative termination form in *SUP 12 Annex 5R* to have that *tied agent* removed from the *Financial Services Register*.

TP firms that enter the financial services contracts regime under Part 6 of the EU Exit Passport Regulations

- 2.2.39 G (1) As the definitions of *TP firm* and *temporary permission* also include *TP firms* under Part 6 of the *EU Exit Passport Regulations*, the rules and guidance in *GEN 2.2.26R* to 2.2.35G also apply to firms which enter the financial services contracts regime set out in Part 6 of those *Regulations* after *exit day* having been in *temporary permission* under Part 3 of those *Regulations*, or which become *TP firms* under regulation 32 of those *Regulations*.
- (2) The application of rules and guidance to *TP firms* under Part 6 of the *EU Exit Passport Regulations* must be read in the light of the purpose of *temporary permission* under Part 6 of those *Regulations*, which is to enable such a *TP firm* to run down its regulated business in the *United Kingdom*. Regulation 33 or 40 of the *EU Exit Passport Regulations* sets out the scope of permitted activities, which is generally those *regulated activities* previously within the scope of the *firm's* passport, necessary to perform a pre-existing contract (as defined in regulation 46 of the *EU Exit Passport Regulations*).
- (3) Accordingly, the rules and guidance in *GEN 2.2.26R* to 2.2.31G, and 2.2.35R to 2.2.37G continue to apply where a *TP firm* leaves *temporary permission* under Part 3 of the *EU Exit Passport Regulations* and then enters *temporary permission* under Part 6 of the *EU Exit Passport Regulations*, namely, where the person falls within regulation 31, 37 or 38 of the *EU Exit Passport Regulations*. The same is true for a *TP firm* which leaves *temporary permission* under regulation 28 of the *EU Exit Passport Regulations* and then

enters temporary permission under regulation 39 of those *Regulations*.

- (4) In those cases, *GEN 2.2.27R* has the effect that any changes referred to in that *rule*, which happen between *exit day* and when the *person* enters *temporary permission* (notwithstanding that they were previously in *temporary permission*) under the regulation in question, apply to the *TP firm*. This also applies to a *TP firm* which enters *temporary permission* for the first time under regulation 32 of the *EU Exit Passport Regulations*.
- (5) Where a *TP firm* enters *temporary permission* under regulation 32 of the *EU Exit Passport Regulations*, a *rule* referred to in *GEN 2.2.26R(1)* once again applies to that *person*, together with any changes referred to in paragraph (3). The *rules* applied by *GEN 2.2.26R(2)* to such a *TP firm* apply together with any changes referred to in paragraph (3).

### Part 3

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

#### 4.1 Application

...

##### Where?

4.1.2 R *GEN 4.3* (Letter disclosure) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, subject to *GEN 4.3.4R* (Exception: insurers).

4.1.2A R *GEN 4.3* (Letter disclosure) applies to a *TP firm* in relation to activities carried on from an establishment maintained by the *TP firm* (or by its *appointed representative*) in the *United Kingdom*, or carried on by the *TP firm* (or its *appointed representative*) into the *United Kingdom* from an establishment that is not in the *United Kingdom*, subject to *GEN 4.3.4R* (Exception: insurers).

...

4.1.4A R *GEN 4.5* (Statements about authorisation and regulation by the *appropriate regulator*) applies in relation to activities carried on from an establishment maintained by the *TP firm* (or by its *appointed representative*) in the *United Kingdom* or carried on by the *TP firm* (or its *appointed representative*) into the *United Kingdom* from an establishment that is not in the *United Kingdom*.

...

### 4.3 Letter disclosure

#### Disclosure in letters to retail clients

...

4.3.1-A R A TP firm must take reasonable care to ensure that every letter (or electronic equivalent) which it or its employees send to a retail client, with a view to or in connection with the TP firm carrying on a regulated activity, includes the disclosure in, as the case may be:

- (1) for a TP firm under Part 3 of the EU Exit Passport Regulations, GEN 4 Annex 1B 1.1R or 1.2R (firms that are not PRA-authorized persons) or, GEN 4 Annex 1B 2.1R or 2.2R (PRA-authorized persons); or
- (2) for a TP firm under Part 6 of the EU Exit Passport Regulations, GEN 4 Annex 1C 1.1R or 1.2R (firms that are not PRA-authorized persons) or GEN 4 Annex 1C 2.1R or 2.2R (PRA-authorized persons).

...

### GEN 4 Annex 1B Statutory status disclosure (TP firms)

#### 1 TP firms under Part 3 of the EU Exit Passport Regulations that are not PRA-authorized persons

1.1 R This rule applies to TP firms under Part 3 of the EU Exit Passport Regulations that are not PRA-authorized persons in relation to activities carried on by them or their appointed representatives from establishments in the United Kingdom:

	<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
(1)	<u>A TP firm under Part 3 of the EU Exit Passport Regulations without a top-up permission</u>	<u>“Deemed authorised and regulated by the Financial Conduct Authority. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</u> <u>(Notes 1, 3 and 4)</u>
(2)	<u>A TP firm under Part 3 of the EU Exit Passport Regulations with</u>	<u>“Authorised by the Financial Conduct Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the</u>



	<u>a top-up permission</u>	<u>UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</u>  (Notes 1, 3 and 4)
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- 1.2      R      This rule applies to TP firms under Part 3 of the EU Exit Passport Regulations that are not PRA-authorized persons in relation to activities carried on by them or their appointed representative into the United Kingdom from an establishment that is not in the United Kingdom:

	<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
(1)	<u>A TP firm under Part 3 of the EU Exit Passport Regulations without a top-up permission</u>	<u>“Deemed authorised and regulated by the Financial Conduct Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</u>  (Notes 1, 3 and 4)
(2)	<u>A TP firm under Part 3 of the EU Exit Passport Regulations with a top-up permission</u>	<u>“Authorised by the Financial Conduct Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</u>  (Notes 1, 3 and 4)

2      **TP firms under Part 3 of the EU Exit Passport Regulations that are PRA-authorized persons**

- 2.1      R      This rule applies to TP firms under Part 3 of the EU Exit Passport Regulations that are PRA-authorized persons in relation to activities carried on by them or their appointed representatives from establishments in the United Kingdom:

	<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
(1)	<u>A TP firm under Part 3 of the EU Exit Passport Regulations</u>	<u>“Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head</u>

	<u>without a top-up permission</u>	<u>office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</u>  (Notes 1, 3 and 4)
(2)	<u>A TP firm under Part 3 of the EU Exit Passport Regulations with a top-up permission</u>	<u>“Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Authorised by the Prudential Regulation Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</u>  (Notes 1, 3 and 4)

2.2 R This rule applies to TP firms under Part 3 of the EU Exit Passport Regulations that are PRA-authorized persons in relation to activities carried on by them or their appointed representative into the United Kingdom from an establishment that is not in the United Kingdom:

	<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
(1)	<u>A TP firm under Part 3 of the EU Exit Passport Regulations without a top-up permission</u>	<u>“Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</u>

		(Notes 1, 3 and 4)
(2)	<u>A TP firm under Part 3 of the EU Exit Passport Regulations with a top-up permission</u>	<p>“<u>Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Authorised by the Prudential Regulation Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Temporary Permissions Regime, which allows EEA-based firms to operate in the UK for a limited period while seeking full authorisation, are available on the Financial Conduct Authority’s website.”</u></p> <p>(Notes 1, 3 and 4)</p>

Note 1 = A firm must use the formulation "Financial Conduct Authority" or "Prudential Regulation Authority" and not the abbreviated formulation "FCA" or "PRA" respectively.

Note 2 = Any firm listed in this table is permitted to add words to the relevant required disclosure statement but only if the firm has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, be fair, clear and not misleading and be likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received.

Note 3 = A “top-up permission” is a Part 4A permission granted to a firm which exercised passporting rights, but which activity was outside of the scope of its passport, i.e. where the regulated activity in question is not an activity which could be passported.

Note 4 = A firm is free to translate the name of its Home State regulator into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear.

**GEN 4 Annex 1C Statutory status disclosure (TP firms under Part 6 of the EU Exit Passport Regulations)**

**1 TP firms under Part 6 of the EU Exit Passport Regulations that are not PRA-authorized persons**

1.1 R This rule applies to TP firms under Part 6 of the EU Exit Passport Regulations that are not PRA-authorized persons in relation to activities carried on by them or their appointed representatives from establishments in the United Kingdom:

<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
---------------------	-------------------------------------

(1)	<u>A TP firm under Part 6 of the EU Exit Passport Regulations without a top-up permission</u>	<p><u>“Deemed authorised and regulated by the Financial Conduct Authority. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”</u></p> <p>(Notes 1, 3 and 4)</p>
(2)	<u>A TP firm under Part 6 of the EU Exit Passport Regulations with a top-up permission</u>	<p><u>“Authorised by the Financial Conduct Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”</u></p> <p>(Notes 1, 3 and 4)</p>

1.2

**R** This rule applies to TP firms under Part 6 of the EU Exit Passport Regulations that are not PRA-authorized persons in relation to activities carried on by them or their appointed representative into the United Kingdom from an establishment that is not in the United Kingdom:

	<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
(1)	<u>A TP firm under Part 6 of the EU Exit Passport Regulations without a top-up permission</u>	<p><u>“Deemed authorised and regulated by the Financial Conduct Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”</u></p> <p>(Notes 1, 3 and 4)</p>
(2)	<u>A TP firm under Part 6 of the EU Exit Passport Regulations with a top-up permission</u>	<p><u>“Authorised by the Financial Conduct Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance</u></p>

		of pre-existing contracts, are available on the Financial Conduct Authority’s website.” (Notes 1, 3 and 4)
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## 2 **TP firms that are PRA-authorized persons**

- 2.1 **R** This rule applies to TP firms under Part 6 of the EU Exit Passport Regulations that are PRA-authorized persons, in relation to activities carried on by them or their appointed representatives from establishments in the United Kingdom:

	<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
(1)	<u>A TP firm under Part 6 of the EU Exit Passport Regulations without a top-up permission</u>	<p>“Authorized and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Deemed authorized by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”</p> <p>(Notes 1, 3 and 4)</p>
(2)	<u>A TP firm under Part 6 of the EU Exit Passport Regulations with a top-up permission</u>	<p>“Authorized and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Authorized by the Prudential Regulation Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”</p> <p>(Notes 1, 3 and 4)</p>

- 2.2 R This rule applies to TP firms under Part 6 of the EU Exit Passport Regulations that are PRA-authorized persons in relation to activities carried on by them or their appointed representative into the United Kingdom from an establishment that is not in the United Kingdom:

	<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
(1)	<u>A TP firm under Part 6 of the EU Exit Passport Regulations without a top-up permission</u>	<p><u>“Authorized and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Deemed authorized by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”</u></p> <p><u>(Notes 1, 3 and 4)</u></p>
(2)	<u>A TP firm under Part 6 of the EU Exit Passport Regulations with a top-up permission</u>	<p><u>“Authorized and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Authorized by the Prudential Regulation Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”</u></p> <p><u>(Notes 1, 3 and 4)</u></p>

Note 1 = A firm must use the formulation “Financial Conduct Authority” or “Prudential Regulation Authority” and not the abbreviated formulation “FCA” or “PRA” respectively.

Note 2 = Any firm listed in this table is permitted to add words to the relevant required disclosure statement but only if the firm has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, be fair, clear and not misleading

and be likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received.

Note 3 = A “top-up permission” is a *Part 4A permission* granted to a *firm* which exercised passporting rights, but which activity was outside of the scope of its passport, i.e. where the *regulated activity* in question is not an activity which could be passported.

Note 4 = A *firm* is free to translate the name of its *Home State regulator* into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear.

Insert the following new TP 6 after GEN TP 5. The text is not underlined.

**TP 6 Transitional provisions applying to GEN only - status disclosure for temporary permission firms**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	Not applicable	G	The purpose of this transitional provision is to provide a period during which a <i>TP firm</i> can make arrangements to ensure it can comply with the status disclosure rules in <i>GEN 4</i> that will apply to <i>TP firms</i> .	From 11 p.m. on 29 March 2019 up to and including 30 June 2019.	Not applicable
2	The statutory status disclosures, as the case may be, in <i>GEN 4 Annex 1B</i> or <i>Annex 1C</i> that a <i>TP firm</i> has to comply with under <i>GEN 4.3.1-A</i> .	R	Subject to (3), a <i>TP firm</i> that is a <i>PRA-authorized person</i> or a <i>TP firm</i> that is an <i>FCA-authorized person</i> does not have to comply with the disclosures referred to in 2(2) during the period in 2(5).	From 11 p.m. on 29 March 2019 up to and including 30 June 2019.	Coming into force at 11 p.m. on 29 March 2019
3	<i>GEN 4.3.1</i> and the statutory status	R	While (2) applies, a <i>TP firm</i> that is a <i>PRA-</i>	From 11 p.m. on 29 March	Coming into force at 11

	disclosures in <i>GEN</i> 4 Annex 1 and 1A that applied to incoming firms immediately before <i>exit day</i> .		<i>authorised person</i> or a <i>TP firm</i> that is an <i>FCA-authorised person</i> must continue to comply with <i>GEN</i> 4.3.1 and, as the case may be, the status disclosure set out in <i>GEN</i> 4 Annex 1 or 1A that applied to it immediately before <i>exit day</i> .	2019 up to and including 30 June 2019.	p.m. on 29 March 2019
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[*Editor's note:* the amendments in this Annex are dependent on legislative provisions set out in regulations 206 and 208 of the draft Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 which are presently before Parliament being made and will only be made once the amending legislation has been made.]

## Annex C

### Amendments to the Fees manual (FEES)

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

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

#### 1 Fees Manual

#### 1.1 Application and Purpose

##### 1.1.1 G ...

(4A) FEES 4A relates to periodic fees for a TP person (including a supervised run-off firm) and special project fees for a CRO firm.

...

(9) FEES 7C relates to the TPR SFGB levy.

...

(11) FEES 7D relates to the TPR DA levy.

...

#### Application

##### 1.1.2 R ...

(8) FEES 7C (in relation to the TPR SFGB money advice levy and TPR SFGB debt advice levy only) and 7D apply to:

(a) TP firms;

(b) TA EMI firms;

(c) TA PI firms; and

(d) TA RAISP firms.

(9) FEES 7C (in relation to the TPR SFGB pensions guidance levy only) applies to firms referred to in FEES 7C.1.2R.

...

...

## 2 General Provisions

### 2.2 Late Payments and Recovery of Unpaid Fees

- 2.2.1 R If a *person* does not pay the total amount of any periodic fee, *FOS* levy, or share of the *FSCS* levy, *CFEB* levy or *SFGB* levy, *TPR SFGB* levy or *TPR DA* levy, before the end of the date on which it is due, under the relevant provision in *FEES* 4, ~~4A~~, 5, 6, 7, ~~7A~~, 7C or 7D that person must pay an additional amount as follows:

...

- 2.2.2 R The *FCA*, (for *FCA* and *PRA* periodic fees, *FOS* and *FSCS* levies, *CFEB* levies, ~~and~~ *SFGB* levies, *TPR SFGB* levies and a *TPR DA* levy), expects to issue invoices at least 30 *days* before the date on which the relevant amounts fall due. Accordingly it will generally be the case that a *person* will have at least 30 *days* from the issue of the invoice before an administrative fee becomes payable.

#### Recovery of Fees

- 2.2.3 G
- (1) Paragraph 23(8) of Schedule 1ZA of the *Act* permits the *FCA* to recover fees (including fees relating to *payment services*, the issuance of *electronic money*, *CBTL* firms, *data reporting services providers*, *designated credit reference agencies*, *designated finance platforms* and, where relevant, *FOS* levies, *CFEB* levies, ~~and~~ *SFGB* levies, *TPR SFGB* levies and a *TPR DA* levy).

...

- 2.2.4 R In addition, the *FCA* may be entitled to take regulatory action in relation to the non-payment of fees, *FOS* levies, *CFEB* levies, ~~and~~ *SFGB* levies, *TPR SFGB* levies and a *TPR DA* levy. The *FCA* may also take regulatory action in relation to the non-payment of a share of the *FSCS* levy, after reference of the matter to the *FCA* by the *FSCS*. What action (if any) that is taken by the *FCA* will be decided upon in the light of the particular circumstances of the case.

## 2.3 Relieving Provisions

#### Remission of Fees and levies

- 2.3.1 R If it appears to the *FCA* or the *FSCS* (in relation to any *FSCS* levy only) that in the exceptional circumstances of a particular case, the payment of any fee, *FSCS* levy, *FOS* levy, *CFEB* levy ~~or~~ *SFGB* levy, *TPR SFGB* levy or *TPR DA* levy would be inequitable, the *FCA* or the *FSCS* as relevant, may

(unless *FEES 2.3.2BR* applies) reduce or remit all or part of the fee or levy in question which would otherwise be payable.

- 2.3.2 R If it appears to the *FCA* or the *FSCS* (in relation to any *FSCS* levy only) that in the exceptional circumstances of a particular case to which *FEES 2.3.1R* does not apply, the retention by the *FCA*, the *FSCS*, or the *CFEB*, as relevant, of a fee, *FSCS* levy, *FOS* levy, *CFEB* levy, ~~or~~ *SFGB* levy, *TPR SFGB* levy or *TPR DA* levy which has been paid would be inequitable, the *FCA*, the *FSCS* or the *CFEB*, may (unless *FEES 2.3.2BR* applies) refund all or part of that fee or levy.

...

- 2.3.2C R For *FEES 7A*, *FEES 7C* and *FEES 7D*, the *FCA* is entitled not to consider a claim under *FEES 2.3.1R* or *FEES 2.3.2R* to refund any overpaid amounts due to a mistake of fact or law by the fee-paying *firm* if the claim is made more than two years after the beginning of the period to which the *SFGB* levy, *TPR SFGB* levy or *TPR DA* levy subject to the claim relates.

## 2.4 VAT

- 2.4.1 R All fees payable or any stated hourly rate under *FEES 3* (Application, notification and vetting fees), *FEES 4* (Periodic fees), *FEES 4A* (Periodic fees for *TP* persons, supervised run-off firms and *CRO* firms), *FEES 7* (The *CFEB* levy), ~~and~~ *FEES 7A* (The *SFGB* levy), *FEES 7C* (*SFGB* levy for *TP* persons and supervised run-off firms) and *FEES 7D* (*DA* levy for *TP* persons and supervised run-off firms) are stated net of VAT. Where VAT is applicable this must also be included.

Insert the following new chapter *FEES 4A* after *FEES 4* (Periodic fees). The text is not underlined.

## 4A Temporary Permissions Regime (TPR) and Financial Service Contracts Regime (FSCR) – periodic fees

### 4A.1 Introduction

#### Application

- 4A.1.1 R This chapter applies to *TP* persons.

#### Purpose

- 4A.1.2 G The purpose of this chapter is to set out the requirements on *TP* persons to pay periodic fees. For the avoidance of doubt, the definition of *TP* persons includes supervised run-off firms but not *CRO* firms. Only *FEES 4A.2.1R* and *FEES 4A Annex 4R* apply to *CRO* firms.

- 4A.1.3 G The detail of the special project fees payable by certain *TP persons* and *CRO firms* is set out in *FEES 4A Annex 3R* and *FEES 4A Annex 4R* respectively.

#### 4A.2 Obligation to pay periodic fees

- 4A.2.1 R A *TP person* must pay periodic fees applicable to it:
- (1) in full and without deduction by 1 August or, if later, within 30 days of the *fee year* to which the sum relates, unless modified by *FEES 4A.2.2R*; and
  - (2) in accordance with the *rules* in this chapter.
- A *TP person* or a *CRO firm* must pay any special project fees applicable to it under *FEES 4A Annex 3R* or *FEES 4A Annex 4R* respectively.
- 4A.2.2 R If a *TP firm's* periodic fee for the previous financial year was at least £50,000, the *TP firm* must pay:
- (1) an amount equal to 50% of the periodic fee payable for the previous year, by 1 April (or if later, within 30 days of the date of the invoice) in the *financial year* to which the sum due under *FEES 4A.2.1R* relates; and
  - (2) the balance of the periodic fee due for the current *financial year* by 1 September (or if later, within 30 days of the date of the invoice) in the *financial year* to which that sum relates.

#### Calculation of periodic fees for TP persons, excluding TPR funds

- 4A.2.3 R Periodic fees for *TP persons*, excluding *TPR funds*, are calculated as follows:
- (1) identify each of the activity groups set out in Parts 1, 3 and 4 of *FEES 4A Annex 1R* that apply to the business of the *TP person* (excluding *TPR funds*) for the relevant period (for this purpose, the activity groups under *FEES 4A Annex 1R* are defined in accordance with Part 1 of *FEES 4 Annex 1AR* and Part 2 of *FEES 4 Annex 11R*);
  - (2) calculate the size of the *TP person's* tariff base for the activity groups identified under (1) using:
    - (a) the tariff base calculations in Part 3 of *FEES 4 Annex 1AR* and Part 3 of *FEES 4 Annex 11R* (including only business undertaken from a *branch* in the *UK*); and
    - (b) the valuation date requirements in Part 5 of *FEES 4 Annex 1AR* and Part 4 of *FEES 4 Annex 11R*;

- (3) multiply the value of the *TP person's* tariff base by the rate applicable to each band of tariff base under *FEES* 4A Annex 1R;
- (4) work out whether a minimum fee is payable under Part 2 of *FEES* 4A Annex 1R and if so how much;
- (5) add together the fixed sums, as set out in the tables in Parts 1, 3 and 4 of *FEES* 4A Annex 1R, applicable to each band identified under (1);
- (6) add together the amounts in (3), (4), and (5); and
- (7) the amount in (6) is the amount of periodic fees payable by the *TP person*.

4A.2.4 R For the purposes of *FEES* 4A.2.3R:

- (1) a *TP person* may apply the relevant tariff bases and rates to its non-UK business, as well as to its UK business, if:
  - (a) it has reasonable grounds for believing that the costs of identifying the *TP person's* UK business separately from its non-UK business in the way described in Part 3 of *FEES* 4 Annex 1AR and Part 3 of *FEES* 4 Annex 11R are disproportionate to the difference in fees payable; and
  - (b) it notifies the *FCA* in writing at the same time as it provides the information concerned under *FEES* 4A.2.5R, or, if earlier, at the time it pays the fees concerned.
- (2) for a *TP person* which has not complied with *FEES* 4A.2.5R for this period, the periodic fee is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10.

Information on which *TP person's* periodic fees are calculated

4A.2.5 R A *TP person*, excluding *TPR funds*, must notify to the *FCA* (in its own capacity and, if applicable, in its capacity as collection agent for the *PRA*) the value (as at the valuation date specified in Part 5 of *FEES* 4 Annex 1AR and Part 4 of *FEES* 4 Annex 11R) of each element of business on which the periodic fee payable by the *TP person* is to be calculated.

4A.2.6 R A *TP person* must send to the *FCA* (in its own capacity and, if applicable, in its capacity as collection agent for the *PRA*) in writing the information required under *FEES* 4A.2.3R as soon as reasonably practicable, and in any event within two *months*, after the date specified as the valuation date in Part 5 of *FEES* 4 Annex 1AR and Part 4 of *FEES* 4 Annex 11R in relation to fees payable to the *FCA*.

- 4A.2.7 R For a *TP person* which has not complied with *FEES* 4A.2.6R for the period covered by *FEES* 4A Annex 1R:
- (1) the fee is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10; and
  - (2) an additional fee of £250 is payable, unless the *TP person* also pays periodic fees under the *PRA Rulebook* in which case an additional fee of £125 is payable instead.
- 4A.2.8 R If a *TP person*, other than a *TPR fund*, is subject to *Solvency II Directive* in activity group A.3 or A.4 and the *PRA* or the *FCA* has either:
- (1) not received the necessary tariff data on a timely basis in line with Part 3 and 5 of *FEES* 4 Annex 1AR; or
  - (2) deemed the tariff data received to be incomplete or insufficiently reliable, by reference to a specific *TP person* or across all or part of the activity group, the *FCA* may use tariff data from the previous reporting period for the periodic fees calculation.

#### Periodic fees commencement

- 4A.2.9 R Periodic fees payable by *TP persons* under *FEES* 4A.2.1R relate to the whole of any fee year and are due for payment from the commencement of the fee year unless the modification in *FEES* 4A.2.9AR applies. Any payment made under *FEES* 4A.2.1R is not refundable.
- 4A.2.9A R Where a *CRO firm* becomes a *supervised run-off firm*, the periodic fee payable under *FEES* 4A.2.1R will be pro-rated over the remaining number of calendar *months* of the *fee year* that it is a *supervised run-off firm*.

#### Periodic fees for TPR funds

- 4A.2.10 R Periodic fees for *TPR funds* are set out in *FEES* 4A Annex 2R.

#### FEES 4 rules incorporated into FEES 4A by cross-reference

- 4A.2.11 G The *FCA Handbook* provisions relating to the periodic fees for *TP persons* including *supervised run-off firms* in *FEES* 4A are meant to follow closely the provisions relating to the general provisions under *FEES* 4. For brevity, not all of the provisions in *FEES* 4 are set out again in *FEES* 4A. In some cases, certain *FEES* 4 rules are applied to the payment of the periodic fees for *TP persons* by individual rules in *FEES* 4A. The rest are set out in the table in *FEES* 4A.2.13R.
- 4A.2.12 R The *FEES* 2 and *FEES* 4 rules set out in the table in *FEES* 4A.2.13R and any other *rules* in *FEES* 4 included in *FEES* 4A by cross-reference apply

to the periodic fees for *TP persons* in the same way as they apply to periodic fees payable under *FEES 4*.

- 4A.2.13 R Table of rules in *FEES 4* that also apply to *FEES 4A* to the extent that in *FEES 4* they apply to *fees* payable to the *FCA*

<i>FEES 4</i> rules incorporated into <i>FEES 4A</i>	Description	Applicable to <i>TP persons</i> other than <i>TPR funds</i>	Applicable to <i>TPR funds</i>
<i>FEES 4.2.4R</i>	Method of payment	Yes	Yes
<i>FEES 4.2.10R</i>	Extension of time	Yes	Yes
<i>FEES 4.3.7R</i>	Groups of <i>firms</i>	Yes	No
<i>FEES 4.3.17R</i>	<i>Firms</i> acquiring business from other <i>firms</i>	Yes	No

**4A Annex 1R TP persons periodic fees for the period from 1 April 2019 to 31 March 2020**

**Part 1**

Activity group	Fee payable	
A.1	Band Width (£ million of Modified Eligible Liabilities (MELs))	Fee (£/£m or part £m of MELs)
		General Periodic fee
	>10 - 140	[tbc]
	>140 - 630	[tbc]
	>630 – 1,580	[tbc]
	>1,580 – 13,400	[tbc]
	>13,400	[tbc]
A.2	Band Width (no. of mortgages and/or home finance transactions)	Fee (£/mortgage)

	>50	[tbc]
A.3	Gross written premium for fees purposes (GWP)	Periodic fee
	Band Width (£ million of GPI)	Fee (£/£m or part £m of GWP)
	>0.5	[tbc]
	PLUS	
	Best estimate liabilities for fees purposes (BEL)	General Periodic fee
	Band Width (£ million of BEL)	Fee (£/£m of part £m of BEL)
	>1	[tbc]
A.4	Gross written premium for fees purposes (GWP)	General Periodic fee
	Band Width (£ million of GWP)	Fee (£/£m or part £m of GWP)
	>1	[tbc]
	PLUS	
	Best estimate liabilities for fees purposes	General Periodic fee
	Band Width (£ million of BEL)	Fee (£/£m or part £m of BEL)
	>1	[tbc]
A.7	For class 1(C), (2), (3) and (4) <i>firms</i> :	
	Band Width (£ million of Funds under Management (FuM))	Fee (£/£m of part £m of FuM)
	>10	[tbc]
	Class 1 (C) firms are defined in <i>FEES</i> 4 Annex 1A	
A.9	Band Width (£ million of Gross Income (GI))	Fee (£/£m of part £m of GI)
	>1	[tbc]



A.10	Band Width (no. of traders)	Fee (£/trader)
	>1	[tbc]
A.13	For class (2) firms	
	Band Width (£ thousands of annual income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	[tbc]
	For a <i>professional firm</i> in A.13 the fee is calculated as above less 10%.	
A.14	Band Width (£ thousands of annual income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	> 100	[tbc]
A.18	Band Width (£ thousands of Annual Income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	[tbc]
A.19	Band Width (£ thousands of Annual Income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	[tbc]
	more than £100 billion	[tbc]
CC.2	Band Width (£ thousands of annual income (AI))	Fee (£)
	0 - 50	[tbc]
	>50 - 100	[tbc]
	>100	[tbc]
	<b>PLUS:</b>	
		Fee (£/£ thousand or part £ thousand of AI)
	>250	[tbc]

**Part 2**

The table below shows the tariff rates (minimum fees) applicable to each of the fee blocks set out in Part 1 of FEES 4A Annex 1R other than fee-block CC2.

