

Investing in authorised funds through nominees

June 2015



Contents

Abbreviations used in this paper	3
1 Overview and proposals	5
Annex	
1 List of questions	8
2 Cost benefit analysis	9
3 Compatibility statement	11
Appendix	
1 Draft Handbook text	13

We are asking for comments on this Consultation Paper by 17 July 2015.

You can send them to us using the form on our website at:
www.fca.org.uk/your-fca/documents/consultation-papers/cp15-20-response-form.

Or in writing to:

Nadia Rose
Strategy & Competition Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 8934
Email: cp15-20@fca.org.uk

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

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

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 706 60790 or email publications_graphics@fca.org.uk or write to Editorial and Digital Department, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS

Abbreviations used in this paper

COBS	Conduct of Business Sourcebook
COLL	Collective Investment Schemes Sourcebook
CP	Consultation paper
FCA	Financial Conduct Authority
FSA	Financial Services Authority
FSMA	Financial Services and Markets Act 2000
PS	Policy statement

1. Overview and proposals

Introduction

- 1.1** In this consultation, we propose to revoke rules and guidance in the Conduct of Business sourcebook (COBS) that are currently scheduled to come into force at the end of this year. They apply to certain firms (defined as 'intermediate unitholders') that hold units in authorised investment funds on behalf of consumers who are the beneficial owners of the units. The rules require certain disclosures and interactions between the firm and the beneficial owners, in respect of their holdings.

Who does this consultation affect?

- 1.2** This consultation will be of interest to fund managers and to firms, such as platform service providers and wealth managers, that operate or arrange nominee accounts for their customers.

Is this of interest to consumers?

- 1.3** The proposals will also be of interest to consumers who invest in authorised funds and consumer organisations.

Context

- 1.4** In CP10/29,¹ the Financial Services Authority (the FSA), our predecessor organisation, proposed rules and guidance requiring certain nominee companies (defined as 'intermediate unitholders') to notify the underlying beneficial owners of units when the fund manager issues certain fund information and voting rights. The proposals were intended to give consumers who invest in funds on an intermediated basis the same rights as those who invest in funds directly.²
- 1.5** Following consultation, the FSA published PS11/9³ setting out a summary of responses and the final rules and guidance (a new section of the Conduct of Business sourcebook – COBS 14.4). These rules require intermediate unitholders to pass on certain notifications required by the Collective Investment Schemes sourcebook (COLL) and sent by authorised fund managers

¹ CP10/29 *Platforms: Delivering the RDR and other issues for platforms and nominee-related services* (November 2010).

² The information to be provided includes notice of the publication of annual and half-yearly short reports, and event-based notifications such as invitations to vote at a unitholder meeting or an increase in fund management fees. Voting rights would apply where (for example) the fund manager proposed to make a major change to the fund, or to merge it with another fund.

³ PS11/9 *Platforms: Delivering the RDR and other issues for platforms and nominee-related services* (August 2011).

and depositaries, and notifications relating to general meetings of unitholders. In the light of consultation feedback, we did not proceed with the proposal to require firms to pass through or facilitate voting rights. Instead the final rules require firms, when sending a notification of a unitholder meeting, to include a summary of the subject of the vote and the firm's policy on passing on or retaining voting rights. The rules were scheduled to come into effect on 31 December 2012.

- 1.6** After further discussions with industry stakeholders on a number of issues relating to the new rules, the FSA deferred implementation until 31 December 2013 in order to resolve operational aspects of the rules, with the aim of re-consulting on revisions to them.⁴ We note from previous consultation responses that external stakeholders were broadly in favour of our aim to give direct and intermediated investors access to the same rights and information regarding their investments, but there were concerns about the operational complexities of implementing some of the COBS 14.4 rules.
- 1.7** In late 2013, we decided to put the implementation of the majority of COBS 14.4 on hold until 31 December 2015.⁵ When we announced this, we committed to conducting further research on the effectiveness of current information provided to investors in funds, covering both those who invest via an intermediated relationship and those who invest in funds directly.⁶

Recent developments

- 1.8** We are planning two separate pieces of work that are likely to affect the rationale for most of the COBS 14.4 rules:
- we will publish a Discussion Paper on improving firms' communications with consumers (the discussion paper) very shortly and
 - we have announced that we will begin a market study on asset management later this year
- 1.9** The discussion paper will consider the effectiveness of disclosure to consumers both in respect of form and content. It will consider new and innovative approaches to meet consumers' information needs and make disclosures more effective, drawing on some existing good practice emerging across the financial services industry. As part of this work, we have already committed to consult on removing requirements to produce disclosure material that we do not believe benefits consumers. Of specific relevance, we intend to consult on removing the short report, which intermediate unitholders would be required to pass on to beneficial owners by COBS 14.4.
- 1.10** The discussion paper also asks for respondents' input on whether consumers accessing products directly, and those using a third party such as a platform service provider, should be given the same information and rights in order to have a level playing field. Alternatively, there may be specific issues which need to be addressed for investors holding their units via an intermediary.
- 1.11** Later this year we will launch a market study on asset management. We have not yet determined the detailed scope of the market study, but it may inform how we reconsider our notification requirements currently in COBS 14.4.

