Consultation Paper

CP12/27*

Financial Services Authority

Quarterly Consultation

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The Financial Services Authority invites comments on this Consultation Paper. Comments on Chapters 2, 3, 5, 6 and 9 should reach us by 5 November 2012 and on Chapters 4, 7, 8 and 10 by 5 December 2012.

Comments may be sent by electronic submission using the form on the FSA's website at (www.fsa.gov.uk/Pages/Library/Policy/CP/2012/cp12-27-response.shtml).

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Abbreviations used in this paper

AFMs	authorised fund managers
BIPRU	Prudential Sourcebook for Banks, Building Societies and Investment Firms
BoE	The Bank of England
CAIA	Chartered Alternative Investment Analysis Association
CCPs	central counterparties
CIS	Collective Investment Scheme
COBS	Conduct of Business sourcebook
COLL	Collective Investment Schemes sourcebook
COLLG	Collective Investment Scheme Information Guide
CRD	Capital Requirements Directive
DEPP	Decision Procedure and Penalties manual
DIMs	discretionary investment managers
EEA	European Economic Area
EG	Enforcement Guide
EMIR	European Market Infrastructure Regulation
EMIR SI	EMIR statutory instrument
ESMA	European Securities and Markets Authority
FCA	The Financial Conduct Authority

FEES	Fees manual
FINRA	Financial Industry Regulatory Authority
FSAP	Financial Sector Assessment Program
FSMA	Financial Services and Markets Act 2000
GaPS	government and public securities
GDRs	global depositary receipts
IMF	International Monetary Fund
KII	key investor information
LR	Listing Rules sourcebook
MiFID	Markets in Financial Instruments Directive
NURS	Non-UCITS Retail Schemes
OTC	over the counter
PAIFs	property authorised investment funds
PD	Prospectus Directive
PRA	The Prudential Regulation Authority
PRIN	Principles for Businesses
RCH	recognised clearing house
RCRO	Retail Conduct Risk Outlook
RDC	Regulatory Decisions Committee
RDR	Retail Distribution Review
REC	Recognised Investment Exchanges and Recognised Clearing Houses sourcebook
ROCH	Recognised Overseas Clearing House
SAAJ	The Securities Analyst Association of Japan
SYSC	Senior Management Arrangements, Systems and Controls sourcebook
TC	Training and Competence sourcebook
UCITS	Collective Investment in Transferable Securities
UCITS IV	UCITS Directive

1 Overview

1.1 In this Consultation Paper (CP), we invite comments on miscellaneous amendments to the Handbook. We propose to:

- amend the Conduct of Business sourcebook (COBS) and Glossary so that the wording of the exemption from the Retail Distribution Review (RDR) rules for certain Holloway policies reflect our policy intention (Chapter 2);
- amend the Senior Management Systems and Controls sourcebook (SYSC) to make the rules on voiding and recovery consistent with our revised approach to the application of the remuneration principles proportionality rule to firms subject to the Remuneration Code (Chapter 3);
- update our rules and guidance in accordance with the revised Basel Core Principles to address transactions with related parties (Chapter 4);
- make changes to the appropriate qualifications lists in the Training and Competence sourcebook (TC) (Chapter 5);
- make amendments to the Retail Distribution Review (RDR) adviser charging and remuneration rules in respect of referrals to discretionary investment managers (Chapter 6);
- make various minor amendments in the Conduct of Business sourcebook (COBS) to clarify that a cost-neutral approach is not prohibited for new business in a with-profit fund (Chapter 7);
- make various amendments to the Collective Investment Schemes sourcebook (COLL) and other parts of the Handbook including to remove out of date references and provide clarity (Chapter 8);
- make changes to the Enforcement Guide (EG) and Decision Procedure and Penalties manual (DEPP) to include investigation and enforcement powers in relation to financial and non-financial counterparties under the European Market Infrastructure Regulation (EMIR) and the EMIR statutory instrument (EMIR SI). Also to make changes to

Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC) to set out how parts of our existing regime will interact with the EMIR and the EMIR SI (Chapter 9); and

- make amendments to the Listing Rules (LR) in respect of depositaries issuing global depositary receipts (GDRs) and the appointment of a sponsor for the submission of supplementary circulars (Chapter 10).

2

Retail Distribution Review – exemption of certain Holloway sickness policies

Introduction

2.1 Holloway sickness policies are insurance policies combining income protection insurance with an investment element. In Chapter 8 of CP11/1[1] we consulted on exemption from the Retail Distribution Review (RDR) rules on professionalism and adviser charging for advised sales of Holloway policies with a small investment element.

2.2 In June 2011 we published final rules setting out the exemption, which include a new Handbook Glossary definition 'Holloway policy special application conditions'.[2] The effect of the exemption is summarised below.

2.3 Since the final rules were published, it has been brought to our attention that the wording of the exemption does not fully reflect the original policy intention, which was that Holloway providers could offer some types of Holloway policy that met the exemption and that other types of Holloway policy that did not meet the exemption were subject to the RDR rules. This chapter consults on minor changes to the wording of the new definition and rules so that they reflect our original policy intention.

2.4 The proposed amendments, if approved, will be made under section 138 (General rule-making powers), section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendments can be found in Appendix 2.

1 CP11/1, *Quarterly Consultation (No.27),* (January 2011).
2 FSA2011/37 Retail Distribution Review (Holloway Sickness Policies) Instrument 2011. http://media.fsahandbook.info/Legislation/2011/2011_37.pdf

Summary of the effect of the exemption

2.5 As explained in Handbook Notice 111[3], the position from 31 December 2012 for exempt Holloway policies is as follows:

- current rules in the Conduct of Business sourcebook (COBS), such as commission disclosure (COBS 6.3 and COBS 6.4 on disclosures to retail clients relating to packaged products and designated investments) and suitability (COBS 9), will continue to apply;
- as now, the Part IV permission of a firm selling exempt Holloway policies will need to include the relevant investment permissions, as permissions relating to non-investment insurance (general insurance and pure protection contracts) do not cover Holloway policies; and
- advisers selling only the exempt Holloway policies will benefit from the exemption from the RDR Professionalism requirements and from any qualification requirement under the Training and Competence sourcebook (TC). However, advisers selling non-exempt Holloway policies or other types of investments falling within the new definition of 'retail investment product' will not benefit from the exemption.

Proposed changes

2.6 We propose to change the definition of 'Holloway policy special application conditions' to read 'all of the *Holloway sickness policies* of a particular type underwritten by the *firm*...'.

Q2.1: Do you agree with the proposed changes to the wording of the exemption from the RDR rules for certain Holloway policies?

Q2.2: Do you have any comments on the amended wording of the Glossary definition and rules in Appendix 2?

Cost benefit analysis

2.7 The proposed changes to the Glossary definition and rules reflect the policy intention on which we originally consulted. Therefore, the cost benefit analysis statement in CP11/1 remains valid.

3 www.fsa.gov.uk/static/pubs/handbook/hb_notice111.pdf – see paragraphs 4.2 to 4.11.

Compatibility statement

2.8 These proposals are designed to meet our consumer protection objective and have been developed with regard to the principles of good regulation. In particular our proposals have been developed bearing in mind the proportionality principle and the international character of the financial services industry. We are satisfied that these proposals are compatible with our general duties under section 2 of FSMA.

Equality and diversity issues

2.9 We have concluded that the proposals set out in this chapter are of low relevance to the equality agenda. Nevertheless, we would welcome any comments respondents may have on any equality issues they believe arise.

Contact

Comments should reach us by 5 November 2012. Please send them to:

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3

Remuneration Code – proposals to amend the rules on voiding and recovery

Introduction

3.1 This chapter proposes amendments to the rules on voiding and recovery in Chapter 19A of the Senior Management Arrangements Systems and Controls sourcebook (SYSC). These amendments are designed to make the rules on voiding and recovery consistent with the changes to the general guidance on proportionality: The Remuneration Code (SYSC 19A) and Pillar 3 disclosures on remuneration (BIPRU 11).[4] The rules on voiding and recovery will continue to apply to large firms that are of systemic importance and have higher risk business models, but in accordance with our revised approach to the proportionate application of the Remuneration Code.

3.2 We are proposing these amendments under our powers in section 138 (General rule-making power), section 139A (General rules about remuneration), and section 156 (General supplementary power) of the Financial Services and Markets Act 2000 (FSMA). The proposed changes to the Handbook are set out in Appendix 3.

3.3 These proposals are of particular interest to firms within the scope of the Remuneration Code.

Background

3.4 Section 139A(9) of FSMA enables the FSA to make rules that render void any provision of an agreement that contravenes specified prohibitions in the Remuneration Code (voiding

4 www.fsa.gov.uk/static/pubs/guidance/fg12-19.pdf

rules). We may also make rules providing for the recovery of any payment made, or other property transferred as a result of the voiding rules.

3.5 SYSC 19A3.53AR and SYSC 19A.3.54R (together with SYSC 19A Annex 1) are such rules. There is also guidance at SYSC 19A.3.55G. The voiding rules apply to certain provisions of agreements relating to certain firms subject to the Remuneration Code and certain types of Remuneration Code staff.[5]

3.6 The voiding rules provide that provisions of agreements which contravene the following rules of the Remuneration Code are void:

- guaranteed variable remuneration (SYSC 19A.3.40R);
- non-deferred variable remuneration (SYSC 19A.3.49R); and
- replacing payments recovered or property transferred (SYSC 19A Annex 1.7R).

3.7 Where the voiding rules apply to the provision of an agreement, they operate automatically to make that provision void. They differ from other regulatory sanctions, as we do not decide whether or not to apply voiding (as we would, for example, with a financial penalty).

3.8 Our supervisory approach is to review the policies and practices of the largest firms, and the proposed remuneration structures of the Code staff within them, before the announcement and distribution of awards, with the intention of ensuring compliance with the Code.

3.9 SYSC 19A.3.54R currently limits the scope of firms subject to the provisions on voiding and recovery by reference to a firm's regulatory permission and its capital resources. Reference to a firm's capital resources was consistent with our approach to applying the Remuneration Code proportionately as set out in our general guidance on proportionality: The Remuneration Code (SYSC 19A) and Pillar 3 disclosures on remuneration (BIPRU 11) published in September 2012.

3.10 The above provides general guidance on the application of the remuneration principles proportionality rule (in SYSC 19A.3.3R) to different firms. The original guidance provided a process by which a Remuneration Code firm should ascertain which of four proportionality tiers it belonged to, based on whether it was part of a group, its regulatory permission and its capital resources. The new proportionality framework replaces the current four-tier structure with a three-level structure and replaces the references to capital resources with references to relevant total assets.

5 For Remuneration Code staff subject to voiding, see SYSC 19A.3.54R(3) to (4).

Proposed amendments

3.11 We propose to amend SYSC 19A.3.54R so that the firms subject to the voiding and recovery rules will be determined by reference to their relevant total assets instead of capital resources.

3.12 This will align the metrics used in SYSC 19A.3.54R with the metrics used in the revised general guidance on proportionality and therefore align our approach to the voiding and recovery rules with our approach to implementing the Remuneration Code.

3.13 The metric for the voiding rule needs to provide a high level of certainty to firms about whether the rule applies to them. This is because the voiding and recovery rules apply automatically to firms in relation to the prohibitions on Remuneration Code staff being remunerated in certain ways.

3.14 We propose to change the metric from capital resources to relevant total assets as follows:

SYSC 19A.3.54R(1)(1B) to 1(D)	Existing metric: Capital resources on the firm's last accounting reference date	Proposed metric: Relevant total assets on the relevant date
UK bank or building society	> £1bn	> £50bn
BIPRU 730k firm that is not a limited activity firm or a limited licence firm	> £750m	> £50bn

3.15 For the purposes of the table above and the proposed amendments to SYSC 19A.3.54R 'relevant total assets' means the average of the firm's total assets on the firm's last three relevant dates.

Groups

3.16 A full credit institution, relevant 'BIPRU 730k firm' or relevant third country 'BIPRU 730k firm' that is part of a group containing a UK bank or building society, or relevant BIPRU 730k firm with relevant total assets exceeding £50billion will satisfy Condition 3 of SYSC 19A.3.54R(1)(1D).

3.17 This means that those that do not have relevant total assets greater than £50 billion will be subject to the voiding and recovery rules if they are part of the same group as a UK bank or building society or relevant BIPRU 730k firm that does have relevant total assets exceeding £50 billion.

3.18 For the purposes of the above, a 'relevant BIPRU 730k firm' is any BIPRU 730k firm that is not a limited activity firm or a limited licence firm. A 'relevant third country BIPRU 730k firm' is any third country BIPRU 730k firm that is not a limited activity firm or limited licence firm. This means that limited licence and limited activity firms will continue to be excluded.

Third country branches

3.19 A third country branch that has relevant total assets exceeding £50 billion, but does not have a firm in its group that is subject to the voiding rules would not be subject to the voiding and recovery rules. Our approach will only capture a third country branch that is part of a group that includes a BIPRU firm (rather than a third country branch) that is subject to the voiding rules.

Voiding

3.20 The scope of voiding rules will continue to be limited to breaches of rules set out in SYSC 19A.3.54R(1).

> **Q3.1:** Do you agree with the proposal to limit the voiding rules to the firms that meet the criteria described?

> **Q3.2:** Do you have any other suggestions to improve the proposed amendments so the voiding rules can provide certainty for firms about whether the voiding rules apply?

Cost benefit analysis

3.21 We considered the voiding rules as part of the cost benefit analysis in CP10/19.[6] Our proposals will not extend the scope of the voiding rules when they come into force. Firms subject to the voiding rules should already be compliant with the revised Remuneration Code. Therefore, we consider that there are no material additional costs in complying with these voiding rules.

Compatibility statement

3.22 We believe our proposals are compatible with our general duties under section 2 of FSMA. Our Remuneration Code contributes to meeting our market confidence and financial stability objectives. In line with the principles of good regulation, we are required to have regard, among other things, to the principle that the burden on firms imposed by our rules is proportionate to the benefits. Limiting the voiding rules, as described above, continues our existing policy and is consistent with our proportionate approach to the application of the revised code. We believe this approach is the most appropriate way to achieve our objectives.