Activity group	Fee payable
A.0	£[tbc] unless it is a <i>TP firm</i> that also pays minimum fees set out in the PRA Rulebook in which case it is £[tbc].

**Part 3**

*TA PI firm* or *TA RAISP firm*

Activity group	Fee payable	
G.2	Minimum fee (£)	[tbc]
	£ million or part £ million of Modified Eligible Liabilities (MELs)	Fee (£/£m or part £m of MELs)
	>0.1	[tbc]
	>10 -140	[tbc]
G.3	Minimum fee (£)	[tbc]
	£ thousands or part £ thousand of Relevant Income	Fee (£/£thousand or part £ thousand of Relevant Income)
	>100	[tbc]

**Part 4**

*TA EMI firm*

Activity group	Fee payable	
G.10	Minimum fee (£)	[tbc]

	£ million or part £ million of average outstanding electronic money (AOEM)	Fee (£/£m or part £m of AOEM)
	>5.0	[tbc]

**4A            TPR funds periodic fees for the period from 1 April 2019 to 31 March 2020**  
**Annex**  
**2R**

**Part 1**

Scheme type	Basic fee (£)	Total funds/sub-funds aggregate	Fee (£)
<i>EEA UCITS scheme</i> recognised under Part 6 of The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2018	[tbc]	1-2	[tbc]
		3-6	[tbc]
		7-15	[tbc]
		16-50	[tbc]
		>50	[tbc]
<p>Note:</p> <p>Schemes are charged according to the number of funds or sub-funds which a TP firm is operating and marketing in the UK as at 31 March immediately before the start of the period to which the fee applies. For example, for 2019/20 fees a reference to 31 March means 31 March 2019.</p>			

**Part 2**

Scheme type	Fee (£)
<i>EEA AIF, EuVECA, EuSEF, or EEA ELTIF</i> which may be marketed in the UK under Part 9A of The Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018	0

**4A Annex    Special Project Fee for restructuring**  
**3**

R	(1)		The Special Project Fee for restructuring (the SPFR) is only payable by a <i>TP firm or TA PI firm</i> in one of the following categories:
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		(a)	if it is in any of the A fee-blocks (as defined in Part 1 of FEES 4 Annex 1AR); or
		(b)	if it is in fee-block G.3 (as defined in FEES 4 Annex 11R).
R	(2)		The SPFR becomes payable by a <i>TP firm</i> or <i>TA PI firm</i> falling into (1)(a) or (b) if it engages in, or prepares to engage in, activity which involves it undertaking or making arrangements with a view to any of the following:
		(a)	raising additional capital; or
		(b)	a significant restructuring of the <i>TP firm</i> or <i>TA PI firm</i> or the <i>group</i> to which it belongs, including:
			(i) mergers or acquisitions;
			(ii) reorganising the <i>TP firm's</i> or <i>TA PI firm's group</i> structure;
			(iv) a significant change to the <i>TP firm's</i> or <i>TA PI firm's</i> business model; and
			(v) a significant internal change programme.
R	(3)		No SPFR is payable under (2) if the transaction only involves the <i>TP firm</i> or <i>TA PI firm</i> seeking to raise capital within the <i>group</i> to which it belongs.
R	(4)		Where the transaction in (2) involves raising capital outside the <i>TP firm</i> or <i>TA PI firm</i> to which the <i>TP firm</i> or <i>TA PI firm</i> belongs, any SPFR in relation to that transaction is only payable by the largest <i>TP firm</i> or <i>TA PI firm</i> in that <i>group</i> . The largest <i>firm</i> is the one that pays the highest periodic fee in the <i>fee year</i> in which the bill is raised. For the purpose of the calculation in (9), all time spent and fees and disbursements incurred in relation to the <i>group</i> are added together.
R	(5)		The definition of <i>group</i> is limited for the purposes of calculating the SPFR to <i>parent undertakings</i> and their <i>subsidiary undertakings</i> .

R	(6)		The <i>FCA</i> will levy its own SPFR separate to any levy issued by the <i>PRA</i> , and this may be in relation to the same event or circumstance.
R	(7)		No SPFR is payable to the <i>FCA</i> :
		(a)	if the amount calculated in accordance with (8) in relation to the regulatory work conducted by the <i>FCA</i> totals less than £25,000 in the case of a <i>TP firm</i> in fee-blocks A.1 or A.3 or A.4, or £50,000 in the case of a <i>TP firm</i> in any of the other A fee-blocks; or
		(b)	for time spent giving <i>guidance</i> to the <i>TP firm</i> or <i>TA PI firm</i> in relation to the same matter if the <i>FCA</i> has charged that <i>TP firm</i> or <i>TA PI firm</i> for that <i>guidance</i> .
R	(8)		The SPFR for the <i>FCA</i> is calculated as follows:
		(a)	Determine the number of hours, or part of an hour, taken by the <i>FCA</i> in relation to regulatory work conducted as a consequence of the activities referred to in (2).
		(b)	Next, multiply the applicable rate in the table at (11) by the number of hours or part hours obtained under (a).
		(c)	Then add any fees and disbursements invoiced to the <i>FCA</i> by any <i>person</i> in respect of services performed by that <i>person</i> for the <i>FCA</i> in relation to assisting the <i>FCA</i> in performing the regulatory work referred to in (a).
		(d)	The resulting figure is the fee.
		(e)	The number of hours or part hours referred to in (a) are the number of hours or part hours as recorded on the <i>FCA</i> 's systems in relation to the regulatory work referred to in (a).
R	(9)		The first column in the table at (10) sets out the relevant pay grades of those employed by the <i>FCA</i> and the second column sets out the hourly rates chargeable in respect of those pay grades.
R	(10)	Table of <i>FCA</i> hourly rates:	

		FCA pay grade	Hourly rate (£)
		Administrator	45
		Associate	75
		Technical Specialist	130
		Manager	145
		Any other person employed by the <i>FCA</i>	255
G	(11)	The obligation to pay the SPFR is ongoing. Accordingly, there is no limitation on the number of times that the <i>FCA</i> may invoice a <i>TP firm</i> or <i>TA PI firm</i> for the SPFR in relation to the same events or circumstances referred to in (2). If the <i>FCA</i> does so, there is a single floor under (7)(a) and not a separate one for each instalment.	
G	(12)	If the SPFR is payable, the full amount calculated under (8) is payable, and not just the excess over £50,000 or £25,000.	

#### 4A Annex 4 Special Project Fee for contractual run-off firms

R	(1)		The Special Project Fee for contractual run-off firms (the SPFCRO) is only payable by a <i>CRO firm</i> .
R	(2)		The SPFCRO is payable to recover the cost of the activities the <i>FCA</i> undertakes to carry out its functions under regulation 47 of the <i>EU Exit Passport Regulations</i> .
R	(3)		The <i>FCA</i> will levy its own SPFCRO separate to any levy issued by the <i>PRA</i> , and this may be in relation to the same event or circumstance.
R	(4)		No SPFCRO is payable to the <i>FCA</i> if the amount calculated in accordance with (5) in relation to the activities carried out by the <i>FCA</i> totals less than £5,000.

R	(5)	The SPFCRO for the <i>FCA</i> is calculated as follows:	
		(a)	Determine the number of hours, or part of an hour, taken by the <i>FCA</i> in relation to the activities undertaken as a consequence of carrying out its functions referred to in (2).
		(b)	Next, multiply the applicable rate in the table at (7) by the number of hours or part hours obtained under (a).
		(c)	Then add any fees and disbursements invoiced to the <i>FCA</i> by any <i>person</i> in respect of services performed by that <i>person</i> for the <i>FCA</i> in relation to assisting the <i>FCA</i> in performing the activities referred to in (a).
		(d)	The resulting figure is the fee.
		(e)	The number of hours or part hours referred to in (a) are the number of hours or part hours as recorded on the <i>FCA</i> 's systems in relation to the activities referred to in (a).
R	(6)	The first column in the table at (7) sets out the relevant pay grades of those employed by the <i>FCA</i> and the second column sets out the hourly rates chargeable in respect of those pay grades.	
R	(7)	Table of <i>FCA</i> hourly rates:	
		FCA pay grade	Hourly rate (£)
		Administrator	45
		Associate	75
		Technical Specialist	130
		Manager	145
		Any other person employed by the <i>FCA</i>	255
G	(8)	The obligation to pay the SPFCRO is ongoing. Accordingly, there is no limitation on the number of times that the <i>FCA</i> may invoice a <i>CRO firm</i> for the SPFCRO in relation to the same activities or circumstances referred to in (2). If	

		the <i>FCA</i> does so, there is a single floor under (4) and not a separate one for each instalment.
G	(9)	If the SPFCRO is payable, the full amount calculated under (5) is payable, and not just the excess over £5,000.

Insert the following new chapter FEES 7C after FEES 7B (DA levies). The text is not underlined.

## **7C Temporary Permissions Regime (TPR) and Financial Service Contracts Regime (FSCR) - Single Financial Guidance Body levy**

### **7C.1 Application and purpose**

#### Application

7C.1.1 R This chapter applies to the *persons* listed in:

- (1) *FEES 1.1.2R(8)* in relation to the *TPR SFGB money advice levy* and *TPR SFGB debt advice levy*; and
- (2) *FEES 7C.1.2R* in relation to the *TPR SFGB pensions guidance levy*.

7C.1.2 R The *TPR SFGB pensions guidance levy* applies to a *TP firm* that falls within one or more of the following activity groups listed in Part 1 of *FEES 4 Annex 1AR*:

- (1) A.1 Deposit acceptors;
- (2) A.4 Insurers - life;
- (3) A.7 Portfolio managers except Class (1)A firms;
- (4) A.9 Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes; and
- (5) A.13 Advisors, arrangers, dealers or brokers.

#### Purpose

7C.1.3 G The purpose of this chapter is to set out the requirements on the *persons* listed in *FEES CB.1.1R* to fund the Secretary of State costs relating to the *SFGB*, and the related *FCA* collection costs. For the avoidance of doubt, such *persons* also include *supervised run-off firms*.



## Background

7C.1.4 G Under section 137SA(1) (Rules to recover expenses relating to the single financial guidance body) of the *Act*, the Secretary of State may, from time to time, notify the *FCA* of the expenses incurred, or expected to be incurred, in connection with the operation of the *SFGB* or under section 11 of the Financial Guidance and Claims Act 2018. Expenses arise under section 11 when the Secretary of State:

- (1) pays grants or makes loans, or gives any other form of financial assistance, to meet expenditure in connection with the establishment of the *SFGB*; and
- (2) pays grants or makes loans, or gives any other form of financial assistance, to the *SFGB* for the purpose of enabling the *SFGB* to carry out its functions.

7C.1.5 G When the Secretary of State has notified the *FCA* under section 137SA(1), under subsections (2) and (3) the *FCA* must make rules requiring *authorised persons*, *electronic money issuers* or *payment service providers* (or any specified class of the same) to pay specified sums, or sums calculated in a specified way to the *FCA* with a view to recovering:

- (1) the amount notified by the Secretary of State; and
- (2) expenses incurred by the *FCA* in connection with its functions under section 137SA of the *Act*.

Regulations 28 and 34 of the *EU Exit Passport Regulations* provide that *supervised run-off firms* are treated as having *Part 4A permission* or a *variation* to that *permission*.

7C.1.6 G This chapter contains the *rules* referred to in *FEES* 7C.1.4G(2).

7C.1.7 G Under section 137SA(8) of the *Act*, the *FCA* must pay to the Secretary of State the amounts that it receives pursuant to the *rules* in this chapter, apart from amounts covering its collection costs (which the *FCA* may keep).

7C.1.8 G The total amount raised by the *TPR SFGB levy* may vary from year to year depending on the amount notified to the *FCA* by the Secretary of State.

## 7C.2 The TPR SFGB levy

7C.2.1 R The *TPR SFGB levy* is made up of:

- (1) The *TPR SFGB money advice levy*, as set out in *FEES* 7C.3;
- (2) The *TPR SFGB debt advice levy*, as set out in *FEES* 7C.3; and

- (3) The *TPR SFGB pensions guidance levy*, as set out in *FEES 7C.4*.

### 7C.3 The TPR SFGB money advice levy and debt advice levy

Obligation to pay TPR SFGB money advice levy or debt advice levy

- 7C.3.1 R A *firm* must pay the *TPR SFGB money advice levy* or *TPR SFGB debt advice levy* applicable to it:
- (1) in full and without deduction by 1 August (or, if later, within 30 days of the date of the invoice) in the *financial year* to which the sum relates, unless modified by *FEES 7C.3.2R*; and
  - (2) in accordance with the *rules* in this chapter.
- 7C.3.2 R If a *firm's TPR SFGB money advice levy* or *TPR SFGB debt advice levy* for the previous *financial year* was at least £50,000, the *firm* must pay:
- (1) an amount equal to 50% of the *TPR SFGB money advice levy* or *TPR SFGB debt advice levy* payable for the previous year, by 1 April (or if later, within 30 days of the date of the invoice) in the *financial year* to which the sum due under *FEES 7C.3.1R* relates; and
  - (2) the balance of the *TPR SFGB money advice levy* or *TPR SFGB debt advice levy* due for the current *financial year* by 1 September (or if later, within 30 days of the date of the invoice) in the *financial year* to which that sum relates.

Calculation of the TPR SFGB money advice levy and debt advice levy

- 7C.3.3 R The *TPR SFGB money advice levy* and *TPR SFGB debt advice levy* are each calculated as follows:
- (1) identify each of the activity groups set out in Parts 1 to 3 of *FEES 7C Annex 1R* and Part 1 of *FEES 7C Annex 2R* that apply to the business of the *firm* for the relevant period (for this purpose, the activity groups under *FEES 7C Annex 1R* are defined in accordance with Part 1 of *FEES 4 Annex 1AR* and Parts 2 and 2A of *FEES 4 Annex 11R*, and the activity groups under *FEES 7C Annex 2R* are defined in accordance with Part 1 of that Annex);
  - (2) calculate, for each of those activity groups identified in (1), the amount payable in the way set out in *FEES 7C.3.4R*;
  - (3) add each of the amounts calculated under (2);
  - (4) work out whether a minimum fee is payable under Parts 2 to 4 of *FEES 7C Annex 1R* and if so how much; and

- (5) add together the amounts calculated under (3) and (4).

7C.3.4 R The amount payable by a *firm* with respect to a particular activity group is calculated as follows:

- (1) calculate the size of the *firm*'s tariff base for that activity group using:
  - (a) the tariff base calculations in Part 3 of *FEES 4 Annex 1AR*, Part 3 of *FEES 4 Annex 11R* and Part 2 of *FEES 7C Annex 2R* (including only business undertaken from a *branch* in the *UK*); and
  - (b) the valuation date requirements in Part 5 of *FEES 4 Annex 1AR*, Part 4 of *FEES 4 Annex 11R* and Part 3 of *FEES 7C Annex 2R*;
- (2) use the figure in (1) to calculate which of the bands set out in the tables in Parts 1 to 3 of *FEES 7C Annex 1R* and Part 4 of *FEES 7C Annex 2R* the *firm* falls into;
- (3) add together the fixed sums, as set out in the tables in Parts 1 to 3 of *FEES 7C Annex 1R* and Part 4 of *FEES 7C Annex 2R*, applicable to each band identified under (2);
- (4) the amount in (3) is the amount payable by the *firm* with respect to that activity group.

7C.3.5 R For the purposes of *FEES 7C.3.4R*:

- (1) a *firm* may apply the relevant tariff bases and rates to its non-*UK* business, as well as to its *UK* business, if:
  - (a) it has reasonable grounds for believing that the costs of identifying its *UK* business separately from its non-*UK* business in the way described in Part 3 of *FEES 4 Annex 1AR*, Part 3 of *FEES 4 Annex 11R* and Part 2 of *FEES 7C Annex 2R* are disproportionate to the difference in fees payable; and
  - (b) it notifies the *FCA* in writing at the same time as it provides the information concerned under *FEES 7C.3.4R(1)*, or, if earlier, at the time it pays the *TPR SFGB money advice levy* or *TPR SFGB debt advice levy* applicable to it.
- (2) for a *firm* which has not complied with *FEES 4A.2.6R* for this period, the *TPR SFGB money advice levy* and *TPR SFGB debt advice levy* are calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10.

TPR SFGB money advice levy and TPR SFGB debt advice levy commencement

- 7C.3.6 R The *TPR SFGB money advice levy* and *TPR SFGB debt advice levy* under *FEES 7C* relate to the whole of any *fee year* and are due for payment from the commencement of the fee year. Any payment made under *FEES 7C.3.1R* is not refundable.

#### 7C.4 The TPR SFGB pensions guidance advice levy

Obligation to pay TPR SFGB pensions guidance levy

- 7C.4.1 R A firm must pay the *TPR SFGB pensions guidance levy* applicable to it:
- (1) in full and without deduction by 1 August (or, if later, within 30 days of the date of the invoice) in the *financial year* to which the sum relates; and
  - (2) in accordance with the *rules* in this section.

Calculation of TPR SFGB pensions guidance levy

- 7C.4.2 R The *TPR SFGB pensions guidance levy* applicable to a particular *firm* is calculated as follows:

- (1) identify each of the activity groups in *FEES 7C.1.2R(2)* that apply to the business of the *firm* for the relevant period;
- (2) calculate the amount payable under *FEES 7C.4.3R* for each of those activity groups;
- (3) add together each of the amounts calculated under (2).

- 7C.4.3 R The amount payable for a particular activity group is calculated as follows:

- (1) (a) calculate the size of the *firm's* tariff base for the activity group using:
  - (i) the tariff base calculations in Part 3 of *FEES 4 Annex 1R* (including only business undertaken from a *branch* in the *UK*); and
  - (ii) the valuation date requirements in Part 5 of *FEES 4 Annex 1AR*;
- (b) exclude best estimate liabilities for fees purposes in the calculation for fee-block A4;
- (2) use the figure in (1) to calculate the levy applicable for each band in *FEES 7C Annex 3R*;

- (3) add together the sums for each applicable band under (2);
- (4) the amount in (3) is the amount payable by the *firm* for that activity group.
- 7C.4.4 R For the purposes of *FEES 7C.4.3R*:
- (1) a *firm* may apply the relevant tariff bases and rates to its non-*UK* business, as well as to its *UK* business, if:
- (a) it has reasonable grounds for believing that the costs of identifying its *UK* business separately from its non-*UK* business in the way described in Part 3 of *FEES 4 Annex 1AR* are disproportionate to the difference in fees payable; and
- (b) it notifies the *FCA* in writing at the same time as it provides the information concerned under *FEES 7C.4.4R(1)*, or, if earlier, at the time it pays the *TPR SFGB pensions guidance levy* applicable to it.
- (2) for a *firm* which has not complied with *FEES 7C.4.3R(1)* for this period, the *TPR SFGB pensions guidance levy* is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10.
- 7C.4.5 R The *TPR SFGB pensions guidance levy* is calculated using the same information that is used to calculate a *firm's* periodic fee under *FEES 4*.
- TPR SFGB pensions guidance levy commencement*
- 7C.4.6 R The *TPR SFGB pensions guidance levy* under *FEES 7C* relates to the whole of any fee year and is due for payment from the commencement of the fee year. Any payment made under *FEES 7C.4.1R* is not refundable.
- 7C.5 FEES 4 rules incorporated into FEES 7C by cross-reference**
- 7C.5.1 R The *Handbook* provisions relating to *FEES 7C* are meant to follow closely the provisions relating to the payment of the periodic fees in *FEES 4*. In the interests of brevity, not all of these provisions are set out again in *FEES 7C*. In some cases, certain *FEES 4 rules* are applied to the payment of the *TPR SFGB money advice levy*, *TPR SFGB debt advice levy* and *TPR SFGB pensions guidance levy* by individual rules in *FEES 7C*. The rest are set out in the table in *FEES 7C.5.3R*.
- 7C.5.2 R The *rules* set out in the table in *FEES 7C.5.3R* and any other *rules* in *FEES 4* included in *FEES 7C* by cross-reference apply to the *TPR SFGB money advice levy*, *TPR SFGB debt advice levy* and *TPR*

*SFGB pensions guidance levy* in the same way as they apply to periodic fees payable under *FEES 4*.

7C.5.3 R Table of rules in *FEES 4* that also apply to *FEES 7C* to the extent that in *FEES 4* they apply to fees payable to the *FCA*

<b>FEES 4 rules incorporated into FEES 7C</b>	<b>Description</b>
<i>FEES 4.2.4R</i>	Method of payment
<i>FEES 4.2.10R</i>	Extension of time
<i>FEES 4.3.7R</i>	Groups of firms
<i>FEES 4.3.17R</i>	Firms acquiring businesses from other firms

**7C Annex 1R** **TPR SFGB money advice levy for the period from 1 April 2019 to 31 March 2020**

This table shows the *TPR SFGB money advice levy* applicable to each activity group (fee-block).

Activity group	TPR SFGB money advice levy payable	
Part 1 <i>TP firms</i>		
A.1	Band Width (£ million of Modified Eligible Liabilities (MELs))	Fee (£/£m or part £m of MELs)
	>10	[tbc]
A.2	Band Width (no. of mortgages and/or <i>home finance transactions</i> )	Fee (£/mortgage)
	>50	[tbc]
A.3	Gross written premium for fees purposes (GWP)	
	Band Width (£ million of GWP)	Fee (£/£m or part £m of GWP)

	>0.5	[tbc]
	<b>PLUS</b>	
	Best estimate liabilities for fees purposes (BEL)	
	Band Width (£ million of BEL)	Fee (£/£m of part £m of BEL)
	>1	[tbc]
A.4	Gross written premium for fees purposes (GWP)	
	Band Width (£ million of GWP)	Fee (£/£m or part £m of GWP)
	>1	[tbc]
	<b>PLUS</b>	
	Best estimate liabilities for fees purposes (BEL)	
	Band Width (£ million of BEL)	Fee (£/£m or part £m of BEL)
	>1	[tbc]
A.7	For class 1(C), (2), (3) and (4) <i>firms</i> :	
	Band Width (£ million of Funds under Management (FuM))	Fee (£/£m of part £m of FuM)
	>10	[tbc]
	Class 1(C) firms are defined in <i>FEES 4 Annex 1AR</i> .	
A.9	Band Width (£ million of Gross Income (GI))	Fee (£/£m of part £m of GI)

	>1	[tbc]
A.10	Band Width (no. of traders)	Fee (£/trader)
	>1	[tbc]
A.13	For class (2) firms	
	Band Width (£ thousands of annual income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	[tbc]
	For a <i>professional firm</i> in A.13 the fee is calculated as above less 10%.	
A.14	Band Width (£ thousands of annual income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	[tbc]
A.18	Band Width (£ thousands of Annual Income (AI))	Fee ((£/£ thousand or part £ thousand of AI)
	>100	[tbc]
A.19	Band Width (£ thousands of Annual Income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	[tbc]
CC.2	Minimum fee (£)	[tbc]
	£ thousands of annual income (AI)	Fee (£/£ thousand or part £ thousand of AI)
	>250	[tbc]



Part 2 TA PI firms and TA RAISP firms		
G.3	Minimum fee (£)	[tbc]
	£ thousands or part £ thousand of Relevant Income	Fee (£/£thousand or part £ thousand of Relevant Income)
	>100	[tbc]
Part 3 TA EMI firms		
G.10	Minimum fee (£)	[tbc]
	£ million or part £m of average outstanding electronic money (AOEM)	Fee (£/£m or part £m of AOEM)
	>5.0	[tbc]
	£ thousands of annual income (AI)	Fee (£/£ thousand or part £ thousand of AI)
	>250	[tbc]
Part 4		
(1)	This Part sets out the minimum <i>TPR SFGB money advice levy</i> applicable to the <i>TPR firms</i> specified in (3) below.	
(2)	The minimum <i>TPR SFGB money advice levy</i> payable by any <i>firm</i> referred to in (3) is £[tbc].	
(3)	A <i>TP firm</i> is referred to in this paragraph if it falls within the following activity groups: A.1; A.2; A.3; A.4; A.7; A.9; A.10; A.13; A.14; A.18; and A.19.	

This table shows the *TPR SFGB debt advice levy* applicable to each activity group (fee-block).

### Part 1

Activity group	A <i>TP firm</i> falls in the activity group if:
A.2 Home finance providers and administrators	It falls under activity group A.2 as defined in Part 1 of <i>FEES 4 Annex IAR</i> .
CC.3 Consumer credit lending	<p>Its permission is in relation to the following regulated activities:</p> <ul style="list-style-type: none"> <li>- <i>entering into a regulated credit agreement as lender</i> (article 60B(1) of the <i>Regulated Activities Order</i>);</li> <li>- <i>exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement</i> (article 60B(2) of the <i>Regulated Activities Order</i>);</li> </ul> <p>which is carried on by way of business and relates to the following <i>specified investments</i>:</p> <ul style="list-style-type: none"> <li>(a) a regulated credit agreement (excluding <i>high-cost short-term credit, a home credit loan agreement and a bill of sale loan agreement</i>);</li> <li>(b) <i>high-cost short-term credit</i>;</li> <li>(c) a <i>home credit loan agreement</i>;</li> <li>(d) a <i>bill of sale loan agreement</i>.</li> </ul>

### Part 2

Activity group	Tariff base
A.2 Home finance providers and administrators	The sterling value of any residential loans to individuals being the sum of gross unsecuritised and securitised balances (applying the definitions of Unsecuritised balances and Securitised balances set out in Section A: Balance Sheet of <i>SUP 16 Annex 19BG</i> .)
CC.3 Consumer credit lending	<p>Value of lending in column A of <i>data item CCR003</i> reported by <i>firms</i> under <i>SUP 16 Annex 38AR</i>, being the sum of <i>data elements</i> entered in rows:</p> <ul style="list-style-type: none"> <li>- 1 Debt purchasing;</li> <li>- 2 Hire purchase/conditional sale agreements;</li> <li>- 3 Home credit loan agreements;</li> <li>- 4 Bill of sale loan agreements;</li> </ul>

	<ul style="list-style-type: none"> <li>- 5 Pawnbroking;</li> <li>- 6 High-cost short-term credit;</li> <li>- 11 Overdrafts;</li> <li>- 12 Other running-account credit; and</li> <li>- 8 Other lending.</li> </ul>
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### Part 3

This table indicates the valuation date for each fee-block. A *firm* can calculate its tariff data in respect of the *TPR SFB debt advice levy* payable to the *FCA* by that *firm*.

Activity group	Valuation date
A.2 Home finance providers and administrators	The 31 December before the start of the period to which the fee applies or, if earlier, the date of the valuation as disclosed by the annual return made in the calendar year prior to the 31 December.
CC.3 Consumer credit lending	Value of lending under Part 2 valued at the <i>firm's accounting reference date</i> in the calendar year ending 31 December occurring before the start of the period to which the <i>TPR SFGB debt advice levy</i> applies.

### Part 4

This table shows the tariff rates applicable to each of the fee-blocks set out in Part 1.

Activity group	TPR SFGB debt advice levy payable	
A.2 Home finance providers and administrators	Band width (£ million of secured debt) >0	Fee (£/£m or part £m of secured debt) [tbc]
CC.3 Consumer credit lending	Band width (£ million of value of lending) >0 (Note 1)	Fee (£/£m or part £m of value of lending) [tbc]
Note		
(1) <i>Credit unions</i> and <i>community finance organisations</i> do not pay any <i>TPR SFGB debt advice levy</i> on the first £2,000,000 of value of lending.		

**7C Annex 3R TPR SFGB pensions guidance levy for the period 1 April 2019 to 31 March 2020**

This table shows the *TPR SFGB pensions guidance levy* applicable to each activity group (fee-block).

Activity group	SFGB pensions guidance levy payable	
<i>TP firms</i>		
A.1	Band width (£ million of modified eligible liabilities (MELs)) >10	Fee (£/£m or part £m of MELS) [tbc]
A.4	Gross written premium for fees purposes (GWP)	
	Band Width (£ million of GWP)	Fee (£/£m or part £m of GWP)
	>1	[tbc]
A.7	For class 1(B), 1(C), (2) and (3) firms: Band width (£ million of funds under management (FuM)) >10	Fee (£/£m or part £m of FuM) [tbc]
A.9	Band width (£ million of gross income (GI)) >1	Fee (£/£m or part £m of GI) [tbc]
A.13	Band width (£ thousands of annual income (AI)) >100	Fee (£/£ thousand or part of £ thousand of AI) [tbc]

Insert the following new chapter FEES 7D after FEES 7C (Temporary Permissions Regime (TPR) and Financial Service Contracts Regime (FSCR) – Single Financial Guidance Body levy). The text is not underlined.

