



No.35

Handbook Notice

July 2016

Financial Conduct Authority



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This Handbook Notice introduces the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative powers on 29 June and 28 July 2016. It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

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

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

Tel: 0300 500 0597

Fax: 020 7066 0991

Email: firm.queries@fca.org.uk

Post: Contact Centre
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1. Overview

Legislative changes

- 1.1** On 29 June 2016, the Board of the Financial Conduct Authority made changes to the Handbook in the instrument listed below.

CP	Title of instrument	Instrument No.	Changes effective
16/13	Enforcement (Market Regulation) Instrument 2016	2016/47	3.7.16

- 1.2** On 28 July 2016, the Board of the Financial Conduct Authority made changes to the Handbook in the instruments listed below.

CP	Title of instrument	Instrument No.	Changes effective
N/A	Handbook Administration (No 42) Instrument 2016	2016/48	1.8.16
16/8	Mortgage Credit Directive (Amendment No 3) Instrument 2016	2016/51	1.8.16
16/7	Payment Accounts Instrument 2016	2016/52	18.9.16
15/42	Supervision Manual (Financial Crime Report) Instrument 2016	2016/53	31.12.16
15/27	Collective Investment Schemes (Reporting Requirements) Instrument 2016	2016/54	1.8.16; 1.1.17
16/8	Listing Rules, Prospectus Rules and Disclosure Guidance and Transparency Rules (Miscellaneous Amendments) Instrument 2016	2016/55	29.7.16
16/8	Enforcement Guide (European Long-Term Investment Fund Regulations 2015) Instrument 2016	2016/56	1.8.16

Summary of changes

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

Feedback on responses to consultations

- 1.4** Consultation feedback is published in Chapter 3 of this Notice or in separate Policy Statements.

FCA Board dates for 2016

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

September	22
November	2 and 3
December	8

2. Summary of changes

- 2.1** This chapter briefly describes FCA Handbook changes made by the Board on 29 June and 28 July 2016. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the Prudential Regulation Authority (PRA) please see <http://www.bankofengland.co.uk/pr/Pages/publications/default.aspx>

Enforcement (Market Abuse Regulation) Instrument 2016 (FCA 2016/47)

- 2.2** Following consultation in CP16/13¹, the FCA Board has made changes to the FCA Handbook sections listed below:

Glossary
DEPP 1, 2, 6 and 6A

- 2.3** The FCA Board also made the following changes to material outside the Handbook:
EG 1 to 4, 7, 8, 11, 12, 19 and App 3

- 2.4** In summary, this instrument makes changes to ensure that the FCA has in place the necessary policies and procedures to investigate and impose sanctions for contraventions of EU MAR. It also aligns (to the extent possible and appropriate) our current enforcement policies and procedure with those of the EU MAR Regulation.

- 2.5** This instrument came into force on **3 July 2016**. Feedback to this consultation is published in a separate Policy Statement.²

Handbook Administration (No 42) Instrument 2016 (FCA 2016/48)

- 2.6** The Board has made minor administrative changes to various modules of the FCA Handbook, as listed below. These correct or clarify existing provisions. They were not consulted on because they are regarded either as falling within the scope of previous consultations or as being so minor that they do not warrant consultation.

Glossary
SYSC 1, 7 and 10
FEES 9
BIPRU 9
MIPRU 3
COBS 22

¹ CP16/13 *Changes to the Decision Procedure and Penalties manual and the Enforcement Guide for the implementation of the Market Abuse Regulation (2014/596/EU)* (April 2016)

² PS16/18 *Changes to the Decision Procedure and Penalties manual and the Enforcement Guide for the implementation of the Market Abuse Regulation* (June 2016)