6 CP10/19, *Revising the Remuneration Code,* (July 2010).

Equality and diversity

3.23 We believe that our proposals are not discriminatory and do not compromise the equality agenda. However, we welcome your comments on any equality issues that you think arise.

Contact

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4

Related parties

Introduction

4.1 The Basel Committee on Banking Supervision's Core Principle for Effective Banking Supervision number 11[7] (Exposures to related parties), states that to prevent abuses arising from exposures (both on the balance sheet and off the balance sheet) to related parties and to address conflict of interest, supervisors must have in place requirements that banks extend exposures to related companies and individuals on an arm's length basis. These exposures are effectively monitored; appropriate steps are taken to control or mitigate the risks; and write-offs of such exposures are made according to standard policies and processes.

4.2 In the most recent International Monetary Fund (IMF) Financial Sector Assessment Program (FSAP) review of the UK regulatory regime, the IMF commented that the FSA relied on high level rules and guidance and recommended that the FSA provide a more detailed implementation of this Basel Core Principle in the FSA rules and practices.

4.3 The recently published revised Basel Core Principles[8] proposed that the text of this Principle (which has become Principle 20 of the revised Principles) be updated to address 'transactions' with related parties rather than just 'exposures'. The proposed rules and guidance reflect the published revised Core Principle text. This change is not thought to have significant cost implications for the proposals.

4.4 The proposed amendments, if approved, will be made under section 138 (General rule-making power), section 156 (General supplementary powers), and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendments can be found in Appendix 4.

7 The footnote to Principle 11 reads as follows: 'Related parties can include, inter alia, the bank's subsidiaries and affiliates, and any party that the bank exerts control over or that exerts control over the bank. It may also include the bank's major shareholders, directors, senior management and key staff, their direct and related interests, and their close family members as well as corresponding persons in affiliated companies'.

8 www.bis.org/publ/bcbs230.pdf

Existing Interpretation

4.5 Basel Core Principle 11 is covered at a high level as part of the foundation principles of the FSA regulatory approach. Chapter 1 of Principles for Business (PRIN) states that 'a firm must conduct its business with integrity'. PRIN 3 states that 'a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems'.

4.6 Chapter 7 of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) (Risk Control) contains the high level credit and counterparty risk requirements derived from the Banking Consolidation and Capital Adequacy Directive and makes it clear that a BIPRU firm should include, as part of its internal control mechanisms, a credit risk policy and systems to ensure that the policy is correctly implemented. A banking supervisor would traditionally expect firms to include in their credit risk policies and procedures areas such as lending to related parties, including group companies, individuals related to directors and politically exposed persons.

4.7 In Chapter 10 of the Prudential sourcebook for Banks, Building Societies and Investment Firms (Large Exposures), the current definition of connected counterparty includes all types of person described in the footnote to Principle 11 through the definitions of 'closely related' and 'associate'. This currently serves as a valuable backstop in terms of the quantum of an exposure and limits the maximum amount that can be lent to any one counterparty or group of connected counterparties (including individuals connected to the firm). However, it does not go into detail on the terms of those transactions (ie, it does not say that they should be at market value and that transactions over a certain threshold should be approved by the board).

4.8 There are a set of changes to the connected counterparties definitions and rules in BIPRU 10, which have been consulted on in CP12/1.[9] These are intended to bring the Handbook text further into line with the Capital Requirements Directive (CRD) text and, as such, will remove the definition of connected counterparty from BIPRU 10. If the consultation proposals are implemented, they will remove the last of the links between Basel Principle 11 and BIPRU 10 and will further separate lending to related individuals from the large exposures controls.

4.9 While the drivers behind Basel Core Principle 10 (Large Exposures) are to ensure that banks do not over-lend to one counterparty and run excessive concentration and counterparty credit risk, the drivers behind Principle 11 are prevention of fraud, conflicts of interest, corruption, and undue pressure being placed on banks to lend imprudently to those who have a personal connection with the bank or the bank's directors and management. Therefore, the latter has more of a systems and controls driver.

9 CP12/1, *Large Exposures Regime – groups of connected clients and connected counterparties*, (January 2012).

Proposed amendments

4.10 We propose to write rules and guidance in SYSC to clarify the expectations of the FSA in relation to transactions with related parties.

4.11 This will include:

- a high-level requirement that relevant firms will have procedures setting out their approach to transactions with related parties;
- transactions with related parties should be undertaken at market value; and
- transactions with related parties that are above a materiality threshold should be approved by a board committee.

Market value

4.12 In this context, 'market value' is interpreted as 'requiring the firm to transact with related parties on terms no more favourable than would be agreed if the transaction was not with a related party' rather than requiring some specific and detailed calculation of market value, which would be a much more onerous requirement.

4.13 This interpretation has been reached on the basis of the Basel Core Principle text, which states in evidential provisions that 'Laws, regulations or the supervisor require that exposures to related parties may not be granted on more favourable terms (ie for credit assessment, tenor, interest rates, amortisation schedules, requirement for collateral) than corresponding exposures to non-related counterparties'.

Exceptions

4.14 The Basel Core Principle states clearly that certain transactions with related parties, such as staff receiving credit at favourable rates as part of an overall remuneration package, are not prevented by this Principle. The proposed guidance reflects this. However, the expectation remains that the firm monitors and controls such arrangements.

Target population

4.15 This clarification will be targeted at banks and building societies and this is the place where these risks arise most acutely.

4.16 As the drivers behind this Principle are common to all types of firms, there may be benefit in extending the new rules and guidance to cover firms other than banks and building societies. This may have more of an impact on other types of firms as they have not been subject to detailed rules in this area in the same way that the banks and building societies have previously been.

Q4.1: Do you consider that these rules and guidance should also apply to firms other than banks and building societies?

Q4.2: If yes, do you believe there would be significant cost implications in extending the application of this policy?

Cost benefit analysis

4.17 Benefits include being able to clarify the expectations in relation to transactions with related parties and more fully demonstrate compliance with Basel Core Principles.

4.18 Costs are expected to be minimal as the target population of firms would be expected to have such procedures in place already. These requirements are just to avoid doubt and clarify existing expectations.

4.19 Responses to previous consultations when BIPRU was introduced indicated that the removal of more detail on the contents of its credit risk policy, including previous guidance around related parties, would not have negative behavioural effects, as such controls were fundamental to the good conduct of banking. Therefore, there is considered to be no significant impact on cost in adding these rules and guidance for clarification purposes, particularly as it replaces previous rules and guidance for covering this subject.

Q4.3: Do you believe that the identification, monitoring and control of transactions with related parties are covered in the current practices of banks and building societies?

Q4.4: Do you agree that the cost impact of these proposed changes is negligible? If not, please provide details.

Compatibility statement

4.20 This policy change is compatible with the regulatory objectives and principles of good regulation, particularly having regard to the international character of the financial markets by demonstrating compliance with international standards.

Equality and diversity

4.21 We have considered the equality and diversity impact of these proposed changes and we do not believe they give rise to any discrimination or other equality concerns.

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5

Changes to the Training and Competence sourcebook (TC)

Introduction

5.1 The Training and Competence sourcebook (TC) sets out the qualification requirements for individuals carrying out certain retail activities. We previously stated that we would consult for one month each time a new qualification was added, removed, or other changes were made to the list of appropriate qualifications.

5.2 This chapter proposes to make changes to the appropriate qualifications lists by:

- adding new appropriate qualifications;
- extending the scope of some existing appropriate qualifications which already qualify individuals to carry out certain activities, so that these individuals are qualified to carry out additional TC activities which share the same exam standards[10]; and
- making some minor amendments to deal with duplications, changes in qualification provider and to ensure clarity.

5.3 This chapter will interest firms and individuals who are subject to the TC requirements, including where our professionalism requirements under the Retail Distribution Review (RDR) apply.

5.4 The proposed amendments would be made under section 138 (General rule-making power), section 149 (Evidential provisions), section 156 (General supplementary powers) and

10 The Training and Competence sourcebook (TC) requires individuals to attain appropriate qualifications if they are carrying out certain activities for retail customers. The content and level of these appropriate qualifications is prescribed through examination standards which set out the minimum required content of qualifications for each activity. We own and oversee the production and changes to the examination standards, but any changes are carried out by the industry for the industry.

section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The text in the proposed changes is set out in Appendix 5.

New qualifications

5.5 We propose to add the following new qualifications to the appropriate qualifications lists for various TC activities.[11] These qualifications have been assessed as meeting our exam standards for these TC activities:

- Chartered Alternative Investment Analysis Association (CAIA)'s CAIA Level 1 (provided it is accompanied with appropriate qualifications in Regulation and Ethics and Personal Taxation) to be added to TC activities 2 and 12. This qualification has been assessed as meeting RDR requirements.
- Chartered Insurance Institute's Certificate in Securities Advice and Dealing, to be added to TC activities 2 and 12. This qualification has been assessed as meeting RDR requirements.
- Faculty or Institute of Actuaries' Fellow, where the individual has passed both modules CA1 and SA2, to be added to TC activity 18.
- Financial Industry Regulatory Authority (FINRA)'s Series 7 – General Securities Representative Examination (provided it is accompanied with appropriate qualification modules in Regulations and Ethics and Personal Taxation) to be added to TC activities 2, 3, 12 and 13. This qualification has been assessed as meeting RDR requirements.
- Japanese Securities Dealers Association's Representative of Public Securities Qualification – Type 1 (provided it is accompanied with appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation) to be added to TC activities 2, 3, 12 and 13 assessed as meeting RDR requirements.
- Pensions Management Institute's Diploma in Regulated Retirement Advice to be added to TC activity 11.
- Pensions Management Institute's Module 201 (Providing for Retirement) to be added to TC activity 19.
- The Securities Analyst Association of Japan (SAAJ) CMA Level 2 to be added to TC activities 2, 3, 12 and 13. This qualification has been assessed as meeting RDR requirements. However, if an individual was not advising on 30 June 2009 and wishes to rely on this qualification, it must be accompanied with appropriate

11 TC activity 2 (Advising on Securities (which are not stakeholder pension schemes, personal pensions or broker funds); TC activity 3 (Advising on Derivatives; TC Activity 11 (Acting as a Pension transfer specialist); TC activity 12 (Advising on and dealing in Securities (which are not stakeholder pensions, personal pensions or broker funds); TC activity 13 (Advising on and dealing in Derivatives); TC activity 18 (Overseeing on a day to day basis administrative functions in relation to effecting or carrying out contracts of insurance which are life policies); and TC activity 19 (Overseeing on a day to day basis administrative functions in relation to stakeholder pension schemes).

qualification modules in Regulation and Ethics, Investment Principles and Risk and Personal Taxation.

Changes to existing appropriate qualifications

5.6 The following TC activities have identical exam standards:

- TC activity 2: advising on securities (which are not stakeholder pension schemes, personal pensions or broker funds), shares the same exam standards as TC activity 12: advising on, and dealing in, securities (which are not stakeholder pension schemes, personal pensions or broker funds); and
- TC activity 3: advising on derivatives, shares the same exam standards as TC activity 13: advising on and dealing in derivatives.

5.7 This means that, where exam standards are identical, an appropriate qualification listed for TC activity 2 will cover the same minimum content and level required for TC activity 12 and vice versa. The same is true for TC activities 3 and 13 and vice versa.

5.8 We have identified a number of appropriate qualifications, already on our lists, which meet the exam standards for more than one TC activity. So we propose to make the following changes.

- Chartered Insurance Institute's Associate or Fellow (life and pensions route only) to be added to TC activities 12 and 13 as meeting RDR requirements. This qualification is already listed for TC activities 2 and 3.
- Faculty or Institute of Actuaries' Fellow or Associate, or where the individual has passed modules CT1, CT2, CT4, CT5, CT6, CT7 and CT8, to be added to TC activities 12 and 13 as meeting RDR requirements. This qualification is already listed for TC activities 2 and 3.
- University of Stirling's MSc Finance to be added to TC activity 12 as meeting RDR requirements. This qualification is already listed for TC activity 2.
- University of Stirling's MSc in International Accounting and Finance (where candidate holds modules as recommended by the firm) to be added to TC activity 12 as meeting RDR requirements. This qualification is already listed for TC activity 2.
- ifs School of Finance (formerly the Chartered Institute of Bankers) Associateship (must include a pass in the Investment/Investment Management Paper) to be added to TC activity 2 as meeting RDR requirements. This qualification is already listed for TC activity 12.

Minor amendments

5.9 It has come to our attention that the Pensions Management Institute's Fellow or Associate by examination appears twice on TC activity 11 (Acting as a pension transfer specialist). Therefore, we propose to delete one of the entries.

5.10 The qualification called 'Secondary Examination', appearing on our appropriate qualification lists for TC activities 2, 3, 8, 11, 12 and 13, will, in future, be offered through the Securities Analyst Association of Japan rather than the Analyst Association of Japan. We have made a change to reflect the change in qualification provider name.

5.11 We have identified that the ifs School of Finance (formerly the Chartered Institute of Bankers) Associateship is listed inconsistently across a number of TC activities. Therefore, we are proposing to update all the entries so that they are all the same:

- ifs School of Finance (formerly the Chartered Institute of Bankers) Associateship (must include a pass in the investment/investment management paper).

Q5.1: Are you aware of any reason why one or more of the suggested changes to the appropriate qualifications tables should not be made?

Cost benefit analysis

5.12 Section 155 of FSMA requires us to perform a cost benefit analysis of our proposed requirements and to publish the results, unless we consider the proposal will not give rise to any cost or to an increase in costs of minimal significance. This proposal does not incur any costs as it simply updates the list of appropriate qualifications.

Compatibility statement

5.13 These proposals are designed to meet our consumer protection objective and have been developed having regard to the principles of good regulation, in particular the proportionality principle and the international character of the financial services industry. We are satisfied that these proposals are compatible with our general duties under section 2 of FSMA.

Equality and diversity

5.14 We have assessed that our proposals do not give rise to discrimination and are of low relevance to the equality agenda. We would nevertheless welcome any comments respondents may have on any equality issues they believe arise.