⁴ CP12/11 *Quarterly Consultation No.33* (June 2012) with the deferral announced in *Handbook Notice 122* (July 2012).

⁵ COBS 14.4.10R and the accompanying guidance, concerning requests by authorised fund managers for liquidity management information, is already in force and will not be subject to the revocation proposed in this paper.

⁶ CP13/9 *Quarterly Consultation Paper No. 2*, chapter 13 (September 2013) and *Handbook Notice 7* (December 2013).

Summary of our proposals

- 1.12** Given that the FCA is considering the effectiveness of disclosures required under the rules due to come into force and that we will be conducting a market study in this area, we propose to revoke the rules and guidance in COBS 14.4.1R to 14.4.9R (inclusive) that relate to notifications to beneficial owners about short reports, unitholder voting rights and other fund information. We intend to reconsider the substance of these rules and guidance in 2016 in the light of feedback from the discussion paper, our subsequent consultation on removing some specific disclosures, and any issues emerging from the market study.
- 1.13** We believe it would be disproportionate to require firms to introduce procedures and systems now to ensure compliance with rules that may only be in place for a short time.
- 1.14** The proposed rule change and the statutory powers it will be made under are set out in Appendix 1.

Q1: Do you agree with our proposal to revoke COBS 14.4.1R to COBS 14.4.9R?

Equality and diversity considerations

- 1.15** We have assessed the likely equality and diversity impacts of the proposals and do not think they give rise to any concerns. But we would welcome your comments.

Next steps

What do you need to do next?

- 1.16** We are asking for feedback on the proposals set out in this Consultation Paper, and in particular we would welcome responses to consultation questions 1 and 2.
- 1.17** Please send your responses to us at: cp15-20@fca.org.uk by 17 July 2015.

How?

- 1.18** Use the online response form on our website or write to us at the address on page 2.

What will we do?

- 1.19** We will consider your feedback and intend to publish our rules in a Handbook Notice later this summer.

Annex 1

List of questions

- Q1:** Do you agree with our proposal to revoke COBS 14.4.1R to COBS 14.4.9R?
- Q2:** Do you have any comments on this analysis?

Annex 2

Cost benefit analysis

1. Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Cost benefit analyses on our original proposals were included in both CP10/29 and PS11/9.
2. Section 138L(3) of FSMA states that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance. In the context of this consultation, this requires us to compare the overall position between revoking the made rules and allowing those rules to come into effect.
3. Given that these changes revoke rules we previously made but which are not yet in force, we do not anticipate the proposed revocation of COBS 14.4.1R – 14.4.9R will in itself lead to an increase in costs for the FCA or for firms. The revocation of these rules means the anticipated benefits from them, which we outlined in CP10/29, will not now be delivered. However, the forthcoming discussion paper will call into question the effectiveness of some of the disclosures to be passed on to investors under the rules.
4. As a result of this, we anticipate those benefits to consumers that would have occurred from the implementation of COBS 14.4 are now likely to be of minimal significance, if the rules come into force as they stand. So we have not prepared a detailed cost benefit analysis for this consultation.
5. Our intention to explore new innovative approaches to consumer disclosures, and to consider how the information needs of direct and intermediated investors might differ, will result in some costs to the FCA and possibly to firms as we engage with them to determine the best way forward. We will account for these costs and benefits in future consultation papers.
6. Firms which have begun operational changes to implement the rules which we are consulting on revoking may have already incurred one-off costs. We intend to consider, following the conclusion of the two workstreams, how best to achieve the underlying purpose of COBS 14.4. So we will take account of those costs as part of any future consultations to make rules which provide for intermediated investors' rights to information and voting in respect of their investments.
7. We consider that while some firms may have already incurred some one-off implementation costs, revoking these rules should not introduce new costs for firms. We consider that this is preferable to a situation in which, if we take no further action, those firms would continue to incur additional one-off costs throughout the remainder of this year to complete implementation by 31 December. Such costs could not be justified if we no longer believe the rules would achieve their intended purpose, given the uncertain future of the underlying disclosures which they extend to intermediated investors.