**MCOB 4A
MAR 2 and Sch 5
SUP 13, 15 and 16
DISP 1 and 2
COLL 4, 5 and 6
FUND 3
DEPP 6**

2.7 In summary, the amendments made this month are as follows:

- a new definition of 'Buy-back and Stabilisation Regulation' in line with the new regime on stabilisation and the inclusion of the link to the legislation on the EUR-Lex site
- improvement of the defined term for 'breach', and updating of Glossary terms containing links to ESMA publications
- correction of the Glossary definition for 'Lloyd's complaint rules' to amend the internal links within the Handbook
- a change to SYSC 1.1A to adjust the navigational table at SYSC 1.1A.1AG to bring SYSC 20 within scope
- removal of references to the PRA or FCA in SYSC 1 Annex 1 detailed application tables
- deletion of provisions in SYSC 7.1 to formally complete the work intended at Handbook separation by instrument PRA 2013/32
- a minor correction to FEES 9 Annex 1R to clarify the scope of the 'relevant transaction volumes or shareholdings, as applicable' column
- an amendment to BIPRU 9.1.9G to correct an obsolete internal cross reference
- COBS 22 is updated to remove an expired temporary restriction on contingent convertible instruments at COBS 22.1.1R
- further drafting errors from 2015/18 have now been put right in MCOB 4A.1.1R, substituting 'mortgage arranger' for 'mortgage credit intermediary'
- administrative and formatting changes are made to MAR 2 and Schedule 5 following deletions made by 2016/44
- the address to which standing data forms should be sent has been corrected at SUP 15 Annex 3R
- obsolete cross references in the table at SUP 16.12.4R under RAG 2.1 have now been removed
- an historic drafting error from 2015/1 at SUP 16.20.5R(2)(b) has now been corrected
- similarly, drafting errors made in 2014/55 at SUP 15 Annex 34B have now been put right in view of Glossary definitions
- consistency in the de-italicisation of 'behaviour' has been promoted in DEPP 6.2.26R in line with recent changes made by 2016/47

- headings are streamlined in DISP 1 and 2 as well as minor clarification to the guidance at DISP 1.3.3BG
- links to online ESMA publications throughout COLL 4, 5, and 6 have been updated with current universal resource locators (urls)
- FUND 3 has also been updated in line with the current online locations of ESMA publications

2.8 This instrument comes into force on **1 August 2016**.

Mortgage Credit Directive (Amendment No 3) Instrument 2016 (FCA 2016/51)

2.9 Following consultation in CP16/8³, the FCA Board has made changes to the FCA Handbook sections listed below:

Glossary
MIPRU 1
MCOB 1
SUP 13A

2.10 In summary, this instrument makes changes to signpost how rules implementing the Mortgage Credit Directive apply to passporting firms.

2.11 This instrument comes into force on **1 August 2016**. Feedback to this consultation is published in Chapter 3 of this Notice.

Payment Accounts Instrument 2016 (FCA 2016/52)

2.12 Following consultation in CP16/7⁴, the FCA Board has made changes to the FCA Handbook sections listed below:

Glossary
ICOBS 6
BCOBS 5
SUP 16
DEPP 2 and Schs 3 and 4

2.13 The FCA Board also made the following changes to material outside the Handbook:

EG 19

2.14 In summary, this instrument makes changes to ensure our Handbook is compatible with the Payment Accounts Regulations 2015 (PARs) and to enable us to fulfil our legal obligations under the legislation. In addition, the data will help us to assess payment service providers' compliance with the provisions of the PARs on switching and basic bank accounts. These changes primarily give effect to requirements put in place by the PARs and so contribute to fulfilling their aims. These correspond closely with our operational objectives of ensuring an appropriate level of consumer protection and promoting effective competition in the interests of consumers. The small changes to ICOBS and BCOBS do not introduce new rules but instead provide clarifications where the PARs contain related or overlapping requirements. The proposed changes to DEPP and EG merely reflect the powers we have been given under the

³ CP16/8 *Quarterly Consultation Paper No.12* (March 2016)

⁴ CP16/7 *Payment Accounts Regulations 2015 – draft Handbook changes and draft guidance* (March 2016)

PARs. Referencing these powers and how we intend to use them ensures transparency while maintaining an up-to-date EG.

- 2.15** This instrument comes into force on **18 September 2016**. Feedback to this consultation will be published in a separate Policy Statement.

Supervision Manual (Financial Crime Report) Instrument 2016 (FCA 2016/53)

- 2.16** Following consultation in CP15/42⁵, the FCA Board has made changes to the FCA Handbook sections listed below:

SUP 16 and TP 1

- 2.17** In summary, this instrument makes changes to enable us to obtain regular, accurate and consistent data to identify financial crime risk. The data will be collated centrally for multiple supervisory sectors to access, facilitating more effective financial crime supervision.

- 2.18** This instrument comes into force on **31 December 2016**. Feedback to this consultation will be published in a separate Policy Statement.

Collective Investment Schemes (Reporting Requirements) Instrument 2016 (FCA 2016/54)

- 2.19** Following consultation in CP15/27⁶, the FCA Board has made changes to the FCA Handbook sections listed below:

**SUP 16
COLL 6**

- 2.20** In summary, this instrument makes changes to the reporting requirements for UCITS management companies using derivatives, allowing us to focus our supervisory work on the most relevant funds, such as those showing non-typical behaviour. Similarly, the changes to the information provided by depositaries will enable us to identify where certain firms may be recording abnormal levels or types of breaches, which might indicate underlying organisational or conduct problems.