Contact

Comments on the changes to the appropriate qualifications list should reach us by 5 November 2012. Please send them to:

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6 Retail Distribution Review: – payments for referrals to discretionary investment managers

Introduction

6.1 This chapter proposes amendments to the Retail Distribution Review (RDR) adviser charging and remuneration rules in Chapter 6 of the Conduct of Business sourcebook (COBS) which come into force on 31 December 2012. These amendments relate to the requirement that a firm should only be paid for personal recommendations 'and any other related services' through adviser charges.

6.2 The amendments clarify that adviser firms should not be remunerated by, or receive commissions, remuneration or benefit of any kind from discretionary investment managers (DIMs) for referrals to the DIM, or for any other activity the adviser firm may perform for a client[12] in relation to their investments being managed on a discretionary basis.

6.3 One of the objectives of the RDR was to address the potential for adviser remuneration to distort consumer outcomes. To achieve this, we made rules that would introduce a system of adviser charging, and ban commissions, remunerations or benefits of any kind being provided to adviser firms in relation to personal recommendations to retail clients on retail investment products. We said that all adviser firms should only be paid through adviser charging for the advice and related services they provide.[13] In this chapter we look at how this requirement applies when firms refer clients to discretionary investment managers.

12 Unless otherwise indicated, 'client' in this document should be read as 'retail client'.
13 PS10/6, *Distribution of retail investments: Delivering the RDR – feedback to CP09/18 and final rules*, (March 2010), page 25.

6.4 The proposed amendments would be made under section 138 (General rule-making power), section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The text of the amendments can be found in Appendix 6. These amendments will be of interest primarily to firms, but also to consumers and consumer bodies, as they will affect how firms interact with retail clients.

Referrals to discretionary investment managers

6.5 In PS10/6[14] we said that adviser firms should not be allowed to receive commission set by discretionary investment managers for recommending their services, just as they cannot receive commission set by product providers for recommending their products. Payments from discretionary investment managers (DIMs) (or the provision of non-monetary benefits) have the potential to bias advisers towards discretionary services and, if payments vary between DIMs, to bias advisers towards recommending DIMs that pay the highest amounts.

6.6 To make it clear that adviser firms should not be remunerated by DIMs, we introduced guidance (COBS 6.1A.6G) to say that an example of a related service is an adviser firm managing a relationship between their client and a DIM (where the adviser firm has also provided that client with personal recommendations for retail investment products).

6.7 We have recently been asked a number of questions about this aspect of the RDR. It has become apparent that firms are uncertain of our expectations. In particular, we have been asked what our expectations are of referral payment arrangements which are in place before 31 December 2012. In this chapter, we propose amendments to the Handbook to ensure that the provisions more clearly reflect the policy intention.

6.8 Firms should note that, for the purposes of the inducement rules in COBS 2.3, a non-monetary benefit would include the direction or referral by a firm of an actual or potential item of designated investment business to another person, whether on its own initiative or the instructions of an associate (COBS 2.3.5G). This means that firms (ie adviser firms and DIMs) should consider whether referrals themselves comply with the inducement rules, and to do so separately from any consideration of a payment for that referral. The conditions that any fee, commission or non-monetary benefit need to meet in order to be provided or accepted under the inducement rules are covered in paragraph 6.14.

Proposed amendments – banning referral payments

6.9 To make it clear that adviser firms must not accept or solicit commission, remuneration or benefit of any kind from a DIM for recommending its services to a retail client[15], we propose to introduce a new rule in the Handbook to replace the previous guidance at COBS 6.1A.6G.

14 PS10/6, *Distribution of retail investments: Delivering the RDR – feedback to CP09/18 and final rules*, (March 2010), Page 28.
15 In line with the policy intention set out in PS10/6.

The prohibition would apply only where the adviser firm has also provided that retail client with a personal recommendation in relation to a retail investment product.

6.10 COBS 6.1A is only applicable to firms that provide personal recommendations to retail clients for retail investment products, but the scope of each provision within this section is not necessarily limited only to personal recommendations. For the avoidance of doubt, the recommendation to the DIM does not of itself need to be a personal recommendation in relation to a retail investment product to be caught by this new rule. This is consistent with the intention of the existing guidance at COBS 6.1A.6G.

6.11 Adviser firms can receive additional remuneration for any role they play in the relationship between a client and a DIM, but this can only be through charges that they have set out upfront and agreed with their clients (and which comply with the other requirements set out in the rules on adviser charges).

> **Q6.1:** Do you agree with the proposed new rule banning referral payments by a discretionary investment manager to an adviser who provides personal recommendations to a client?

6.12 There may be occasions on which an adviser firm recommends a client to a DIM, based on a thorough consideration of their investment needs and objectives, and may have an ongoing relationship with the client. However, the adviser firm never provide a personal recommendation to that retail client in relation to a retail investment product (but does give retail investment advice to other clients and is holding itself out as providing financial or investment advice). The proposed new rule would not prohibit payments from the DIM to the adviser firm in such situations, but we would welcome views on whether we should consider extending it to cover them.

6.13 For referral payments which are not prohibited by the adviser charging rules, there are, however, other Handbook provisions which require firms to put their clients' interests first when considering paying or receiving such payments. In particular, if the referral payments are in relation to designated investment business, firms must comply with the client's best interests rule (COBS 2.1.1R) and the inducement rules (COBS 2.3).[16]

6.14 In order to comply with the inducement rules, both the DIM and the adviser firm would need to ensure that they meet certain tests before paying or accepting such payments. This includes being able to demonstrate that the payment does not impair compliance with the firm's duty to act in the best interests of the client and, where relevant, is designed to enhance the quality of the service to the client and is clearly disclosed (COBS 2.3.1R).

> **Q6.2:** Do you consider that the banning of referral payments by discretionary investment managers should be extended to cases where the adviser does not make personal

16 Several of the Principles for Businesses are also relevant, including Principle 6 (Customers' interests) and Principle 8 (Conflicts of interest).

recommendations to the client but has an ongoing relationship with them?

Transitional arrangements

6.15 The amendments we are consulting on relate to referrals being made for the first time by an adviser of a client to a DIM after 31 December 2012. However, we have been asked about the continuation of ongoing payment arrangements that exist before 31 December 2012. We recognise that the amendments proposed here do not give firms guidance on how to treat referral payment arrangements which are already in place when the RDR rules come into force.

6.16 Our preference is to treat existing referral payments in a similar way to trail commission.[17] Trail commission can continue to be paid or accepted if the contract to which the commission relates was entered into on or before 30 December 2012 and certain other conditions are met.[18]

6.17 As with trail commission, our preference is that adviser firms receive no additional remuneration post-RDR for recommending that a client invests more money through their DIM-managed portfolio. The adviser firm could continue to be paid by the DIM for the investment amount resulting from a pre-RDR referral.

6.18 However, we have decided not to consult on transitional arrangements in this paper. We recognise that there could be costs for those firms who need to distinguish between a client's pre-RDR and post-RDR investments, so that they only provide referral payments on the former, and that these costs may not have been taken into account in our previous cost benefit analysis of the adviser charging proposals. Therefore, we are considering consulting separately on transitional arrangements for existing referral payment arrangements, including the possibility of carrying out a cost benefit analysis on our proposed approach. In considering an appropriate timescale for making rules for transitional arrangements, we will take into account the time required for firms to make the necessary system changes.

6.19 In the interim, the rules allow adviser firms to continue to receive commissions from DIMs after 31 December 2012 for specific referrals, where the referral was made prior to 31 December 2012 and the contract which envisages ongoing payments from the DIM to the adviser firm for the referrals was made prior to 30 December 2012. In these circumstances, and until we indicate otherwise, we will interpret the rules to mean that any activity that an adviser undertakes in relation to a client's DIM-managed portfolio from 31 December 2012, including any recommendation to top-up or reduce their investments through the DIM, will not impact on the level of payments they are allowed to receive from the DIM.

17 We use 'trail commission' to mean ongoing commission that is payable for advice provided pre-RDR and which normally continues to be payable while the client holds the investment concerned.

18 The conditions that must be met for trail commission to remain payable are contained in COBS 6.1A.4AR.

Q6.3: Do you have any comments on our proposed approach to transitional arrangements?

Advisers managing a relationship between a retail client and a DIM

6.20 We have been asked to provide further guidance on what constitutes managing a relationship in COBS 6.1A.6G. This should be interpreted as any service provided to a retail client in relation to investments which are managed by a DIM. For example, the adviser may undertake one or more of the following (though this is not an exhaustive list):

- act as an agent for the client with regard to their agreement with the DIM;
- pass material to the DIM on the client's financial situation and/or investment preferences;
- receive information/material from the DIM to pass on to the client;
- monitor the performance of the client's investments with the DIM; or
- periodically reassess whether the use of the DIM remains in the client's best interests.

6.21 We propose to make it clear in the new rule (which would replace the guidance at COBS 6.1A.6G) that any service provided to a retail client by an adviser firm in relation to the investment managed by a DIM will be a 'related service' and therefore, in scope of the adviser charging rules.

Q6.4: Do you agree with our proposal to clarify 'managing a relationship'?

Calculation of the cost of adviser services to a client

6.22 COBS 6.1A.16G says that 'in order to meet its responsibilities under the client's best interests rule and Principle 6 (Customers' interests), a firm should consider whether the personal recommendation is likely to be of value to the retail client when the total charges the retail client is likely to be required to pay are taken into account.'

6.23 We propose to amend this guidance to include related services as well as personal recommendations for the purposes of consistency with our amendments elsewhere in COBS 6.1A. Therefore, a firm should also consider whether a service related to a personal recommendation is likely to be of value to the retail client when the total charges the retail client is likely to be required to pay are taken into account. However, we would already expect firms to be mindful of their obligations in this area under Principle 6 and the client's best interests rule.

Q6.5: Do you agree with our proposed amendments to COBS 6.1A.6 on referrals to discretionary investment managers?

Cost benefit analysis

6.24 The changes proposed in this chapter relating to referrals to discretionary investment managers are intended to clarify the rules and guidance published with PS10/6 and to confirm the policy intention which was set out in the accompanying text. The proposed changes meet requests for clarification by the industry. Consequently, we believe no significant additional costs are created by the clarification amendments.

Q6.6: Do you agree that the clarifications in this chapter do not entail costs or benefits other than those already captured in PS10/6?[19]

Compatibility statement

6.25 We believe that the rules as amended are compatible with our statutory objectives of protecting consumers and promoting market confidence since we expect our amendments to reduce the potential for advisers' remuneration to bias advice. We also consider that the clarifications consulted on here fulfil the principles of good regulation, in particular the need to use our resources in the most efficient and economic way. The Handbook changes will reduce future uncertainty for firms when applying the rules and therefore the need for individual guidance.

Equality and diversity

6.26 We have concluded that our proposals do not give rise to discrimination and are of low relevance to the equality agenda. Nevertheless, we would welcome any comments respondents may have on any equality issues they believe arise.

19 PS10/6, *Distribution of retail investments: Delivering the RDR – feedback to CP09/18 and final rules*, (March 2010).

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7

Proposed minor amendment to rules on new business connected to with-profits funds

Introduction

7.1 In CP11/5[20], we set out our proposals for a range of changes to our rules and guidance in Chapter 20 of the Conduct of Business sourcebook (COBS) concerning the operation of with-profits funds. After the consultation period ended and we considered the responses, we published PS12/4 which clarified a number of points relevant to with-profits business and published the final rules for COBS 20.[21]

7.2 The proposed amendments, if approved, will be made under section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendments can be found in Appendix 7.

Proposed amendments

7.3 After we published the revised rule changes in PS12/4, we amended the rule on new business in a with-profit fund, as this was a particular concern to some firms.

7.4 We received further comments which suggested that the new rules and guidance could be interpreted as meaning that new business must always add positive value to a with-profits fund. For example, the with-profits fund should receive a commercial return for the use of the inherited estate to support new business and firms with an established approach of aiming for

20 CP11/5: *Protecting with-profits policyholders,* (February 2011) www.fsa.gov.uk/library/policy/cp/2011/11_05.shtml
21 PS12/4: *Protecting with-profits policyholders – feedback and final rules,* (March 2012) www.fsa.gov.uk/static/pubs/policy/ps12-04.pdf

a cost-neutral position, under which the inherited estate does not gain or lose, would be stopped from continuing this position under COBS 20.2.28R and COBS 20.2.28AG(1).

7.5 In PS12/4 we said this change was intended to tighten an existing rule in response to concerns that firms could use the inherited estate in ways that could reduce the amount available for distributions to existing and future with-profits policyholders. This could either be through new business being deliberately priced on loss-making terms, or new business generating insufficient volume to cover all the costs associated with it.

7.6 The guidance was never intended to suggest that new business must always add value by increasing assets or otherwise creating a benefit for the fund. In keeping with references to new business being self-supporting in the guidance, our intention was that new business must be expected to add sufficient value to compensate for the costs of writing that business. This means sufficient value to ensure the policyholder is treated fairly by new business not being an unfair drain on the estate. We have also considered a cost-neutral approach to be consistent with this.

7.7 Therefore, we propose to clarify the guidance in COBS 20.2.28AG(1) by adding additional wording to make it clear that a cost-neutral approach is not prohibited.

> **Q7.1:** Do you agree with our proposal to clarify the wording in COBS 20.2.28AG(1)?

Cost benefit analysis

7.8 Section 155 of FSMA requires us to undertake a cost benefit analysis of our proposed requirements and to publish the results, unless we consider the proposal does not give rise to any cost or any increase is of minimal cost.

7.9 The proposed additional wording is intended to tighten up the guidance and allow current practices to continue. It should have no significant cost for firms.

Compatibility statement

7.10 The proposal aims to clarify rules that are designed to meet our consumer protection objectives and have been developed with regard to the principles of good regulation. We are satisfied that these proposals are compatible with our general duties under section 2 of FSMA.

Equality and diversity issues

7.11 We have assessed that our proposals do not give rise to discrimination and that the proposals are of low relevance to the equality agenda. We would nevertheless welcome any comments respondents may have on any equality issues they believe arise.

Contact

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8

Proposed changes to the Collective Investment Schemes sourcebook

Introduction

8.1 This chapter proposes various amendments to the Collective Investment Schemes sourcebook (COLL), the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) and the Glossary of definitions.