8. As a result of this revocation, consumers investing in authorised funds through intermediate unitholders may not receive specified information about their investments, at least until the FCA makes new rules in light of the output of the discussion paper and market study. We note that many firms do in fact allow investors holding units through an intermediated arrangement to request this information. Consumers who want to access this information will often be able to do so, although there may be a charge for it. However, we cannot conclude at this stage whether such an arrangement is likely to meet the needs of intermediated consumers in the long term. More generally, we expect firms to consider the information needs of their customers and communicate with them in a way that is clear, fair and not misleading.
9. We also believe that, overall, revoking these rules will ultimately be in the best interests of consumers. It will allow us to develop a solution that ensures the information they get is both relevant to their requirements and of benefit to them, while not resulting in any unnecessary costs for firms.

Q2: Do you have any comments on this analysis?

Annex 3

Compatibility statement

Compatibility with the FCA's general duties

1. Section 138I(2)(d) of FSMA requires us to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B of FSMA.
2. The proposals set out in this consultation paper are compatible with the FCA's strategic objective of ensuring that the relevant markets function well, as they revoke rules which are not yet in force with the intention of ensuring the effectiveness of information passed from firms to consumers.
3. The proposals in this consultation paper are primarily intended to advance our operational objective of delivering consumer protection – maintaining and securing an appropriate degree of protection for consumers, by ensuring that the disclosure needs of all consumers investing in authorised fund products, whether directly or through intermediaries, are met. Revoking these rules prevents a situation where firms implement rules which will be affected by a later round of consultation. This saves unnecessary costs for firms and prevents potential confusion for their customers, who may otherwise begin receiving disclosures in relation to their investments but may then cease to receive such disclosures shortly afterwards.
4. In preparing these proposals, we have had regard to all of the regulatory principles in section 3B of FSMA.

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

5. We believe that the proposals in this consultation paper will have minimal impact on our resources.

The principle that a burden or restriction should be proportionate to the benefits

6. We do not believe the proposals in this consultation paper will create a burden for firms. They will prevent firms incurring unnecessary costs in the period while we work with firms and consumer groups to consider the overall effectiveness of disclosure material.

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

7. These proposals make clear our intention to consider the effectiveness of disclosure and, together with the forthcoming discussion paper, will result in greater clarity for firms.

Effective competition

8. In preparing the proposals we have had regard to the FCA's duty to promote effective competition in the interests of consumers under section 1B(4) FSMA. We do not anticipate any competition implications arising as a result of these proposals.

Expected effect on mutual societies

9. Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, in comparison with other authorised persons.
10. We see no reason why our proposed rules would affect mutual providers differently than firms with other structures.

Equality and diversity

11. In CP10/29 and PS11/9 we stated that the substantive proposals did not give rise to discrimination and were of low relevance on the equality agenda. We believe this statement also applies to this proposal to revoke the rules.

Appendix 1

Draft Handbook text

**RETAIL DISTRIBUTION REVIEW (PLATFORMS) (AMENDMENT NO 3)
INSTRUMENT 2015**

Purpose

- A. The purpose of this instrument is to amend the Retail Distribution Review (Platforms) Instrument 2011 (FSA 2011/47) (the Platform Instrument), as amended by the Retail Distribution Review (Platforms) (Amendment) Instrument (FSA 2012/43) and the Retail Distribution Review (Platforms) (Amendment No 2) Instrument (FCA 2013/81).

Powers exercised by the Financial Conduct Authority

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

Commencement

- D. This instrument shall come into force on [*Date*].

Amendments to the Platform Instrument

- E. The Platform Instrument (as amended) is further amended in part, as follows:
- (1) The insertions into the Conduct of Business Sourcebook (COBS) of COBS 14.4.1R, 14.4.2R, 14.4.3G, 14.4.4R, 14.4.5R, 14.4.6R, 14.4.7R, 14.4.8R and 14.4.9R are revoked.
 - (2) For the avoidance of doubt, the remainder of COBS 14.4 remains in force.

Citation

- F. This instrument may be cited as the Retail Distribution Review (Platforms) (Amendment No 3) Instrument.

By order of the Board of the Financial Conduct Authority
[*Date*]

Financial Conduct Authority



PUB REF: 005099

© Financial Conduct Authority 2015
25 The North Colonnade Canary Wharf
London E14 5HS
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk
All rights reserved