- 2.21** Part of this instrument comes into force on **1 August 2016**, and the remainder on **1 January 2017**. Feedback to this consultation is published in Chapter 3 of this Notice.

Listing Rules, Prospectus Rules and Disclosure Guidance and Transparency Rules (Miscellaneous Amendments) Instrument 2016 (FCA 2016/55)

- 2.22** Following consultation in CP16/8⁷, the FCA Board has made changes to the FCA Handbook sections listed below:

⁵ CP15/42 *Quarterly Consultation Paper No. 11* (December 2015)

⁶ CP15/27 *UCITS V implementation and other changes to the Handbook affecting investment funds* (September 2015)

⁷ CP16/8 *Quarterly Consultation Paper No.12* (March 2016)

Glossary**LR 5****PR 1 and App 1****DTR 4 and TP 1**

- 2.23** In summary, this instrument makes changes to amend the LR reverse takeover provisions and ensure that issuers are clear that they cannot artificially break up a transaction to avoid the transaction being classified as a reverse takeover. The changes to the DTR prescribe a reporting format for the annual reports on payments to governments prepared in accordance with DTR 4.3A. Finally, the amendments to the PR ensure that our rules are up-to-date and accurately reflect ESMA publications.
- 2.24** This instrument comes into force on **29 July 2016**. Feedback to this consultation is published in Chapter 3 of this Notice.

***Enforcement (European Long-Term Investment Funds Regulation Instrument 2015)
Instrument 2016 (FCA 2016/56)***

- 2.25** Following consultation in CP15/42⁸, the FCA Board has made changes to the FCA Handbook section listed below:
DEPP 2
- 2.26** The FCA Board also made the following changes to material outside the Handbook:
EG 19
- 2.27** In summary, this instrument makes changes to provide guidance that ELTIFs fall under the AIFMR in terms of enforcement actions; and provide a decision-making mechanism for proposing or deciding to refuse an application for authorisation as a UK ELTIF, or revoke that authorisation.
- 2.28** This instrument comes into force on **1 August 2016**. Feedback to this consultation is published in Chapter 3 of this Notice.

⁸ CP15/42 *Quarterly Consultation Paper No. 11* (December 2015)

3. Consultation feedback

- 3.1 This chapter provides feedback on consultations that will not have a separate policy statement published by the FCA.

CP15/42 Quarterly Consultation Paper No 12 – Mortgage Credit Directive: Confirming our approach to passporting firms

Mortgage Credit Directive (Amendment No 3) Instrument 2016

Background

- 3.2 The Mortgage Credit Directive (MCD) allows credit intermediaries to do business in European Economic Area (EEA) member states other than their home member state without being subject to additional admission requirements from the host member state. This is known as 'passporting.'
- 3.3 In respect of passporting firms the MCD assigns different responsibilities to the competent authorities in the home and host member states, depending on the specific conduct requirement and how the firm is carrying out business. In CP16/8⁹ we proposed Handbook changes to set out the relevant chapters and sub-chapters that apply to firms passporting into the UK, as well as to firms passporting from the UK to other member states. This involved adding new rules and guidance in MCOB 1.3 and making associated Glossary changes. We also proposed to clarify the territorial application of MIPRU and to fix an incorrect cross-reference.

Feedback

- 3.4 We received no feedback on our proposals.

Our response

- 3.5 As we have received no objections, we intend to proceed with our proposals as set out in CP16/8.

Cost benefit analysis and compatibility statement

- 3.6 The cost benefit analysis and compatibility statement published in CP16/8 Chapter 2 remain unchanged.

Equality and diversity issues

- 3.7 We continue to believe these changes do not give rise to any equality and diversity issues nor do they give rise to unfair discrimination against protected groups as set out in CP16/8 Chapter 2.

⁹ CP16/8 Quarterly Consultation Paper No 12 (March 2016)

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

CP15/27 UCITS V implementation and other changes affecting investment funds

Collective Investment Schemes (Reporting Requirements) Instrument 2016

Background

- 3.9** In Part III of CP15/27¹⁰ we consulted on a number of changes to our rules for authorised funds. In this paper we provide feedback on our proposals to:

- introduce a new standardised form for UCITS management companies to report the use of derivatives in their funds and how the resulting risks are managed
- revise the way in which depositaries report breaches recorded by authorised fund managers (AFMs), and
- require depositaries to report on their oversight visits to AFMs

- 3.10** We will provide feedback on the other issues we consulted on in CP15/27 Part III at a later stage.