8.2 The proposed amendments, if approved, will be made under section 138 (General rule-making power), section 139(4) (Miscellaneous ancillary matters), section 156 (General supplementary powers), section 157(1) (Guidance), section 247 (Trust scheme rules) and section 248 (Scheme particulars rules) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendments is set out in Appendix 8.

Proposals

Removal of reference to the former Collective Investment Schemes sourcebook (CIS) and Collective Investment Scheme Information Guide (COLLG)

8.3 CIS has not been in force since 11 February 2007 as it was replaced by COLL. However, SYSC still contains a reference to CIS in SYSC 6.1.4AR(2)(b). We wish to remove this reference to ensure CIS is no longer referred to and to avoid any confusion for firms.

8.4 COLL 7.7.6G(3) currently refers to a summary of the regime for Undertakings for Collective Investment in Transferable Securities (UCITS) mergers being found in COLLG. However, changes to COLLG have resulted in the summary no longer appearing in the guide. We consider that any party to a merger should consider the full rules in COLL 7.7

rather than a summary. Therefore, we propose to delete COLL 7.7.6G(3), as the summary it refers to no longer exists.

Q8.1: Do you agree with removing these two references in the FSA Handbook?

Disclosure requirements for property authorised investment funds

8.5 We propose to amend the rules in relation to disclosures in scheme instrument contents and prospectuses for property authorised investment funds (PAIFs). The current rule in COLL 3.2.6R(7B) requires a PAIF to disclose in its instrument of incorporation that it is a PAIF. However, this means that all sub-funds in an umbrella scheme would also have to be PAIFs.

8.6 To correct text we have removed the PAIF disclosure requirement in the scheme instrument as required by COLL 3.2.6R(7B). Instead, we have inserted additional requirements for the prospectuses of PAIFs into COLL 4.2.5R. These include a requirement to disclose whether the fund is a PAIF if it is not an umbrella and, if it is an umbrella, to disclose whether any of the sub-funds are PAIFs, in the same way as it is currently disclosed if any of the sub-funds are feeder funds.

Q8.2: Do you agree with the amendment to the PAIF disclosure requirement?

Disclosures to clarify certain descriptions in fund objectives or fund names

8.7 A number of funds currently employ descriptions in their fund name, investment objectives or fund literature that can imply a degree of capital protection or a guarantee of positive returns, where no such guarantee may exist. Descriptions and names of this type include the terms 'absolute return' and 'total return'. The Retail Conduct Risk Outlook (RCRO) 2012 outlined this as one of the reasons why absolute return funds posed a potential retail risk.

8.8 Therefore, we propose to include in our list of required prospectus contents (COLL 4.2.5R(3)(ca)), additional disclosures for firms that use such terms where there is no guarantee to support them. The additional disclosures will inform investors that there may be a risk to their capital, provide information on the anticipated timescale for a positive return, and advise that there is no guarantee that such a return will be achieved over this or any other timescale (where no such guarantee exists).

8.9 We believe that such a disclosure will help avoid the risk that investors are misled by such terms. Including such a disclosure in the fund objectives where these terms are used should ensure these warnings are given sufficient prominence in all required disclosure material.

8.10 We have included a transitional provision in our proposals to give affected authorised fund managers (AFMs) up to six months to make the change to their funds' prospectuses. If other changes are made to the fund prospectus during that six-month transitional period, we would expect the change to be made at that point.

> **Q8.3:** Do you agree with the provision of additional disclosures to investors when terms implying positive returns irrespective of market conditions are used?

Clarification of those government and public securities to which the COLL spread rules apply

8.11 Current rules in COLL 5.2.12R(1) refer to the rule applying to government and public securities (GaPS), which is an FSA glossary term. This term derives from the definition given in Article 78 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

8.12 This definition names one of the specified issuers of GaPS as 'a local authority in the UK or elsewhere'. However, Article 54 of the UCITS Directive, when setting out the investment powers for UCITS schemes, refers to 'securities…issued or guaranteed by a Member State [and] one or more of its local authorities…'. This may imply that COLL goes wider than the UCITS Directive in applying the broader spread rules to local authorities from outside the European Economic Area (EEA).

8.13 To align the wording of the COLL rule with the UCITS Directive, we propose to specify that the GaPS referred to in COLL 5.2.12R are those issued or guaranteed by an EEA state, one or more of its local authorities, a third country, or a public international body to which one or more EEA states belong. There is also a consequential amendment to COLL 5.2.11R. We propose to make the same change for non-UCITS retail schemes (NURS), as there would appear to be benefit in consistency across UCITS and NURS for these types of assets.

8.14 There are minor consequential amendments to the wording of COLL 3.2.6R(8) and COLL 4.2.5R(3)(i) as a result of this change.

> **Q8.4:** Do you agree with our proposed specification of which government and public securities the COLL spread rules apply to?

> **Q8.5:** Do you agree this specification should also be made for NURS?

Updated reference to European Securities and Markets Authority (ESMA) guidelines

8.15 COLL 5.3.11G currently contains a reference to a set of guidelines issued by the ESMA entitled 'Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS'.[22] This document, which represented ESMA's final report following feedback on the guidelines, has now been replaced by the final guidelines document.[23] Therefore, we are amending the link provided in the guidance so that the final version of the guidelines can be accessed.

Q8.6: Do you agree with the proposed update to COLL 5.3.11G?

Netting of issue and cancellation of units

8.16 In CP06/18[24] we consulted on COLL 6.2.6AR allowing netting of issue and cancellation of units in multiple classes. These proposals were subsequently confirmed as rules.[25] Our summary of responses in the Handbook Notice reflects the differing viewpoints received on whether netting across classes with different periodic charges should be allowed. At the time, our response was not to allow this type of netting due to consultation responses that indicated the possibility that administration systems might not cope with unrestricted aggregation and the number of errors might be increased.

8.17 With an increasing number of unit classes being introduced by managers to take account of the Retail Distribution Review (RDR), we propose to remove the restriction in COLL 6.2.6AR on netting across share classes that have different charges.

8.18 While the technology of administration systems has developed since 2007, we propose that widening the ability to net should be accompanied by appropriate due oversight. Therefore, we are taking this opportunity to clarify within the rules the oversight duties and ongoing responsibility of the depositary, which is required to provide its consent for netting. In addition, we have included a requirement that the AFM must itself ensure that its treatment of unit classes in this manner will not be to the detriment of unitholders.

Q8.7: Do you agree with our removal of the requirement for the units to have the same charging structure under COLL 6.2.6AR and our clarification of the role of the depositary in these circumstances?

22 (ESMA reference ESMA/2011/112).
23 (ESMA reference ESMA/2012/197).
24 CP06/18, *Quarterly Consultation (No 10)*, (January 2006).
25 In Handbook Notice 63 (February 2007).

Calculation of the preliminary charge

8.19 Currently, COLL 6.7.7R(2)(a) specifies that a preliminary charge on the purchase of units should either be a fixed amount or calculated as a percentage of the price of a unit. We wish to clarify this rule so it is consistent with the Key Investor Information (KII) Regulation, which is reproduced in the Handbook as an Appendix to COLL. Article 10 of these Regulations specifies that, in the presentation of charges in the KII document, entry and exit charges shall each be the maximum percentage that might be deducted from the investor's capital commitment to the UCITS.

8.20 We propose to amend COLL 6.7.7R(2)(a) to state that a preliminary charge should either be a fixed amount or calculated as a percentage of the unitholder's investment. We have also made a consequential amendment to the text of COLL 4.2.5R(21) on the prospectus description of a preliminary charge.

Q8.8: Do you agree with the proposed clarification on the calculation of the preliminary charge?

Income allocations when converting between unit classes

8.21 A method known as 'income equalisation' is used by funds to ensure that deals in units do not adversely affect the rights of unitholders to income their units have 'earned'. COLL 6.8.3R(3A)(c)(v) facilitates this process by allowing the appropriate transfers between the fund's income and capital accounts for units issued or cancelled.

8.22 As set out in COLL 6.4.8R, unitholders have a right to convert from one share class to another. However, COLL 6.8.3R(3A)(c)(v) does not explicitly state that such transfers can be made on conversions between unit classes, although the same considerations for unitholders' entitlements apply.

8.23 The RDR is likely to see a large increase in the number of conversions firms will be required to carry out. We propose to clarify COLL 6.8.3R(3A)(c)(v) and the Glossary definition of 'income equalisation' to include a reference to conversions, so that it is clear that transfers between the capital and income accounts can be made in these circumstances. HM Revenue and Customs has been consulted on this proposal.

Q8.9: Do you agree with the proposed clarification concerning conversions?

Clarification on information to be given to unitholders of a merging or receiving UCITS

8.24 The current rule on information to be given to unitholders by the AFM of a merging UCITS or receiving UCITS contains a reference in COLL 7.7.10R (3)(c)(ii) to a right to obtain a copy of the report of the independent auditor or depositary on request. We are proposing an addition to this rule to clarify that the report referred to is the report required by Article 42 of the UCITS Directive, as implemented by Regulation 11 of the UCITS Regulations 2011.

Q8.10: Do you agree with the proposed additional clarification of COLL 7.7.10R(3)(c)(ii)?

Requirement for recognised schemes to provide annual and half-yearly reports free of charge

8.25 COLL 9.4.2R currently requires the operator of a recognised collective investment scheme to maintain facilities in the UK for the purposes of inspection and obtaining certain documents on request to any person. The rule specifies that persons should be able to obtain copies of the latest prospectus and (for a section 264 recognised scheme) a copy of the scheme's EEA KII document free of charge. For other items in the list, the operator can make no more than a reasonable charge for obtaining the documents.

8.26 Article 75(1) of the revised UCITS Directive (UCITS IV) requires that the latest published annual and half-yearly reports be made available free of charge and on request to investors. However, just applying the Directive requirement would mean that investors in a section 264 recognised scheme[26] would be able to obtain annual and half-yearly reports free of charge, whereas investors in section 270 and 272 recognised schemes[27] may be charged for obtaining these documents.

8.27 We propose that investors in all recognised schemes should be able to obtain annual and half-yearly reports free of charge. An amendment to COLL 9.4.2R (1) is proposed to achieve this.

Q8.11: Do you agree with the proposal for operators of all recognised schemes to allow a person to obtain the annual and half-yearly report free of charge?

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26 A scheme authorised under the UCITS Directive in another EEA State that has successfully applied to be 'recognised' by the FSA in order to market units in the UK, as permitted by section 264 of FSMA.

27 A section 270 scheme is a collective investment scheme which does not fall within the criteria for a section 264 scheme (see above), but which is authorised in a country or territory designated in an order by HM Treasury, and which has successfully applied to be recognised under section 270 of FSMA to market units in the UK. A section 272 scheme is a collective investment scheme which falls outside the criteria to be a section 264 or 270 recognised scheme, but which has successfully applied to be individually recognised, having met the criteria outlined in section 272 of FSMA.

Cost benefit analysis

8.28 Section 155 of FSMA requires us to publish a cost benefit analysis of the implications of the proposed amendments. The requirement under section 155 of FSMA does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance. Most rule changes are clarificatory and hence do not give rise to costs of more than minimal significance. However, there are a few exceptions to this and for these rule changes we discuss the costs and benefits below.

Disclosures to clarify certain descriptions in fund objectives or fund names

8.29 Some cost impact may be expected for managers whose funds use such descriptions in their fund's name, objectives or other literature, purely arising from the administrative costs of making an amendment to scheme prospectuses. There should be no additional costs other than these as any schemes using terms in their fund's name, fund objectives or other fund literature such as 'absolute return' or 'total return' should be able to provide the additional information required in the prospectus with a minimum of difficulty.

8.30 As highlighted in the RCRO, consumers could suffer significant unexpected financial loss if they are sold funds that fail to perform, where the perception that a return is guaranteed exists. Consumers will therefore benefit from these changes through an awareness that capital invested in a fund using such descriptions in their fund name or objectives may be at risk. The additional information will also benefit from consumers being aware of the period in which the fund seeks to achieve a positive return, where this is not currently provided.

Calculation of the preliminary charge

8.31 The proposed change may result in cost impact for managers who currently show the preliminary charge as a percentage of the price of a unit on contract notes for customers, as they will need to amend this. However, following recent discussions with industry on this matter, it has been indicated that many managers already show a preliminary charge in a manner consistent with that laid out in the KII Regulations. Many other managers also completely discount the preliminary charge during the sale so any costs should not be substantial.

8.32 Benefits will arise from this proposal for firms, who will now have certainty on the basis for the preliminary charge and consistency between COLL and the KII Regulation. Customers will also be able to see how much of their initial investment is taken as a preliminary charge.

Income allocations when converting between unit classes

8.33 The Retail Distribution Review is likely to result in managers launching additional share classes, some of which may have lower charges than existing ones. Investors directly, or

through their advisers, may request a movement to a lower charging share class. A conversion does not crystallise a gain in the same way that a sale and purchase of units does. In the light of the expected volume of class conversions, our proposal will help avoid inappropriate distortions of the entitlements of unitholders. Clarifying the rule to include conversions also assists firms in understanding the transfers they can make between income and capital.

Requirement for recognised schemes to provide annual and half-yearly reports free of charge

8.34 The proposed change may have a small cost impact on operators of section 270 and 272 recognised schemes, which will now be required to provide annual and half-yearly reports free of charge. However, the cost increase should be minimal, as we already specify that the charge for obtaining these documents should be reasonable.

8.35 Consumers investing in section 270 and 272 recognised schemes should benefit from these proposals by being allowed to obtain the annual and half-yearly reports without charge. There will also be consistency for all types of recognised scheme, as those recognised under section 264 are already required to provide these documents free of charge under Article 75 (1) of the UCITS Directive.

Compatibility statement

8.36 We believe that the rules as amended are compatible with our statutory objectives of protecting consumers and promoting market confidence. Our proposals fulfil the principles of good regulation, and a burden or restriction should be proportionate to the expected benefits.

8.37 The Handbook changes will reduce uncertainty for firms and consumers when applying the rules and ensure adequate protection for consumers.