**7D Temporary Permissions Regime (TPR) – Devolved Authorities levy**

**7D.1 Application and purpose**

Application

7D.1.1 R This chapter applies to every *person* listed in *FEES* 1.1.2R(8).

Purpose

7D.1.2 G The purpose of this chapter is to set out the requirements on the *persons* listed in *FEES* 7D.1.1R to fund the Treasury’s costs relating to the provision of debt advice by the *Devolved Authorities*, and the related *FCA* collection costs. For the avoidance of doubt, such *persons* also include *supervised run-off firms*.

Background

7D.1.3 G The Treasury’s debt advice costs are defined in subsection 1 of section 137SB (Rules to recover debt advice expenses incurred by the devolved authorities) of the *Act* as the expenses incurred, or expected to be incurred, by the *Devolved Authorities* in connection with the provision of information and advice on debt to members of the public in Scotland, Wales and Northern Ireland.

7D.1.4 G (1) Section 137SB(1) of the *Act* requires the Treasury to notify the *FCA* of the amount of the debt advice costs.

(2) Section 137SB(2 and 3) of the *Act* requires the *FCA* to make rules requiring *authorised persons, electronic money issuers or payment service providers* to pay specified sums, or sums calculated in a specified way to the *FCA* with a view to recovering:

(a) the amount notified by the Treasury; and

(b) expenses incurred by the *FCA* in connection with its functions under section 137SB of the *Act*.

Regulations 28 and 34 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 provide that *supervised run-off firms* are treated as having *Part 4A permission* or a *variation* to the *permission*.

7D.1.5 G This chapter contains the *rules* referred to in *FEES* 7D.1.4G(2).

- 7D.1.6 G Under section 137SB(8) of the *Act*, the *FCA* must pay to the Treasury the amounts that it receives under these *rules*, apart from amounts covering its collection costs (which it may keep).
- 7D.1.7 G The total amount raised by the *TPR DA levy* may vary from year to year depending on the amount notified to the *FCA* by the Treasury.
- 7D.1.8 G These rules were made with the consent of the Treasury pursuant to section 137SB(5) of the *Act*.

## 7D.2 The TPR DA levy

### Obligation to pay TPR DA levy

- 7D.2.1 R A *firm* must pay the *TPR DA levy* applicable to it:
- (1) in full and without deduction by 1 August (or, if later, within 30 days of the date of the invoice) in the *financial year* to which the sum relates; and
  - (2) in accordance with the *rules* in this chapter.

### Calculation of TPR DA levy

- 7D.2.2 R The *TPR DA levy* is calculated as follows:
- (1) identify each of the activity groups set out in Part 1 of *FEES 7D Annex 1R* that apply to the business of the *firm* for the relevant period (for this purpose, the activity groups under *FEES 7D Annex 1R* are defined in that Annex or in accordance with Part 1 of *FEES 4 Annex 1AR*);
  - (2) calculate, for each of those activity groups identified in (1), the amount payable in the way set out in *FEES 7D.2.3R*; and
  - (3) add each of the amounts calculated under (2).
- 7D.2.3 R The amount payable by a *firm* with respect to a particular activity group is calculated as follows:
- (1) calculate the size of the *firm's* tariff base for that activity group using:
    - (a) the tariff base calculations in Part 2 of *FEES 7D Annex 1R* (including only business undertaken from a *branch* in the *UK*); and
    - (b) the valuation date requirements in Part 3 of *FEES 7D Annex 1R*;

- (2) the amount payable in (1) is the amount payable by the *firm* with respect to that activity group.

7D.2.4 R For the purposes of *FEES* 7D.2.3R:

- (1) a *firm* may apply the relevant tariff bases and rates to its non-*UK* business, as well as to its *UK* business, if:
  - (a) it has reasonable grounds for believing that the costs of identifying its *UK* business separately from its non-*UK* business in the way described in Part 2 of *FEES* 7D Annex 1R are disproportionate to the difference in fees payable; and
  - (b) it notifies the *FCA* in writing at the same time as it provides the information concerned under *FEES* 7D.2.3R(1), or, if earlier, at the time it pays the *TPR DA* levy applicable to it.
- (2) for a *firm* which has not complied with *FEES* 4A.2.6R for this period, the *TPR DA* levy is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10.

TPR DA levy commencement

7D.2.5 R The *TPR DA* levy under *FEES* 7D relates to the whole of any *fee year* and is due for payment from the commencement of the *fee year*. Any payment made under *FEES* 7D.2.1R is not refundable.

**7D.3 FEES 4 rules incorporated into FEES 7D by cross-reference**

7D.3.1 R The *FCA Handbook* provisions relating to *FEES* 7D are meant to follow closely the provisions relating to the payment of the periodic fees in *FEES* 4. In the interests of brevity, not all of these provisions are set out again in *FEES* 7D. In some cases, certain *FEES* 4 rules are applied to the payment of the *TPR DA* levy by individual rules in *FEES* 7D. The rest are set out in the table in *FEES* 7D.3.3R.

7D.3.2 R The rules set out in the table in *FEES* 7D.3.3R and any other rules in *FEES* 4 included in *FEES* 7D by cross-reference apply to the *TPR DA* levy in the same way as they apply to periodic fees payable under *FEES* 4.

7D.3.3 R Table of rules in *FEES* 4 that also apply to *FEES* 7D to the extent that in *FEES* 4 they apply to fees payable to the *FCA*

FEES 4 rules incorporated into FEES 7D	Description
<i>FEES</i> 4.2.4R	Method of payment
<i>FEES</i> 4.2.10R	Extension of time

<i>FEES</i> 4.3.7R	Groups of firms
<i>FEES</i> 4.3.17R	Firms acquiring businesses from other firms

**7D            TPR DA levy for the period from 1 April 2019 to 31 March 2020**  
**Annex**  
**1R**

This table shows the *TPR DA* levy applicable to each activity group (fee-block).

Part 1

Activity group	A <i>TP</i> firm falls in the activity group if:
A.2 Home finance providers and administrators	It falls under activity group A.2 as defined in Part 1 of <i>FEES</i> 4 Annex 1AR.
CC.3 Consumer credit lending	<p>Its permission is in relation to the following regulated activities:</p> <ul style="list-style-type: none"> <li>- <i>entering into a regulated credit agreement as lender</i> (article 60B(1) of the <i>Regulated Activities Order</i>);</li> <li>- <i>exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement</i> (article 60B(2) of the <i>Regulated Activities Order</i>);</li> </ul> <p>which is carried on by way of business and relates to the following <i>specified investments</i>:</p> <ul style="list-style-type: none"> <li>(a) a regulated credit agreement (excluding <i>high-cost short-term credit</i>, a <i>home credit loan agreement</i> and a <i>bill of sale loan agreement</i>);</li> <li>(b) <i>high-cost short-term credit</i>;</li> <li>(c) a <i>home credit loan agreement</i>;</li> <li>(d) a <i>bill of sale loan agreement</i>.</li> </ul>

Part 2

Activity group	Tariff base
A.2 Home finance providers and administrators	The sterling value of any residential loans to individuals being the sum of gross unsecuritised and securitised balances (applying the definitions of 'unsecuritised balances' and 'securitised balances' set out in Section A: Balance Sheet of <i>SUP</i> 16 Annex 19BG).



CC.3 Consumer credit lending	<p>Value of lending in column A of <i>data item</i> CCR003 reported by <i>firms</i> under SUP 16 Annex 38AR, being the sum of <i>data elements</i> entered in rows:</p> <ul style="list-style-type: none"> <li>- 1 Debt purchasing;</li> <li>- 2 Hire purchase/conditional sale agreements;</li> <li>- 3 Home credit loan agreements;</li> <li>- 4 Bill of sale loan agreements;</li> <li>- 5 Pawnbroking;</li> <li>- 6 High-cost short-term credit;</li> <li>- 11 Overdrafts;</li> <li>- 12 Other running-account credit; and</li> <li>- 8 Other lending.</li> </ul>
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## Part 3

This table indicates the valuation date for each fee-block. A *firm* can calculate its tariff data in respect of the *TPR DA levy* payable to the *FCA* by that *firm*.

Activity group	Valuation date
A.2 Home finance providers and administrators	The 31 December before the start of the period to which the fee applies or, if earlier, the date of the valuation as disclosed by the annual return made in the calendar year prior to the 31 December.
CC.3 Consumer credit lending	Value of lending under Part 2 valued at the <i>firm's accounting reference date</i> in the calendar year ending 31 December occurring before the start of the period to which the <i>TPR DA levy</i> applies.

## Part 4

This table shows the tariff rates applicable to each of the fee-blocks set out in Part 1.

Activity group	TPR DA levy payable	
A.2 Home finance providers and administrators	Band width (£million of secured debt) >0	Fee (£/£m or part £m of secured debt) [tbc]
CC.3 Consumer credit lending	Band width (£million of value of lending)	Fee (£/£m or part £m of value of lending)

	>0 (Note 1)	[tbc]
<p><b>Note:</b> <i>Credit unions and community finance organisations</i> do not pay any <i>TPR DA levy</i> on the first £2,000,000 of value of lending.</p>		

Insert the following new chapter FEES 13A after FEES 13 (Illegal money lending levy). The text is not underlined.

## **13A Temporary Permissions Regime (TPR) and Financial Service Contracts Regime (FSCR) – Illegal money lending levy**

### **13A.1 Application and purpose**

#### Application

- 13A.1.1 R This chapter applies to every *TP person* carrying on an activity which would fall within activity group CC2 (Credit-related regulated activities).

#### Purpose

- 13A.1.2 R The purpose of this chapter is to set out the requirements on the *persons* listed in *FEES* 13A.1.1R to fund the costs of taking action against illegal money lending. For the avoidance of doubt, such *persons* also include *supervised run-off firms*.

- 13A.1.3 G Section 333S of the *Act* (Financial assistance for action against illegal money lending) provides that the Treasury may make grants or loans, or give other forms of financial assistance, to *persons* for the purpose of taking action against illegal money lending.

- 13A.1.4 G Section 333T of the *Act* (Funding of action against illegal money lending) requires the Treasury to notify the *FCA* of the amount of the Treasury's illegal money lending costs. The *FCA* must make *rules* requiring *authorised persons*, or any specified class of authorised persons, to pay to the *FCA* the specified amounts or amounts calculated in a specified way, with a view to recovering the amounts notified to it by the Treasury.

Regulations 28 and 34 of the *EU Exit Passport Regulations* provide that *supervised run-off firms* are treated as having *Part 4A permission* or a *variation* to the *permission*.

- 13A.1.5 G *FEES* 13A sets out the rules referred to in *FEES* 13A.1.4G.

### **13A.1 Obligation to pay the IML levy**

- 13A.2.1 R A *TP person* must pay the *TPR IML levy* applicable to it:

- (1) in full and without deduction by 1 August (or, if later, within 30 *days* of the date of the invoice) in the *financial year* to which the sum relates; and
- (2) in accordance with the *rules* in this chapter.

#### Calculation of the TPR IML levy

13A.2.2 R The *TPR IML levy* is calculated as follows:

- (1) identify whether activity group CC2 applies to the business of the *TP person* for the relevant period (for this purpose, the activity group is defined in accordance with Part 1 of *FEES 4 Annex 1AR*);
- (2) calculate the amount payable in accordance with *FEES 13A Annex 1R*;
- (3) a *TP person* in activity group CC2 must calculate its tariff base using the annual income calculation in Part 3 of *FEES 4 Annex 1AR* and *FEES 4 Annex 11BR* (including only business undertaken from a *branch* in the *UK*) and the valuation date requirements in Part 5 of *FEES 4 Annex 1AR*.

13A.2.3 R For the purposes of *FEES 13A.2.2R*:

- (1) a *TP person* may apply the relevant tariff bases and rates to its non-*UK* business, as well as to its *UK* business, if:
  - (a) it has reasonable grounds for believing that the costs of identifying the *TP person's UK* business separately from its non-*UK* business in the way described in Part 3 of *FEES 4 Annex 1AR* and Part 3 of *FEES 4 Annex 11R* are disproportionate to the difference in fees payable; and
  - (b) it notifies the *FCA* in writing at the same time as it provides the information concerned under *FEES 13A.2.2R(3)*, or, if earlier, at the time it pays the *TPR IML levy* concerned.
- (2) for a *TP person* which has not complied with *FEES 13A.2.2R(3)* for this period, the *TPR IML levy* is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10.

#### TPR IML levy commencement

13A.2.4 R The *TPR IML levy* under *FEES 13A* relate to the whole of any fee year and are due for payment from the commencement of the fee year. Any payment made under *FEES 13A.2.1R* is not refundable.

FEES 4 rules incorporated into FEES 13A by cross-reference

13A.2.5 G The Handbook provisions relating to the *TPR IML levy* in *FEES 13A* are meant to follow closely the provisions relating to the payment of the periodic fees in *FEES 4*. In the interests of brevity, not all of the provisions in *FEES 4* are set out again in *FEES 13A*. In some cases, certain *FEES 4* rules are applied to the payment of the *TPR IML levy* by individual rules in *FEES 13A*. The rest are set out in the table in *FEES 13A.2.7R*.

13A.2.6 R The *rules* set out in the table in *FEES 13A.2.7R* and any other *rules* in *FEES 4* included in *FEES 13A* by cross-reference apply to the *TPR IML levy* in the same way as they apply to periodic fees payable under *FEES 4*.

13A.2.7 R Table of rules in *FEES 4* that also apply to *FEES 13A* to the extent that in *FEES 4* they apply to fees payable to the *FCA*

<b>FEES 4 rules incorporated into FEES 13A</b>	<b>Description</b>
<i>FEES 4.2.4R</i>	Method of payment
<i>FEES 4.2.10R</i>	Extension of time
<i>FEES 4.3.7R</i>	Groups of firms
<i>FEES 4.3.17R</i>	Firms acquiring businesses from other firms

### 13A Annex Annex 1R TPR Illegal money lending (IML) levy for 2019/20 1R

<b>Activity group</b>	<b>Description</b>	<b>Fee (£)</b>
<b>Activity group CC2. Credit-related regulated activities:</b>	Up to £250,000 consumer credit income:	[tbc]
	Over £250,000 consumer credit income:	[tbc] + £tbc] per £1,000

### Part 2: Comes into force on 1 April 2019

In this Part, underlining indicates new text.

## 6.5 Compensation costs

### Allocation

...

6.5.6C R When identifying the relevant *classes* to which a *TP firm* belongs, the *FSCS* must identify the activity (or activities) in *FEES 6 Annex 3AR* that most closely matches that for which the *TP firm* is treated as having *Part 4A permission*.

...

### TP 22 Transitional provisions relating to FSCS levy arrangements for TP firms from 1 April 2019

<u>(1)</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>	<u>(5)</u>	<u>(6)</u>
	<u>Material to which the transitional provision applies</u>		<u>Transitional provision</u>	<u>Transitional provision: dates in force</u>	<u>Handbook provisions coming into force</u>
<u>22.1</u>	<u>FEES 6.5.9R</u>	<u>R</u>	<u>The rule referred to in column (2) does not apply to <i>TP firms</i>.</u>	<u>From 1 April 2019, indefinitely</u>	<u>1 April 2019</u>
<u>22.2</u>	<u>FEES TP 22.1R</u>	<u>G</u>	<u>FEES TP 22.1R means that a <i>TP firm</i> that becomes a <i>participant firm</i> part way through a <i>financial year</i> of the <i>compensation scheme</i> will be required to pay a share of a <i>compensation costs levy</i> and a <i>specific costs levy</i>.</u>		
<u>22.3</u>	<u>The changes made to <i>FEES 6</i> by the <i>Exiting the European Union: Temporary Permission and</i></u>	<u>R</u>	<u>The changes in (2) apply to any levy made after 1 April 2019. This is so even if:  (1) the <i>claim</i> against the <i>relevant person</i> or</u>	<u>From 1 April 2019, indefinitely</u>	<u>1 April 2019</u>

	<p><u>Financial Services Contracts Instrument 2019</u></p>		<p><u>successor in default</u>  <u>arose or relates to</u>  <u>circumstances arising</u>  <u>before that date; or</u>    <u>(2) the relevant</u>  <u>person or successor</u>  <u>was in default before</u>  <u>that date.</u></p>		
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## Annex D

### Amendments to the Client Assets sourcebook (CASS)

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

#### **1 Application and general provisions**

...

#### **1.3 General application: Where?**

1.3.1 G The *rules* in CASS 1.3 set out the maximum territorial scope of this sourcebook. Particular ~~rules~~ rules may have express territorial limitations.

UK establishments: general

1.3.2 R ~~Except as provided for in CASS 1.2.3R(2), CASS 1 to CASS 13 applies~~ apply to every *firm*, in relation to *regulated activities* carried on by it from an *establishment* in the *United Kingdom*.

1.3.2A G The territorial scope of CASS 14 is set out at CASS 14.1.6R.

...

Insert the following new chapter CASS 14 after CASS 13 (Claims management: client money). The text is not underlined.

#### **14 Temporary permissions regime – client assets rules**

##### **14.1 General application**

Who?

14.1.1 R This chapter only applies to a *TP firm* that has not *failed*.

What?

14.1.2 R Unless otherwise stated, the *rules* in CASS 14 apply:

- (1) in relation to:
- (a) a *TP firm's* activities to which *CASS 7* applies as a result of *GEN 2.2.26R*, but subject to *CASS 14.1.3R*; and
  - (b) a *TP firm's* activities to which *CASS 5* or *CASS 6* applies as a result of *GEN 2.2.26R*; and
- (2) where those activities are carried on in reliance on the *TP firm's temporary permission*.
- 14.1.3 R *CASS 14* does not apply in relation to a *TP firm's* activities to which *CASS 7* applies if, during the period for which it has a *temporary permission*, the *TP firm* does not hold any *client money* for the purposes of the *rules* in *CASS 7* that apply as a result of *GEN 2.2.26R*.
- 14.1.4 G *CASS 14.1.3R* may, for example, be relevant to a *TP firm* that can apply the exclusion from the definition of *client money* at *CASS 7.10.16R(1)* (credit institutions) or at *CASS 7.11.1R(4)* (title transfer collateral arrangements) throughout the period.
- 14.1.5 G (1) *CASS 14* does not apply in relation to a *TP firm's* activities which are carried on other than in reliance on its *temporary permission*. It only applies in relation to the part of its *Part 4A permission* that the *TP firm* is treated as having under regulation 8, 11, 28 or 34 of the *EU Exit Passport Regulations*.
- (2) For example, where a *TP firm* had *Part 4A permission* immediately before *exit day* to act as trustee or depositary of an *AIF* or to act as trustee or depositary of a *UCITS*, and continues to hold that *permission*, the *rules* applying to activities under that part of its *Part 4A permission* are not affected by its *temporary permission* because of *GEN 2.2.26R(1)* (see also the guidance at *GEN 2.2.37G(3)*). In relation to those activities, it should continue to comply with the applicable *rules* in *CASS*. It may also consider making the election at *CASS 14.3.6R* in relation to its activities that are carried on in reliance on the *TP firm's* temporary permission.

Where?

- 14.1.6 R The *rules* in *CASS 14* apply in relation to a *TP firm's* activities described at *CASS 14.1.2R* wherever they are carried on.
- 14.1.7 G *CASS 14.1.6R* means that the *rules* in *CASS 14* apply both to activities carried on from a *UK branch* and activities carried on other than from a *UK branch* into the *UK*.

## 14.2 Temporary permission CASS firm classification



- 14.2.1 R (1) Subject to paragraphs (2) to (5), this section applies only to a *TP firm* to which either or both of *CASS 6* and *CASS 7* apply as a result of *GEN 2.2.26R*.
- (2) In relation to a *TP firm* to which both *CASS 5* and *CASS 7* (*Client money rules*) apply as a result of *GEN 2.2.26R*, this section does not apply in relation to *client money* that the *TP firm* holds in accordance with *CASS 5* as a result of *GEN 2.2.26R*.
- (3) The *rules* in this section apply to a *TP firm* even if at the date of the determination or, as the case may be, the notification required under them, either or both of *CASS 6* and *CASS 7* do not apply to it, provided that:
- (a) either or both of those chapters applied to it as a result of *GEN 2.2.26R* during part or all of the previous calendar year; or
- (b) it projects that either or both will apply to it as a result of *GEN 2.2.26R* in the current calendar year.
- (4) The *rules* in this section do not apply to a *TP firm* to which, as a result of *GEN 2.2.26R*, only *CASS 6* applies, applied or is projected to apply, merely because it is, was, or is projected to be a *firm* which *arranges safeguarding and administration of assets*.
- (5) The *rules* in this section do not apply to a *TP firm* that has notified the *FCA* of an election made under *CASS 14.3.6R*.
- 14.2.2 G This section does not apply to a *TP firm* to which, as a result of *GEN 2.2.26R*, *CASS 5* applies but neither *CASS 6* nor *CASS 7* applies.
- 14.2.3 G The frequency of a *TP firm's* reporting obligations under *CASS 14.3* depends on the 'CASS firm type' within which a *TP firm* falls. The 'CASS firm types' are defined in accordance with *CASS 14.2.8R*.
- 14.2.4 R (1) A *TP firm* must once every year, and by the time it is required to make a notification in accordance with *CASS 14.2.9R*, determine whether it is a *CASS large TP firm*, *CASS medium TP firm* or a *CASS small TP firm* according to the amount of *client money* or *safe custody assets* which it holds, using the limits set out in the table in *CASS 14.2.8R*.
- (2) For the purpose of determining its 'CASS firm type' in accordance with *CASS 14.2.8R*, a *TP firm* must:
- (a) if it currently holds *client money* or *safe custody assets*, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets*

held during the previous calendar year ending on 31 December, and use that figure to determine its ‘CASS firm type’;

- (b) if it did not hold *client money* or *safe custody assets* in the previous calendar year but projects that it will do so in the current calendar year, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets* that it projects that it will hold during that year, and use that figure to determine its ‘CASS firm type’; but
- (c) in either case, exclude from its calculation any *client money* held in accordance with CASS 5.

- 14.2.5 G For the purposes of CASS 14.2.4R a *TP firm* should only include *client money* and *safe custody assets* that it holds (or is projected to hold) in relation to the *TP firm’s* activities which are carried on (or projected to be carried on) in reliance of the *firm’s temporary permission*. It should not include *client money* and *safe custody assets* that it holds in reliance of any authorisation in its *Home State*.
- 14.2.6 R For the purpose of calculating the value of the total amounts of *client money* and *safe custody assets* that it holds on any given day during a calendar year a *TP firm* must:
- (1) in complying with CASS 14.2.4R(2)(a), base its calculation on the reconciliation performed in accordance with CASS 7.15.20R during the previous year;
  - (2) in relation to *client money* or *safe custody assets* denominated in a currency other than sterling, translate the value of that *money* or those *safe custody assets* into sterling at the previous day’s closing spot exchange rate; and
  - (3) in relation to *safe custody assets* only, calculate their total value using the previous day’s closing mark to market valuation, or if in relation to a particular *safe custody asset* none is available, the most recent available valuation.
- 14.2.7 R (1) Notwithstanding CASS 14.2.4R, provided that the conditions in (2) are satisfied a *TP firm* may elect to be treated:
- (a) as a *CASS medium TP firm*, in the case of a *TP firm* that is classed by the application of the limits in CASS 14.2.8R as a *CASS small TP firm*; and
  - (b) as a *CASS large TP firm*, in the case of a *TP firm* that is classed by the application of the limits in CASS 14.2.8R as a *CASS medium TP firm*.

- (2) The conditions to which (1) refers are that in either case:
- (a) the election is notified to the *FCA* by email;
  - (b) the notification in accordance with (a) is made at least one week before the election is intended to take effect; and
  - (c) the *FCA* has not objected.

14.2.8 R CASS firm types

<b>CASS firm type</b>	<b>Highest total amount of <i>client money</i> held during the <i>TP firm</i>'s last calendar year or as the case may be that it projects that it will hold during the current calendar year</b>	<b>Highest total value of <i>safe custody assets</i> held by the <i>TP firm</i> during the <i>TP firm</i>'s last calendar year or as the case may be that it projects that it will hold during the current calendar year</b>
<i>CASS large TP firm</i>	more than £1 billion	more than £100 billion
<i>CASS medium TP firm</i>	an amount equal to or greater than £1 million and less than or equal to £1 billion	an amount equal to or greater than £10 million and less than or equal to £100 billion
<i>CASS small TP firm</i>	Less than £1 million	Less than £10 million

14.2.9 R Once every calendar year a *TP firm* must notify to the *FCA* by email the information specified in (1), (2) or (3) as applicable, and the information specified in (4), in each case no later than the day specified in (1) to (4):

- (1) if it held *client money* or *safe custody assets* in the previous calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year, notification of which must be made no later than the fifteenth *business day* of January;
- (2) if it did not hold *client money* or *safe custody assets* in the previous calendar year but at any point up to the fifteenth *business day* of January the *TP firm* projects that it will do so in the current calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *TP firm* projects that it will hold during the current calendar year, notification of which must be made no later than the fifteenth *business day* of January; or

- (3) in any other case, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *TP firm* projects that it will hold during the remainder of the current calendar year, notification of which must be made no later than the *business day* before the firm begins to hold *client money* or *safe custody assets*; and
- (4) in every case, of its ‘CASS firm type’ classification, notification of which must be made at the same time the *TP firm* makes the notification under (1), (2) or (3).
- 14.2.10 R For the purpose of the annual notification to which CASS 14.2.9R refers, a *TP firm* must apply the calculation rule in CASS 14.2.6R.
- 14.2.11 R For the purpose of CASS 14.2.9R(1), the *FCA* will treat that obligation as satisfied if a *TP firm* submitted a *TPCAR* for each period within the previous calendar year in compliance with the *rules* in CASS 14.3.
- 14.2.12 R A *TP firm's* ‘CASS firm type’ and any change to it takes effect if the *TP firm*:
- (1) notifies the *FCA* in accordance with CASS 14.2.9R(1) or CASS 14.2.9R(2), on 1 February following the notification; or
  - (2) notifies the *FCA* in accordance with CASS 14.2.9R(3), on the day it begins to hold *client money* or *safe custody assets*; or
  - (3) makes an election under CASS 14.2.7R(1), and provided the conditions in CASS 14.2.7R(2) are satisfied, on the day the notification made under CASS 14.2.7R(2)(a) states that the election is intended to take effect.
- 14.2.15 G Any written notification made to the *FCA* under this chapter should be marked for the attention of: “Client Assets TP Firm Classification”.

### 14.3 Temporary Permission Client Assets Return

- 14.3.1 R (1) A *TP firm* must submit a completed *TPCAR* to the *FCA* by email for each reporting period specified in CASS 14.3.3R.
- (2) The *TP firm* must submit the *TPCAR* to the *FCA* by the deadline specified in CASS 14.3.4R.
- (3) A *TPCAR* must be completed using the template specified at CASS 14 Annex 1R.
- 14.3.2 G Guidance notes on completing a *TPCAR* are available at CASS 14 Annex 2G.
- 14.3.3 R The *TPCAR* reporting periods for the purposes of CASS 14.3.1R are:

- (1) for *TP firms* to which either or both of *CASS 6* and *CASS 7* applies as a result of *GEN 2.2.26R*, either:
  - (a) for *CASS small TP firms*, the initial nine-month period from 1 April 2019 to 31 December 2019, and each subsequent 12-month period; or
  - (b) for *CASS medium TP firms* and *CASS large TP firms*, the initial one-month period from 1 April 2019 to 30 April 2019, and each subsequent one-month period; and
- (2) for *TP firms* to whom as a result of *GEN 2.2.26R*, *CASS 5* applies:
  - (a) if the *TP firm's* annual revenue from its business to which *CASS 5* applies as a result of *GEN 2.2.26R* is £5 million or less:
    - (i) the shorter of:
      - (A) the initial period from 1 April 2019 to the *firm's accounting reference date*, and
      - (B) the initial period from 1 April 2019 to the last day of the six-month period after the *firm's accounting reference date*; and
    - (ii) each six-month period subsequent to the shorter of those initial periods; or
  - (b) if the *TP firm's* annual revenue from its business to which *CASS 5* applies as a result of *GEN 2.2.26R* exceeds £5 million:
    - (i) the shorter of:
      - (A) the initial period from 1 April 2019 to the *firm's accounting reference date*, and
      - (B) the initial period from 1 April 2019 to the last day of the three-month period after the *firm's accounting reference date*; and
    - (ii) each three-month period subsequent to the shorter of those initial periods.