- 3.11** We have developed the policy in this Handbook Notice in the context of the existing UK and EU regulatory framework. We will keep the proposals under review to assess whether any amendments will be required due to changes in the UK regulatory framework, including as a result of any negotiations following the UK's vote to leave the EU.

- 3.12** We received five responses to the questions about these proposed reporting requirements. Two came from the Investment Association and the Depositaries and Trustees Association (DATA) and the other three came from investment management firms.

Feedback

- 3.13** UCITS management companies are currently required to report to us, at least annually, with details about their use of derivatives and the methods they use for estimating the risks arising from derivative usage. We have not previously specified the details that should be reported or the format to be used, so we proposed to introduce a standard template to enable us to receive and assess a more complete and consistent set of data. We asked:

We asked: Do you agree with our proposal to introduce a standard DRMP reporting template?

- 3.14** The majority of respondents supported the proposed template and agreed it would provide clarity and comparability of data submitted by fund managers. There was support for our proposal to withdraw the current version of Form FSA042 to avoid duplicate reporting.

- 3.15** One respondent suggested that we should discontinue the use of the term 'derivative risk management process' (DRMP) and replace it with 'derivative use report', to avoid confusion with the UCITS Directive requirement to maintain a risk management policy.

¹⁰ CP15/27 UCITS V implementation and other changes to the Handbook affecting investment funds (September 2015) Paragraphs 7.2 to 7.11

- 3.16** Three respondents expressed concerns about the proposed mid-month date of 15 October for recording the information to be submitted in the derivative use report. In order to avoid additional operational burden, one of them suggested submitting the data as at the annual accounting date for each fund, but agreed that the date should not be aligned with AIFMD reporting dates. This respondent also asked for a longer submission window of two to four months, instead of the proposed six weeks.
- 3.17** One respondent asked for clarification on the material changes that might result in a change of the fund's risk profile and would therefore require the submission of an updated derivative use report.

Our response

- 3.18** We note the comments on 'DRMP' and have removed references to 'details of the risk management process' from COLL 6.12.3R and COLL 6.12.3AR. The new form is referred to in the rules as the 'derivative use report' (DUR) instead.¹¹
- 3.19** We understand why it might be convenient for firms to prepare the derivative use report as at the annual accounting date, but we believe the benefits of having a single reporting date will outweigh the drawbacks. It will provide us with a snapshot of derivative usage across the industry and facilitate comparison between funds, allowing us to identify potential risks more effectively.
- 3.20** We do not believe an extended submission window is necessary as firms should already have the information required for the derivative use report available for their internal risk management and NAV calculation. We consider the additional operational burden for firms should be limited. However, to recognise the concerns regarding a mid-month record date, we will change the record date to 31 October each year. A firm will need to submit the report annually within 30 business days of 31 October with information that is accurate as at that date and covers the previous 12 months (even if it has already submitted updated reports during that period).
- 3.21** We have clarified that we intend for firms to report the information through our Gabriel system (the 'appropriate systems' referred to in COLL 6.12.3AR (3)(a)). However, if the system is unavailable at the time of reporting, we would normally advise firms of this with a notice on our website. This is likely to be the case for reports to be submitted later this year, while the necessary changes to Gabriel are developed. In such cases, a downloadable spreadsheet will be available to complete and submit by email instead.
- 3.22** As suggested, we have added guidance at COLL 6.12.3BG with a non-exhaustive list of examples of changes to the fund's risk profile that might be considered significant for the purpose of submitting an updated report. Such reports only need to contain the new information for the period since the previous report, which may be less than 12 months.

Feedback

We asked: Do you have any specific comments on the proposed template in COLL 6 Annex 2R?

- 3.23** The responses to this question mainly sought further clarification of our proposals. One respondent asked whether firms could submit comments alongside their data, and whether incomplete derivative use reports could be submitted in case of missing data. Another

¹¹ The DUR will be called 'Form FSA042 – UCITS' in Gabriel, replacing the existing form, but the systems change will not happen until after the new rules come into force. Firms should no longer use the existing Form FSA042.

respondent requested a definition for 'gross' long and short derivative positions required in the proposed template, as the term is not defined in the UCITS Directive or CESR Guidelines.

- 3.24** One respondent asked whether the Commitment Approach and Absolute/Relative Value-at-Risk (VaR) calculations should be expressed as percentages in the reporting template. Another respondent asked for clarification at which point the mean average value should be calculated.
- 3.25** As our rules do not require leverage limits to be defined in the fund's prospectus, two respondents asked for the reference to such a requirement in the proposed template to be clarified or removed. The same respondents asked for clarification about whether the table of derivative use information is meant to show the position as at the record date or capture the use of derivatives throughout the preceding twelve months.