Equality and diversity issues

8.38 We have concluded that our proposals do not give rise to discrimination and are of low relevance to the equality agenda. Nevertheless, we would welcome any comments respondents may have on any equality issues they believe arise.

Contact

Comments should reach us by 5 December 2012. Please send them to:

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9

Implementing the European Regulation on OTC derivatives, central counterparties and trade repositories

Introduction

9.1 The European Regulation on over the counter (OTC) derivatives, central counterparties (CCPs) and trade repositories, known as the European Market Infrastructure Regulation (EMIR), came into force on 16 August 2012[28] and the European Securities and Markets Authority (ESMA) published supporting detailed technical standards on 27 September 2012. During 2013, EMIR will require anyone trading a derivatives contract to report the details of the contract to a trade repository and introduce requirements for financial and non-financial counterparties to risk-manage OTC derivative contracts.

9.2 EMIR also introduces EU wide standards for CCPs and trade repositories. Once a CCP has been authorised to clear a particular type of contract under the EMIR rules, ESMA can require all financial counterparties, as well as non-financial counterparties who transact in derivatives above pre-defined thresholds, to clear all contracts of that type through a CCP, with contracts that are not cleared subject to bilateral risk management and collateral requirements by those market participants.

9.3 EMIR does not require significant implementation in the FSA Handbook, as it is an EU Regulation (not a Directive) and the EU legislative text has a direct effect in the UK. Further, HM Treasury are proposing changes to domestic legislation to implement EMIR.

28 Regulation (EU) No 648/2012.

So, most of the FSA Handbook amendments required tend to be consequential upon those changes. The proposed amendments in this consultation, if approved, will be made under section 138 (General rule-making powers), section 156 (General supplementary powers), section 157(1) (Guidance), section 210 (Statements of policy), section 293(1) (Notification requirements), section 395 (The Authority's procedures) and paragraph 17(1) (Fees) of Schedule 1 to the Financial Services and Markets Act 2000 (FSMA). The proposed Handbook text can be found in Appendix 9.

Background

9.4 To ensure domestic legislation is compatible with EMIR and we have the powers we need to comply with our obligations, HM Treasury plan to introduce secondary legislation in the form of an EMIR statutory instrument (EMIR SI). The EMIR SI from HM Treasury, among other things, will increase the scope of our investigative and enforcement powers to cover the EMIR reporting and risk management requirements, and provide a wider range of enforcement powers in relation to CCPs. This consultation outlines our planned implementation in the Handbook of those anticipated new powers. We are also consulting on proposed amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC) to reflect how parts of our existing regime will interact with EMIR and to reflect expected changes to domestic legislation arising from the EMIR SI. Only minor amendments to the Handbook are required.

9.5 We intend to make these changes to the FSA Handbook in early 2013, ahead of the transition to the new regulatory authorities (the Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA) and the Bank of England (BoE)). The Handbook changes set out in this consultation are therefore subject to change in line with the future mandates and policies of the FCA, PRA and BoE.

9.6 This consultation is based on the EU EMIR regulation and the anticipated EMIR SI which will be published only when it is laid before Parliament. We understand from HM Treasury that there will not be formal consultation on the EMIR SI provisions, as EMIR contains directly applicable obligations and the domestic SI ensures that the domestic regime is compatible with it. So, in part, it is necessary for this consultation to refer to anticipated changes to primary legislation that have not yet been published. Where proposed Handbook text is indicated in grey, it reproduces legislative text from the anticipated draft recognition requirements in the EMIR SI. To the extent that the final legislation differs from our expectations, the final Handbook text may also need to be amended.

Proposed amendments

Investigation and enforcement powers for financial and non-financial counterparties

9.7 The EMIR requirements aim to ensure certain derivatives transactions are centrally cleared, derivative transactions are reported to trade repositories and risk mitigation techniques employed in relation to OTC derivative transactions. These requirements apply to a wide range of financial and non-financial counterparties to derivative contracts, some of which will not require authorisation under FSMA. EMIR requires us to have additional powers to investigate any counterparties that fall within the scope of EMIR and enforce compliance with a number of provisions related to the requirements of EMIR.

9.8 We expect that the EMIR SI will expand our supervisory and enforcement powers by allowing us to gather information from various persons subject to EMIR obligations, impose civil penalties on persons such as financial and non financial counterparties, or to release public statements to censure them if they have failed to comply with obligations under EMIR. The proposed Handbook changes are limited to explaining the powers and setting out our policy in exercising them. We propose including an explanation of our approach to these powers in a new chapter in the Enforcement Guide (EG). We have also proposed consequential amendments to the Decision Procedure and Penalties manual (DEPP).

9.9 The new chapter in EG will explain that we will only use these powers where it is appropriate to do so and with regard to the relevant factors listed under DEPP. Where we are proposing or deciding to publish a statement censuring a financial or non-financial counterparty or imposing a penalty on a financial or non-financial counterparty, the decision maker will be the Regulatory Decisions Committee (RDC). This is to ensure that our power to censure or impose a penalty is exercised consistently with similar penalty and censure powers under other legislation, for example in relation to market abuse.

9.10 Where the RDC does use the power to impose a penalty, it will be for an amount that is effective, proportionate and dissuasive. We will issue a warning notice followed by a decision notice, stating the amount of the penalty. A firm will have a right of appeal to the Upper Tribunal in the normal way following receipt of a decision notice.

Funding investigation and enforcement activities

9.11 There is no requirement for non-authorised counterparties to register with the FSA under EMIR, which means the cost of processing notifications/applications for exemptions and oversight of EMIR requirements will need to be recovered from the authorised firms. We propose to allocate these costs to the authorised firms that will benefit from safer derivatives markets as a result of EMIR, for example through the insurer (A.3 and A.4), fund manager (A.7) and advising/arranging/dealing fee-blocks (A.12 and A.13). With costs allocated to the relevant fee-blocks in proportion to the direct costs allocated to them as part of the annual FSA funding allocation process.

Central counterparties – recognition

9.12 Currently, CCPs established in the UK can apply for Recognised Clearing House (RCH) status and non-UK CCPs can apply for Recognised Overseas Clearing House (ROCH) status under FSMA. Recognition provides an exemption from the need to be authorised to carry on regulated activities in the UK. HM Treasury's EMIR SI is expected to retain the concept of an RCH, but introduce a definition of an EMIR 'recognised central counterparty' as being an RCH where a recognition order has been made following a successful application for authorisation in accordance with article 17 of EMIR. As the definition of an RCH will include an EMIR recognised central counterparty, we propose to amend the Glossary in a consistent way, so any rules or guidance currently applicable to an RCH will also continue to apply to an EMIR-recognised central counterparty unless explicitly stated otherwise. RCHs and ROCHs that do not provide clearing services as a CCP will not require authorisation under EMIR, for example where the RCH operates a settlement system but does not provide clearing services as a CCP.

9.13 The rules and guidance in REC on applications, supervision and notifications in relation to RCHs will be adapted, but continue to apply to RCHs that are EMIR recognised central counterparties. We propose additional guidance in REC 5, which provides guidance in relation to the application process for RCHs. The proposed guidance indicates that, to provide clearing services, a domestic CCP must make an application under EMIR, which will be determined in accordance with the procedure in article 17 of EMIR.

9.14 The UK ROCH regime will no longer be required for non-UK CCPs as they will be able to provide clearing services in the UK and all other EU member states with a central EMIR license from ESMA (in the case of a CCP from a third country) or from another Member State competent authority (in the case of a CCP from that Member State). CCPs with a ROCH licence at the time the relevant EMIR provisions come into force are permitted to continue to operate under that license provided they submit an application for authorisation or recognition under EMIR within six months of the date which the ESMA technical standards come into force. The UK ROCH regime will remain in place to provide recognition for any ROCHs that do not perform clearing services, for example a ROCH that operates a settlement system, but does not provide clearing services.

Central counterparties – recognition requirements

9.15 We expect the EMIR SI to retain the existing recognition requirements for those RCHs that are not recognised CCPs. RCHs that have applied for reauthorisation under EMIR, but have not yet been assessed, will also continue to be subject to the existing requirements until they are assessed as a result of the effect of the EMIR transitional provisions.

9.16 RCHs that are EMIR recognised CCPs will be subject to directly applicable requirements set out in EMIR and a limited set of additional recognition requirements set out in the EMIR SI. We propose guidance describing the additional recognition requirements, which we expect to include updated requirements in relation to the default rules needed to

facilitate the operation of Part 7 of the Companies Act 1989[29] and continued application of the existing recognition requirement for financial crime and market abuse. Once the EMIR SI is finalised we will consider whether any additional requirements or guidance is required.

Central counterparties – notification requirements

9.17 The notification requirements in REC 3 will continue to apply to RCHs that are recognised CCPs. We are consulting on an additional requirement for EMIR authorised CCPs specifying the information required under EMIR level 1, article 32(4) in order to carry out an assessment of a proposed acquirer. We are also proposing to extend the existing requirement for recognised investment exchanges to notify the FSA at least 30 days before a change in management to EMIR-authorised CCPs, to allow time to assess compliance under EMIR level 1 articles 27 and 31.

Central counterparties – supervisory and enforcement powers

9.18 In line with the obligations created by EMIR, HM Treasury's SI is also expected to extend our existing supervisory and enforcement powers for RCHs to include powers to gather information from recognised central counterparties and impose civil penalties on recognised CCPs or to release public statements to censure them if they have failed to comply with obligations under EMIR. As above, we are consulting on proposed changes to EG and DEPP to explain the powers and our policy in exercising them consistently with similar penalty and censure powers of the FSA under other legislation.

Central counterparties – application fees

9.19 The application fees we currently charge for new RCH applications are set out in our Fees manual (FEES). We propose to apply a fee of £75,000 for applications to re-authorise an existing RCH (75% of the £100,000 fee for new applications). Applications for authorisation under EMIR received from any entities that are not currently RCHs will continue to attract the full £100,000 application fee. EMIR authorisations will also specify the services and activities, including financial instruments that a CCP is authorised to provide. Where an RCH applies to extend the activities and services it is authorised to provide, we intend to charge a fee of £25,000. We may review our approach following consultation depending on the date for transition of CCP regulation to the BoE and the overall approach the FSA adopts to fees in the next financial year.

Cost benefit analysis

9.20 This cost benefit analysis below is limited to changes to the Handbook arising from the additional impact of the rules and guidance that we are proposing. The impact of the

29 The Treasury has previously consulted on proposals to amend Part 7 of the Companies Act 1989 and in August 2012 conducted an informal consultation on proposed amendments to support segregation and portability in relation to client clearing under EMIR.

obligations and requirements imposed by EMIR and by virtue of HM Treasury's EMIR SI are not considered.

9.21 Section 155 of FSMA requires us to publish a cost benefit analysis of the implications of the proposed amendments. The requirement under section 115 of FSMA does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.

9.22 The costs arising from the proposed Handbook changes are expected to be of minimal significance as most of those changes are consequential in nature or describe processes or requirements in EMIR or primary legislation.

9.23 Section 155(9) of FSMA exempts us from having to carry out a cost benefit analysis on our fees. However, as set out in CP12/3[30], we believe we have taken care in framing our proposals to impose burdens that are proportionate to the benefits they provide.

Q9.1: Do you have any comments on our cost benefit analysis?

Compatibility statement

9.24 Section 2(3) of FSMA requires that, in carrying out our general functions, we have regard to the principles of good regulation. Given that the proposed changes to Handbook text will not have significant cost benefit implications, and they are necessary, we are satisfied that the changes are proportionate and compatible with the principles of good regulation.

9.25 We have considered the international character of financial services and markets and the desirability of maintaining the competitive position of the UK.

Equality and diversity

9.26 We have considered the equality and diversity impact of these proposed changes and do not believe they give rise to any discrimination or other equality concerns.

Q9.2: Do you agree with our assessment of the equality and diversity impact of these proposals?

30 CP12/3, *Regulated fees and levies: Rates proposals 2012/13,* (February 2012).

Contact

Comments should reach us by 5 November 2012. Please send them to:

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10

Proposed changes to Chapters 8 and 18 of the Listing Rules sourcebook (LR)

Introduction

10.1 In this chapter we are consulting on proposed amendments to Chapter 8 of the Listing Rules sourcebook (LR) regarding the appointment of a Sponsor for the submission of supplementary circulars, and to LR 18, regarding global depositary receipts (GDRs).

10.2 The proposed amendments, if approved, will be made under section 73A (Part 6 Rules), section 75 (Applications for listing), section 79 (Listing particulars and other documents), section 80 (General Duty of disclosure in listing particulars), section 81 (Supplementary listing particulars), section 88 (Sponsors), section 96 (Obligations of issuers of listed securities), section 101 (Part 6 rules: general provisions) and Schedule 7 (the Authority as Competent Authority for Part VI) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendments can be found in Appendix 10.

10.3 This chapter will be of interest to listed issuers, their advisors, sponsors and investors.

Proposed changes to 8.2.1R(1)

10.4 LR 8.2.1R(1) does not include supplementary circulars or supplementary listing particulars. It is current practice for a premium listed company to appoint a sponsor when it is required to submit a supplementary prospectus or supplementary listing particulars for the admission of equity shares to premium listing, and we are now consulting on the rewording of LR 8.2.1R.

10.5 We propose to amend LR 8.2.1R(1) by revising LR 8.2.1R(1)(a) and (d), so that premium listed companies will be required to appoint a sponsor when it submits a supplementary prospectus or supplementary listing particulars.

> **Q10.1:** Do you agree with the proposal to require a premium listed company to appoint a sponsor when it is required to submit a supplementary prospectus or supplementary listing particulars?

Proposed changes to LR 18.2 and LR 18.3

Authorisation of depositaries issuing global depositary receipts (GDRs)

10.6 LR 18.2.13R stipulates that a depositary that issues GDRs must be a suitably authorised and regulated financial institution acceptable to the FSA. In practice GDR issuers tend not to use UK depositaries, making the task of enforcing the rule challenging. LR 18.2.13R does not easily fit with the international nature of the GDR market. Furthermore, LR 18.2.13R is not a requirement under the Prospectus Directive (PD) and we believe that (given the nature of the market), it is sufficient to rely on disclosure to deliver an appropriate level of investor protection, as is generally the case with the Listing Rules and Prospectus Rules. As it is not a requirement under the PD and imposes a strain on FSA resources that is not necessary for investor protection, we propose to delete LR 18.2.13R.