14.3.4 R The *TPCAR* submission deadlines for the purposes of *CASS 14.3.1R* are:

- (1) for *TP firms* to which either or both of *CASS 6* and *CASS 7* applies as a result of *GEN 2.2.26R*, either:

- (a) for *CASS small TP firms* the 15<sup>th</sup> *business day* of the *month* that follows the reporting period specified in *CASS 14.3.3R(1)*; or
  - (b) for *CASS medium TP firms* and *CASS large TP firms*, the 15<sup>th</sup> *business day* of the *month* that follows the reporting period specified in *CASS 14.3.3R(2)*; and
- (2) for *TP firms* to which *CASS 5* applies as a result of *GEN 2.2.26R*, the 30<sup>th</sup> *business day* after the relevant reporting period specified in *CASS 14.3.3R(3)*.
- 14.3.5 G (1) If both *CASS 14.3.3R(1)* and (2) apply to a *TP firm*, then it should submit a completed *TPCAR* to the *FCA* to cover each reporting period that applies to it, by the relevant submission deadline in *CASS 14.3.4R(1)* and (2).
- (2) In those cases:
- (a) a *TP firm* should only complete Part 1 and Part 2 of any *TPCAR* that is for a reporting period specified under *CASS 14.3.3R(1)*; and
  - (b) it should only complete Part 1 and Part 3 of any *TPCAR* that is for a reporting period specified under *CASS 14.3.3R(2)*.

Election to use the *CMAR* for *TP firms* that had a Part 4A permission before exit day

- 14.3.6 R (1) This *rule* applies to a *TP firm* to which *SUP 16.14.3R* (Client money and asset return) applies as a result of *GEN 2.2.26R(1)*, on the basis that it has classified itself as a *CASS large firm* or a *CASS medium firm* for the purposes of *CASS 1A*.
- (2) A *TP firm* may comply with *SUP 16.14.3R* instead of *CASS 14.3.1R* provided that it has notified the *FCA* in advance and by email that it has elected to do so.
- (3) A *TP firm* that makes the election under this *rule* must, when completing data field 8 of the *CMAR*:
- (a) use a separate row to distinguish between types of business activity or services which are carried on in reliance of the *firm's temporary permission* and types which are not; and
  - (b) clearly indicate which rows relate to a business activity or service which is carried on in reliance of the *firm's temporary permission*.

- 14.3.7 G (1) See *GEN 2.2.37G(3)* for an explanation of the effect of *GEN 2.2.26R(1)* and *CASS 14.1.5G*.
- (2) *CASS 14.3.6R* may be relevant to a *TP firm* that had a *Part 4A permission* immediately before *exit day* for acting as trustee or depositary of an AIF or acting as trustee or depositary of a UCITS and continues to hold that *permission*.
- (3) In complying with *CASS 14.3.6R(3)*:
- (a) a *TP firm* should observe the guidance at *SUP 16 Annex 29AG* (Guidance notes for the data item in *SUP 16 Annex 29R*) in relation to data field 8 of the *CMAR* and, therefore, distinguish between each different type of business activity or service which it carries on in reliance its *temporary permission*, as well as between each type which it carries on under its *Part 4A permission*;
- (b) a *TP firm* could, for example, annotate each row which relates to a business activity or service which is carried on in reliance of the *firm's temporary permission* by including the letters "TP" in data field 8A; and
- (c) if a *TP firm* follows sub-paragraph (b), the overall effect may be that data field 8 includes a number of rows that are prefaced with "TP" (for example, "TP CFD business" and "TP share custody business") and a number of rows that are not (for example, "AIF depositary business" and "UCITS depositary business").

#### 14.4 Temporary permission auditor's report

- 14.4.1 R This section does not apply in relation to a *TP firm* to which only *CASS 5* applies as a result of *GEN 2.2.26R*.
- 14.4.2 R Subject to *CASS 14.4.3R*, a *TP firm* to which this section applies must ensure that the *FCA* receives any report made by its external auditors pursuant to a requirement in its *Home State* that implements article 8 of the *MiFID Delegated Directive*, in the following circumstances:
- (1) where the auditor's report confirms that the *TP firm's* arrangements referred to in article 8 of the *MiFID Delegated Directive* are not adequate; or
- (2) in response to a request made by the *FCA* to the *TP firm* in writing.
- 14.4.3 R (1) If the *TP firm* did not have a *temporary permission* during the entire period covered by an auditor's report, that auditor's report is excluded from the requirement under *CASS 14.4.2R*.

- (2) Where the auditor's report required under CASS 14.4.2R is not in English, the *TP firm* must ensure that the *FCA* receives both the auditor's report and an English translation of it.
- 14.4.4 R (1) A *TP firm* must ensure that any auditor's report and English translation which are required to be provided to the *FCA* under this section are sent by email.
- (2) In the case of an auditor's report, this must be sent:
- (a) where CASS 14.4.2R(1) applies, as soon as it is made available to the relevant *Home State* regulator; and
- (b) where CASS 14.4.2R(2) applies, immediately on the *FCA's* written request.
- (3) In the case of an English translation, this must be sent:
- (a) where CASS 14.4.2R(1) applies, within one *month* of the auditor's report being made available to the relevant *Home State* regulator; and
- (b) where CASS 14.4.2R(2) applies, within one *month* of the *FCA's* written request.
- 14.4.5 R Where a *TP firm* intends to rely on another *person* to send an auditor's report to the *FCA* under this section, it must inform the *FCA* in advance of that person's identity by email.
- 14.4.6 R The *rules* in this section apply regardless of whether the scope of an auditor's report includes a *TP firm's* activities specified in CASS 14.1.2R.

## 14.5 Client information

- 14.5.1 R A *TP firm* must provide any *client* in respect of which it carries on the activities specified in CASS 14.1.2R with the following information (the "TP Firm CASS Disclosure") in English and in a *durable medium*:
- (1) any non-UK jurisdiction under which the *TP firm's failure* may be administered; and
- (2) unless such an outcome is not possible under the law of that jurisdiction as it applies on *exit day*, a statement that makes clear the possibility that any *client money* or *safe custody assets* belonging to that *client* will, as a result of the law of that jurisdiction, be treated differently to *money* or assets belonging to other customers of the *TP firm* in the event of the *TP firm's failure*.



- 14.5.2 R (1) A *firm* must ensure that the “TP Firm CASS Disclosure” is not obscured by or disguised within other information.
- (2) Where a *firm* provides the “TP Firm CASS Disclosure” amidst or alongside other information, it must ensure that it uses a font size for the ‘TP Firm CASS Disclosure’ that is at least equal to the predominant font size used throughout the information provided, as well as a layout that ensures the “TP Firm CASS Disclosure” is prominent.
- 14.5.3 G (1) To comply with CASS 14.5.1R(1) it is sufficient to name the jurisdiction. For example, this may be the name of the *TP firm’s Home State*, or an administrative region within it.
- (2) In order to comply with CASS 14.5.1R(2), a *TP firm* should carefully consider the applicable law and insolvency rules in question as at *exit day* when deciding whether or not a statement is required to be given under that provision. For example, it could obtain a legal opinion on whether the law differentiates between the treatment of different classes of *clients*. If, following such careful consideration, the *firm* cannot rule out the possibility of different treatment, then it should make the statement under CASS 14.5.1R(2).
- 14.5.4 R The “TP Firm CASS Disclosure” under CASS 14.5.1R is not required where a *firm* complies with those requirements of CASS 5, CASS 6 or CASS 7 that are applied under GEN 2.2.26R without needing to safeguard *client money* or *safe custody assets*.
- 14.5.5 G Situations falling under CASS 14.5.4R include where, for example, the *TP firm* relies on:
- (1) CASS 5.1.5R(1)(b) or (2);
- (2) CASS 7.10.6R; or
- (2) GEN 2.2.26R(3) or (4) and takes the approach set out in article 10.6.a, 10.6.b or 10.6.d of IDD.
- 14.5.6 R A *TP firm* must provide the “TP Firm CASS Disclosure” under CASS 14.5.1R to a *client*:
- (1) where it safeguards *client money* or *safe custody assets* for the *client* on *exit day*, on that date (unless it has taken steps before that date which would have complied with the requirements under CASS 14.5.1R and CASS 14.5.2R); or
- (2) otherwise, in good time before it safeguards *client money* or *custody assets* for the *client*.

## 14.6 Tied agents and appointed representatives of TP firms

- 14.6.1 G (1) CASS does not apply directly to a *TP firm's appointed representative* or *tied agent*.
- (2) A *TP firm* will be responsible for the acts and omissions of its *appointed representatives* and *tied agents* in carrying on business for which the *TP firm* has accepted responsibility.
- (3) In determining whether a *TP firm* has complied with any provision of CASS, anything done or omitted by a *TP firm's* appointed representative or tied agent (when acting as such) will be treated as having been done or omitted by the *TP firm*.
- (4) CASS 14.6.2R further restricts the possibility of *appointed representatives* and *tied agents* of *TP firms* from receiving or holding *client money* and *safe custody assets*. But that rule does not apply in relation to the business of an *appointed representative* or *tied agent* of a *TP firm* in respect of which CASS 5 would apply to the *TP firm* as a result of GEN 2.2.26R.
- 14.6.2 R A *TP firm* must not permit an *appointed representative* or *tied agent* to receive or hold *client money* or *safe custody assets* in the course of or in connection with any of their business in respect of which CASS 6 or CASS 7 would apply to the *TP firm* as a result of GEN 2.2.26R.

## 14 Annex Temporary permissions client asset return (TPCAR) 1R

[**Note:** A *firm* must answer all the questions in Part 1. A *firm* must also complete either Part 2 or Part 3, depending on the answer to question 1.1.3. Further guidance notes are available at CASS 14 Annex 2G.]

PART 1 - TO BE COMPLETED BY ALL TP FIRMS		
<b>Section 1.1 - Scope of this return</b>		
1.1.1	What is the reporting period start date for this return?	[dd/mm/yyyy]
1.1.2	What is the reporting period end date for this return?	[dd/mm/yyyy]
1.1.3	Does this return report on: - <i>investment services or activities</i> , to which CASS 6 or CASS 7 apply as a result of GEN 2.2.26R, or - <i>insurance distribution activities</i> , to which CASS 5 applies as a result of GEN 2.2.26R?	[Investment services or activities]  [Insurance distribution activities]
<b>Section 1.2 - Location of activities</b>		
1.2.1	During the reporting period, did the <i>firm</i> conduct any of the activities to which this return relates from an establishment in the UK?	[Yes] [No]
<b>Section 1.3 - Compliance</b>		
1.3.1	During the reporting period, did the <i>firm</i> have any breaches of its obligations under CASS 14?	[Yes] [No]
1.3.2	During the reporting period, did the <i>firm</i> obtain an external auditor report on the adequacy of the <i>firm's</i> arrangements under its client assets obligations?	[Yes] [No]
<b>Section 1.4 - Solvency</b>		
1.4.1	During the reporting period, were there any issues with the <i>firm's</i> solvency?	[Yes] [No]
<b>Section 1.5 - Other issues</b>		
1.5.1	During the reporting period, were there any other issues with the <i>firm</i> in relation to its obligations under CASS which applied as a result of GEN 2.2.26R? If so, please provide a brief description.	

<b>PART 2 - FOR REPORTING ON INVESTMENT SERVICES OR ACTIVITIES (SEE Q 1.1.3)</b>		
2.1.1	During the reporting period, did the firm hold <i>client money</i> and/or <i>safe custody assets</i> in relation to activities carried on in reliance of the firm's <i>temporary permission</i> to which CASS 6 or CASS 7 apply as a result of GEN 2.2.26R?	[Yes] [No]
<b>If yes, then during the reporting period:</b>		
2.1.2	What was the highest balance of <i>client money</i> held in relation to activities carried on in reliance of the firm's <i>temporary permission</i> , in relation to which CASS 7 applies as a result of GEN 2.2.26R?	[Highest balance]
2.1.3	What was the highest amount of <i>safe custody assets</i> held in relation to activities carried on in reliance of the firm's <i>temporary permission</i> , in relation to which CASS 6 applies as a result of GEN 2.2.26R?	[Highest balance]
2.1.4	What percentage of the <i>client money</i> reported in Question 2.1.2 was deposited with a <i>bank</i> or a <i>qualifying money market fund</i> in the same <i>group</i> as the firm (article 4, <i>MiFID Delegated Directive</i> )?	[ ]%
2.1.5	What was the frequency of reconciliations between the firm's internal accounts and records and those of any third party with whom the <i>client money</i> reported in Question 2.1.2 was held (article 2(1)(c), <i>MiFID Delegated Directive</i> )?	[Daily] [Monthly] [Quarterly] [Annually] [Other]
2.1.6	What was the frequency of reconciliations between the firm's internal accounts and records and those of any third party with whom the <i>safe custody assets</i> reported in Question 2.1.3 were held (article 2(1)(c), <i>MiFID Delegated Directive</i> )?	[Daily] [Monthly] [Quarterly] [Annually] [Other]
2.1.7	Did the firm resolve all discrepancies identified by its reconciliations referred to in Questions 2.1.5 and 2.1.6 as applicable (article 2(1)(c), <i>MiFID Delegated Directive</i> )?	[Yes] [No]
2.1.8	Were there any changes to the firm's officer responsible for compliance with obligations relating to safeguarding of <i>client money</i> and <i>safe custody assets</i> appointed pursuant to article 7 of the <i>MiFID Delegated Directive</i> ?	[Yes] [No]
2.1.9	Did the firm have any breaches of its obligations to segregate and/or keep records in accordance with its obligations under CASS 6 or 7 which applied as a result of GEN 2.2.26R?	[Yes] [No]

<b>PART 3 - FOR REPORTING ON INSURANCE DISTRIBUTION ACTIVITIES (SEE Q 1.1.3)</b>		
3.1.1	During the reporting period, did the firm hold <i>money</i> in relation to activities carried on in reliance of the firm's <i>temporary permission</i> to which CASS 5 applies as a result of GEN 2.2.26R?	[Yes] [No]
<b>If yes, then during the reporting period:</b>		
3.1.2	How did the firm protect such <i>money</i> in accordance with article 10.6 of the <i>IDD</i> ?	[Contractual risk transfer to the insurer] [Holding customers' monies in segregated customer accounts] [Holding capital on a permanent basis] [A guarantee fund]
3.1.3	What was the highest balance of <i>money</i> held by the firm in relation to activities carried on in reliance of the firm's <i>temporary permission</i> to which CASS 5 applies as a result of GEN 2.2.26R?	[Balance]
3.1.4	Did the firm have any breaches of its obligations to segregate and/or keep records in accordance with its obligations under CASS 5 which applied as a result of GEN 2.2.26R?	[Yes] [No]

## 14 Annex Guidance notes for the TPCAR 2G

1. This annex contains *guidance* on the *TPCAR* and is therefore only relevant to a *firm* that is subject to *CASS 14.3*.
2. Italicised terms in the *TPCAR* have the same meaning as in the *Glossary*.
3. A *firm* is reminded of its obligation to determine their "CASS firm type" categorisation in accordance with *CASS 14.2.8R*.
4. A *firm* should complete Part 1 and either Part 2 or Part 3, depending on whether it is reporting on *investment services and activities* or *insurance distribution activities*. See also the guidance at *CASS 14.3.5G* for *firms* that carry on both sorts of activities under their *temporary permission*.

5. For the purposes of the *TPCAR*, the *FCA* does not prescribe any particular methodology or frequency for valuing *safe custody assets*.
6. Guide for completing individual questions in the *TPCAR*:

## PART 1 - TO BE COMPLETED BY ALL TP FIRMS

Section 1.1 - Scope of this return	
1.1.1	What is the reporting period start date for this return?
1.1.2	What is the reporting period end date for this return?
	<p>The reporting period is a calendar period for which the <i>TPCAR</i> is required to be completed in accordance with <i>CASS 14.3.1R</i>, including the first <i>day</i> and the last <i>day</i> of the relevant period applicable to the <i>firm</i>. The first reporting period starts from 1 April 2019.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• For a <i>firm</i> conducting <i>investment services or activities</i> under their <i>temporary permission</i> which is subject to monthly reporting under <i>CASS 14.3.3R</i>, the first reporting period will be 1 April 2019 to 30 April 2019, regardless of whether or not any <i>day</i> in April is a <i>business day</i>.</li> <li>• For a <i>firm</i> conducting <i>insurance distribution</i> activities under their <i>temporary permission</i> which is subject to half-yearly reporting under <i>CASS 14.3.3R</i> and has an accounting reference date of 31 December, the first reporting period will be 1 April 2019 to 30 June 2019, regardless of whether or not any <i>day</i> in this period is a <i>business day</i>. The next reporting period for such a <i>firm</i> will be 1 July 2019 to 31 December 2019.</li> </ul>
1.1.3	<p>Does this return report on:</p> <ul style="list-style-type: none"> <li>- <i>investment services and activities</i>, to which <i>CASS 6</i> or <i>CASS 7</i> apply as a result of <i>GEN 2.2.26R</i>; or</li> <li>- <i>insurance distribution</i> activities, to which <i>CASS 5</i> applies as a result of <i>GEN 2.2.26R</i>?</li> </ul>
	<p>A <i>firm</i> should identify the relevant activity in the course of which it holds <i>client money</i> or <i>safe custody assets</i> under its <i>temporary permission</i> and answer either “investment services or activities” or “insurance distribution activities”.</p>

	If a <i>firm</i> is conducting both activities in the course of which it holds <i>client money</i> or <i>safe custody assets</i> under its <i>temporary permission</i> , then it will need to complete a separate <i>TPCAR</i> for each activity.
<b>Section 1.2 - Location of activities</b>	
1.2.1	Did the <i>firm</i> conduct the activities to which this return relates from an establishment in the <i>UK</i> ?
	A <i>firm</i> should answer either “Yes” or “No”. For example, a <i>firm</i> should answer “Yes” if, during the reporting period, it conducted the above activities from a <i>branch</i> in the <i>UK</i> .
<b>Section 1.3 - Compliance</b>	
1.3.1	During the reporting period, did the <i>firm</i> have any breaches of its obligations under <i>CASS 14</i> ?
	A <i>firm</i> should answer either “Yes” or “No”.
1.3.2	During the reporting period, did the <i>firm</i> obtain an external auditor’s report on the adequacy of the <i>firm's</i> arrangements under its client assets obligations?
	A <i>firm</i> should answer either “Yes” or “No”.
<b>Section 1.4 - Solvency</b>	
1.4.1	During the reporting period, were there any issues with the <i>firm's</i> solvency?
	A <i>firm</i> should answer either “Yes” or “No”.
<b>Section 1.5 - Other issues</b>	

1.5.1	During the reporting period, were there any other issues with the <i>firm</i> in relation to its obligations under CASS which applied as a result of GEN 2.2.26R? If so, please provide a brief description.
	A <i>firm</i> should describe any issues not covered by the TPCAR that may be relevant in respect of holding <i>client money or safe custody assets</i> to which CASS applies as a result of GEN 2.2.26R during the reporting period.

## PART 2 - FOR REPORTING ON INVESTMENT SERVICES OR ACTIVITIES

2.1.1	During the reporting period, did the <i>firm</i> hold <i>client money</i> and/or <i>safe custody assets</i> in relation to activities carried on in reliance of the <i>firm's temporary permission</i> to which CASS 6 or CASS 7 apply as a result of GEN 2.2.26R?
	A <i>firm</i> should answer either “Yes” or “No”.
2.1.2	What was the highest balance of <i>client money</i> held in relation to activities carried on in reliance of the <i>firm's temporary permission</i> , in relation to which CASS 7 applies as a result of GEN 2.2.26R?
	<p>A <i>firm</i> should report the highest total amount of <i>client money</i> that it held at any point during the reporting period.</p> <p>A <i>firm</i> should ensure that it includes in the amount reported any <i>client money</i> that it is holding, which has or have been placed with a third party <i>custodian</i>, either by a <i>custodian</i> with which that <i>firm</i> has deposited those <i>client money</i>, or by that <i>firm</i> if it is a <i>custodian</i>.</p> <p>A <i>firm</i> should determine the highest figures by reference to the data that it has recorded from its reconciliations required under article 2(1)(c) of the <i>MiFID Delegated Directive</i> that relate to the reporting period in question.</p>
2.1.3	What was the highest amount of <i>safe custody assets</i> held in relation to activities carried on in reliance of the <i>firm's temporary permission</i> , in relation to which CASS 6 applies as a result of GEN 2.2.26R?

	<p>A <i>firm</i> should report the highest total amount of <i>safe custody assets</i> that it held at any point during the reporting period.</p> <p>A <i>firm</i> should ensure that it includes in the amount reported any <i>safe custody assets</i> that it is holding, which has or have been placed with a third party <i>custodian</i>, either by a <i>custodian</i> with which that <i>firm</i> has deposited those safe custody assets, or by that <i>firm</i> if it is a <i>custodian</i>.</p> <p>A <i>firm</i> should determine the highest figures by reference to the data that it has recorded from its reconciliations required under article 2(1)(c) of the <i>MiFID Delegated Directive</i> that relate to the reporting period in question.</p>
2.1.4	What percentage of the <i>client money</i> reported in Question 2.1.2 was deposited with a <i>bank</i> or a <i>qualifying money market fund</i> in the same <i>group</i> as the <i>firm</i> (article 4, <i>MiFID Delegated Directive</i> )?
	A <i>firm</i> should state what percentage of <i>client money</i> are held with a <i>credit institution, bank or qualifying money market fund</i> of the same <i>group</i> as the <i>firm</i> .
2.1.5	What was the frequency of reconciliations between the <i>firm's</i> internal accounts and records and those of any third party with whom the <i>client money</i> reported in Question 3 was held (article 2(1)(c), <i>MiFID Delegated Directive</i> )?
	A <i>firm</i> should identify the frequency of its reconciliations in respect of <i>client money</i> required by article 2(1)(c) of <i>MiFID Delegated Directive</i> and answer either “Daily”, “Quarterly”, “Monthly”, “Annually” or “Other”.
2.1.6	What was the frequency of reconciliations between the <i>firm's</i> internal accounts and records and those of any third party with whom the <i>safe custody assets</i> reported in Question 2.1.2 were held (article 2(1)(c), <i>MiFID Delegated Directive</i> )?
	A <i>firm</i> should identify the frequency of its reconciliations in respect of <i>safe custody assets</i> required by article 2(1)(c) of <i>MiFID Delegated Directive</i> and answer either “Daily”, “Quarterly”, “Monthly”, “Annually” or “Other”.

2.1.7	Did the <i>firm</i> resolve all discrepancies identified by its reconciliations referred to in Questions 7 and 8 as applicable (article 2(1)(c), <i>MiFID Delegated Directive</i> )?
	A <i>firm</i> should answer either “Yes” or “No”.
2.1.8	Were there any changes to the <i>firm's</i> officer responsible for compliance with obligations relating to safeguarding of client assets appointed pursuant to article 7 of the <i>MiFID Delegated Directive</i> ?
	A <i>firm</i> should answer either “Yes” or “No”.
2.1.9	Did the <i>firm</i> have any breaches of its obligations to segregate and/or keep records in accordance with its obligations under CASS 6 or 7 which applied as a result of GEN 2.2.26R?
	A <i>firm</i> should answer either “Yes” or “No”.

### PART 3 - FOR REPORTING ON INSURANCE DISTRIBUTION ACTIVITIES

3.1.1	During the reporting period, did the <i>firm</i> hold <i>money</i> in relation to activities carried on in reliance of the <i>firm's</i> temporary permission to which CASS 5 applies as a result of GEN 2.2.26R?
	A <i>firm</i> should answer either “Yes” or “No”.
3.1.2	How did the <i>firm</i> protect such <i>money</i> in accordance with article 10.6 of the <i>IDD</i> ?
	<p>This question should only be answered if a <i>firm</i> answered “Yes” in Question 3.1.1.</p> <p>A <i>firm</i> should answer “Contractual risk transfer to the insurer”, “Holding customers' monies in segregated customer accounts”, “Holding capital on a permanent basis” or “A guarantee fund”.</p>



	<p>A <i>firm's</i> answer may depend on which of these methods are permitted by its <i>Home State's</i> implementation of the <i>IDD</i>.</p> <p>More than one answer may be given if the <i>firm</i> protects <i>money</i> using more than one of these methods.</p>
3.1.3	What was the highest balance of <i>money</i> held by the <i>firm</i> in relation to activities carried on in reliance of the <i>firm's temporary permission</i> to which <i>CASS 5</i> applies as a result of <i>GEN 2.2.26R</i> ?
	<p>This question should only be answered if a <i>firm</i> answered “Yes” in Question 11.</p> <p>A <i>firm</i> should take into account the amount recorded in the <i>firm's</i> records that relate to the reporting period in question. A <i>firm</i> should also take into account <i>money</i> held in all the possible methods of holding such <i>money</i> under <i>IDD</i>.</p>
3.1.4	Did the <i>firm</i> have any breaches of its obligations to segregate and/or keep records in accordance with its obligations under <i>CASS 5</i> which applied as a result of <i>GEN 2.2.26R</i> ?
	A <i>firm</i> should answer either “Yes” or “No”.

**Annex E**

**Amendments to the Compensation sourcebook (COMP)**

In this Annex, underlining indicates new text.

**5.5 Protected investment business**

...

Territorial scope condition

5.5.2 R The territorial scope condition is that the *protected investment business* was carried on from:

(1) an establishment of the *relevant person* in the *United Kingdom*; or

...

(6) an establishment in an EEA State of the relevant person, if it is a TP firm (other than a supervised run-off firm) that is:

(a) managing a UK UCITS; or

(b) managing an AIF that is an authorised fund.

...

**6.2 Who is a relevant person?**

...

6.2.4 G A TP firm that under section 213(9A) or section 213(9A) [bis] of the Act is not to be regarded as a relevant person is not a participant firm. For the purposes of the FCA's compensation rules, this means that most (but not all) TP firms operating in the UK without an establishment are not participant firms.

...

**TP 1 Transitional provisions**

TP 1.1 Transitional provisions table

(1)	(2)	(3)	(4)	(5)	(6)
	<b>Material to which the transitional provision applies</b>		<b>Transitional provision</b>	<b>Transitional provision: dates in force</b>	<b>Handbook provisions</b>

					coming into force
...					
47	<p><u>Amendments introduced to <i>COMP</i> by the Exiting the European Union: Temporary Permission and Financial Services Contracts Instrument 2019</u></p>	R	<p>The amendments referred to in column (2) do not apply:</p> <p>(1) in relation to a <u>claim against a <i>TP firm</i>, or against a successor of a <i>TP firm</i>, that was in default before <i>exit day</i>; or</u></p> <p>(2) to any acts or omissions before <i>exit day</i> that give rise to a <u>claim against a <i>TP firm</i>, or against a successor of a <i>TP firm</i>, after <i>exit day</i>;</u></p> <p>but nothing in limb (2) of this <u>rule shall limit the ability of the <i>FSCS</i> to pay compensation in respect of a <i>claim</i> against a <i>TP firm</i> or a successor of a <i>TP firm</i>, where it is a <u>relevant person for a reason other than because it is a <i>TP firm</i>.</u></u></p>	From <i>exit day</i> , indefinitely	<i>exit day</i>

## Annex F

## Amendments to the Credit Unions sourcebook (CREDS)

In this Annex, underlining indicates new text.

## Sch 3 Fees and other required payments

...

## Sch 3.2 G

Description of fee	Reference
...	...
<u>TPR SFGB levy</u>	<u>FEES 7C</u>
<u>TPR DA levy</u>	<u>FEES 7D</u>

**EXITING THE EUROPEAN UNION: SMCR AND APR (AMENDMENTS)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
  - (2) section 59AB(1) (Specifying functions as controlled functions: transitional provision);
  - (3) section 60 (Applications for approval);
  - (4) section 60A (Vetting candidates by authorised persons);
  - (5) section 61 (Determination of applications);
  - (6) section 63E (Certification of employees by authorised persons);
  - (7) section 63F (Issuing of certificates);
  - (8) section 64A (Rules of conduct);
  - (9) section 137A (The FCA’s general rules);
  - (10) section 137T (General supplementary powers); and
  - (11) 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 [29 March 2019 at 11 p.m.] except for Part 2 of Annex E, which comes into force on [27 September 2019].

**Amendments to the Handbook**

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

(1)	(2)
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex A
Code of Conduct (COCON)	Annex B
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex C
Fit and Proper test for Employees and Senior Personnel (FIT)	Annex D
Supervision manual (SUP)	Annex E

**Citation**

- E. This instrument may be cited as the Exiting the European Union: SMCR and APR (Amendments) Instrument 2019.

By order of the Board  
[*date*]

**Annex A**

**Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)**

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

**1 Application and purpose**

...

**1 Annex Detailed application of SYSC**

**1**

...

<b>Part 3</b>	<b>Tables summarising the application of the common platform requirements to different types of firm</b>
---------------	--

...