Our response

- 3.26** We have made several changes to the proposed reporting template, partly to reflect the comments received and our subsequent discussions with stakeholders. We have added columns for firms to provide a fuller description of their risk management by indicating whether global exposure is calculated as leverage or market risk under COLL 5.3.7R. We have also added columns for firms using VaR as a risk measure to indicate the parameters they apply to its calculation, as well as any internal limit they set according to Box 10 of the CESR Guidelines.¹² We need this additional information to put the other data being reported in its proper context. Firms that are using VaR should already have this information set out in their internal procedures.
- 3.27** The template will include a box allowing firms to submit free-form non-numerical comments with their data, including if necessary an explanation of why data is missing from certain fields.
- 3.28** While we have noted the concerns expressed on a clear definition of 'gross', we believe that the term is generally accepted and should be sufficiently clear to investment professionals.
- 3.29** We have clarified in the reporting table that the information on Commitment Approach, Absolute/Relative VaR and leverage should all be reported as percentage figures. Since we have moved the record date to the end of the month, the mean average value (now referred to as the mean of all calculations over the past 12 months) should also be calculated at the end of month point.
- 3.30** We note the comments made on not defining leverage limits in the prospectus and have changed the reporting template to align it more closely with Box 24 of the CESR Guidelines. We will require firms to report the maximum expected or the usually expected level of leverage disclosed in the prospectus, or else the maximum level agreed internally as part of the AFM's risk management.
- 3.31** We expect firms to complete the second table by indicating which derivative types have been used during the twelve months preceding the record date (or the period since the previous report, if submitting the form at other times to notify a significant change in derivative use). Firms, as part of their risk management process, should already hold information about whether or not a particular type of contract has been used, so we do not expect them to encounter any significant additional burden in collating data to complete the table.

Feedback

We asked: Do you agree with our proposed changes to the depositary reporting requirement in SUP 16?

¹² CESR's Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS

- 3.32** The existing reporting requirements for depositaries in SUP 16.6 are limited in scope and detail, so we reached an informal agreement with members of DATA in 2014 that they would voluntarily report more detailed breach information, together with details of findings from their monitoring of AFMs. In CP15/27 we proposed rules to put the voluntary reporting arrangement on a permanent basis.
- 3.33** DATA in their response provided a number of detailed drafting comments on the rules and the reporting form. They pointed out that the systems currently used by certain firms would not enable them to report breaches which were not closed in previous reporting periods. They suggested a six-month transitional period to allow depositaries to prepare for reporting this information.
- 3.34** DATA asked us to provide guidance on when we would consider a breach closed for the purpose of the report and to confirm that the obligation in SUP 16.6.8R(1A) and the proposed guidance in SUP 16.6.10G only concern the reporting of breaches for COLL and FUND by the AFM. They pointed out that when the visit report is submitted by the depositary, the AFM's response and comments required by SUP 16.6.8R (1B)(b)(iii) might not yet be available and asked for this to be reflected in the final rule. DATA also asked how depositaries should report issues requiring long-term resolution and suggested that it should be the AFM's responsibility to set the timeline for resolving an issue.
- 3.35** Another respondent argued that the additional and more frequent reporting requirements would mean that depositaries had to allocate more time and resource to report the additional information. However, the respondent did not support this assertion with detailed evidence or quantified cost estimates.

Our response

- 3.36** We intend to proceed with the rules broadly as consulted on, but we have revised several points of detail, mainly to take account of the comments received. The rules will take effect from 1 January 2017, so depositaries will complete the first monthly report (REP011) as at 31 January 2017 for the month of January and submit it within the following 30 business days. Similarly, under the rules the first quarterly report (REP012) will be prepared as at 31 March 2017, covering the preceding three months. We confirm that the only breaches to be reported to us by the depositary are those for COLL and FUND.
- 3.37** We have clarified that depositaries should notify us at least once when the breach has been identified and again when the breach has been closed (unless both notifications are made in the same month, in which case a single report is sufficient). There is no requirement to continue reporting an open breach every month until it has been closed, although changes to the information first reported (such as a new maximum percentage error figure or a revised action plan) should be notified as an existing breach following the month in which the change occurs.
- 3.38** Reports of breaches already made under the current voluntary arrangements that are still open when the new rule takes effect do not need to be resubmitted under the new rule. We have added the words 'or otherwise' to SUP 16.6.8R (1A)(b) and (c) to indicate this. However, for such breaches that are still open as of 31 December 2016, changes to information previously reported should be reported under the new rule, as should the eventual closure of the breach.
- 3.39** We have not included the proposed guidance that an AFM should ensure its breaches are fully reported to the depositary at SUP 16.6.9G. We think this is already adequately covered by existing rules in COLL and by the requirements of the UCITS Directive and AIFMD Level 2

Regulations concerning the contractual terms to be put in place between the AFM and the depositary.