> **Q10.2:** Do you agree with our proposal to delete LR 18.2.13R, thereby removing the requirement for a depositary to be a suitably authorised and regulated financial institution acceptable to the FSA?

Requirement for depositaries issuing GDRs to hold rights and monies relating to shares on trust

10.7 LR 18.2.14R requires that a depository must hold rights and monies relating to the shares on trust (or under equivalent arrangements) for the benefit of GDR holders. We have recently discovered that depositaries generally do not hold cash in a manner that would protect it in the event that the depositary failed.

10.8 LR 18.2.14R is not a PD requirement and we accept that this additional measure imposes a higher standard than the market appears to demand, as the arrangements for holding cash are generally disclosed in prospectuses. Therefore, we propose to amend LR 18.2.14R so that it requires depositaries to have adequate arrangements in place to safeguard certificate holders' rights. These arrangements would need to be described in the prospectus.

Q10.3: Do you agree with our proposal to amend LR 18.2.14R so that it requires depositaries to have arrangements in place to safeguard certificate holders' rights and to describe these arrangements in the prospectus?

Cost benefit analysis

10.9 Section 155 of FSMA requires us to publish a cost benefit analysis of the implications of the proposed amendments. The requirement, under section 155 of FSMA, does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.

10.10 Given the nature of the proposed changes, we do not envisage that they will lead to a cost increase of more than a minimal significance.

Compatibility statement

10.11 Section 2(3) of FSMA requires that, in carrying out our general functions, we have regard to principles of good regulation. Given that the proposed changes will not have significant cost benefit implications, we are satisfied that the changes are proportionate and that they are compatible with the principles of good regulation.

Equality and diversity issues

10.12 We have concluded that the proposals set out in this chapter are of low relevance to the equality agenda. Nevertheless, we would welcome any comments respondents may have on any equality issues they believe arise.

Contact

Comments should reach us by 5 December 2012. Please send them to:

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Appendix 1
List of questions

Chapter 2:

Q2.1: Do you agree with the proposed changes to the wording of the exemption from the RDR rules for certain Holloway policies?

Q2.2: Do you have any comments on the amended wording of the Glossary definition and rules in Appendix 2?

Chapter 3:

Q3.1: Do you agree with the proposal to limit the voiding rules to the firms that meet the criteria described?

Q3.2: Do you have any other suggestions to improve the proposed amendments so the voiding rules can provide certainty for firms about whether the voiding rules apply?

Chapter 4:

Q4.1: Do you consider that these rules and guidance should also apply to firms other than banks and building societies?

Q4.2: If yes, do you believe there would be significant cost implications in extending the application of this policy?

Q4.3: Do you believe that the identification, monitoring and control of transactions with related parties are covered in the current practices of banks and building societies?

Q4.4: Do you agree that the cost impact of these proposed changes is negligible? If not, please provide details.

Chapter 5:

Q5.1: Are you aware of any reason why one or more of the suggested changes to the appropriate qualifications tables should not be made?

Chapter 6:

Q6.1: Do you agree with the proposed new rule banning referral payments by discretionary investment manager to an adviser who provides personal recommendations to a client?

Q6.2: Do you consider that the banning of referral payments by discretionary investment managers should be extended to cases where the adviser does not make personal recommendations to the client but has an ongoing relationship with them?

Q6.3: Do you have any comments on our proposed approach to transitional arrangements?

Q6.4: Do you agree with our proposal to clarify ‘managing a relationship’?

Q6.5: Do you agree with our proposed amendments to COBS 6.1A.6R on referrals to discretionary investment managers?

Q6.6: Do you agree that the clarifications in this chapter do not entail costs or benefits other than those already captured in PS10/6?

Chapter 7:

Q7.1: Do you agree with our proposal to clarify the wording in COBS 20.2.28AG(1)?

Chapter 8:

Q8.1: Do you agree with removing these two references in the FSA Handbook?

Q8.2: Do you agree with the amendment to the PAIF disclosure requirement?

Q8.3: Do you agree with the provision of additional disclosures to investors when terms implying positive returns irrespective of market conditions are used?

Q8.4: Do you agree with our proposed specification of which government and Public Securities the COLL spread rules apply to?

Q8.5: Do you agree this specification should also be made for NURS?

Q8.6: Do you agree with the proposed update to COLL 5.3.11G?

Q8.7: Do you agree with our removal of the requirement for the units to have the same charging structure under COLL 6.2.6AR and our clarification of the role of the depositary in these circumstances?

Q8.8: Do you agree with the proposed clarification on the calculation of the preliminary charge?

Q8.9: Do you agree with the proposed clarification concerning conversions?

Q8.10: Do you agree with the proposed additional clarification of COLL 7.7.10R(3)(c)(ii)?

Q8.11: Do you agree with the proposal for operators of all recognised schemes to allow a person to obtain the annual and half-yearly report free of charge?

Chapter 9:

Q9.1: Do you have any comments on our cost benefit analysis?

Q9.2: Do you agree with our assessment of the equality and diversity impact of these proposals?

Chapter 10:

Q10.1: Do you agree with the proposal to require a premium listed company to appoint a sponsor when it is required to submit a supplementary prospectus or supplementary listing particulars?

Q10.2: Do you agree with our proposal to delete LR 18.2.13R, thereby removing the requirement for a depositary to be a suitably authorised and regulated financial institution acceptable to the FSA?

Q10.3: Do you agree with our proposal to amend LR 18.2.14R so that it requires depositaries to have arrangements in place to safeguard certificate holders’ rights and to describe these arrangements in the prospectus?

Appendix 2

Retail Distribution Review – exemption of certain Holloway sickness policies

Appendix 2

RETAIL DISTRIBUTION REVIEW (HOLLOWAY SICKNESS POLICIES) (AMENDMENT) INSTRUMENT 2012

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of:

(1) the power in section 138 (General rule-making power) of the Financial Services and Markets Act 2000 ("the Act"); and

(2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 31 December 2012.

Amendments to the Handbook

D. The Glossary of definitions is amended in accordance with Annex A to this instrument.

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

Citation

F. This instrument may be cited as the Retail Distribution Review (Holloway Sickness Policies) (Amendment) Instrument 2012.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

Holloway policy special application conditions

conditions that will be met by a *firm* where:

(a) in the case of a *firm* which underwrites *Holloway sickness policies*:

(i) all of the *Holloway sickness policies* of a particular type underwritten by the *firm* show a projected maturity value of not more than 20% of accumulated *premiums* at the mid-rate projection in the *key features illustrations* prepared for the purposes of *COBS* 13.1.1R(2); except that no more than 5% of the relevant *Holloway sickness policies* underwritten by the *firm* may show a projected maturity value of between 20% and 25% of accumulated *premiums* at the mid-rate projection in the *key features illustrations* prepared for the purposes of *COBS* 13.1.1R(2); and

(ii) the *firm* conducts a regular assessment to determine whether ~~its~~ the relevant *Holloway sickness policies* meet the conditions in (i) and, if such an assessment indicates that the conditions in (i) may no longer be met, takes any steps necessary to ensure that ~~its~~ the relevant *Holloway sickness policies* will meet the conditions in (i) within three months of the relevant assessment having been carried out;

…

…

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

6.1B Retail investment product provider and platform service provider requirements relating to adviser charging and remuneration

Application – Who? What?

…

6.1B.2A R This section does not apply to a *firm* in circumstances where a *retail client* receives a *personal recommendation* in relation to one of the *firm's Holloway sickness* ~~*policy*~~ *policies*, provided that the *Holloway policy special application conditions* are met.

Appendix 2A

Designation of Handbook provisions

1. FSA Handbook provisions will be 'designated' to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website[1] for further details about this process.

2. We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
COBS 6.1B.2AR	FCA

1 www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml

Appendix 3

Remuneration Code – proposals to amend the rules on voiding and recovery

SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS (REMUNERATION CODE) (NO 5) INSTRUMENT 2012

Powers exercised

A. 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 138 (General rule-making power);
(2) section 139A (General rules about remuneration); and
(3) section 156 (General supplementary powers).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

D. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Remuneration Code) (No 5) Instrument 2012.

By order of the Board
xx December 2012

Annex

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

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

Effect of breaches of the Remuneration Principles

…

19A.3.54 R (1) Subject to (1A) to (3), the *rules* in *SYSC* 19A Annex 1.1R to 1.4R apply in relation to the prohibitions on *Remuneration Code staff* being *remunerated* in the ways specified in:

(a) *SYSC* 19A.3.40R (guaranteed variable *remuneration*);

(b) *SYSC* 19A.3.49R (non-deferred variable *remuneration*); and

(c) *SYSC* 19A Annex 1.7R (replacing payments recovered or property transferred).

(1A) Paragraph (1) applies only to those prohibitions as they apply in relation to a *firm* that satisfies at least one of the conditions set out in (1B) ~~to~~ and (1D).

(1B) Condition 1 is that the *firm* is a *UK bank*, ~~or~~ a *building society* or a relevant *BIPRU 730k firm* that ~~had *capital* resources~~ has relevant total assets exceeding ~~£1,000~~ £50 ~~million~~ billion ~~on its last *accounting reference date*~~.

(1C) ~~Condition 2 is that the *firm* is a relevant *BIPRU 730k firm* that had *capital resources* exceeding £750 million on its last *accounting reference date*.~~ [deleted]

(1D) Condition ~~3~~2 is that the *firm*:

(a) is a *full credit institution*, a relevant *BIPRU 730k firm* or a relevant *third country BIPRU 730k firm*; and

(b) is part of a *group* containing a *firm* that has relevant total assets exceeding £50 billion and that is a *UK bank*, a *building society* or a relevant *BIPRU 730k firm*.~~:~~

~~(i) a *UK bank* or *building society* that had *capital resources* exceeding £1,000 million on its last *accounting reference date*; or~~

~~(ii) a relevant *BIPRU 730k firm* that had *capital resources* exceeding £750 million on its last *accounting reference date*.~~

(1E) In ~~condition 2 in (1C) and condition 3 in (1D)(a) and (b)(ii)~~ this rule:

(a) a "relevant *BIPRU 730k firm*" is any *BIPRU 730k firm* that is not a *limited activity firm* or a *limited licence firm*;

(b) a "relevant *third country BIPRU 730k firm*" is any *third country BIPRU 730k firm* that is not a *limited activity firm* or a *limited licence firm*; and

(c) "relevant total assets" means the arithmetic mean of the *firm*'s total assets as set out in its balance sheet on its last three *accounting reference dates*.

Appendix 3A

Designation of Handbook provisions

1. FSA Handbook provisions will be 'designated' to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website[1] for further details about this process.

2. We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
SYSC 19A.3.54R	FCA and PRA

1 www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml

Appendix 4

Related parties

Appendix 4

SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS (RELATED PARTY RISK REQUIREMENTS) INSTRUMENT 2012

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in the following sections of the Financial Services and Markets Act 2000 ("the Act"):

(1) section 138 (General rule-making power);
(2) section 156 (General supplementary powers); and
(3) section 157(1) (Guidance).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

D. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Related Party Risk Requirements) Instrument 2012.

By order of the Board
[*date*]

Annex

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

In this Annex, underlining indicates new text.

7.1 Risk control

…

Related party risk

7.1.17 R A *bank* or *building society* must establish, implement and maintain effective policies and procedures to evaluate and manage risks arising out of transactions with its related parties.

7.1.18 G For the purposes of *SYSC* 7.1.17R the *FSA* considers:

(1) transactions to include:

(a) any arrangement or circumstance that gives rise to or varies an on-balance sheet or off-balance sheet asset or liability (whether contingent or otherwise);

(b) dealings such as service contracts, asset acquisitions and disposals, construction contracts, lease agreements, derivative transactions, borrowings and write-offs; and

(2) a *firm's* related parties to include:

(a) its *affiliated companies*;

(b) any *person* that the *firm* exerts *control* over or that exerts *control* over the *firm*;

(c) a *firm's* and a *firm's affiliated companies'* major shareholders, *directors*, *senior management* and key employees, their direct and related interests and their close family members; and

(d) any *person* that falls into the categories listed above after the relevant transaction has been entered into.

7.1.19 G In meeting the general standard referred to in *SYSC* 7.1.17R, a *bank* or *building society's* policies and procedures on related party transactions should:

(1) require that the *firm* transacts with related parties at market value or on terms no more favourable than would be agreed if the transaction was not with a related party (other than in relation to beneficial terms

that are part of an overall remuneration package such as favourable interest rates for employee loans);

(2) require the *firm* to obtain board approval for transactions with related parties that are above a materiality threshold set by the board;

(3) prevent a related party from taking part in the *firm's* decision making process in relation to any transactions with that related party;

(4) ensure that the *firm* records and monitors the details and amount of any related party transactions using an independent credit review or audit process and provides those details and amount to the *FSA* if required; and

(5) only permit exceptions if reported to the *firm's senior management* or *governing body* as appropriate.

7.1.20 G The *FSA* may use its *own-initiative power* to vary a *firm's Part IV permission* to impose *requirements* or *limitations* which include but are not restricted to:

(1) setting a limit for a *firm's* transactions with related parties; or

(2) deducting a *firm's exposures* under transactions with related parties from its *capital resources*; or

(3) requiring a *firm* to collateralise its transactions with related parties.

Appendix 4A

Designation of Handbook provisions

1. FSA Handbook provisions will be 'designated' to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website[1] for further details about this process.

2. We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
SYSC 7.1.17R	PRA
SYSC 7.1.18G	PRA
SYSC 7.1.19G	PRA
SYSC 7.1.20G	PRA

1 www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml

Appendix 5

Changes to the Training and Competence sourcebook (TC)

TRAINING AND COMPETENCE SOURCEBOOK (QUALIFICATIONS AMENDMENTS NO 7) INSTRUMENT 2012

Powers exercised

A. 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 138 (General rule-making power);
(2) section 149 (Evidential provisions);
(3) section 156 (General supplementary powers); and
(4) section 157(1) (Guidance).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

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

Citation

E. This instrument may be cited as the Training and Competence Sourcebook (Qualifications Amendments No 7) Instrument 2012.