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

Provision SYSC 4	COLUMN A ...	COLUMN A+ ...	COLUMN A++ ...	COLUMN B ...
...	...	...	...	...
SYSC 4.4.1AR	Not applicable	Not applicable	Not applicable	<p><del>Rule applies this section only to:</del></p> <p><i>(1) an authorised professional firm in respect of its non-mainstream regulated activities unless the firm is also conducting other regulated activities and has appointed approved persons to perform the governing functions with equivalent responsibilities for the firm's non-mainstream regulated activities and other regulated activities;</i></p> <p><i>(2) activities carried on by a firm whose principal purpose is to carry on</i></p>

			<p>activities other than regulated activities and which is:</p> <p>(a) an oil market participant;</p> <p>(b) a service company;</p> <p>(c) an energy market participant;</p> <p>(d) a wholly owned subsidiary of:</p> <p>(i) a local authority;</p> <p>(ii) a registered social landlord;</p> <p>(e) a firm with permission to carry on insurance distribution activity in relation to non-investment insurance contracts but no other regulated activity except advising on P2P agreements;</p> <p>(2A) a credit firm which holds a limited permission (other than a not for profit debt advice body) with respect to the relevant credit activity (as defined in paragraph 2G of Schedule 6 to the Act) for which it has limited permission;</p> <p>(3) an incoming Treaty firm, an incoming EEA firm and a UCITS qualifier, (but only SYSC 4.4.5R(2) applies for these firms); and</p> <p>(4) a sole trader, but only if he employs any person who is required to be approved under section 59 of the Act (Approval for particular arrangements).</p> <p><u>As specified in SYSC 4.4.1AR</u></p>
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...	...	...	...	...
-----	-----	-----	-----	-----

...

**4 General organisational requirements**

...

**4.4 Apportionment of responsibilities**

Application

4.4.1A R This section applies to:

...

(4) ~~an incoming Treaty firm, an incoming EEA firm a TP firm or a UCITS-qualifier TP UCITS qualifier~~ (but only SYSC 4.4.5R(2) applies for these firms); and

...

...

Allocating functions of apportionment and oversight

4.4.5 R A firm must appropriately allocate to one or more individuals, in accordance with the following table, the functions of:

...

<b>1: Firm type</b>	<b>2: Allocation of both functions must be to the following individual, if any (see Note):</b>	<b>3: Allocation to one or more individuals selected from this column is compulsory if there is no allocation to an individual in column 2, but is otherwise optional and additional:</b>
...	...	...
(2) <del>An incoming EEA firm or incoming Treaty firm</del> <u>A TP firm</u> (note: only the functions in SYSC 4.4.5R(2) must be allocated)	...	...
...	...	...

## 4.4.6 G Frequently asked questions about allocation of functions in SYSC 4.4.5R

Question		Answer
...	...	...
11	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an <i>overseas firm</i> which is not an <i>incoming EEA firm</i> , <i>incoming Treaty firm</i> , a <i>TP firm</i> or <i>UCITS qualifier TP UCITS qualifier</i> ?	...
12	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an a <i>TP firm incoming EEA firm</i> or <i>incoming Treaty firm</i> ?	<del>SYSC 1 Annex 1.1.1R(2) and SYSC 1 Annex 1.1.8R restrict the application of SYSC 4.4.5R for such a firm. Accordingly:</del>
		(1) Such a <i>firm</i> is not required to allocate the function of dealing with apportionment in SYSC 4.4.5R(1).
		(2) Such a <i>firm</i> is required to allocate the function of oversight in SYSC 4.4.5R(2). <del>However, the systems and controls that must be overseen are those relating to matters which the appropriate regulator, as Host State regulator, is entitled to regulate (there is guidance on this in SUP 13A Annex 2). Those are primarily, but not exclusively, the systems and controls relating to the conduct of the firm's activities carried on from its UK branch.</del>
		(3) Such a <i>firm</i> need not allocate the function of oversight to its <i>chief executive</i> ; it must allocate it to one or more <i>directors</i> and <i>senior managers</i> of the <i>firm</i> or the <i>firm's group</i> under SYSC 4.4.5R, row (2).
		(4) <del>An <i>incoming EEA firm</i> which has provision only for cross border services is not required to allocate either function if it does not carry on regulated activities in the United Kingdom; for example if they fall within the overseas persons</del>

		exclusions in article 72 of the <i>Regulated Activities Order</i> . [deleted] See also Questions <u>Question 1 and 15</u> .
...	...	...
15	What about <del>incoming electronic commerce activities carried on from an establishment in another EEA State with or for a person in the United Kingdom?</del>	<i>SYSC</i> does not apply to an <i>incoming ECA provider</i> acting as such. [deleted]

...

## 22.1 Application

...

Territorial scope and overseas firms

...

- 22.1.5 R This chapter does not apply to:
- (1) an *overseas firm* that does not have an establishment in the *United Kingdom*;
  - (2) a *UCITS qualifier* (see section 266 of the Act (Disapplication of rules)) *TP UCITS qualifier*;
  - (3) an *AIFM qualifier* a *TP AIFM qualifier*; or
  - (4) an *incoming EEA firm* a *TP firm* that is an ~~EEA~~ a *pure reinsurer*.
- 22.1.6 R For an *incoming firm* or any other *overseas firm*, *SYSC* 22.2.2R (Obligation to give references) only applies if the current or former *employee* in question (defined as “P” in *SYSC* 22.2.2R) is or was an *employee* of its *branch* in the *United Kingdom* and only relates to their activities as such.

...

## 23 Senior managers and certification regime: Introduction and classification

...

## 23 Definition of SMCR firm and different types of SMCR firms

### Annex 1

Part One: Flow diagram and other basic provisions

...

1.2 R ...

1.3 R (1) A Gibraltar-based firm (as defined in GEN 2.3 (General saving of the Handbook for Gibraltar)) is treated as a TP firm for the purposes of deciding into which category of SMCR firm it falls. In particular, it is to be treated as an EEA SMCR firm.

(2) (1) is without prejudice to the generality of GEN 2.3.

...

#### Part Three: Definition of exempt firm

...

3.3 R ~~An incoming EEA firm~~ A TP firm that is ~~an EEA~~ a pure reinsurer is an exempt firm.

#### Part Four: Definition of banking sector

...

4.4 R A firm is also in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is a non-UK institution other than ~~an incoming firm~~ a TP firm that meets the following conditions:

...

4.5 R An SMCR banking firm in SYSC 23 Annex 1 4.4R is ~~a third-country~~ an overseas SMCR banking firm.

4.6 R A firm is also in the banking sector for the purposes of the flow diagram in Part One of this Annex if it is ~~an incoming EEA firm or incoming Treaty firm~~ a TP firm that meets the following conditions:

- (1) it has a *branch* in the *United Kingdom*;
- (2) it is not an institution authorised under the *Act* to carry on the *regulated activity* of *effecting contracts of insurance* or *carrying out contracts of insurance*; and
- (3) it meets one of the following conditions:
  - (a) it is a *credit institution* which has a *permission* under Part 4A, ~~Schedule 3 or Schedule 4~~ of the *Act* that includes *accepting deposits*; or
  - (b) it meets all the following conditions:
    - (i) the institution is an *investment firm*;

- (ii) it has a *permission* under Part 4A, ~~Schedule 3 or Schedule 4~~ of the *Act* that covers *dealing in investments as principal*; and
- (iii) when carried on by it, that activity is a *PRA-regulated activity*.

...

## 24 Senior managers and certification regime: Allocation of prescribed responsibilities

...

### 24.3 Who prescribed responsibilities should be allocated to

...

Dividing and sharing management functions between different people

...

#### 24.3.10 G ...

- (2) The *firm* should make the judgement:

...

- (e) article 21 of the *MiFID Org Regulation* (General organisational requirements) or other similar relevant ~~and directly applicable EU legislation~~ *onshored regulations*.

...

...

## 24 Annex 1 Which FCA-prescribed senior management responsibilities apply to which kind of firm

...

Banking sector firms

#### 2.1 R ...

- (2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):

...

- (c) ~~a third-country~~ *an overseas SMCR banking firm*.

...

2.3 R Table: FCA-prescribed senior management responsibilities applying to banking sector firms

Brief description of responsibility	Reference letter of responsibility	UK firm	Small UK firm	<del>Third-country</del> <u>Overseas</u> firm
-------------------------------------	------------------------------------	---------	---------------	---

...

...

...

...

...

**Note (1):** the categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* in SYSC 24 Annex 1 2.1R. Therefore:

...

(c) column five (~~Third-country~~ Overseas firm) refers to SYSC 24 Annex 1 2.1R(2)(c).

...

Insurance sector firms

3.1 R ...

(2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):

...

(b) a *firm* falling within paragraph (b) of the definition of *Solvency II firm* (~~third-country branch undertaking that would require Part 4A permission as an insurance or reinsurance undertaking if its head office were situated in the United Kingdom~~);

...

...

...

3.3 R Table: FCA-prescribed senior management responsibility applying to insurance sector firms

Brief description of responsibility	Reference letter of responsibility	Solvency II firm	<del>Third country</del> <u>Overseas</u> branches	Other insurance sector	ISPV
...	...	...	...	...	...

**Note:** The categories of *firm* in the column headings of this table are to be interpreted in accordance with the classification of *firms* in SYSC 24 Annex 1 3.1R. Therefore:

...

(2) ~~Third country~~ Overseas branches (column four) refers to SYSC 24 Annex 1 3.1R(2)(b);

...

...

**25 Senior managers and certification regime: Management responsibilities maps and handover procedures and material**

...

**25.6 Management responsibilities maps: Material only relevant to EEA SMCR firms**

Application

25.6.1 R ...

Purpose

25.6.2 G (1) ~~The *management responsibilities map* is an important support to the FCA's functions as *Host State competent authority*. [deleted]~~

(2) ~~Having requirements and powers that apply directly to individuals helps to make the requirements on *firms* that the FCA is required or entitled to impose as *Host State competent authority* more effective.~~

(3) ~~As explained in SYSC 25.1.6G (Purpose), the *management responsibilities map* also helps the FCA to operate its powers and requirements for individuals.~~

(4) ~~By helping the FCA to better understand how the *branch* is structured, the *management responsibilities map* also helps the FCA to carry out more effective supervision of conduct of business, money laundering and other *Host State* responsibilities.~~

25.6.3 G ~~This chapter is not intended to extend the application of the *common platform requirements* or other parts of SYSC to matters which are reserved by an *EU instrument* to the *firm's Home State regulator* in relation to *EEA SMCR firms*. [deleted]~~

...

Leaving out information already supplied

25.6.5 R ~~An *EEA SMCR firm* may exclude has, before *exit day*, excluded any information from its *management responsibilities map*: under this section in~~

the form this section was in immediately before *exit day*, it may continue to exclude it after *exit day*.

- (1) ~~any information contained in its *requisite details*;~~
- (2) ~~any information contained in any notice of changes to its *requisite details* under the *EEA Passport Rights Regulations*; and~~
- (3) ~~any other information that has been supplied by the *firm* to the *FCA* or the *PRA* (including through the *firm's Home State competent authority*) if:~~
  - (a) ~~that information was supplied to the *FCA* or the *PRA* as a *Host State competent authority*; and~~
  - (b) ~~the *Single Market Directives* or any other *EU* legislation provides for the supply of that information to the *FCA* or the *PRA* as described in (a).~~

25.6.6 G ~~Information contained in SYSC 25.6.5R(1) and (2) covers: [deleted]~~

- (1) ~~details about the *branch* contained in the notice given by the *firm's Home State competent authority* as part of the process for establishing the *branch* in the *United Kingdom*; and~~
- (2) ~~any updates to that information under the *EEA Passport Rights Regulations*.~~

25.6.7 G ~~The *management responsibilities map* of an *EEA SMCR firm* may therefore consist of information: [deleted]~~

- (1) ~~that has changed since its *requisite details* were supplied or were last changed; or~~
- (2) ~~that is not covered in the *firm's Home State competent authority's* passport notification.~~

25.6.8 G ~~The If an *EEA SMCR firm* excludes information from its *management responsibilities map* under SYSC 25.6.5R it should take into account the *guidance* in this section in the form this section was in immediately before *exit day*. In particular, the *FCA* expects that an *EEA SMCR firm* that excludes information from its *management responsibilities map* under SYSC 25.6.5R will identify in its *management responsibilities map* the documents supplied to the *FCA* or the *PRA* where the omitted information can be found.~~

25.6.9 G ~~In practice an *EEA SMCR firm* may find it easier to prepare its *management responsibilities map* without omitting any information under SYSC 25.6.5R so that all the information referred to in SYSC 25.2 (Management responsibilities maps: Main rules) can be found in a single integrated document. [deleted]~~



25.6.10 G ~~SYSC 25.4 (Guidance about what should be in a management responsibilities map) does not take into account the right of a *firm* to omit information under SYSC 25.6.5R. It assumes that the *firm* will prepare a single *document* under SYSC 25.6.9G. However SYSC 25.4 is not intended to take away the right to omit information under SYSC 25.6.5R. [deleted]~~

...

## 25.9 Handover procedures and material

### Application

25.9.1 R This section applies to a *firm* that meets the following conditions:

- (1) it falls within SYSC 25.1.1R (Application and purpose); and
- (2) it falls within one of the following categories:
  - (a) it is a *UK SMCR firm*; or
  - (b) it is ~~a *third-country*~~ an *overseas SMCR banking firm*.

25.9.2 R For ~~*third-country*~~ *overseas SMCR banking firms*, references in this section to an *SMF manager* are references to the *SMF manager* when acting as an *SMF manager* for the *firm's branch* in the *United Kingdom*.

...

## 25 Annex Examples of the business activities and functions of an SMCR firm 1G

Business areas and management functions	Explanation
...	...
(10) Market making	This has the same meaning as it does in <del><i>MIFID</i></del> (see the definition of market maker in article 4.1(7)) <u>the <i>Glossary</i> definition of <i>market maker</i></u> .
...	...

## 26 Senior managers and certification regime: Overall and local responsibility

### 26.1 Application

...

#### Territorial scope

...

26.1.7 R Table: Application of this chapter to ~~a third country~~ an overseas SMCR firm

...

## 26.6 Meaning of local and overall responsibility: General

UK firms

...

26.6.2 G (1) ~~Certain EU legislation requires~~ requirements of the regulatory system say that the governing body of a firm to certain firms should have ultimate responsibility for, and the prime and leading role in, managing the *firm*.

(2) In particular this is the case under:

- (a) ~~article 88 of the CRD (Governance arrangements)~~ SYSC 4.3A.1R (Management body); and
- (b) ~~article 9 of MiFID (management body); and~~ [deleted]
- (c) ~~article 40 of the Solvency II Directive (Responsibility of the administrative, management or supervisory body)~~ rule 2.1 in the Part of the PRA Rulebook called Conditions Governing Business (General Governance Requirements).

...

...

## 27 Senior managers and certification regime: Certification regime

...

### 27.6 Other exclusions

Single Market Directives

27.6.1 G ~~Under section 63E(7) of the Act, this chapter does not apply to an arrangement which allows an employee to perform a function if the question of whether the employee is fit and proper to perform the function is reserved under any of the Single Market Directives or the auction regulation to an authority in a country or territory outside the United Kingdom. [deleted]~~

...

### 27.8 Definitions of the FCA certification functions

...

...

Functions requiring qualifications

...

27.8.11 G ...

- (2) SYSC 27.8.10R applies to an *overseas SMCR firm* irrespective of whether the function in TC App 1.1.1R (Activities and Products/Sectors to which TC applies) applies to ~~incoming EEA firms~~ TP firms or *overseas firms* for the purposes of TC.

...

...

Material risk takers

...

27.8.15 R Table: Definition of material risk taker

Type of SMCR firm	Employees included
<p>(1) <del>A UK An</del> <u>An</u> SMCR banking firm <del>A third-country SMCR banking firm</del></p>	<p>Each member of the <i>dual-regulated firms Remuneration Code staff</i> of the firm in column (1) of this row (1).  This includes any <i>person</i> who meets any of the criteria set out in articles 3 to 5 of <del>Commission Delegated Regulation (EU) No 604/2014</del> <u>the Material Risk Takers Regulation</u> (criteria to identify categories of staff whose professional activities have a material impact on an institution’s risk profile).</p>
<p>(2) <del>An EEA SMCR banking firm</del> For these purposes, subparagraphs (i) and (ii) in SYSC 19D.1.1R(1)(d) (application of the dual-regulated firms Remuneration Code) do not apply. <del>[deleted]</del></p>	<p>In relation to a firm in column (1) of this row (2), the definition of <i>dual-regulated firms Remuneration Code staff</i> is extended so that it includes <i>employees</i> of this kind of firm in the same way as it includes <i>employees</i> of a <del>third country SMCR banking firm</del>.</p>
<p>...</p>	<p>...</p>
<p><b>Note:</b> <u>The definition of the persons included in column (2) applies in relation to a TP firm in one of the rows of column (1) in the same way as it does to other overseas SMCR firms in that row. The definition of dual-regulated firms Remuneration Code staff applies accordingly.</u></p>	

...

Client-dealing function

...

27.8.19 R Table: Activities covered by the client-dealing FCA certification function

Activity	Comments
...	...
(5) <del>Acting as a ‘bidder’s representative’ in relation to <i>bidding in emissions auctions</i>. [deleted]</del>	Acting as a ‘bidder’s representative’ has the meaning in sub_paragraph 3 of article 6(3) of the <i>auction regulation</i> .

...

## Annex B

### Amendments to the Code of Conduct sourcebook (COCON)

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

#### 1 Application and purpose

##### 1.1 Application

...

Where does it apply?

...

- 1.1.12 R *A person will not be subject to COCON to the extent that it this would be contrary to the ~~UK's obligations under a Single Market Directive, the auction regulation or the benchmarks regulation~~ requirements of an EU measure passed or made before exit day, to the extent that those requirements continue to have effect after exit day under the EUWA.*

...

## Annex C

### Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

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

#### 1 Application and purpose

##### 1.1A Application

...

What?

...

- 1.1A.4 G ~~The relevance of *MiFID* to the *Statements of Principle* will depend on the extent to which the corresponding requirement imposed on *firms* under *MiFID* is reserved to a *Home State regulator* or has been disappplied under *MiFID* (see *APER* 2.1A.2R and *FIT* 1.2.4AG. See also *COBS* 1 Annex 1, Part 2, 1.1R (EEA territorial scope rule: compatibility with European law)).~~  
[deleted]

Where?

- 1.1A.5 G The territorial scope of the *approved persons* regime and its application to *incoming EEA firms* is set out in *SUP* 10A.1 (see *SUP* 10A.1.11R and *SUP* 10A.1.13R).

...

#### 2 The Statements of Principle for Approved Persons

##### 2.1A The Statements of Principle

...

- 2.1A.2 R An *approved person* will not be subject to a *Statement of Principle* to the extent that ~~it this would be contrary to the *UK's obligations* under a *Single Market Directive*, the *auction regulation* or the *benchmarks regulation* requirements of an *EU* measure passed or made before *exit day*, to the extent that those requirements continue to have effect after *exit day* under the *EUWA*.~~

...

## Annex D

### Amendments to the Fit and Proper test for Employees and Senior Personnel sourcebook (FIT)

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

#### 1 General

##### 1.1 Application and purpose

1.1.1 G *FIT* applies to:

...

- (3) ~~an EEA firm or a Treaty firm that wishes to establish a branch into the United Kingdom using EEA rights or Treaty rights; or apply for a top-up permission; [deleted]~~

...

...

##### 1.2 Introduction

...

1.2.4A G (1) ~~Under Article 21(1)(d) of the MiFID Org Regulation and articles 34 and 35 of MiFID, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the firm's Home State. Therefore, in assessing the fitness and propriety of: [deleted]~~

(a) ~~a person to perform a controlled function; or~~

(b) ~~a certification employee;~~

~~solely in relation to the MiFID business of an incoming EEA firm, the FCA will not have regard to that person's competence and capability.~~

(2) ~~Where the function relates to:~~

(a) ~~matters outside the scope of MiFID; or~~

(b) ~~business outside the scope of the MiFID business of an incoming EEA firm, for example insurance distribution activities in relation to life policies; or~~

- (e) matters within the responsibility of the *FCA* as the *Host State regulator*, for example *money laundering* responsibilities (see the *money laundering reporting function* (CF11 and SMF17)) or (3) below;

the *FCA* will have regard to a *person's* competence and capability as well as their honesty, integrity, reputation and financial soundness.

- (3) The *FCA* will have regard to a natural *person's* competence and capability to the extent they give a *personal recommendation* or information about *financial instruments, structured deposits, investment services* or *ancillary services* on behalf of a *UK branch* of:
  - (a) an *investment firm* authorised under *MiFID*;
  - (b) an *AIFM investment firm* carrying out activities under article 6(4) of the *AIFMD* (provision of additional services);
  - (c) a *UCITS investment firm* carrying out activities under article 6(3) of the *UCITS Directive* (provision of additional services); or
  - (d) a *credit institution*.
- (4) (3) is the result of the combined effect of articles 25(1) (Assessment of suitability and appropriateness and reporting to clients) and 35(8) (Establishment of a branch) of *MiFID*.
- (5) (1) to (4) are also relevant to the matters an *EEA SMCR firm* should take into account when assessing any *staff being assessed under FIT*. Where, under (1) to (4):
  - (a) the *FCA* will have regard to a *person's* competence and capability, so should a *firm* when assessing any *staff being assessed under FIT*; and
  - (b) the *FCA* will not have regard to a *person's* competence and capability, a *firm* need not do so either when assessing any *staff being assessed under FIT*.

...

- 1.2.4C G Under article 10(1) and (2) of the *IDD* appropriate knowledge and ability is reserved to the *firm's Home State* (see *SUP 13A Annex 2G*). [deleted]

...



## Annex E

## Amendments to the Supervision manual (SUP)

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

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

**10A FCA Approved Persons**

**10A.1 Application**

...

Incoming EEA firms, incoming Treaty firms and UCITS qualifiers

10A.1.7 R ~~This chapter does not apply to: [deleted]~~

(1) ~~an incoming EEA firm; or~~

(2) ~~an incoming Treaty firm; or~~

(3) ~~a UCITS qualifier;~~

if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved, under any of the *Single Market Directives*, the *Treaty*, the *UCITS Directive* or the *auction regulation* or the *benchmarks regulation*, to an authority in a country or territory outside the *United Kingdom*.

10A.1.8 G ~~SUP 10A.1.7R reflects the provisions of section 59(8) of the Act and, in relation to an incoming Treaty firm and a UCITS qualifier, the Treaty and the UCITS Directive. It preserves the principle of Home State prudential regulation. In relation to an incoming EEA firm exercising an EEA right, or an incoming Treaty firm exercising a Treaty right, the effect is to reserve to the Home State regulator the assessment of the fitness and propriety of a person performing a function in the exercise of that right. A member of the governing body, or the notified UK branch manager, of an incoming EEA firm, acting in that capacity, will not therefore have to be approved by the FCA under the Act. [deleted]~~

10A.1.9 G Notwithstanding SUP 10A.1.8G, an incoming EEA firm or incoming Treaty firm will have had to consider the impact of the *Host State* rules with which it is required to comply when carrying on a *passported activity* or *Treaty activity* through a *branch* in the *United Kingdom*. An incoming EEA firm will have been notified of those provisions under Part II of Schedule 3 to the Act in the course of satisfying the conditions for *authorisation* in the *United Kingdom*. [deleted]

- 10A.1.10 G ~~An incoming EEA firm will have to consider, for example, the position of a branch manager based in the United Kingdom who may also be performing a function in relation to the carrying on of a regulated activity not covered by the EEA right of the firm. In so far as the function is within the description of an FCA controlled function, the firm will need to seek approval for that person to perform that FCA controlled function. [deleted]~~

Incoming EEA firms: passported activities from a branch

- 10A.1.11 R (1) Only the following *FCA controlled functions* apply to ~~an incoming EEA firm~~ a TP firm with respect to its ~~passport~~ passport ~~activities~~ passport ~~activities~~ activities (as defined in (2)) carried on from a *branch* in the *United Kingdom*:
- (a) the *money laundering reporting function*;
  - ~~(1)~~
  - (b) the *significant management function*, in so far as the function relates to:
    - (i) *designated investment business* other than ~~dealing in investments as principal~~, disregarding article 15 of the *Regulated Activities Order*; or
    - ~~(a)~~
    - (ii) processing confirmations, payments, settlements, insurance claims, *client money* and similar matters, in so far as this relates to *designated investment business*; and
    - ~~(b)~~
  - (c) the *customer function* other than where this relates to the function in *SUP 10A.10.7R(4)* and *(7)*.
  - ~~(3)~~
- (2) For the purposes of this rule, “passport activities” of a TP firm means regulated activities that meet the following conditions:
- (a) they are included in the permission of the *TP firm* under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018; and
  - (b) the firm was entitled to carry them on in the United Kingdom immediately before exit day by virtue of section 31(1)(b) or (c) of the Act as it was in force immediately before exit day.

...

Incoming EEA firms etc with top-up permission activities from a UK branch

- 10A.1.13 R In relation to the ~~activities~~ *regulated activities* of a *TP firm* ~~for which it has a top-up permission~~ that are not passported activities (as defined in SUP 10A.1.11R), only the following *FCA controlled functions* apply:

...

...

Appointed representatives

- 10A.1.15 R The descriptions of the following *FCA controlled functions* apply to an *appointed representative* of a *firm*, except in relation to *CBTL business* or an *introducer appointed representative*, as they apply to an *FCA- authorised person*:

- (1) the *FCA governing functions*, subject to SUP 10A.1.16R and except for a *tiered agent* of ~~an~~ a *firm* that is both an *EEA MiFID investment firm* and a *TP firm*; and

...

...

Oil market participants, service companies, energy market participants, subsidiaries of local authorities or registered social landlords and insurance intermediaries:-

...

- 10A.1.18 R The descriptions of *FCA significant-influence functions*, other than the *FCA required functions*, and, if the *firm* is a *MiFID investment firm* or an *EEA MiFID investment firm* that is a *TP firm*, the *FCA governing functions* do not extend to activities carried on by a *firm* whose principal purpose is to carry on activities other than *regulated activities* and which is:

...

...

Bidders in emissions auctions

- 10A.1.21 G For a *firm* that is exempt from *MiFID* under article 2(1)(j) and whose ~~only permission is bidding in emissions auctions~~, the only *FCA controlled functions* that apply to it are: [deleted]

- (1) ~~the *FCA governing functions*~~;

- (2) ~~the *money laundering reporting function*~~; and

~~(3) the customer function.~~

~~This is because the FCA-approved person regime specifies a number of functions by incorporation of requirements in SYSC; however, a firm carrying on auction regulation bidding is only subject to SYSC to a limited extent in relation to that activity. This means that the FCA required functions do not apply to auction regulation bidding, except for the money laundering reporting function. Similarly, the significant management function does not apply in relation to auction regulation bidding because, in carrying on that activity, a firm is not subject to SYSC 2.1.1R or SYSC 4.1.1R and is not undertaking proprietary trading.~~

...

10A.1.27 G ...

#### Gibraltar firms

10A.1.28 R (1) A Gibraltar-based firm (as defined in GEN 2.3 (General saving of the Handbook for Gibraltar)) is treated as a TP firm for the purposes of deciding into which categories of firm in this chapter it falls.

(2) (1) is without prejudice to the generality of GEN 2.3.

...

### 10A.6 FCA governing functions

...

What the FCA governing functions include

10A.6.3 R Each of the FCA governing functions includes:

(1) (where apportioned under SYSC 4.3.1R and SYSC 4.4.3R (or, for a full-scope UK AIFM apportioned under article 60(1) of the AIFMD level 2 regulation))

(a) ...

(b) the significant management function; .

(2) (in respect of bidding in emissions auctions) that part of the customer function specified in SUP 10A.10.7R(7) (bidder's representative). [deleted]

...

...

**10A.8 Systems and controls functions**

Systems and controls function (CF28)

...

10A.8.2 R The *systems and controls function* does not apply in relation to:

- (1) ~~*bidding in emissions auctions* carried on by a firm that is exempt from *MiFID* under article 2(1)(j); or [deleted]~~

...

...

Full scope UK AIFM

10A.8.5 G For a full-scope UK AIFM, the requirement to have an *employee* responsible for reporting to the *governing body* of the *firm* or the audit committee for matters in *SUP* 10A.8.1R(2) and *SUP* 10A.8.1R(3) is derived from the ~~AIFMD level 2 regulation~~ *AIFMD level 2 regulation*, which imposes obligations on such *firms* to have a permanent risk management function and, where appropriate and proportionate for their business, an internal audit function.

...

**10A.10 Customer-dealing functions**

...

Customer function (CF 30)

10A.10.7 R The *customer function* is the function of:

...