- 3.40** We have added guidance at SUP 16.6.10G on how to complete the monthly breach report and on when we would consider a breach to be closed. This is generally when the AFM has taken all necessary action to rectify the breach, including payment of any compensation due to the fund and/or unitholders. When the breach requires longer-term systems changes, it can still be considered closed when an effective temporary control to resolve the issue has been put in place. We have retitled the relevant column in the template 'Action taken or planned' to indicate that a range of corrective actions can be described here, including changes to planned timelines for implementing new systems and controls.
- 3.41** Regarding the potential unavailability of the data required by SUP 16.6.8R (1B)(b)(iii) on visit reports, we have added the words 'where available' to address the concern.
- 3.42** As with derivative use reports, we have clarified that depositary reports should be submitted through Gabriel, but we will accept email submissions if the system is unavailable and will normally notify that fact on our website.
- 3.43** We have added guidance to the table at SUP 16 Annex 12BG to help depositaries enter the information consistently and have made some minor changes to the REPO11 reporting template.
- 3.44** We have noted the concerns about the additional burden on depositaries of the new reporting requirements. However, we have already set out our analysis of the impact in CP15/27 and we do not propose to make significant changes to the new requirements.

Cost benefit analysis and compatibility statement

- 3.45** We received two responses on the CBA specifically relating to the derivative reporting proposal. One respondent expressed concerns about the implementation costs of a mid-month reference date for the use of derivatives report and disagreed with our assessment in CP15/27. We have addressed these concerns in paragraphs 3.19 and 3.20. The Investment Association indicated that some of their members might have to undertake significant development and commitment of resources to report which types of derivative had been used during the reporting period. We have addressed this point in paragraph 3.31.
- 3.46** Otherwise, we believe the cost benefit analysis and compatibility statement set out in CP15/27 remains valid. The final rules do not differ significantly from the version we consulted on, nor have any significant new issues been identified to lead us to revise the assessment of their impact.

Equality and diversity issues

- 3.47** We are required under the Equality Act 2010 to have 'due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.
- 3.48** Our equality impact assessment set out in CP15/27 remains valid. We continue to believe that the changes do not result in direct discrimination for any of the groups with protected characteristics, i.e. sex, disability, gender, pregnancy and maternity, race, religion and belief, marriage/civil partnership, sexual orientation and gender reassignment, nor do we believe that our proposals should give rise to indirect discrimination against any of these groups.

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

CP16/8 Quarterly Consultation Paper No 12 – Changes to the LR, DTR, PR and Glossary

Listing Rules, Prospectus Rules and Disclosure Guidance and Transparency Rules (Miscellaneous Amendments) Instrument 2016

Background

3.50 In Chapter 3 of the March 2016 Quarterly Consultation Paper (QCP)¹³, we consulted on a number of minor changes to the FCA Handbook, including:

- amending the Glossary
- amending the Listing Rules (LR)
- amending the Disclosure Guidance and Transparency Rules (DTR), and
- amending the Prospectus Rules (PR)

3.51 We are now providing feedback on these proposals.

Summary of proposals

3.52 In our consultation, we proposed amending the LR to make the link between the definition of a reverse takeover in LR 5 and aggregation provisions in LR 10 clearer. Our aim was to ensure that transactions cannot be artificially broken up in order to avoid being classified as a reverse takeover. In particular, we proposed amending LR 5.6.4R to state that when calculating the percentage ratio of a transaction the issuer must apply the class tests and the aggregation provisions in LR 10.2.10R (aggregating transactions).

3.53 We also proposed to make some amendments to the DTR to prescribe a reporting format for the annual reports on payments to governments prepared under the Transparency Directive 2004/109/EC (TD). To ease the administrative burden and cost for issuers caught by a parallel requirement under the Accounting Directive 2013/34/EU (AD), we proposed using the same reporting format as prescribed by the Department for Business, Innovation and Skills (BIS) and Companies House for AD reports on payments to governments. We proposed the introduction of two new rules – DTR 4.3A.10R(1) and DTR 4.3A.10R(2) – which will require issuers to file TD reports on payments to governments with the FCA. Issuers will also be required to upload them to the system identified by the FCA on our website as the National Storage Mechanism (NSM) for regulatory announcements and certain documents published by issuers. We also proposed introducing new DTR 4.3A.10R(3), which specifies the new prescribed reporting format and the relevant schema, and also a transitional provision so that DTR 4.3A.10R would apply in relation to issuers with a financial year beginning on or after 1 August 2016.