By order of the Board
[*date*]

Annex

Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text.

Appendix 4E Appropriate Qualification tables

…

Qualification table for : Advising on (but not dealing in) *securities* (which are not *stakeholder pension schemes*, *personal pension schemes* or *broker funds*) – Activity number 2 in TC Appendix 1.1.1R		
Qualification	**Qualification Provider**	**Key**
…		
Fellow or Associate or where the individual has passed all of the following modules CT1, CT2, CT4, CT5, CT6, CT7 and CT8	Faculty or Institute of Actuaries	a
Certificate in Securities Advice and Dealing	Chartered Insurance Institute	a
…		
Certificate for Financial Advisers (Pre 31/10/2004)	Ifs School of Finance (formerly the Chartered Institute of Bankers)	c
Associateship - (must include a pass in the Investment / Investment Management Paper)	ifs School of Finance (formerly the Chartered Institute of Bankers)	b
…		
Secondary Examination	The Securities ~~Analyst~~ Analysts Association of Japan (SAAJ)	d
CMA Level 2 (for individuals advising before 30 June 2009)	The Securities Analysts Association of Japan (SAAJ)	b
CMA Level 2 (for individuals not advising before 30 June 2009 – (provided it is accompanied with appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation))	The Securities Analysts Association of Japan (SAAJ)	b
CAIA Level 1 (provided it is accompanied	Chartered Alternative Investment Analysis Association (CAIA)	b

with appropriate qualifications in Regulation and Ethics and Personal Taxation)		
…		
Series 7 – General Securities Representative Examination	Financial Industry Regulatory Authority (FINRA) – Formerly the National Association of Securities Dealers (NASD)	d
Series 7 – General Securities Representative Examination (provided it is accompanied with appropriate qualifications in Regulation and Ethics and Personal Taxation)	Financial Industry Regulatory Authority (FINRA) – Formerly the National Association of Securities Dealers (NASD)	b
…		
Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association	d
Representative of Public Securities Qualification – Type 1 (provided it is accompanied with appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation	Japanese Securities Dealers Association	b
…		

Qualification table for : Advising on (but not dealing in) *Derivatives* – Activity number 3 in TC Appendix 1.1.1R		
Qualification	**Qualification Provider**	**Key**
…		
ACI Diploma (~~when~~ provided it is accompanied with appropriate ~~qualification~~ qualifications in ~~modules covering regulation & ethics, investment principles & risk~~ Regulation and Ethics, Investment Principles and Risk and ~~personal taxation~~ Personal Taxation)	ACI The Financial Markets Association	a
Series 7 – General Securities Representatives Examination (provided it is accompanied with appropriate qualifications in Regulation and Ethics and Personal Taxation)	Financial Industry Regulatory Authority (FINRA) – Formerly the National Association of Securities Dealers (NASD)	b
Secondary Examination	The Securities ~~Analyst~~ Analysts Association of Japan (SAAJ)	d

CMA Level 2 (for individuals advising before 30 June 2009)	The Securities Analysts Association of Japan (SAAJ)	b
CMA Level 2 (for individuals not advising before 30 June 2009 – (provided it is accompanied by appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation))	The Securities Analysts Association of Japan (SAAJ)	b
…		
Associateship – (must include a pass in the Investment / Investment Management Paper) ~~from the Associateship~~	ifs School of Finance (formerly the Chartered Institute of Bankers)	~~d~~ b
…		
Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association	d
Representative of Public Securities Qualification – Type 1 (provided it is accompanied with appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation)	Japanese Securities Dealers Association	b
…		

Qualification table relating to : Advising on *Packaged Products* (which are not *broker funds*) and *Friendly Society* tax-exempt policies - Activity Numbers 4 and 6 in TC Appendix 1.1.1 R		
Qualification	**Qualification Provider**	**Key**
...		
~~Associate~~ Associateship (~~where candidate has~~ must include a ~~passed~~ pass in the ~~investment module~~ Investment Module)	ifs School of Finance (formerly the Chartered Institute of Bankers)	b
...		

Qualification table for : Advising on, and dealing in *Securities* (which are not *stakeholder pension schemes* or *broker funds*) – Activity number 12 in TC

Appendix 1.1.1R		
Qualification	**Qualification Provider**	**Key**
...		
SFA Securities and Financial Derivatives Representative Examination	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	c
Associate or Fellow (life and pensions route only)	Chartered Insurance Institute	b
Certificate in Securities Advice and Dealing	Chartered Insurance Institute	a
...		
Associateship (must include a pass in the Investment / Investment Management Paper)	ifs School of Finance (formerly the Chartered Institute of Bankers)	b
Fellow or Associate or where the individual has passed all of the following modules CT1, CT2, CT4, CT5, CT6, CT7 and CT8	Faculty or Institute of Actuaries	a
...		
BA in Finance	University of Stirling	b
MSc in Finance	University of Stirling	b
MSc in International Accounting and Finance (where candidates hold modules as recommended by the firm)	University of Stirling	b
...		
Secondary Examination	The Securities ~~Analyst~~ Analysts Association of Japan (SAAJ)	d
CMA Level 2 (for individuals advising before 30 June 2009)	The Securities Analysts Association of Japan (SAAJ)	b
CMA Level 2 (for individuals not advising before 30 June 2009 – (provided it is accompanied with appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation))	The Securities Analysts Association of Japan (SAAJ)	b
CAIA Level 1 (provided it is accompanied with appropriate qualifications in Regulation and Ethics and Personal Taxation)	Chartered Alternative Investment Analysis Association (CAIA)	b
...		

Series 7 – General Securities Representatives Examination	Financial Industry Regulatory Authority (FINRA) – Formerly the National Association of Securities Dealers (NASD)	d
Series 7 – General Securities Representatives Examination (provided it is accompanied with appropriate qualifications in Regulation and Ethics and Personal Taxation)	Financial Industry Regulatory Authority (FINRA) – Formerly the National Association of Securities Dealers (NASD)	b
…		
Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association	d
Representative of Public Securities Qualification – Type 1 (provided it is accompanied with appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation)	Japanese Securities Dealers Association	b
…		

Qualification table for : Advising on and dealing with or for clients in *Derivatives* – Activity number 13 in TC Appendix 1.1.1R		
Qualification	**Qualification Provider**	**Key**
…		
Advanced Financial Planning Certificate	Chartered Insurance Institute	b
Associate or Fellow (life and pensions route only)	Chartered Insurance Institute	b
…		
Associateship (must include a pass in the Investment / Investment Management Paper)	ifs School of Finance (formerly the Chartered Institute of Bankers)	b
~~Associateship (must include a pass in the Investment Management Paper)~~	~~ifs School of Finance (formerly the Chartered Institute of Bankers)~~	~~b~~
Fellow or Associate or where the individual has passed all of the following modules CT1, CT2, CT4, CT5, CT6, CT7 and CT8	Faculty or Institute of Actuaries	a
…		
Secondary Examination	The Securities ~~Analyst~~ Analysts Association of Japan (SAAJ)	d

CMA Level 2 (for individuals advising before 30 June 2009)	The Securities Analysts Association of Japan (SAAJ)	b
CMA Level 2 (for individuals not advising before 30 June 2009 – (provided it is accompanied by appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation))	The Securities Analysts Association of Japan (SAAJ)	b
Series 7 – General Securities Representatives Examination (provided it is accompanied with qualifications in Regulation and Ethics and Personal Taxation)	Financial Industry Regulatory Authority (FINRA) – Formerly the National Association of Securities Dealers (NASD)	b
…		
Representative of Public Securities Qualifications – Type 1	Japanese Securities Dealers Association	d
Representative of Public Securities Qualifications – Type 1 (provided it is accompanied with appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation)	Japanese Securities Dealers Association	b
…		

…

Qualification table for : Advising on *investments* in the course of *corporate finance business* – Activity number 8 in TC Appendix 1.1.1R		
Qualification	**Qualification Provider**	**Key**
…		
Secondary Examination	The Securities ~~Analyst~~ Analysts Association of Japan (SAAJ)	2
CMA Level 2	The Securities Analysts Association of Japan (SAAJ)	2
…		

…

Qualification table for : Acting as a *Pension transfer specialist* – Activity number 11 in TC Appendix 1.1.1R		
Qualification	**Qualification Provider**	**Key**
…		

~~Fellow or Associate by examination~~	~~Pensions Management Institute~~	~~1~~
Diploma in Regulated Retirement Advice	Pensions Management Institute	1

…

Qualification table for : Overseeing on a day to day basis administrative functions in relation to effecting or carrying out *contracts of insurance* which are *life policies*:

- **(i) new business administration;**
- **(ii) policy alterations including surrenders and policy loans;**
- **(iii) preparing projections;**
- **(iv) processing claims, including pension payments;**
- **(v) fund switching**

Activity number 18 in TC Appendix 1.1.1R

Qualification	**Qualification Provider**	**Key**
…		
Fellow or Associate	Faculty or Institute of Actuaries	4
Fellow where the individual has passed CA1 and SA2	Faculty or Institute of Actuaries	4
…		

…

Qualification table for : Overseeing on a day to day basis administrative functions in relation to the operation of *stakeholder pension schemes*:

- **(i) new business administration;**
- **(ii) receipt of or alteration to contributions;**
- **(iii) preparing projections and annual statements;**
- **(iv) administration of transfers;**
- **(v) handling claims, including pension payments;**
- **(vi) fund allocation and switching.**

Activity number 19 in TC Appendix 1.1.1R

Qualification	**Qualification Provider**	**Key**

…		
Fellow or Associate	Pensions Management Institute	4
Module 201: Providing for Retirement	Pensions Management Institute	4
…		

…

Appendix 5A

Designation of Handbook provisions

1. FSA Handbook provisions will be 'designated' to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website[1] for further details about this process.

2. We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
TC App 4.1	FCA

1 www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml

Appendix 6

Retail Distribution Review: payments for referrals to discretionary investment managers

Appendix 6

RETAIL DISTRIBUTION REVIEW (ADVISER CHARGING NO 6) INSTRUMENT 2012

Powers exercised

A. 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 138 (General rule-making power);
(2) section 156 (General supplementary powers); and
(3) section 157(1) (Guidance).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 31 December 2012.

Amendments to the Handbook

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

Citation

E. This instrument may be cited as the Retail Distribution Review (Adviser Charging No 6) Instrument 2012.

By order of the Board
[*date*]

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

6.1A Adviser charging and remuneration

…

6.1A.6 ~~G~~ <u>R</u> ~~Services related to the *personal recommendation* may include, but are not limited to~~ <u>‘Related service(s)’ for the purposes of *COBS* 6.1A includes</u>:

(1) *arranging* or *executing* a transaction which has been recommended to a *retail client* by the *firm*, an *associate* or another *firm* in the same *group* or conducting administrative tasks associated with that transaction; <u>or</u>

(2) managing a relationship between a *retail client* (to whom the *firm* provides *personal recommendations on retail investment products*) and a *discretionary investment manager* <u>or providing a service to such a client in relation to the investments managed by such a manager; or</u>

<u>(3)</u> <u>recommending a *discretionary investment manager* to a *retail client* (to whom the *firm* provides *personal recommendations* on *retail investment products*)</u>.

…

Calculation of the cost of adviser services to a client

6.1A.16 G In order to meet its responsibilities under the *client’s best interests rule* and *Principle* 6 (Customers’ interests), a *firm* should consider whether the *personal recommendation* <u>or any other related service</u> is likely to be of value to the *retail client* when the total charges the *retail client* is likely to be required to pay are taken into account.

Appendix 6A

Designation of Handbook provisions

1. FSA Handbook provisions will be 'designated' to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website[1] for further details about this process.

2. We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
TC App 4.1	FCA

1 www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml

Appendix 7

Proposed minor amendment to rules on new business connected to with-profits funds

Appendix 7

CONDUCT OF BUSINESS SOURCEBOOK (WITH-PROFITS BUSINESS) (AMENDMENT) INSTRUMENT 2012

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

Commencement

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

Amendments to the Handbook

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

Citation

D. This instrument may be cited as the Conduct of Business Sourcebook (With-Profits Business) (Amendment) Instrument 2012.

By order of the Board
[*date*]

Annex

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

20.2 Treating with-profits policyholders fairly

…

New business

20.2.28A G (1) Writing new *insurance business* into a *with-profits fund* is not, of itself, automatically adverse to the interests of *with-profits policyholders*. For example, new *insurance business* which defers the emergence or distribution of surplus to a limited extent for a number of *policyholders*, or which leads to a marginal change in the equity backing ratio, may, subject to satisfying the guidance in *COBS* 20.2.60G and *COBS* 20.2.29G, reasonably be considered not to have an adverse effect on the *with-profits policyholders* in a *with-profits fund*, if the *firm's governing body* is satisfied (and can demonstrate based on appropriate analysis) that each new line of *insurance business* is likely to be financially self-supporting over the periods during which the contracts are expected to remain in force and is likely to add sufficient value to the *with-profits fund* to offset the cost of acquiring the business.

…

Appendix 7A

Designation of Handbook provisions

1. FSA Handbook provisions will be 'designated' to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website[1] for further details about this process.

2. We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
20.2.28AG	FCA

1 www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml

Appendix 8

Proposed changes to the Collective Investment Schemes sourcebook

COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (AMENDMENT NO 7) INSTRUMENT 2012

Powers exercised

A. The Financial Services Authority 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 138 (General rule-making power);
(b) section 139(4) (Miscellaneous ancillary matters);
(c) section 156 (General supplementary powers);
(d) section 157(1) (Guidance);
(e) section 247 (Trust scheme rules); and
(f) section 248 (Scheme particulars rules);

(2) regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and

(3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

D. The modules of the FSA'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).

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Collective Investment Schemes sourcebook (COLL)	Annex C

Citation

E. This instrument may be cited as the Collective Investment Schemes Sourcebook (Amendment No 7) Instrument 2012.

By order of the Board
[*date*]

Annex A

Amendment to the Glossary of definitions

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

income equalisation	(in relation to a *scheme*) a capital sum which, in accordance with a power contained in the *instrument constituting the scheme*, is included in an allocation of income for a *unit* issued, ~~or~~ sold or converted during the accounting period in respect of which that income allocation is made.