- (6) acting in the capacity of an *investment manager* and carrying on functions connected to this; <sub>2</sub>
- (7) ~~in relation to *bidding in emissions auctions*, acting as a 'bidder's representative' within the meaning of subparagraph 3 of article 6(3) of the *auction regulation*. [deleted]~~

...

**10A.14 Changes to an FCA-approved person's details**

Moving within a firm

...

10A.14.4A G (1) The *MiFID authorisation and management body change notification ITS* requires that *MiFID investment firms* (except *credit institutions*) submit the Annex III information on ~~the~~ ESMA a specified template (which is based on one prepared by ESMA and which is available at <https://www.fca.org.uk/publication/forms/mifid-changes-management-body-form.docx> ('Annex III template')) where there is a change to a member of the *management body* or a *person* who effectively directs the business.

...

...

Ceasing to perform an FCA controlled function

...

10A.14.9A G (1) The *MiFID authorisation and management body change notification ITS* requires that a *MiFID investment firm* (except a *credit institution*) submit the information in Annex III of the *MiFID authorisation and management body change notification ITS* on the ~~ESMA~~ Annex III template referred to in SUP 10A.14.4AG where there is a change to a member of the *management body* or a *person* who effectively directs the business.

...

...

**10A Annex 1G Frequently asked questions**

	Question	Answer
...	...	...
	<b>Requirements of the regime</b>	
...	...	...
4	Do the <i>FCA controlled functions</i> apply to an <del>incoming EEA firm</del> <u>overseas firm</u> that is providing <del>cross-border services</del> <u>cross-border services</u> into the <u>United Kingdom from an overseas establishment</u> ?	No. The <i>FCA-approved persons regime</i> does not apply to <del>cross-border services</del> <u>cross-border services</u> ( <i>SUP 10A.1.5R</i> ).
...	...	...

...

**10C FCA senior managers regime for approved persons in SMCR firms****10C.1 Application**

...

...

EEA firms: general application

- 10C.1.4 R ~~This chapter does not apply to an *SMCR firm* if and in so far as the question of whether a *person* is fit and proper to perform a particular function in relation to that *firm* is reserved to an authority in a country or territory outside the *United Kingdom* under: [deleted]~~
- ~~(1) the *Single Market Directives*;~~
  - ~~(2) the *Treaty*;~~
  - ~~(3) the *auction regulation*;~~
  - ~~(4) the *benchmarks regulation*.~~
- 10C.1.5 G (1) ~~*SUP* 10C.1.4R reflects the provisions of section 59(8) of the *Act* and, where relevant, the *Treaty*. [deleted]~~
- ~~(2) It preserves the principle of *Home State* prudential regulation.~~
  - ~~(3) For an *EEA SMCR firm*, the effect is to reserve to the *Home State regulator* the assessment of fitness and propriety of a *person* performing a function in the exercise of an *EEA right*. A member of the *governing body*, or the notified *UK branch manager*, of an *EEA SMCR firm*, acting in that capacity, will not, therefore, have to be approved by the *FCA* under the *Act*.~~
  - ~~(3A) For example, *persons* in *Solvency II firms* which are *incoming EEA firms* are not expected to be carrying out *FCA* functions to the extent that the *person* will be regarded as effectively running the *firm* or responsible for a *Solvency II Directive* ‘key function’.~~
  - ~~(4) Aside from (1) to (3A) an *EEA SMCR firm* should have:~~
    - ~~(a) considered the impact of the *Host State* rules with which it is required to comply when carrying on a *passported activity* or a *Treaty activity* through a *branch* in the *United Kingdom*;~~

- (b) ~~been notified of those provisions under Part II of Schedule 3 to the Act in the course of satisfying the conditions for *authorisation* in the *United Kingdom*; and~~
- (c) ~~considered, for example, the position of a *branch manager* based in the *United Kingdom* who may also be performing a function in relation to the carrying on of a *regulated activity* not covered by the *EEA right* of the *firm*. In so far as the function is within the description of an *FCA controlled function*, the *firm* will need to seek approval for that *person* to perform that *FCA controlled function*.~~

...

10C.1.12 G ...

Gibraltar firms

10C.1.13 G SYSC 23 Annex 1 1.3R says that a Gibraltar-based firm (as defined in GEN 2.3 (General saving of the Handbook for Gibraltar)) is treated as a TP firm for the purposes of deciding into which categories of SMCR firm it falls.

10C.1.14 G In particular, this means that it is to be treated as an EEA SMCR firm.

...

**10C.8A EEA branch senior manager function (SMF21)**

...

10C.8A.2 R ...

(4) ~~Paragraph (2)(d) only applies in relation to the *activities regulated activities* of a *firm* for which it has a *top-up permission* that are not passported activities as defined in (5).~~

(5) For the purposes of this rule, “passported activities” of a TP firm means *regulated activities* that meet the following conditions:

- (a) they are included in the *permission* of the TP firm under the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018; and
- (b) the *firm* was entitled to carry them on in the *United Kingdom* immediately before *exit day* by virtue of section 31(1)(b) or (c) of the Act as it was in force immediately before *exit day*.



...

**10C.10 Application for approval and withdrawing an application for approval**

...

How to apply for approval

...

- 10C.10.9A G (1) The *MiFID authorisation and management body change notification ITS* requires that *MiFID investment firms* (except *credit institutions*) submit the Annex III information on ~~the~~ ESMA a specified template (which is based on one prepared by ESMA and which is available at <https://www.fca.org.uk/publication/forms/mifid-changes-management-body-form.doc> ('Annex III template')) where there is a change to a member of the *management body* or a *person* who effectively directs the business.

...

...

**10C.14 Changes to an FCA-approved person's details**

...

Ceasing to perform an FCA-designated senior management function

...

- 10C.14.6A G (1) The *MiFID authorisation and management body change notification ITS* requires that a *MiFID investment firm* (except a *credit institution*) submit the information in Annex III of the *MiFID authorisation and management body change notification ITS* on the ~~ESMA~~ Annex III template referred to in SUP 10C.10.9AG where there is a change to a member of the *management body* or a *person* who effectively directs the business.

...

...

**10C Annex 1 What functions apply to what type of firm**

...

...

Part Three: Functions applying to banking sector firms

- 3.1 R ...
- (2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):
- ...
- (c) ~~a *third country*~~ an overseas SMCR banking firm.

3.2 R Table: Controlled functions applying to banking firms

(1) Brief description of function	(2) Function number	(3) UK firm	(4) EEA firm	(5) <del>Third-country</del> <u>Overseas</u> firm
...				
<p>Note: The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> in SUP 10C Annex 1 3.1R. Therefore:</p> <p>...</p> <p>(3) column five (<del>Third-country</del> <u>Overseas</u> firm) refers to SUP 10C Annex 1 3.1R(2)(c).</p>				

Part Four: Functions applying to insurance sector firms

- 4.1 R ...
- (2) *SMCR firms* in (1) are divided into the following categories for the purposes in (1):
- (a) a *Solvency II firm* not within any other paragraph of this rule;
- (b) a *Solvency II firm* ~~within paragraph (c) of the Glossary definition of *Solvency II firm* (EEA branch)~~ that is a TP firm;
- (c) a *Solvency II firm* that:
- (i) is within paragraph (b) of the Glossary definition of *Solvency II firm* (~~third country branch~~ undertaking that would require Part 4A permission as an insurance or reinsurance undertaking if its head office were situated in the United Kingdom); and
- (ii) does not fall within SUP 10C Annex 1 4.1R(2)(b);

...

...

...

4.3 R Table: Controlled functions applying to insurance sector firms

(1) Brief description of function	(2) Function number	(3) Solvency II and large NDF	(4) EEA branches	(5) <del>Third country</del> <u>Overseas</u> branches	(6) Small NDF and other	(7) ISPV
...						
<p>Note 1: The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> at SUP 10C Annex 1 4.1R. Therefore:</p> <p>...</p> <p>(c) column five (<del>Third country</del> <u>Overseas</u> branches) refers to SUP 10C Annex 1 4.1R(2)(c);</p> <p>...</p>						
...						

...

**TP 6 Financial Services (Banking Reform) Act 2013: Approved persons**

Note to the reader

6.1.1-2 G (1) SUP TP 6 has not been amended to reflect changes in the *FCA Handbook* and *Glossary* since the beginning of 2018 (except for some changes to SUP TP 6.1.1-1G made in 2019). This is because it is made up of transitional provisions that mostly expired before then.

...

6.1.1-1 G Table: Meaning of superseded Glossary terms

Term in SYSC TP 5	Term that has replaced it
EEA relevant authorised person	<i>EEA SMCR banking firm</i>
non-UK relevant authorised person	an <i>EEA SMCR banking firm</i> or a <del><i>third-country SMCR banking firm</i></del> <u>an overseas SMCR banking firm</u>
...	...

third-country relevant authorised person	<del>third-country</del> <u>overseas SMCR banking firm</u> but not an <u>EEA SMCR banking firm</u>
...	...

...

**Part 2: Comes into force on 27 September 2019**

**10A FCA Approved Persons**

...

**10A.6 FCA governing functions**

...

Director function (CF1)

...

10A.6.8 R ...

(2) (1) does not apply if that *parent undertaking or holding company* has a *Part 4A permission* ~~or is regulated by an EEA regulator~~.

...

...

Non-executive director function (CF2)

...

10A.6.13 ...

(2) However, (1) does not apply if that *parent undertaking or holding company* has a *Part 4A permission* ~~or is regulated by an EEA regulator~~.

...

**EXITING THE EUROPEAN UNION: SMCR AND APR (AMENDMENTS) (SOLO-REGULATED FIRMS) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
  - (2) section 59AB(1) (Specifying functions as controlled functions: transitional provision);
  - (3) section 60 (Applications for approval);
  - (4) section 60A (Vetting candidates by authorised persons);
  - (5) section 61 (Determination of applications);
  - (6) section 63E (Certification of employees by authorised persons);
  - (7) section 63F (Issuing of certificates);
  - (8) section 64A (Rules of conduct);
  - (9) section 137A (The FCA’s general rules);
  - (10) section 137T (General supplementary powers);
  - (11) section 139A (Power of the FCA to give guidance)[; and]
  - (12) [Transitional regulations].
- 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 [9 December 2019] except for Part 1 of Annex C, which comes into force [about six months before [9 December 2019]].

**Amendments to the Handbook**

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

(1)	(2)
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex A
Fit and Proper test for Employees and Senior Personnel (FIT)	Annex B
Supervision manual (SUP)	Annex C

**Notes**

- E. In this instrument, notes shown as “*Editor’s note:*” are intended for the convenience of the reader and do not form part of the legislative text.

**Citation**

- F. This instrument may be cited as the Exiting the European Union: SMCR and APR (Amendments) (Solo-Regulated Firms) Instrument 2019.

By order of the Board  
[date]

*Editor’s notes:*

- (1) The amendments in this draft instrument are prepared as if the near-final version of the Individual Accountability (FCA-Authorised Firms) Instrument 2018 (the solo-regulated firms instrument) included in Policy Statement PS18/14 (Extending the Senior Managers & Certification Regime to FCA firms - Feedback to CP17/25 and CP17/40, and near-final rules) were made and in force.
- (2) The text of the solo-regulated firms instrument was based on a version of the Individual Accountability (Dual-Regulated Firms) Instrument 2018 that was slightly different from the version that was eventually made. We have not marked up the changes needed to bring the solo-regulated firms instrument into line with the Handbook as currently in force.
- (3) If a provision in the Handbook is amended both by this draft instrument and by the solo-regulated firms instrument, the combined amendments are shown so as to make the proposed text as clear as possible. This may mean that amendments proposed in the solo-regulated firms instrument are shown again here. However, if the required changes to the solo-regulated firms instrument would not be significant we do not show them.
- (4) The amendments in this draft instrument take account of those in the Exiting the European Union: SMCR and APR (Amendments) Instrument 2019.
- (5) The text in this instrument does not take account of the proposed changes in CP18/26 (Claims management companies: how we propose to apply the Senior Managers and Certification Regime), CP19/4 (Optimising the Senior Managers & Certification Regime and feedback to DP16/4 – Overall responsibility and the legal function) or (save as described in (1)) in any other consultation or near-final Handbook amendments that have not yet been included in the Handbook as finalised and made text.

**Annex A**

**Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)**

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

**4 General organisational requirements**

...

**4.4 Apportionment of responsibilities**

Application

4.4.1A R ...

(4) Only SYSC 4.4.5R(2) applies to a *TP firm* ~~or a *TP UCITS* qualifier~~.

...

...

Allocating functions of apportionment and oversight

...

4.4.6 G Frequently asked questions about allocation of functions in SYSC 4.4.5R

Question		Answer
...	...	...
11	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an <i>overseas firm</i> which is not a <i>TP firm</i> <del>or <i>TP UCITS</i> qualifier</del> ?	...
...	...	...

...

**23 Definition of SMCR firm and different types of SMCR firms**

**Annex 1**

...

## Part Three: Definition of exempt firm

...

3.4 R ~~A UCITS qualifier~~ TP UCITS qualifier is an exempt firm (~~see section 266 of the Act (Disapplication of rules)~~).

3.5 R ~~An AIFM qualifier~~ A TP AIFM qualifier is an exempt firm.

...

## Part Six: Definition of limited scope SMCR firm

...

6.3 R A firm listed in the table in SYSC 23 Annex 1 6.4R is a *limited scope SMCR firm* if:

- (1) its principal purpose is to carry on activities other than *regulated activities*; and
- (2) it is not a *MiFID investment firm* or an EEA MiFID investment firm that is a TP firm.

...

## Part Seven: Exclusion from enhanced regime

...

7.4 R ~~A firm is excluded from the enhanced regime if: [deleted]~~

- (1) ~~it is exempt from MiFID under article 2(1)(j); and~~
- (2) ~~its only permission is bidding in emissions auctions.~~

...

## 24 Senior managers and certification regime: Allocation of prescribed responsibilities

...

### 24 Which FCA-prescribed senior management responsibilities apply to which kind of firm

#### Annex 1

...

## Solo regulated firms



...

4.2 R Table: FCA-prescribed senior management responsibility applying to solo regulated firms

(1) Brief description of responsibility	(2) Reference letter of responsibility	(3) UK core firm	(4) <del>Third country</del> <u>Overseas</u> core firm	(5) Enhanced scope firm
...				
<p><b>Note:</b> The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> in SYSC 24 Annex 1 4.1R. Therefore:</p> <p>...</p> <p>(2) <del>Third country</del> <u>Overseas</u> core firm (column four) refers to SYSC 24 Annex 1 4.1R(2)(b); and</p> <p>...</p>				

...

**26 Senior managers and certification regime: Overall and local responsibility**

**26.1 Application**

...

Territorial scope

...

26.1.7 R Table: Application of this chapter to a ~~third country~~ an overseas SMCR firm

Reference in this chapter	Modification
...	...
chief executive	<i>branch manager or the person performing the head of <del>third country overseas</del> branch function or the PRA's Head of Overseas Branch designated senior management function</i>

...

**27 Senior managers and certification regime: Certification regime**

...

**27.8 Definitions of the FCA certification functions**

...

Material risk takers

...

27.8.15 R Table: Definition of material risk taker

Type of SMCR firm	Employees included
...	...
<p>(5) A <i>firm</i> that would fall within SYSC 19A.1 if it applied to an <i>incoming EEA firm</i></p> <p>For these purposes sub-paragraphs (i) and (ii) in SYSC 19A.1.1R(1)(d) (application of the Remuneration Code) do not apply. <u>[deleted]</u></p>	<p>In relation to a <i>firm</i> in column (1), the definition of <i>Remuneration Code staff</i> is extended so that it includes <i>employees</i> of this kind of <i>firm</i> in the same way as it includes <i>employees</i> of an <i>overseas firm</i> in row (4) of this table.</p>
...	...
<p>(7) An <i>above-threshold non-EEA non-UK AIFM</i> or an <i>incoming EEA AIFM</i></p>	...
...	...
<p>(9) A <i>firm</i> that would fall within SYSC 19C.1 if it applied to an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i> <u>[deleted]</u></p>	<p>In relation to a <i>firm</i> in column (1), the definition of <i>BIPRU Remuneration Code staff</i> is extended so that it includes <i>employees</i> of this kind of <i>firm</i> in the same way as it includes <i>employees</i> of a <i>third country BIPRU firm</i> in column (1) of row (8) of this table.</p>
...	...
<p>(11) An <i>EEA UCITS management company</i> <u>[deleted]</u></p>	<p>In relation to a <i>firm</i> in column (1), the definition of <i>UCITS Remuneration Code staff</i> is extended so that it includes <i>employees</i> of this kind of <i>firm</i> in the same way as it includes <i>employees</i> of <i>firms</i> in row (10) of this table.</p>

**Note:** The definition of the *persons* included in column (2) applies in relation to a *TP firm* in one of the rows of column (1) in the same way as it does to other *overseas SMCR firms* in that row. The ~~definition~~ definitions of *dual-regulated firms Remuneration Code staff*, *Remuneration Code staff*, *AIFM Remuneration Code staff* and *BIPRU Remuneration Code staff* ~~applies~~ apply accordingly.

...

## Annex B

### Amendments to the Fit and Proper test for Employees and Senior Personnel sourcebook (FIT)

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

#### 1 General

##### 1.1 Application and purpose

...

1.1.2 G The purpose of *FIT* is to set out and describe the criteria that:

(1) an *SMCR firm* should consider when:

...

(e) (in the case an *FCA-authorized person* that is not a *limited scope SMCR firm*) assessing the fitness of a *non-SMF board director subject to competence requirements* under the *competent employees rule*, any ~~directly applicable EU legislation~~ *onshored regulation* or any other requirement of the *regulatory system*.

...

...

**Annex C**

**Amendments to the Supervision manual (SUP)**

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

**Part 1: Comes into force [about six months before 9 December] 2019**

**TP 12 Bank of England and Financial Services Act 2016: Approved persons in solo-regulated firms**

...

**12.2 Conversion of existing approvals**

...

12.2.5 R Mapping table: Potential conversion of approval for existing controlled functions into approval for designated senior management functions

<b>Part One (core SMCR firms and limited scope SMCR firms)</b>		
<b>(1) Pre-Implementation Controlled Function</b>	<b>(2) New FCA-designated senior management function</b>	<b>(3) Is notification required?</b>
Executive functions		
...		
<u>Chief executive function</u>	... (2) Head of <del>third country</del> overseas branch function ...	...
...		

...

12.23.2 R ...

**12.24 Gibraltar**

12.24.1 R This section applies to a Gibraltar-based firm (as defined in GEN 2.3 (General saving of the Handbook for Gibraltar)).

- 12.24.2 R GEN 2.3 continues to apply on and after the commencement date, but taking into account the amendments made by the Individual Accountability (FCA-Authorised Firms) Instrument 2018.
- 12.24.3 R In particular, a provision of the FCA Handbook that applied under GEN 2.3 to firms that were SMCR firms on exit day applies on and after the commencement date to a solo-regulated SMCR firm to which this section applies unless the contrary intention appears.
- 12.24.4 G SUP TP 12.24.3R may mean, for example, that the deleted parts of SYSC 25.6 (Management responsibilities maps: Material only relevant to EEA SMCR firms) apply to a solo-regulated SMCR firm even though none of SYSC 25.6 applied to it on or before exit day.

**Part 2: Comes into force 9 December 2019**

**10A FCA Approved Persons in Appointed Representatives**

**10A.1 Application**

...

Exclusions and modifications

...

- 10A.1.15A R The FCA governing functions do not apply to a tied agent of an EEA MiFID investment firm that is a TP firm.

...

**10C FCA senior managers regime for approved persons in SMCR firms**

...

**10C.4 Specification of functions**

...

- 10C.4.3 R Table of FCA-designated senior management functions for SMCR firms

Type	SMF	Description of FCA controlled function
------	-----	--

<i>FCA governing functions</i>	...	...
	SMF 19	<i>Head of <del>third country</del> overseas branch function</i>
	...	...
...		

...

**10C.5 FCA governing functions: Executive**

...

Head of ~~third country~~ overseas branch function (SMF 19)

10C.5.24 R ...

- (2) The *head of ~~third country~~ overseas branch function* is the function of having responsibility alone or jointly with others, for the conduct of all activities of the *United Kingdom branch* of the *firm* which are subject to the *UK regulatory system*.

...

**10C Annex 1 What functions apply to what type of firm**

...

Part Five: Functions applying to core firms

5.1 R ...

- (2) *Firms* in (1) are divided into the following categories for the purposes of this *rule*:

...

- (b) an *EEA SMCR firm*; and
- (c) an *overseas SMCR firm* not falling into (b); ~~and~~
- (d) ~~a *UK SMCR firm* falling into SYSC 23 Annex 1 6.4R (a *firm* exempt under *MiFID* whose only *permission* is *bidding in emissions auctions*).~~ [deleted]

5.2 R Table: Controlled functions applying to core SMCR firms

(1)	(2)	(3)	(4)	(5)	(6)
-----	-----	-----	-----	-----	-----

Brief description of function	Function number	UK firm	EEA firm	Other overseas firm	Emission auction bidder
Governing functions					
<i>Chief executive function</i>	SMF 1	...	...	...	✓
<i>Executive director function</i>	SMF 3	...	...	...	✓
<i>Chair of the governing body function</i>	SMF 9	...	...	...	✓
<i>Head of <del>third country</del> overseas branch function</i>	SMF 19	...	...	...	*
<i>Partner function</i>	SMF 27	...	...	...	✓
Required functions					
<i>Compliance oversight function</i>	SMF 16	...	...	...	*
<i>Money laundering reporting function</i>	SMF 17	...	...	...	✓
Other high-level management functions					
<i>EEA branch senior manager function</i>	SMF 21	...	...	...	*
<p>Note: The categories of <i>firm</i> in the column headings of this table are to be interpreted in accordance with the classification of <i>firms</i> at SUP 10C Annex 1 5.1R. Therefore:</p> <p>(a) column three (UK firm) refers to SUP 10C Annex 1 5.1R(2)(a);</p> <p>(b) column four (EEA firm) refers to SUP 10C Annex 1 5.1R(2)(b); and</p> <p>(c) column five (Other overseas firm) refers to SUP 10C Annex 1 5.1R(2)(c); and</p> <p>(d) <del>column six (Emission auction bidders) refers to SUP 10C Annex 1 5.1R(2)(d). [deleted]</del></p>					

...

Part Seven: Functions applying to limited scope firms

...

7.8 R Table: Controlled functions applying to limited scope SMCR firms that are sole traders or authorised professional firms

(1) Brief description of function	(2) Function number	(3) UK firm	(4) EEA firm	(5)
--------------------------------------	------------------------	----------------	-----------------	-----



				<b>Other overseas firm</b>
Governing functions				
...	...	...	...	...
<i>Head of <del>third country</del> overseas branch function</i>	SMF 19	...	...	...
...				

**CREDIT RATING AGENCIES (GUIDANCE) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) section 139A (Power of the FCA to give guidance) in the Financial Services and Markets Act 2000 (“the Act”);
  - (2) the powers of direction, guidance and related provisions in or under the following provisions of the Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2019 (SI 2019/XXXX):
    - (a) regulation 5 (Guidance);
    - (b) regulation 8 (Statement of policy);
    - (c) regulation 18 (Information gathering and investigations));
    - (d) regulation 19 (Notices); and
  - (3) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on [29 March 2019 at 11 p.m.]

**Amendments to the Handbook**

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

**Amendments to material outside the Handbook**

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

**Citation**

- F. This instrument may be cited as the Credit Rating Agencies (Guidance) Instrument 2019.

By order of the Board  
[date]

**Editor's notes**

- (1) The near-final instrument is dependent on the Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2019 (SI 2019/XXXX) ("CRA (EU Exit) Regulations") and will only be made when the CRA (EU Exit) Regulations are made.
- (2) The amendments in this instrument are based on the text of the Handbook in force on 29 March 2019.

## Annex A

### Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

## 2 Statutory notices and the allocation of decision making

...

### 2.5 Provision for certain categories of decision

...

2.5.18 G Some of the distinguishing features of notices given under enactments other than the *Act* are as follows:

...

(6) *CRA Regulation: Where the FCA is exercising its powers to refuse an application for registration under articles 16 or 17, or to refuse an application made by a credit rating agency to withdraw its registration under article 20(3), it must give a written notice in accordance with article 18(2). In these circumstances the decision to give a written notice under article 18(2) will be taken by FCA staff under executive procedures.*

Where the FCA is exercising its powers to withdraw the registration of a credit rating agency on the FCA's own initiative under article 20(1) or (2), or to give a direction under article 24(1), it must give a written notice in accordance with article 18(2). In these circumstances the decision to give a written notice under article 18(2) will be taken by the RDC.

Upon receipt of a written notice under article 18(2) the credit rating agency may decide to seek a review or to refer the matter directly to the Tribunal under article 18A.

If the credit rating agency decides to seek a review of the decision set out in the article 18(2) notice, they can make representations to the RDC. If the RDC decides to maintain the original decision, the credit rating agency may refer the RDC's decision to do so to the Tribunal.

...

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

...

<b>UK Securitisation Regulations</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
<b><u>CRA (EU Exit) Regulations</u></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Regulation 11(1)(a) and 12(1)(a)</u>	<u>when the FCA is proposing or deciding to impose a penalty under regulation 7</u>		<u>RDC</u>
<u>Regulation 11(1)(b) and 12(1)(b)</u>	<u>when the FCA is proposing or deciding to publish a statement under regulation 10</u>		<u>RDC</u>

## 2 Annex 2G Supervisory notices

...

<b>UK Securitisation Regulations</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
<b><u>CRA Regulation</u></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Article 18(2) and 18(10)</u>	<u>when the FCA is exercising its power under article 16 to refuse an application for registration of a credit rating agency</u>		<u>RDC or executive procedures (see DEPP 2.5.18G(6))</u>
<u>Article 18(2) and 18(10)</u>	<u>when the FCA is exercising its power under article 17 to refuse an application for registration of a group of credit rating agencies</u>		<u>RDC or executive procedures (see DEPP 2.5.18G(6))</u>
<u>Article 18(2) and 18(10)</u>	<u>when the FCA is exercising its power under article 20(1) and 20(2) to withdraw the registration of a credit rating agency on its own initiative</u>		<u>RDC (see DEPP 2.5.18G(6))</u>

<p><u>Article 18(2) and 18(10)</u></p>	<p><u>when the FCA is exercising its power under article 20(3) to refuse an application made by a credit rating agency to withdraw its registration</u></p>		<p><u>RDC or executive procedures</u> <u>(see DEPP 2.5.18G(6))</u></p>
<p><u>Article 18(2) and 18(10)</u></p>	<p><u>when the FCA is exercising its power under article 24(1) to impose a direction to temporarily prohibit a credit rating agency from issuing credit ratings or to suspend the use of credit ratings issued by a credit rating agency</u></p>		<p><u>RDC or executive procedures</u> <u>(see DEPP 2.5.18G(6))</u></p>

...

**Sch 4 Powers Exercised**

...

4.2G

<p>The following additional powers and related provisions have been exercised by the FCA to make the statements of policy in DEPP:</p>
<p>...</p>
<p>Application of Part 26 of the Act (notices) of the <i>UK Securitisation Regulations</i></p>
<p><u>Regulation 5 (Guidance) of the CRA (EU Exit) Regulations</u></p>
<p><u>Regulation 8 (Statement of policy) of the CRA (EU Exit) Regulations</u></p>
<p><u>Regulation 18 (Information gathering and investigations) of the CRA (EU Exit) Regulations</u></p>
<p><u>Regulation 19 (Notices) of the CRA (EU Exit) Regulations</u></p>

## Annex B

### Amendments to the Enforcement Guide (EG)

Insert the following new section after EG 19.38 (UK Securitisation Regulations). The text is not underlined.

#### **19.39 Credit Rating Agencies (CRA) Regulation**

19.39.1 The *CRA Regulation* aims to enhance the integrity, responsibility, good governance and independence of credit rating activities, contributing to the quality of credit ratings issued in the *United Kingdom* while achieving high levels of investor protection. The *CRA Regulation* imposes requirements including, among other things, obligations on *credit rating agencies* relating to their independence and avoidance of conflicts of interest, their methodologies and disclosures.

19.39.2 Supervisory and enforcement functions under the *CRA Regulation* were transferred from *ESMA* to the *FCA* through the *CRA (EU Exit) Regulations* on *exit day*.

19.39.3 The *FCA's* approach to enforcing under the *CRA Regulation* will mirror our general approach to enforcing the *Act*, as set out in *EG 2*. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the *person* who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.

#### Conduct of investigations under the CRA Regulation

19.39.4 The *CRA (EU Exit) Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *CRA Regulation*.

19.39.5 The *FCA* will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the *CRA Regulation* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases. The *FCA's* policy in non-criminal investigations under the *CRA Regulation* is to use powers to compel the provision of information in the same way as we would during an investigation under the *Act*.