¹³ CP16/8 Quarterly Consultation Paper No 12 (March 2016)

- 3.54** Finally, we consulted on our proposals to amend PR 1.1.6G(6), PR 1.1.8G and the relevant defined terms to reflect further European Securities and Markets Authority (ESMA) publications.

Feedback

- 3.55** The consultation closed on 18 May 2016. We received three responses: one from an issuer and two from non-governmental organisations.

Definition of reverse takeover in LR 5 (Q3.1)

- 3.56** We received no responses to this question.

Prescribed reporting format for the TD reports on payments to governments (Q3.2 – 3.6)

- 3.57** We had three respondents to questions 3.2 – 3.6.
- 3.58** In relation to question 3.2, all three respondents agreed with our proposal to use the same prescribed reporting format for the TD reports on payments to governments as the one prescribed by BIS and Companies House for AD reports on payments to governments. Two respondents noted that for issuers who do not fall under the UK's AD reporting requirements, the minor additional burden of preparing the TD reports on payments to governments will be outweighed by the benefits of a level playing field and comparability of reporting.
- 3.59** Question 3.3 asked respondents if they agreed with our proposal to introduce new rules DTR 4.3A.10R(1) and DTR 4.3A.10R(2) to require issuers to file the TD reports with the FCA and to upload them to the system identified by the FCA on our website as the NSM. All three respondents agreed with our proposal. However, two respondents suggested that, while they agreed with our proposal to require open and machine-readable inputs from issuers, the FCA should also provide for open and machine-readable outputs for users from the NSM. Additionally, both respondents highlighted the need for the FCA to consider the use of company identifiers for the FCA schema since a Companies House number does not necessarily exist for all TD issuers.
- 3.60** All three respondents agreed with question 3.4 relating to our proposal to introduce a new DTR 4.3A.10R(3), which specifies the new prescribed reporting format and the relevant schemas.
- 3.61** In question 3.5, respondents were asked if they agreed with our proposal to introduce a transitional provision. One respondent agreed with our proposal. However, two respondents said that they did not believe there was a strong justification for introducing a transitional provision and suggested applying the prescribed reporting format for issuers with financial years beginning on or after 1 January 2016. Both respondents explained that the majority of issuers reporting solely under DTR 4.3A have a financial year beginning on 1 January; therefore the requirement would take effect for those issuers for financial years beginning on 1 January 2017, meaning the reports in XML format covering the year 1 January to 31 December 2017 would not be visible until June 2018 (the TD requires payments to governments reports to be published no later than six months following year end).
- 3.62** In question 3.6 respondents were asked whether they agreed or disagreed that the existing disclosure, dissemination and filing requirements for TD reports on payments to governments should remain unchanged. While one respondent expressed that they had no particular

opinion, two respondents agreed with the proposal and further emphasised that the purpose of requiring companies to file in XML allows data to be provided in an open and machine-readable form for users.

Changes to PR

- 3.63** Our proposed amendments to PR to reflect further ESMA publications were covered by question 3.7. We received no responses to this question.

Our response

Definition of reverse takeover in LR 5 (Q3.1)

- 3.64** Given that we did not receive any responses concerning our proposal to amend the definition of reverse takeover in LR 5, we will proceed with the amendments as outlined in the QCP.

Prescribed reporting format for the TD reports on payments to governments (Q3.2 – 3.6)

- 3.65** We have carefully considered the responses that we received relating to our proposals to prescribe a reporting format for the TD reports on payments to governments.

- 3.66** Given that all three respondents agreed with our proposals outlined in question 3.2, we will proceed on this point as outlined in the QCP.

- 3.67** While all three respondents agreed with our proposals outlined in question 3.3, two respondents said that it was important for the FCA to consider the provision of open and machine-readable data outputs as well as inputs. Morningstar, the NSM provider, has confirmed that the XML files will be displayed free of charge and are accessible to interested parties. Human readable reports will also be available in the NSM as these will be filed under the original TD payments to governments rules introduced for issuers with financial years beginning on or after 1 January 2015. We therefore intend to introduce new rules DTR 4.3A.10R(1) and DTR 4.3A.10R(2) as outlined in the QCP.