#### Decision making under the CRA Regulation

19.39.6 The decision making procedures for those decisions under the *CRA Regulation* requiring the giving of a *warning notice*, *decision notice* or *supervisory notice* are dealt with within *DEPP*.

19.39.7 The *CRA Regulation* requires the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to certain material as set out in section 394 of the *Act* as applied by the *CRA Regulation*.

#### Imposition of penalties under the *CRA Regulation*

19.39.8 When determining whether to take action to impose a penalty or to issue a public censure under the *CRA Regulation*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP* 6.2 and *DEPP* 6.4. The *FCA*'s policy in relation to determining the level of a financial penalty includes having regard, where relevant, to *DEPP* 6.5, *DEPP* 6.5A, *DEPP* 6.5B and *DEPP* 6.5D.

19.39.9 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving non-criminal breaches of the *CRA Regulation* to assist us to exercise our functions under the *CRA Regulation* in the most efficient and economical way. See *DEPP* 5, *DEPP* 6.7 and *EG* 5 for further information on the settlement process and the *settlement discount scheme*.

19.39.10 The *FCA* will apply the approach to publicity that is outlined in *EG* 6, read in the light of regulation 19 of the *CRA (EU Exit) Regulations*.

#### Statement of policy in section 169(7) interviews (as implemented by the *CRA (EU Exit) Regulations* 2019)

19.39.11 The *CRA (EU Exit) Regulations* apply section 169 of the *Act* which requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the *CRA (EU Exit) Regulations* the *FCA* will follow the procedures described in *DEPP* 7.



## TRADE REPOSITORIES (GUIDANCE) INSTRUMENT 2019

### Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) section 139A (Power of the FCA to give guidance) in the Financial Services and Markets Act 2000 (“the Act”);
  - (2) the powers of direction, guidance and related provisions in or under the following provisions of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendments etc. and Transitional Provision) (EU Exit) Regulations 2019 (SI 2019/XXXX):
    - (a) regulation 69 (Statement of policy);
    - (b) regulation 71 (Powers to issue guidance);
    - (c) regulation 78 (Application of Part 11 of the Act (information gathering and investigations)); and
    - (d) regulation 79 (Application of Part 26 of the Act (notices)).

### Commencement

- B. This instrument comes into force on [29 March 2019 at 11 p.m.], immediately after the changes made by the Credit Rating Agencies (Guidance) Instrument 2019 come into force.

### Amendments to the Handbook

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

### Amendments to material outside the Handbook

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

### Citation

- E. This instrument may be cited as the Trade Repositories (Guidance) Instrument 2019.

By order of the Board  
[date]

**Editor's notes**

- (1) The near-final instrument is dependent on the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendments etc. and Transitional Provision) (EU Exit) Regulations 2019 (SI 2019/XXXX) (“Trade Repositories (EU Exit) Regulations”) and will only be made when the Trade Repositories (EU Exit) Regulations are made.
- (2) The amendments in this instrument are based on the text of the Handbook in force on 29 March 2019.

## Annex A

### Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

## 2 Statutory notices and the allocation of decision making

...

### 2.5 Provision for certain categories of decision

...

- 2.5.18 G Some of the distinguishing features of notices given under enactments other than the *Act* are as follows:

...

(7) *Trade Repositories (EU Exit) Regulations*: Where the FCA is exercising its powers to refuse an application for registration of a trade repository under article 58 of EMIR or to refuse an application made by a trade repository to withdraw its registration under article 71(3) of EMIR, it must give a written notice in accordance with article 71a(6) of EMIR. In these circumstances the decision to give a written notice under article 71a(6) will be taken by FCA staff under executive procedures.

Where the FCA is exercising its powers to withdraw the registration of a trade repository on the FCA's own initiative under article 71(1) or (2), it must give a written notice in accordance with article 71a(6). In these circumstances the decision to give a written notice under article 71a(6) will be taken by the RDC.

Upon receipt of a written notice under article 71a(6) the credit rating agency may decide to seek a review or to refer the matter directly to the Tribunal under article 71b.

If the trade repository decides to seek a review of the decision set out in the article 71a(6) notice, they can make representations to the RDC. If the RDC decides to maintain the original decision, the trade repository may refer the RDC's decision to do so to the Tribunal.

...

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

...

<b>CRA (EU Exit) Regulations</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
<b><u>Trade Repositories (EU Exit) Regulations</u></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Regulations 65(a) and 66(a)</u>	<u>when the FCA is proposing or deciding to publish a statement under regulation 67</u>		<u>RDC</u>
<u>Regulations 65(b) and 66(b)</u>	<u>when the FCA is proposing or deciding to impose a financial penalty under regulation 68</u>		<u>RDC</u>

## 2 Annex 2G Supervisory notices

...

<b>CRA Regulation</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
<b><u>Trade Repositories (EU Exit) Regulations</u></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Article 71a(6) and 71a(10)</u>	<u>when the FCA is exercising its power under article 58 to refuse an application for registration of a trade repository</u>		<u>RDC or executive procedures (see DEPP 2.5.18G(7))</u>
<u>Article 71a(6) and 71a(10)</u>	<u>when the FCA is exercising its power under article 71(1) or 71(2) to withdraw the registration of a trade repository on its own initiative</u>		<u>RDC (see DEPP 2.5.18G(7))</u>

<u>Article 71a(6) and 71a(10)</u>	<u>when the FCA is exercising its power under article 71(3) to refuse an application made by a trade repository to withdraw its registration</u>		<u>RDC or executive procedures</u> <u>(see DEPP 2.5.18G(7))</u>
-----------------------------------	--	--	--

...

**Sch 4 Powers Exercised**

...

4.2G

The following additional powers and related provisions have been exercised by the FCA to make the statements of policy in *DEPP*:

...

Regulation 19 (Notices) of the CRA (EU Exit) Regulations

Regulation 69 (Statement of policy) of the Trade Repositories (EU Exit) Regulations

Regulation 71 (Powers to issue guidance) of the Trade Repositories (EU Exit) Regulations

Regulation 78 (Application of Part 11 of the Act (information gathering and investigations) of the Trade Repositories (EU Exit) Regulations

Regulation 79 (Application of Part 26 of the Act (notices) of the Trade Repositories (EU Exit) Regulations

## Annex B

### Amendments to the Enforcement Guide (EG)

Insert the following new section after EG 19.39 (Credit Rating Agencies (CRA) Regulation).  
The text is not underlined.

#### **19.40 Trade Repositories (EU Exit) Regulations**

19.40.1 Supervisory and enforcement functions in respect of *trade repositories* under *EU EMIR* were transferred from *ESMA* to the *FCA* through the *Trade Repositories (EU Exit) Regulations* on exit day.

19.40.2 The *FCA*'s approach to enforcing under the *Trade Repositories (EU Exit) Regulations* will mirror our general approach to enforcing the *Act*, as set out in *EG 2*. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the *person* who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.

#### Conduct of investigations under the Trade Repositories (EU Exit) Regulations

19.40.3 The *Trade Repositories (EU Exit) Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *Trade Repositories (EU Exit) Regulations*, *EMIR* and the *Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018*.

19.40.4 The *FCA* will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the *Trade Repositories (EU Exit) Regulations* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases. The *FCA*'s policy in non-criminal investigations under the *Trade Repositories (EU Exit) Regulations* is to use powers to compel the provision of information in the same way as we would during an investigation under the *Act*.

#### Decision making under the Trade Repositories (EU Exit) Regulations

19.40.5 The decision-making procedures for those decisions under the *Trade Repositories (EU Exit) Regulations* requiring the giving of a *warning notice*, *decision notice* or *supervisory notice* are dealt with within *DEPP*.

19.40.6 The *Trade Repositories (EU Exit) Regulations* require the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to certain material as set out in section 394 of the *Act* as applied by the *Trade Repositories (EU Exit) Regulations*.

Imposition of penalties under the *Trade Repositories (EU Exit) Regulations*

19.40.7 When determining whether to take action to impose a penalty or to issue a public censure under the *Trade Repositories (EU Exit) Regulations*. The *FCA*'s policy includes having regard to the relevant factors in *DEPP* 6.2 and *DEPP* 6.4. The *FCA*'s policy in relation to determining the level of a financial penalty includes having regard, where relevant, to *DEPP* 6.5, *DEPP* 6.5A, *DEPP* 6.5B and *DEPP* 6.5D.

19.40.8 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving non-criminal breaches of the *Trade Repositories (EU Exit) Regulations* to assist us to exercise our functions under the *Trade Repositories (EU Exit) Regulations* in the most efficient and economical way. See *DEPP* 5, *DEPP* 6.7 and *EG* 5 for further information on the settlement process and the *settlement discount scheme*.

19.40.9 The *FCA* will apply the approach to publicity that is outlined in *EG* 6, read in the light of regulation 79 of the *Trade Repositories (EU Exit) Regulations*.

Statement of policy in section 169(7) interviews (as implemented by the *Trade Repositories (EU Exit) Regulations*)

19.40.10 The *Trade Repositories (EU Exit) Regulations* apply section 169 of the *Act* which requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the *Trade Repositories (EU Exit) Regulations* the *FCA* will follow the procedures described in *DEPP* 7.

**EXITING THE EUROPEAN UNION: FEES AND DISPUTE RESOLUTION:  
COMPLAINTS (AMENDMENTS) INSTRUMENT 2019**

**Powers exercised by the Financial Ombudsman Service**

A. The Financial Ombudsman Service Limited:

- (1) makes and amends the rules for the voluntary jurisdiction;
- (2) fixes and varies the standard terms for voluntary jurisdiction participants;

as set out in Annex A and Annex B of this instrument; and

- (3) makes and amends the rules and guidance relating to complaints handling procedures of the Financial Ombudsman Service;
- (4) makes and amends the rules for the voluntary jurisdiction; and
- (5) fixes and varies the standard terms for voluntary jurisdiction participants;

to incorporate changes to the Glossary as set out in the Exiting the European Union: Glossary (Amendments) Instrument 2019, in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (a) section 227 (Voluntary jurisdiction);
- (b) paragraph 8 (Information, advice and guidance) of Schedule 17;
- (c) paragraph 14 (The scheme operator’s rules) of Schedule 17;
- (d) paragraph 18 (Terms of reference to the scheme) of Schedule 17
- (e) paragraph 20 (Voluntary jurisdiction rules: procedure) of Schedule 17; and
- (f) paragraph 22 (Consultation) of Schedule 17.

B. The making and amendment of the rules and guidance and the fixing and varying of the standard terms, as set out at paragraph A above, by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

**Powers exercised by the Financial Conduct Authority**

C. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:

- (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;
- (2) the following powers and related provisions in the Act:
  - (a) section 137A (The FCA’s general rules);
  - (b) section 137T (General supplementary powers);
  - (c) section 139A (Power of the FCA to give guidance);
  - (d) section 226 (Compulsory jurisdiction);
  - (e) section 234 (Industry funding);



- (f) paragraph 13 (FCA’s rules) of Schedule 17; and
  - (g) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority);
- (3) regulation 120 (Guidance) of the Payment Services Regulations 2017; and
  - (4) regulation 60 (Guidance) of the Electronic Money Regulations 2011.
- D. The rule-making provisions referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority consents to and approves the rules and guidance and standard terms made and amended and fixed and varied by the Financial Ombudsman Service Limited, as set out at paragraph A above.

### Commencement

- F. This instrument comes into force on [29 March 2019 at 11 p.m.], except for Part 2 of Annex B, which comes into force on [1 April 2019] immediately after the changes made by the Claims Management Instrument 2018 (FCA 2018/56) come into force.

### Amendments to the Handbook

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

(1)	(2)
Fees manual (FEES)	Annex A
Dispute Resolution: Complaints sourcebook (DISP)	Annex B

- H. Changes to the Glossary as set out in the Exiting the European Union: Glossary (Amendments) Instrument 2019 are incorporated by the Financial Ombudsman Service Limited as set out at paragraph A above.

### Notes

- I. In Annex B to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

### Citation

- J. This instrument may be cited as the Exiting the European Union: Fees and Dispute Resolution: Complaints (Amendments) Instrument 2019.

By order of the Board of the Financial Ombudsman Service Limited  
[date]

By order of the Board of the Financial Conduct Authority  
[date]

[*Editor's note*: this Annex takes into account the changes made by Exiting the European Union: High Level Standards (Amendments) Instrument 2019 which come into effect on 29 March 2019 at 11 p.m.]

## Annex A

### Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text.

#### 5 Financial Ombudsman Service Funding

##### 5.1 Application and Purpose

...

5.1.1C R This chapter applies to a *TP firm*. This rule demonstrates the contrary intention under *GEN 2.2.26R*.

...

##### 5.3 The general levy

...

5.3.2A G When identifying the relevant *industry block(s)*, the *TP firm*, *TA EMI firm*, *TA PI firm* or *TA RAISP firm* must identify the activity (or activities) in *FEES 5 Annex 1R* that most closely matches that for which that *firm* is treated as having *Part 4A permission*.

...

5.3.8B R A *VJ participant* which is also a *TP person* will pay 20% of the annual levy required by *FEES 5.3* and *FEES 5 Annex 2R*.

...

##### 5.4 Information requirement

- 5.4.1 R (1) A *firm* must provide the *FCA* by the end of February each year (or, if the *firm* has become subject to the *Financial Ombudsman Service* part way through the *financial year*, by the date requested by the *FCA*) with a statement of:
- (a) the total amount of *relevant business* (measured in accordance with the appropriate tariff base(s)) which it conducted; or
  - (b) in the case of *firms* in *industry blocks 2* and *4*, the gross written premium for fees purposes as defined in *FEES 4 Annex 1AR* (unless *FEES 5.4.1R(1A)* applies),

as at or in the year to 31 December of the previous year as appropriate, including only business undertaken from a branch in the UK in relation to the tariff base for each of the relevant *industry blocks* set out in *FEES 5 Annex 1*.

...

**5 Annex 1R Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2019/20**

...

Compulsory jurisdiction - general levy

Industry block	Tariff base	General levy payable by firm
...		
11-fee-paying payment service providers (but excluding firms in any other Industry block except Industry block 18)	For <i>authorised payment institutions, registered account information service providers, electronic money issuers</i> (except for <i>small electronic money institutions</i> ), the Post Office Limited, the Bank of England, government departments and local authorities, <u>TA EMI firms, TA PI firms and TA RAISP firms</u> , relevant income as described in <i>FEES 4 Annex 11 Part 3</i>	...
	...	...
...		
18-fee-paying electronic money issuers	For all <i>fee-paying electronic money issuers</i> except for <i>small electronic money institutions</i> , and <u>TA EMI firms</u> , average outstanding electronic money, as described in <i>FEES 4 Annex 11 Part 3</i> .	...

	...	...
...		

## Annex B

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In Part 1 to this Annex, underlining indicates new text and striking through indicates deleted text. In Part 2 to this Annex, DISP 1.1.1G, DISP 1.1.1AG, DISP 2.6.1R and certain provisions in DISP 2 Annex 1G are deleted in their entirety and replaced by the underlined provisions in that Part. The deleted text is not shown as struck through.

#### Part 1: Comes into force on [29 March 2019 at 11 p.m.]

**INTRO Introduction**

**INTRO Introduction**

**1**

...

#### Chapter 1: Treating complainants fairly

**INTRO** DISP 1 contains rules and guidance on how *respondents* should deal with *complaints* promptly and fairly, including *complaints* that could be referred to the *FOS*. ~~Some of these rules also apply to certain branches of firms elsewhere in the EEA and certain EEA firms carrying out activities in the United Kingdom under the freedom to provide cross border services.~~

...

**1 Treating complainants fairly**

**1.1 Purpose and application**

Purpose

**1.1.1 G** This chapter contains *rules and guidance* on how *respondents* should deal promptly and fairly with *complaints* in respect of business carried on from establishments; ~~in the United Kingdom, by certain branches of firms in the EEA or by certain EEA firms carrying out activities in the United Kingdom under the freedom to provide cross border services. It is also relevant to those who may wish to make a complaint or refer it to the Financial Ombudsman Service.~~

(1) in the United Kingdom; or

(2) in an EEA State, in the case of a TP firm, a TA EMI firm, a TA PI firm or a TA RAISP firm with respect to services provided into the United Kingdom.

**1.1.1A G** This chapter is also relevant to those who may wish to make a complaint

or refer it to the *Financial Ombudsman Service*.

...

Application to firms

- 1.1.3 R (-) This chapter applies to a *TP firm*. This rule demonstrates the  
1) contrary intention under *GEN 2.2.26R*.
- (1) Subject to *DISP 1.1.5R*, this chapter applies to a *firm* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *appointed representative*:
- (a) in the *United Kingdom*; or
- (b) in an *EEA State*, in the case of a *TP firm* with respect to services provided into the *United Kingdom*.

...

- (3) ~~The *complaints data publication rules* do not apply in respect of activities carried on from a *branch* of an *EEA firm* in the *United Kingdom* or activities carried on by an *EEA firm* in the *United Kingdom* under the freedom to provide *cross border services*. [deleted]~~
- (4) ~~This chapter, except the *complaints data publication rules*, also applies to an *incoming EEA AIFM* for *complaints* from *eligible complainants* concerning *AIFM management functions* carried on for an *authorised AIF* or a *UK ELTIF* other than a *body corporate* that is not a *collective investment scheme* under the freedom to provide *cross border services*. [deleted]~~

...

- 1.1.3A D The *complaints reporting directions* apply to a *firm* that provides *payment services* or issues *electronic money* in respect of:
- (1) *complaints* from *payment service users*; and
- (2) *complaints* from *electronic money* holders that are *eligible complainants*
- concerning activities carried on from an establishment maintained by the *firm* in the *United Kingdom* (or in an *EEA State*, in the case of a *TP firm* with respect to services provided into the *United Kingdom*).

...

- 1.1.5 R This chapter does not apply to:

...

- (4) ~~complaints in respect of auction regulation bidding; [deleted]~~
- (5) a full-scope UK AIFM, or a small authorised UK AIFM or an incoming EEA AIFM, for complaints concerning AIFM management functions carried on for an AIF that is a body corporate unless it is a collective investment scheme;

...

...

Additional requirements for insurance and reinsurance distribution business in the UK

- 1.1.10-A R Where *insurance distribution activities* are carried on from an establishment maintained by it or its *appointed representative* in the *United Kingdom* (or in an *EEA State*, in the case of a *TP firm* with respect to services provided into the *United Kingdom*), a firm must have in place and operate appropriate and effective procedures for registering and responding to *complaints* from a person who is not an *eligible complainant*.

...

...

~~Additional IDD requirements for EEA branches of UK firms~~

- 1.1.10-B R ~~Where *insurance distribution* or *reinsurance distribution* is carried on from a *branch* maintained by a *UK firm* or its *appointed representative* in another *EEA State*, the firm must:~~
- ~~(1) have in place and operate appropriate and effective procedures for registering and responding to *complaints* from a *customer*; and~~
  - ~~(2) solely in relation to its *insurance distribution business*, adhere to one or more relevant *ADR entities* in that *EEA State* in respect of *consumer disputes*. [deleted]~~

~~[Note: articles 7(2), 14 and 15(1) of the *IDD*]~~

Application to payment services providers that are not firms

- 1.1.10A R This chapter (except the *complaints reporting rules* and the *complaints data publication rules*) applies to *payment service providers* that are not *firms* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by that *payment service provider* or its *agent* in the *United Kingdom* (or in an *EEA State*, in the case of a *TA PI firm* or a *TA RAISP firm* with respect to services

provided into the United Kingdom).

- 1.1.10A D The *complaints reporting directions* apply to a *payment service provider*  
B that is not a *firm* in respect of *complaints* from *payment service users* concerning activities carried on from an establishment maintained by that *payment service provider* or its *agent* in the *United Kingdom* (or in an *EEA State*, in the case of a *TA PI firm* or a *TA RAISP firm* with respect to services provided into the *United Kingdom*).

...

Application to electronic money issuers that are not firms

- 1.1.10C R This chapter (except the *complaints reporting rules* and the *complaints data publication rules*) applies to an *electronic money issuer* that is not a *firm* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by that *electronic money issuer* or its *agent* in the *United Kingdom* (or in an *EEA State*, in the case of a *TA EMI firm* with respect to services provided into the *United Kingdom*).

- 1.1.10C D The *complaints reporting directions* apply to an *electronic money issuer*  
A that is not a *firm* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by that *electronic money issuer* or its *agent* in the *United Kingdom* (or in an *EEA State*, in the case of a *TA EMI firm* with respect to services provided into the *United Kingdom*).

...

Application to UCITS management companies

- 1.1.10E R For *complaints* related to *collective portfolio management* services of a *UK UCITS management company* for a *UCITS scheme* or a *scheme* which, immediately before *exit day*, was an *EEA UCITS scheme*, DISP 1.1.3R(1) applies, except where modified as follows:

- (1) the *consumer awareness rules*, *complaints handling rules* and *complaints record rule* apply in respect of *complaints* from *unitholders* rather than from *eligible complainants*; ~~and~~
- (2) ~~the *consumer awareness rules*, the *complaints handling rules* and the *complaints record rule*, as modified in (1), also apply where the services are provided from a *branch* in another *EEA State* (and any reference to *respondent* in the *consumer awareness rules* includes such a *branch*):~~ [deleted]

- 1.1.10F R ~~For *complaints* related to *collective portfolio management* services of an *EEA UCITS management company* for a *UCITS scheme*, DISP 1.1.3R(1) applies, except where modified as follows:~~



- (1) ~~where the services are provided from a *branch* in the *United Kingdom*, the *consumer awareness rules*, *complaints handling rules* and *complaints record rule* apply in respect of *complaints from unitholders* rather than from *eligible complainants*; and~~
- (2) ~~this chapter, except the *consumer awareness rules*, *complaints handling rules*, *complaints record rule* and *complaints data publication rules*, also applies to an *EEA UCITS management company* providing services in the *United Kingdom* under the freedom to provide *cross border services*. [deleted]~~

...

## 1.1A Complaints handling requirements for MiFID complaints

...

- 1.1A.2 R For the *MiFID complaints* of a *third country investment firm*, the provisions marked “~~EU~~ UK” shall apply as *rules*.
- 1.1A.3 G A *MiFID complaint* is, amongst other things, a complaint to which article 26 of the *MiFID Org Regulation* applies, being a complaint about:
- ...
- (4) the activities permitted by the UK provisions which implemented article 6(3) of the *UCITS Directive* when carried on by a *collective portfolio management investment firm*; and
  - (5) the activities permitted by the UK provisions which implemented article 6(4) of the *AIFMD* when carried on by a *collective portfolio management investment firm*.

...

...

- 1.1A.5 G In contrast to the other provisions in *DISP* 1 which generally apply to *complaints* from *eligible complainants*, subject to *DISP* 1.1A.6R:
- (1) the obligations in this section that apply to the *MiFID complaints* of *MiFID investment firms*, apply to complaints from “clients” as defined in the UK provisions which implemented MiFID (which includes *retail clients*, *professional clients* and (in relation to *eligible counterparty business*) *eligible counterparties*; and
- ...
- 1.1A.6 R (1) Only the provisions in this section marked “~~EU~~ UK” and *DISP* 1.1A.39R apply to a *MiFID complaint* received from a *retail client*, *professional client* or an *eligible counterparty* that is not an

*eligible complainant.*

...

Application: Where?

- 1.1A.7 R The table below sets out how *DISP* 1.1A applies to *MiFID* complaints relating to:
- (1) the activities of a *MiFID* investment firm carried on from an establishment in the *United Kingdom*; and
  - (2) the *equivalent business of a third country investment firm* where the complaint is received from a *retail client* or an *elective professional client*;
  - (3) ~~activities carried on from a branch of a UK firm in another EEA State; and [deleted]~~
  - (4) ~~activities carried on from a branch of an EEA firm in the United Kingdom. [deleted]~~

Table: Application of DISP 1.1A to the MiFID business of firms in the UK, and the equivalent business of third country investment firms, ~~branches of UK firms and UK branches of EEA firms~~

(1) Provision	(2) Provision applies to the MiFID business of a firm carried on from an establishment in the UK?	(3) Provision applies to the equivalent third country business of a third country investment firm where the complaint is received from a retail client or an elective professional client?	(4) Provision applies to a branch of a UK firm in another EEA State?	(5) Provision applies to a branch of an EEA firm in the UK?
1.1A.10 <del>E</del> <del>UK</del>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.11R	Yes	Yes	No	<del>Yes</del>
1.1A.12 <del>E</del> <del>UK</del>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.13 <del>E</del> <del>UK</del>	Yes	Yes	<del>Yes</del>	<del>Yes</del>

1.1A.14G	Yes	Yes	<del>Yes</del>	No
1.1A.15G	Yes	Yes	<del>Yes</del>	No
1.1A.16E <del>UK</del>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.17E <del>UK</del>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.18E <del>UK</del>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.19G	Yes	Yes	<del>Yes</del>	No
1.1A.20R	Yes	Yes	No	<del>Yes</del>
1.1A.21G	Yes	Yes	No	<del>Yes</del>
1.1A.22R	Yes	Yes	No	<del>Yes</del>
1.1A.23R	Yes	Yes	No	<del>Yes</del>
1.1A.24E <del>UK</del>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.25E <del>UK</del>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.26R	Yes	Yes	No	<del>Yes</del>
1.1A.27G	Yes	Yes	No	<del>Yes</del>
1.1A.28R	Yes	Yes	No	<del>Yes</del>
1.1A.29E <del>UK</del>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.30E <del>UK</del>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.31R	Yes	Yes	No	<del>Yes</del>
1.1A.32G	Yes	Yes	No	<del>Yes</del>
1.1A.33G	Yes	Yes	No	<del>Yes</del>
1.1A.34G	Yes	Yes	No	<del>Yes</del>
1.1A.35R	Yes	Yes	No	<del>Yes</del>
1.1A.36R	Yes	Yes	No	<del>Yes</del>

1.1A.37 <del>EU</del> <del>UK</del>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.38 <del>EU</del> <del>UK</del>	Yes	Yes	<del>Yes</del>	<del>Yes</del>
1.1A.39R	Yes	Yes	<del>No</del>	<del>Yes</del>
1.1A.40R	Yes	Yes	<del>No</del>	<del>No</del>
1.1A.41G	Yes	Yes	<del>No</del>	<del>No</del>
1.1A.42R	No	No	<del>Yes</del>	<del>No</del>
Notes				
(1) <del>The provisions marked “EU” in the table are ‘directly applicable’ which means they apply to all MiFID investment firms in relation to MiFID complaints by virtue of the MiFID Org Regulation. [deleted]</del>				
(2) ...				

Interpretation of this section

- 1.1A.8 G This section contains a number of provisions marked with the status letters “~~EU~~ ~~UK~~”, which have been selectively reproduced from the *MiFID Org Regulation*.
- 1.1A.9 G References in column (1) to a word or phrase used in those provisions marked “~~EU~~ ~~UK~~” have the meaning indicated in column (2) of the table below:

...

Consumer awareness

- 1.1A.10 ~~EU~~ ~~UK~~ Investment firms shall publish the details of the process to be followed when handling a complaint. Such details shall include information about the complaints management policy and the contact details of the complaints management function. This information shall be provided to clients or potential clients, on request, or when acknowledging a complaint.

...

...

Complaints handling

- 1.1A.12 ~~EU~~ ~~UK~~ Investment firms shall establish, implement and maintain effective and transparent complaints management policies and procedures for the prompt handling of clients’ or potential clients’ complaints.

- ...
- 1.1A.13 ~~EU~~  
UK The complaints management policy shall provide clear, accurate and up-to-date information about the complaints-handling process. This policy shall be endorsed by the firm's management body.
- ...
- 1.1A.14 G The complaints management policy should be set out in a written document e.g. as part of a general fair treatment policy. It should be made available to all relevant staff of the *firm* through appropriate internal channels.
- [**Note:** guideline 1(b) and (c) of the ~~complaints handling guidelines~~ Joint Committee Final Report on guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors-, 27 May 2014, JC 2014 43. See <https://www.eba.europa.eu/documents/10180/732334/JC+2014+43+-+Joint+Committee+-+Final+report+complaintshandling+guidelines.pdf/312b02a6-3346-4dff-a3e4-41e987484e75>]
- 1.1A.15 G The *firm*'s senior management should be responsible for the implementation of the complaints management policy and for monitoring compliance with it.
- [**Note:** guideline 1(b) and (c) of the Joint Committee Final Report on guidelines for complaints-handling ~~complaints handling guidelines~~ for the securities (ESMA) and banking (EBA) sectors-, 27 May 2014, JC 2014 43. See <https://www.eba.europa.eu/documents/10180/732334/JC+2014+43+-+Joint+Committee+-+Final+report+complaintshandling+guidelines.pdf/312b02a6-3346-4dff-a3e4-41e987484e75>]
- 1.1A.16 ~~EU~~  
UK Investment firms shall enable clients and potential clients to submit complaints free of charge.
- ...
- 1.1A.17 ~~EU~~  
UK Investment firms shall establish a complaints management function responsible for the investigation of complaints. This function may be carried out by the compliance function.
- ...
- 1.1A.18 ~~EU~~  
UK Investment firms' compliance function shall analyse complaints and complaints-handling data to ensure that they identify and address any risks or issues.
- ...

...

Complaints resolved by close of the third business day

1.1A.23 R If a *MiFID investment firm* resolves a *MiFID complaint* by close of business on the third *business day* following the day on which it is received, it may choose to comply with *DISP* 1.1A.24~~EU~~UK to *DISP* 1.1A.27G rather than with *DISP* 1.1A.28R to *DISP* 1.1A.34G.

1.1A.24 ~~EU~~  
UK When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay.

...

1.1A.25 ~~EU~~  
UK Investment firms shall communicate the firm's position on the complaint to clients or potential clients and inform the clients or potential clients about their options, including that they may be able to refer the complaint to an alternative dispute resolution entity, as defined in ~~Article 4(h) of Directive 2013/11/EU of the European Parliament and Council on consumer ADR regulation 4 of the *ADR Regulations*~~, or that the client may be able to take civil action.

[**Note:** article 26(5) of the *MiFID Org Regulation*. See the *ADR Directive* at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF.>]

1.1A.26 R The explanation given by *MiFID investment firms* to *clients* or potential *clients* in accordance with *DISP* 1.1A.25~~EU~~UK must also:

...

1.1A.27 G The information regarding the *Financial Ombudsman Service* required to be provided in a communication sent under *DISP* 1.1A.25~~EU~~UK and referred to in *DISP* 1.1A.26R should be set out clearly, comprehensibly, in an easily accessible way and prominently within the text of those responses.

...

...

1.1A.29 ~~EU~~  
UK When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay.

...

1.1A.30 ~~EU~~  
UK Investment firms shall communicate the firm's position on the complaint to clients or potential clients and inform the clients or

potential clients about their options, including that they may be able to refer the complaint to an alternative dispute resolution entity, as defined in ~~Article 4(h) of Directive 2013/11/EU of the European Parliament and Council on consumer ADR regulation~~ 4 of the *ADR Regulations*, or that the client may be able to take civil action.

[**Note:** article 26(5) of the *MiFID Org Regulation*. See the *ADR Directive* at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>.]

- 1.1A.31 R The explanation given by *MiFID investment firms* to *clients* or potential *clients* in accordance with *DISP* 1.1A.30~~EU~~UK must also:

...

- 1.1A.32 G The information regarding the *Financial Ombudsman Service* required to be provided in a *final response* sent under *DISP* 1.1A.30~~EU~~UK and referred to in *DISP* 1.1A.31R should be set out clearly, comprehensibly, in an easily accessible way and prominently within the text of those responses.

...

...

#### Complaints records

- 1.1A.37 ~~EU~~UK Investment firms shall keep a record of the complaints received and the measures taken for their resolution.

...

#### Complaints reporting

- 1.1A.38 ~~EU~~UK Investment firms shall provide information on complaints and complaints-handling to the relevant competent authorities and, where applicable under national law, to an alternative dispute resolution (ADR) entity.

...

...

- 1.1A.41 G The effect of the *complaints data publication rules* and *DISP* 1.1A.37~~EU~~UK is that, for the purposes of complying with those rules, a *firm's complaints* data summary should include relevant data about any *MiFID complaints* received by the *firm*.

~~ADR entities and branches of UK MiFID investment firms in other EEA States~~

- 1.1A.42 R ~~A branch of a UK MiFID investment firm in another EEA State must adhere to one or more relevant ADR entities in that EEA State in respect of consumer disputes concerning investment services and ancillary services. [deleted]~~

~~[Note: article 75 of MiFID]~~

...

## 1.2 Consumer awareness rules

...

- 1.2.2B R ~~To the extent that it applies to an EMD complaint or a PSD complaint, the information specified in DISP 1.2.1R must be available in an official language of each such EEA State where the respondent offers payment services or issues electronic money, or in another language if agreed between the respondent and the payment service user or electronic money holder. [deleted]~~

~~[Note: article 101 of the Payment Services Directive]~~

...

- 1.2.5A G ~~DISP 1.2.5G does not apply to a branch of a UK UCITS management company in another EEA State. [deleted]~~

...

## 1.3 Complaints handling rules

Complaints handling procedures for respondents

- 1.3.1 R Effective and transparent procedures for the reasonable and prompt handling of *complaints* must be established, implemented and maintained by: a respondent.

~~(1) a respondent; and~~

~~(2) a branch of a UK firm in another EEA State.~~

...

...

Particular procedures for UCITS management companies

- 1.3.1B R A UK UCITS management company must ensure that the procedures it establishes under DISP 1.3.1R for the reasonable and prompt handling of *complaints* require that:

~~(1) there are no restrictions on unitholders exercising their rights in~~



~~the event that the UCITS is authorised in an EEA State other than the United Kingdom; and~~

- (2) ~~unitholders~~ are allowed to file complaints in any of the official languages of the *Home State* of the *UCITS scheme* or a scheme which, immediately before *exit day*, was an EEA UCITS scheme or of any *EEA State* to which a notification ~~has been~~ was transmitted by the *competent authority* of the *scheme's Home State* in accordance with article 93 of the *UCITS Directive*.

~~[Note: article 15 of the UCITS Directive]~~

...

## 1.9 Complaints record rule

1.9.1 R A firm, ~~including, in the case of collective portfolio management services for a UCITS scheme or an EEA UCITS scheme, a branch of a UK firm in another EEA State,~~ a payment service provider or an e-money issuer, must keep a record of each *complaint* received and the measures taken for its resolution, and retain that record for:

- (1) at least five years where the *complaint* relates to *collective portfolio management services for a UCITS scheme* or a scheme which, immediately before *exit day*, was an EEA UCITS scheme; and

...

from the date the *complaint* was received.

...

...

## 1.10B Payment services and electronic money complaints reporting

1.10B.1 D ...

- (2) Once a year an *electronic money institution*, ~~an EEA authorised electronic money institution,~~ a payment institution, or a registered account information service provider ~~or an EEA registered account information service provider~~ must provide the *FCA* with a complete report concerning complaints received about *payment services* and *electronic money*.

...

...

## 1 Annex 2G Application of DISP 1 to type of respondent / complaint

~~1.~~ The table below summarises the application of *DISP* 1. Where the table indicates that a particular section may apply, its application in relation to any particular activity or *complaint* is dependent on the detailed application provisions set out in *DISP* 1.

~~2.~~ In some cases the application of *DISP* 1 to *firms* depends on whether responsibility for the matter is reserved under an *EU* instrument to an *incoming EEA firm's Home State regulator*. Reference should be made to the detailed application provisions set out in *DISP* 1.

Type of respondent/ complaint	DISP 1.1A Requirements for MiFID investment firms	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules	DISP 1.10B Complaints reporting directions
...								
<i>firm</i> in relation to <i>MiFID</i> complaints concerning <i>MiFID business</i> carried on from an establishment in the <i>UK</i> (or in an <i>EEA State</i> , in the case of a <i>TP firm</i> with respect to services provided into the <i>United Kingdom</i> )	Applies for <i>retail clients</i> and <i>professional clients</i> , and (where relevant) <i>eligible counterparties</i> (see also <i>DISP 1.1A.6R</i> )	Does not apply	Does not apply	<i>DISP 1.7</i> applies as set out in <i>DISP 1.1A</i>	Does not apply (but see <i>DISP 1.1A.37EU(UK)</i> )	Applies as set out in <i>DISP 1.1A</i>	Applies as set out in <i>DISP 1.1A</i>	Does not apply
<i>UK UCITS management company</i> in relation to complaints concerning <i>collective portfolio management services</i> in respect of a <i>UCITS scheme</i> or an <i>EEA UCITS scheme</i> provided under the freedom to provide cross border services	Does not apply	Applies for <i>unitholders</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply

<i>branch of a UK UCITS management company in another EEA State in relation to complaints concerning collective portfolio management services in respect of an EEA UCITS scheme—</i>	Does not apply	Applies for <i>unitholders</i>	Applies for <i>unitholders</i>	Does not apply	Applies for <i>unitholders</i>	Does not apply	Does not apply	Does not apply
<i>branch of a UK firm (other than a UK UCITS management company when providing collective portfolio management services in respect of an EEA UCITS scheme) in another EEA State in relation to complaints concerning non-MiFID business</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>branch of a UK firm in another EEA State in relation to MiFID complaints</i>	Applies for <i>retail clients</i> and <i>professional clients</i> , and (where relevant) <i>eligible</i>	Does not apply	Does not apply	Does not apply	Does not apply (but see <i>DISP</i> 1.1A.37EU)	Does not apply	Does not apply	Does not apply

	<i>counterparties</i> (see also <i>DISP</i> 1.1A.6R)							
<i>incoming branch of an EEA firm (other than an EEA UCITS management company when providing collective portfolio management services in respect of an EEA UCITS scheme) in relation to complaints concerning non-MiFID business</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply
<i>incoming branch of an EEA firm in relation to MiFID complaints</i>	Applies for <i>retail clients and professional clients</i> , and (where relevant) <i>eligible counterparties</i> (see also <i>DISP</i> 1.1A.6R)	Does not apply	Does not apply	Applies as set out in <i>DISP</i> 1.1A	Does not apply (but see <i>DISP</i> 1.1A.37EU)	Applies as set out in <i>DISP</i> 1.1A	Does not apply	Does not apply
<i>incoming branch of an EEA UCITS management company in relation to complaints concerning</i>	Does not apply	Applies for <i>unitholders</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Applies for <i>unitholders</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply

<i>collective portfolio management services in respect of a UCITS scheme</i>								
<i>incoming EEA UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme provided under the freedom to provide cross border services</i>	Does not apply	Does not apply	Does not apply	Applies for eligible complainants	Does not apply	Applies for eligible complainants	Does not apply	Does not apply
<i>incoming EEA firm providing cross border services from outside the UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
...								
<i>EEA branch of a UK payment service provider in relation to complaints concerning payment services</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>incoming</i>	Does not apply	Applies for	Applies for	Applies for	Applies for	Does not apply	Does not apply	Applies for

<i>branch of an EEA authorised payment institution in relation to complaints concerning payment services</i>		<i>eligible complainants</i>	<i>eligible complainants</i>	<i>eligible complainants</i>	<i>eligible complainants</i>			<i>payment service users</i>
<i>incoming EEA authorised payment institution providing cross border payment services from outside the UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
...								
<i>EEA branch of an authorised electronic money institution or an EEA branch of any other UK electronic money issuer in relation to complaints concerning issuance of electronic money</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
<i>incoming branch of an EEA authorised electronic money</i>	Does not apply	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply	Does not apply	Applies for <i>eligible complainants</i>

<i>institution in relation to complaints concerning issuance of electronic money</i>								
<i>incoming EEA authorised electronic money institution providing cross border electronic money issuance services from outside the UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
...								
<i>a full-scope UK AIFM, or a small authorised UK AIFM or an incoming EEA AIFM, for complaints concerning AIFM management functions carried on for an AIF that is a body corporate (unless it is a collective investment scheme)</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
...								



<p><i>an incoming EEA AIFM, for complaints concerning AIFM management functions carried on for an authorised AIF or a UK ELTIF under the freedom to provide cross-border services</i></p>	<p>Does not apply</p>	<p>Applies for <i>eligible complainants</i></p>	<p>Applies for <i>eligible complainants</i> (<del>DISP 1.3.4G</del> does not apply)</p>	<p>Applies for <i>eligible complainants</i></p>	<p>Applies for <i>eligible complainants</i></p>	<p>Applies for <i>eligible complainants</i></p>	<p>Does not apply</p>	<p>Does not apply</p>
<p>...</p>								

...

## 2 Jurisdiction of the Financial Ombudsman Service

...

### 2.1 Purpose, interpretation and application

...

2.1.6A R This chapter applies to a TP firm. This rule demonstrates the contrary intention under GEN 2.2.26R.

...

### 2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

(1) *regulated activities* (other than ~~*auction regulation bidding and administering a benchmark*~~);

...

2.3.1A R The *Ombudsman* can also consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by:

(1) an *investment firm* authorised under the UK provisions which implemented MiFID when providing *investment services* or *ancillary services*;

(2) a *CRD credit institution* when providing one or more *investment services*;

(3) an *investment firm* authorised under the UK provisions which implemented MiFID or a *CRD credit institution* when selling *structured deposits* to *clients*, or advising *clients* on them;

(4) a *collective portfolio management investment firm* when providing the activities permitted by the UK provisions which implemented article 6(3) of the UCITS Directive; and

(5) a *collective portfolio management investment firm* when providing the activities permitted by the UK provisions which implemented article 6(4) of the AIFMD.

...

...

## 2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

...

- (c) activities which (~~at 27 July 2018 on~~ [29 March 2019 at 11 p.m.]) would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1G*);

...

...

...

2.5.4A G ~~*DISP 2.5.1R(2)(4)*~~ *DISP 2.5.1R(2)(c)* includes *complaints* about the *EEA* end of 'one leg' *payment services* transactions, i.e. services provided from *EEA* establishments that are subject to the territorial jurisdiction of the *Voluntary Jurisdiction* (see *DISP 2.6.4R(2)*) that also involve a payment service provider located outside the *EEA*. It also includes *complaints* about *payment services* irrespective of the currency of the transaction.

...

## 2.6 What is the territorial scope of the relevant jurisdiction?

### Compulsory Jurisdiction

2.6.1 R (1) The *Compulsory Jurisdiction* covers *complaints* about the activities of a *firm* (including its *appointed representatives*), of a *payment service provider* (including *agents* of a *payment institution*), of an *electronic money issuer* (including *agents* of an *electronic money institution*), of a *CBTL firm*, of a *designated credit reference agency* or of a *designated finance platform* carried on from an establishment:

(a) in the *United Kingdom*; or

(b) in an *EEA State*, in the case of a *TP firm*, a *TA EMI firm*, a *TA PI firm* or a *TA RAISP firm* with respect to services provided into the *United Kingdom*.

(2) ~~The *Compulsory Jurisdiction* also covers *complaints* about:~~

~~(a) *collective portfolio management services* provided by an *EEA UCITS management company* managing a *UCITS scheme*; and~~

- (b) ~~AIFM management functions provided by an incoming EEA AIFM managing an authorised AIF or a UK ELTIF other than a body corporate that is not a collective investment scheme; [deleted]~~

~~from an establishment in another EEA State under the freedom to provide cross border services.~~

2.6.2 G This:

- (1) ~~includes incoming EEA firms, incoming EEA authorised payment institutions, incoming EEA authorised electronic money institutions and incoming Treaty firms; but~~
- (2) ~~excludes complaints about business conducted in the United Kingdom on a services basis from an establishment outside the United Kingdom other than:~~
- (a) ~~complaints about collective portfolio management services provided by an EEA UCITS management company in managing a UCITS scheme; and~~
- (b) ~~complaints about AIFM management functions provided by an incoming EEA AIFM managing an authorised AIF or a UK ELTIF other than a body corporate that is not a collective investment scheme. [deleted]~~

#### Voluntary Jurisdiction

2.6.4 R The *Voluntary Jurisdiction* covers only *complaints* about the activities of a *VJ participant* carried on from an establishment:

- (1) in the *United Kingdom*; or
- (2) elsewhere in the *EEA* or Gibraltar if the following conditions are met:
- (a) the activity is directed wholly or partly at the *United Kingdom* (or part of it);
- (b) contracts governing the activity are (or, in the case of a potential customer, would have been) made under the law of England and Wales, Scotland or Northern Ireland; and
- (c) the *VJ participant* has notified appropriate regulators in the place in which the establishment is located its ~~Home State~~ of its intention to participate in the *Voluntary Jurisdiction*.

...

**2 Annex Regulated Activities for the Voluntary Jurisdiction at 27 July 2018 on [29**

**1G**      **March 2019 at 11 p.m.]**

This table belongs to *DISP* 2.5.1R<sub>2</sub>

The activities which were covered by the *Compulsory Jurisdiction* (~~at 27 July 2018~~ on [29 March 2019 at 11 p.m.]) were:

- (1) for *firms*
  - (a) *regulated activities* (other than ~~*auction regulation bidding and administering a benchmark*~~)
  - ...
  - ...
- (7) for *investment firms* authorised under the UK provisions which implemented MiFID:
  - ...
  - ...
- (9) for a *collective portfolio management investment firm*:
  - (a) when providing the activities permitted by the UK provisions which implemented article 6(3) of the UCITS Directive; and
  - (b) when providing the activities permitted by the UK provisions which implemented article 6(4) of the AIFMD;
  - ...
  - ...

The activities which (~~at 27 July 2018~~ on [29 March 2019 at 11 p.m.]) were *regulated activities* were, in accordance with section 22 of the *Act* (Regulated Activities), any of the following activities specified in Part II of the *Regulated Activities Order* (with the addition of ~~*auction regulation bidding and administering a benchmark*~~):

- ...
- (22 *managing a UK UCITS* (article 51ZA);  
A)
- ...

...

**3**      **Complaint handling procedures of the Financial Ombudsman Service**

...

### 3.1 Purpose, interpretation and application

...

3.1.6 R This chapter applies to a TP firm. This rule demonstrates the contrary intention under GEN 2.2.26R.

...

## 4 Standard terms

...

### 4.2 Standard terms

...

4.2.6 R The following rules in FEES apply to VJ participants as part of the standard terms, but substituting ‘VJ participant’ for ‘firm’:

...

(11) FEES 5.3.8AR; and

(12) ~~FEES 5 Annex 2R and FEES 5 Annex 3R.~~ FEES 5.3.8BR; and

(13) FEES 5 Annex 2R and FEES 5 Annex 3R.

...

## TP 1 Transitional provisions

### 1.1 Transitional provisions table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
46A	<u>DISP 1</u> <u>DISP 2</u> <u>DISP 3</u> and <u>FEES 5</u>	R	<u>DISP 1, DISP 2, DISP 3 and FEES 5 only apply to a TP firm, a TA EMI firm, a TA PI firm and a TA RAISP firm in respect of complaints under the Compulsory Jurisdiction about acts or omissions that</u>	From 11 p.m. on 29 March 2019	Amended with effect from 11 p.m. on 29

			occurred on or after <i>exit day</i> .		<u>March</u> <u>2019</u>
--	--	--	--	--	-----------------------------

...

**Sch 1 Record keeping requirements**

...

Sch  
1.2G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>DISP</i> 1.1A.37 <u>EUU</u> <u>K</u>	<i>MiFID complaints</i> subject to <i>DISP</i> 1.1A.	Each <i>MiFID complaint</i> received and the complaint handling measures taken to address the <i>MiFID complaint</i> and for its resolution  [ <del>Note:</del> <b>Note:</b> see article 26(1), article 72, and Annex 1 of the <i>MiFID Org Regulation</i> ]	Not specified  [ <b>Note:</b> (see article 26(1), article 72 and Annex 1 of the <i>MiFID Org Regulation</i> )]	Not specified  [ <b>Note:</b> (see article 72 of the <i>MiFID Org Regulation</i> )]
...				

**Part 2: Comes in force on 1 April 2019, immediately after the changes made by the Claims Management Instrument 2018 (FCA 2018/56) come into force**

**1 Treating complainants fairly**

**1.1 Purpose and application**

Purpose

- 1.1.1 G This chapter contains *rules* and *guidance* on how *respondents* should deal promptly and fairly with *complaints* in respect of business:
- (1) carried on from establishments in the *United Kingdom*; or
  - (2) carried on from establishments in an *EEA State*, in the case of a *TP firm*, a *TA EMI firm*, a *TA PI firm* or a *TA RAISP firm* with respect to services provided into the *United Kingdom*; or
  - (3) carried on in *Great Britain*, in respect of *regulated claims management activities*, (see *PERG 2.4A*).
- 1.1.1A G This chapter is also relevant to those who may wish to make a *complaint* or refer it to the *Financial Ombudsman Service*.

...

## **2 Jurisdiction of the Financial Ombudsman Service**

...

### **2.6 What is the territorial scope of the relevant jurisdiction?**

#### Compulsory Jurisdiction

- 2.6.1 R (1) The *Compulsory Jurisdiction* covers *complaints* about the activities of a *firm* (including its *appointed representatives*), of a *payment service provider* (including *agents* of a *payment institution*), of an *electronic money issuer* (including *agents* of an *electronic money institution*), of a *CBTL firm*, of a *designated credit reference agency* or of a *designated finance platform* which:
- (a) (except for *regulated claims management activities* and activities ancillary to *regulated claims management activities*) are carried on from an establishment in the *United Kingdom*; or
  - (b) are carried on from an establishment in an *EEA State*, in the case of a *TP firm*, a *TA EMI firm*, a *TA PI firm* or a *TA RAISP firm* with respect to services provided into the *United Kingdom*; or
  - (c) are, or are ancillary to, *regulated claims management activities*.

[*Editor's note*: DISP 2.6.2G is deleted in Part 1 of this instrument with effect from 29 March 2019 at 11 p.m. The effect of this deletion is that the amendments made to DISP 2.6.2G by instrument FCA 2018/56 could not take effect. We are showing the provision as [deleted] here for clarity and completeness.]



2.6.2 G [deleted]

...

[*Editor's note*: the following existing provisions in DISP 2 Annex 1G are deleted and replaced by the corresponding text below. For the avoidance of doubt deleted text is not shown as struck through. The new text is underlined.]

**2**      **Regulated Activities for the Voluntary Jurisdiction at 1 April 2019**  
**Annex**  
**1G**

...

The activities which were covered by the *Compulsory Jurisdiction* (at 1 April 2019) were:

...

The activities which (at 1 April 2019) were *regulated activities* were, in accordance with section 22 of the *Act* (Regulated Activities), any of the following activities specified in Part II and Parts 3A and 3B of the *Regulated Activities Order* (with the addition of *administering a benchmark*):

...

**EXITING THE EUROPEAN UNION: GIBRALTAR (GENERAL RULES)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;
  - (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000;
  - (3) section 395 (the FCA and PRA’s procedures) of the Financial Services and Markets Act 2000;
  - (4) regulation 120 (Guidance) of the Payment Services Regulations 2017; and
  - (5) regulation 60 (Guidance) of the Electronic Money Regulations 2011.

**Commencement**

- B. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Amendments to the Handbook**

- C. The General Provisions (GEN) are amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Exiting the European Union: Gibraltar (General Rules) Instrument 2019.

By order of the Board  
[date]

**Editor's notes**

- (1) The near-final instrument relates to the statutory instruments set out in Annex 4 of the accompanying Policy Statement and other matters arising from the UK's withdrawal from the EU.
- (2) We will set out our approach in due course for any additional amendments which are required as a result of further statutory instruments.
- (3) The amendments in this instrument are based on the text of the Handbook in force on 29 March 2019.

## Annex

### Amendments to the General Provisions (GEN)

Insert the following new section GEN 2.3 after GEN 2.2 (Interpreting the Handbook). The text is not underlined.

#### 2.3 General saving of the Handbook for Gibraltar

Continued application of the Handbook with respect to Gibraltar

- 2.3.1 R (1) The *FCA Handbook* shall, after *exit day*, be construed, unless the contrary intention appears, as conferring rights and imposing obligations in relation to or in connection with Gibraltar corresponding to those that existed immediately before *exit day*.
- (2) Accordingly, any provision of these *rules* which immediately before *exit day* applied in relation to or in connection with Gibraltar shall, with any necessary modifications to give effect to that corresponding right or obligation, continue to apply after *exit day*; and any provision which did not so apply shall continue not to apply, unless provision indicating the contrary intention is made.
- (3) In *GEN 2.3*, a reference to “Gibraltar” includes, but is not limited to, rights or obligations conferred or imposed in relation to or in connection with Gibraltar-based firms, public institutions established, *persons* resident and *body corporates* incorporated in Gibraltar, and activities of *firms* in Gibraltar.
- (4) In *GEN 2.3* “Gibraltar-based firm” has the same meaning as in the *Gibraltar Order*.

Extent of guidance applying in relation to or in connection with Gibraltar

- 2.3.2 R (1) *Guidance* which, immediately before *exit day*, was *guidance* on or in connection with a *rule* to which, on and after *exit day*, *GEN 2.3.1R* applies, shall, with any necessary modifications, continue to apply on and after *exit day* in relation to or in connection with Gibraltar to the same extent as the *rule*, unless provision indicating the contrary intention is made.
- (2) *Guidance* which, immediately before *exit day*, was *guidance* on or in connection with an enactment other than a *rule*, shall continue to apply on and after *exit day* in relation to or in connection with Gibraltar to the same extent as the enactment continues to apply in relation to or in connection with Gibraltar.

Purpose of GEN 2.3.1R and GEN 2.3.2R

- 2.3.3 G
- (1) The purpose of *GEN 2.3.1R* and *GEN 2.3.2R* is to ensure that the *rules* and *guidance* that apply in relation to or in connection with Gibraltar before *exit day* continue to apply in the same way after *exit day*, notwithstanding amendments made to the *FCA Handbook* as a result of the *UK's* withdrawal from the *EU*.
  - (2) Accordingly, any amendment to or deletion of a *rule* or *guidance* made to address a matter arising from the *UK's* withdrawal from the *EU* is to be disregarded to the extent it changed the application of a *rule* or *guidance* in relation to or in connection with Gibraltar.
  - (3) As such, any *rule* or *guidance* that applied before *exit day* in relation to or in connection with a Gibraltar-based firm, a *person* resident in Gibraltar, a *body corporate* incorporated in Gibraltar, or the activities of a *firm* in Gibraltar will so apply after *exit day* with any necessary modifications, taking into account any other amendments made on *exit day*.
  - (4) However, the approach in *GEN 2.3.1R* is a general one, and as such that approach does not apply where a *rule* or *guidance* states explicitly that a different provision applies in relation to or in connection with Gibraltar or where a different position is explicitly stated in relation to a *rule* or *guidance*.
  - (5) In *GEN 2.3.1R*, the contrary intention should be construed in the light of regulations made under the *EUWA*. *GEN 2.3.1R* is not intended to apply where the application of a *rule* or *guidance* in the *FCA Handbook* in relation to or in connection with Gibraltar would be contrary to the intention of regulations made under the *EUWA* or would have a result that is incompatible or inconsistent with the legislative scheme with which the *rule* or *guidance* is connected.
  - (6) The *rules* and *guidance* are saved subject to any necessary modification to give effect to a right or obligation that corresponds to the right or obligation that existed before *exit day*. So, for example, where the removal of a reference to a matter in relation to Gibraltar could make it impracticable for a Gibraltar-based firm exercising market access rights by virtue of the *Gibraltar Order* to continue to comply with a *rule*, the *rule* should be construed as applying, to the extent necessary, as if it continued to refer to a matter in relation to Gibraltar.
  - (7) Another example of such a matter may be a *rule* which on and after *exit day* (as a result of an amendment made under the *EUWA*) refers only to the membership of a *UK* professional body. Where this is the case, a Gibraltar-based *firm* may treat the *rule* as if it continues to refer to a Gibraltar-based professional body, if that is necessary to correspond with the obligation that had effect in relation to the Gibraltar-based firm before *exit day*.

- (8) None of *GEN 2.3.1R* or *GEN 2.3.2R* prevents changes being made to *rules* and *guidance* that apply in relation to or in connection with Gibraltar after *exit day*.

Further guidance on *GEN 2.3.1R* and *GEN 2.3.2R* as they apply in relation to Gibraltar-based firms exercising market access rights by virtue of the Gibraltar Order

- 2.3.4 G (1) Where *GEN 2.3.1R* and *GEN 2.3.2R* apply in relation to a Gibraltar-based firm exercising market access rights by virtue of the *Gibraltar Order* and which carries on *regulated activities* outside of the scope of its entitlement, such as by virtue of a *Part 4A permission* (i.e. it has a top-up permission), *rules* and *guidance* will continue to apply to such a firm in respect of those activities by virtue of that *permission*.
- (2) Where *GEN 2.3.1R* and *GEN 2.3.2R* apply in relation to a Gibraltar-based firm exercising market access rights by virtue of the *Gibraltar Order*, in determining which *rules* and *guidance* could apply to them in the *UK*, such firms may, as a starting point, find it helpful to refer to the table in *SUP 13A Annex 1G* (Rules that applied to incoming EEA firms) as it applied immediately before *exit day*. However, the table will not apply in its entirety to each such firm, if, for example, a *firm* has a *Part 4A permission* for other activities.