- 3.68** In their response to question 3.3, two respondents also highlighted the need for the FCA to consider the use of company identifiers for the FCA schema. This is because a Companies House number does not necessarily exist for all TD issuers, which include both UK and non-UK issuers. In May 2016 the European Commission published the final draft text of the Regulatory Technical Standard (RTS) on access to regulated information at Union level under the Transparency Directive¹⁴. Proposed Article 7 of this RTS reads 'Each Officially Appointed Mechanism shall use legal entity identifiers (LEI) as the unique identifiers for all issuers'. Therefore, in consideration of this potential future requirement for all issuers under the TD, we do not intend to propose the use of alternative company identifiers for payments to governments reports in the UK.

- 3.69** Given that all three respondents agreed with question 3.4 relating to our proposal to introduce a new DTR 4.3A.10R(3), we will proceed with introducing the new rule as outlined in the QCP.

- 3.70** In relation to question 3.5 concerning the introduction of a transitional provision, two respondents disagreed with our proposal. We have taken into consideration the concerns raised by these respondents. However, while we understand the importance of making the XML

¹⁴ European Commission, Commission Delegated Regulation (EU) .../... of 19.5.2016 (May, 2016)

version of the reports on payments to governments available in an open and machine-readable format as soon as reasonably practical, we intend to maintain the transitional provision as outlined in the QCP. This will allow issuers not already preparing reports in this format time to implement the relevant changes.

- 3.71** Given the responses to question 3.6, we will retain the existing disclosure, dissemination and filing requirements for TD reports on payments to governments.

Changes to PR

- 3.72** Question 3.7 outlined our proposal to amend the PR. There were no responses to this question.

- 3.73** However, in the QCP, we proposed updating the definition of 'ESMA Prospectus Questions and Answers' to reflect any further versions published during the consultation period. The consultation closed on 18 May 2016. In April 2016, ESMA published a revised version of the Prospectus Questions and Answers. Therefore, as well as updating PR as proposed in the draft instrument, we have updated the definition to reflect the latest version.

- 3.74** The instrument does not significantly differ from the consultative draft as a result of this update.

Cost benefit analysis and compatability statement

- 3.75** In questions 3.8 – 3.10 we asked respondents if they agreed with our analysis of the impact of the proposed changes. There were no responses to questions 3.8 and 3.10 relating to the impact analyses of our amendments to the LR and PR respectively. Two respondents agreed with our impact analysis of proposed amendments to the TD reports on payments to governments requirements outlined in question 3.9.

- 3.76** We consider that our assessments remain valid. Therefore, the cost benefit analysis and compatibility statement published in the Consultation Paper remain unchanged.

Equality and diversity issues

- 3.77** We continue to consider that the changes outlined in the QCP do not give rise to any equality or diversity concerns.

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

CP16/8 Quarterly Consultation Paper No 12 – UK European Long-Term Investment Funds and our decision making procedure

Enforcement (European Long-Term Investment Funds Regulations 2015) Instrument 2016

Background

- 3.79** European Long-Term Investment Funds (ELTIFs) are a new type of European alternative investment fund that will invest in assets with a long-term time horizon, such as infrastructure projects and unlisted small or medium-sized enterprises. The European Long Term Investment Funds Regulation (ELTIF Regulation) aims to create a cross-border framework for long-term

investments to stimulate demand from institutional and/or retail investors for assets requiring 'patient capital'. Investors' money will be locked in for a considerable amount of time, with few opportunities to redeem it.

- 3.80** In September 2015, we published CP15/27¹⁵ which set out our proposal on Handbook changes relating to the ELTIF Regulation. We published final rules for these proposals in December 2015.¹⁶ Changes for consumer redress were dealt with separately.¹⁷

Feedback

- 3.81** We received no feedback on our proposals.

Our response

- 3.82** No response is needed.

Cost benefit analysis and compatability statement

- 3.83** The cost benefit analysis and compatibility statement published in CP16/8 Chapter 6 remain unchanged.

Equality and diversity issues

- 3.84** We continue to believe these changes do not give rise to any equality and diversity issues nor do they give rise to unfair discrimination against protected groups as set out in CP16/8 Chapter 6.

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

¹⁵ CP15/27 *UCITS V implementation and other changes to the Handbook affecting investment funds* (September 2015)

¹⁶ *Handbook Notice No. 28* (December 2015)

¹⁷ *Handbook Notice No. 32 Supplement* (April 2016)

4. Additional information

Making corrections

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

Publication of Handbook material

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

Obligation to publish feedback

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

Comments

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



PUB REF: 004954

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