Annex B

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

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

6.1 Compliance

…

6.1.4A R …

(2) In *SYSC* 6.1.4AR(1) "compliance" means compliance with the rules in:

…

(b) *COLL* (Collective Investment Schemes sourcebook) ~~and *CIS* (Collective Investment Schemes sourcebook) (where appropriate)~~;

…

Annex C

Amendment to the Collective Investment Schemes sourcebook (COLL)

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

3.2 The instrument constituting the scheme

…

Table: contents of the instrument constituting the scheme

3.2.6 R …

…		
	~~**Property Authorised Investment Funds**~~	
7B	~~For a *property authorised investment fund*, a statement that:~~	
	~~(1)~~	~~it is a *property authorised investment fund*;~~
	~~(2)~~	~~no *body corporate* may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and~~
	~~(3)~~	~~in the event that the *authorised fund manager* reasonably considers that a *body corporate* holds more than 10% of the net asset value of the fund, the *authorised fund manager* is entitled to delay any redemption or cancellation of *units* in accordance with 18 if the *authorised fund manager* reasonably considers such action to be:~~
		~~(a) necessary in order to enable an orderly reduction of the holding to below 10%; and~~
		~~(b) in the interests of the *unitholders* as a whole.~~ [deleted]
	Government and public securities: investment in one issuer	
8	Where relevant, for a *UCITS scheme*, a statement in accordance with *COLL* 5.2.12R (Spread: government and public securities) as to the individual states or bodies in which over 35% of the value of the *scheme* may be invested ~~in *government and public securities*~~.	
…		

…

4.2 Pre-sale notifications

…

Table: contents of the prospectus

4.2.5 R …

…			
Authorised fund			
2	A description of the *authorised fund* including:		
	…		
	(h)	if it is not an *umbrella*, a statement that it is a *feeder UCITS*, a *feeder NURS*, ~~or~~ a *fund of alternative investment funds*~~,~~ or a *property authorised investment fund*, where that is the case.	
…			
Umbrella Schemes			
2B	For a *UCITS scheme* or *non-UCITS retail scheme* which is an *umbrella*, a statement detailing whether each specific *sub-fund* is a *feeder UCITS*, a *feeder NURS*, ~~or~~ a *fund of alternative investment funds* or a *property authorised investment fund*, as appropriate.		
Investment objectives and policy			
3	The following particulars of the investment objectives and policy of the *authorised fund*:		
	(a)	the investment objectives, including its financial objectives;	
	(b)	the *authorised fund's* investment policy for achieving those investment objectives, including the general nature of the portfolio and, if appropriate, any intended specialisation;	
	(c)	an indication of any limitations on that investment policy;	
	(ca)	for an *authorised fund* that has indicated in its name, investment objectives or fund literature (including in any *financial promotions* for the *fund*), through use of descriptions such as 'absolute return', 'total return' or similar, an intention to deliver positive returns in all market conditions (and where there is no actual guarantee of such returns), additional statements in the *authorised fund's* investment objectives specifying:	
		(i)	that capital is in fact at risk;
		(ii)	the investment period over which the *authorised fund* aims to achieve a positive return; and

		(iii)	that there is no guarantee that this will be achieved over that specific, or any, time period;
	…		
	(i)	where *COLL* 5.2.12R(3) (Spread: government and public securities) applies, a prominent statement as to the fact that more than 35% of the *scheme property* is or may be invested in ~~*government and public securities*~~ those *securities* referred to in *COLL* 5.2.12R(1) and the names of the individual states, local authorities or public international bodies in whose *securities* the *authorised fund* may invest more than 35% of the *scheme property*;	
	…		
…			
Preliminary charge			
21	Where relevant, a statement authorising the *authorised fund manager* to make a *preliminary charge* and specifying the ~~basis for and~~ current amount or rate of that charge, as calculated in accordance with *COLL* 6.7.7R(2) (Charges on buying and selling units).		
…			
Property Authorised Investment Funds			
22A	For a *property authorised investment fund*, a statement that:		
	(1)	~~it is a *property authorised investment fund*;~~ [deleted]	
	(2)	no *body corporate* may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and	
	(3)	in the event that the *authorised fund manager* reasonably considers that a *body corporate* holds more than 10% of the net asset value of the fund, the *authorised fund manager* is entitled to delay any redemption or cancellation of *units* if the *authorised fund manager* reasonably considers such action to be:	
		(a)	necessary in order to enable an orderly reduction of the holding to below 10%; and
		(b)	in the interests of the *unitholders* as a whole.
…			

…

5.2 General investment powers and limits for UCITS schemes

…

Spread: general

5.2.11 R (1) This *rule* does not apply to ~~*government and public securities*~~ *transferable securities* and *approved money-market instruments* to which *COLL* 5.2.12R (Spread: government and public securities) applies.

…

…

Spread: government and public securities

5.2.12 R (1) This *rule* applies to ~~*government and public securities* ("such *securities*")~~ *transferable securities* and *approved money-market instruments* issued or guaranteed by an *EEA State*, one or more of its local authorities, a non-*EEA state* or a public international body to which one or more *EEA States* belong ("such *securities*").

…

5.3 Derivative exposure

…

~~CESR~~ ESMA guidelines

5.3.11 G *Authorised fund managers* are advised that both CESR and its successor body, the European Securities and Markets Authority (ESMA) have issued guidelines which, in accordance with the *UCITS implementing Directive*, *authorised fund managers* should comply with in applying the *rules* in this section:

Guidelines: Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (CESR/10-788)

www.esma.europa.eu/index.php?page=document_details&id=7000&from_id=28

Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS ~~(ESMA/2011/112)~~ (ESMA/2012/197)

~~www.esma.europa.eu/index.php?page=document_details&id=7542&from_id=28~~

http://www.esma.europa.eu/system/files/2012-197.pdf

…

5.6 Investment powers and borrowing limits for non-UCITS retail schemes

…

Spread: general

5.6.7 R (1) This *rule* does not apply in respect of ~~*government and public securities*~~ *transferable securities* and *approved money-market instruments* to which *COLL* 5.6.8R (Spread: government and public securities) applies.

…

…

Spread: government and public securities

5.6.8 R (1) This *rule* applies in respect of ~~*government and public securities*~~ *transferable securities* and *approved money-market instruments* issued or guaranteed by an *EEA State*, one or more of its local authorities, a non-*EEA state* or a public international body to which one or more *EEA States* belong ("such *securities*").

(2) The requirements in *COLL* 5.2.12R (Spread: government and public securities) apply to investment in ~~*government and public securities*~~ such *securities* by a *non-UCITS retail scheme*, except for *COLL* 5.2.12R(4) which will apply to such a *scheme* only to the extent that it concerns the most recently published *prospectus* of the *scheme*.

…

6.2 Dealing

…

Issue and cancellation of units in multiple classes

6.2.6A R If an *authorised fund* has two or more *classes* of *unit* in issue, the *authorised fund manager* may treat any or all of those *classes* as one for the purpose of determining the number of *units* to be *issued* or *cancelled* by reference to a particular *valuation point*, if:

(1) ~~the *depositary* gives its prior agreement; and~~ [deleted]

(1A) the *authorised fund manager* ensures that the arrangement will not result in detriment to any *unitholder*, or prospective *unitholder*, in the *authorised fund*;

(1B) the *authorised fund manager's* systems and controls are such that the arrangement will not result in an increased risk of pricing and

valuation errors for *units* of the *fund*;

(2) the relevant *classes*:

(a) have the same entitlement to participate in, and the same liability for *charges*, expenses and other payments that may be recovered from, the *scheme property*; or

(b) differ only as to:

(i) whether income is distributed or accumulated by periodic credit to capital, provided the *price* of the *units* in each *class* is calculated by reference to undivided shares in the *scheme property*; and

(ii) the liability for *charges*, expenses and other payments that may be recovered from the *scheme property*; and

(3) the *depositary*, if it is satisfied that the conditions at (1A), (1B) and (2) are met, gives its prior consent in writing to the *authorised fund manager*.

Ongoing responsibility of the depositary for the monitoring of issue and cancellation of units in multiple classes

6.2.6B R The *depositary* must withdraw its consent given under *COLL* 6.2.6AR(3) if at any time it is no longer satisfied that the conditions set out in *COLL* 6.2.6AR(1A), (1B) and (2) continue to be met.

6.2.6C G In line with its responsibilities under *COLL* 6.3.6G(3), the *depositary* should periodically review any arrangement in operation under *COLL* 6.2.6AR to ensure that the conditions in *COLL* 6.2.6AR(1A), (1B) and (2) continue to be met.

…

6.7 Payments

…

Charges on buying and selling units

6.7.7 R …

(2) An *authorised fund manager* must not make any charge or levy in connection with:

(a) the *issue* or *sale* of *units* except where a *preliminary charge* is made in accordance with the *prospectus* of the *scheme* which must be either a fixed amount or calculated as a percentage of the ~~*price* of a *unit*~~ *unitholder's* investment; or

…

…

6.8 Income: accounting, allocation and distribution

…

Income allocation and distribution

…

6.8.3 R …

(3A) The amount available for income allocations must be calculated by:

…

(c) making any other transfers between the *income account* and the *capital account* that are required in relation to:

…

(v) the aggregate amount of *income property* included in *units issued*, ~~and *units*~~ *cancelled* and converted during the period; and

…

…

…

7.7 UCITS mergers

…

UCITS Regulations 2011

7.7.6 G …

(3) ~~A summary of how the regime for *UCITS mergers* operates is to be found in *COLLG*.~~ [deleted]

…

Information to be given to unitholders

7.7.10 R …

(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 *depositary* 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*;

…

…

…

9.4 Facilities in the United Kingdom

…

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), ~~and~~ (d) and (e), and otherwise at no more than a reasonable charge) of copies in English of:

…

…

…

TP 1 Transitional Provisions

TP 1.1

(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
…					

28	*COLL* 4.2.5R (3)(ca)	R	The *authorised fund manager* need not comply with *COLL* 4.2.5R(3)(ca) during the application period of this transitional provision, unless it makes any other change to the *prospectus* of the *authorised fund* during the period.	From [date rule comes into force] to [six months thereafter]	[date rule comes into force]

Appendix 8A

Designation of Handbook provisions

1. FSA Handbook provisions will be 'designated' to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website[1] for further details about this process.

2. We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
Glossary definition of 'income equalisation'	FCA
SYSC 6.1.4AR	FCA
COLL 3.2.6R	FCA
COLL 4.2.5R	FCA
COLL 5.2.11R	FCA
COLL 5.2.12R	FCA
COLL 5.3.11G	FCA
COLL 5.6.7R	FCA
COLL 5.6.8R	FCA
COLL 6.2.6AR	FCA
COLL 6.2.6BR	FCA
COLL 6.2.6CG	FCA
COLL 6.7.7R	FCA
COLL 6.8.3R	FCA
COLL 7.7.6G	FCA
COLL 7.7.10R	FCA
COLL 9.4.2R	FCA
COLL TP 1.1 (28)	FCA

1 www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml

Appendix 9

Implementing the European Regulation on OTC derivatives, central counterparties and trade repositories

DERIVATIVES, CENTRAL COUNTERPARTIES AND TRADE REPOSITORIES INSTRUMENT 2012

Powers exercised

A. 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 138 (General rule-making power);
(2) section 156 (General supplementary powers);
(3) section 157(1) (Guidance);
(4) section 210 (Statements of policy);
(5) section 293(1) (Notification requirements);
(6) section 395 (The Authority's procedures); and
(7) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

D. The modules of the FSA'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).

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Decision Procedure and Penalties manual (DEPP)	Annex C
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex D
Enforcement Guide (EG)	Annex E
Perimeter Guidance manual (PERG)	Annex F

Notes

E. In Annex D 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

F. This instrument may be cited as the Derivatives, Central Counterparties and Trade Repositories Instrument 2012.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

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

Term	Definition
clearing	(in relation to a *central counterparty*) the process of establishing positions, including the calculation of net obligations and ensuring that financial instruments, cash or both are available to secure the exposures arising from those positions.
EMIR regulation	Regulation No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.
EMIR requirements	requirements imposed under the *EMIR regulation* and any regulation made under it.
OTC derivatives, central counterparties and trade repositories regulation	the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2012.
recognised central counterparty	a *central counterparty* in relation to which a *recognition order* has been made pursuant to section 290(1)(c) of the *Act*.

Amend the following definitions as shown.

Term	Definition
central counterparty	~~(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))~~ 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.
default rules	(1) … (2) (in relation to a *UK RCH* that is not a *recognised central counterparty*) the default rules which it is required to have under paragraph 24 of the Schedule to the *Recognition Requirements* Regulations.

	(3)	(in relation to a *recognised central counterparty*) the default rules which it is required to have under Schedule 2 to the *Recognition Requirement Regulations*.
recognised body requirements	(1)	(in relation to a *RIE* or *RCH*) the recognition requirements;
	(2)	(in relation to a *UK RIE*) the *MiFID implementing requirements*;
	(3)	(in relation to an *RAP*) the *RAP recognition requirements*;
	(3A)	(in relation to a *UK RCH* that is a *recognised central counterparty*), the *EMIR requirements*;
	(4)	(in relation to any of the bodies specified in (1) to (3A)) any obligations imposed by or under the *Act*.
recognised clearing house	a *clearing house* which is declared by a *recognition order* for the time being in force to be a recognised clearing house and includes a *recognised central counterparty*.	

Annex B

Amendments to the Fees manual (FEES)

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

3 Annex 3R Application fees payable in connection with Recognised Investment Exchanges, Recognised Clearing Houses and Recognised Auction Platforms

Description of applicant	Amount payable	Due date
Part 1 (UK recognised bodies)		
Applicant for recognition as a *UK RIE*	100,000	Date the application is made
Applicant for recognition as a *UK RCH* other than a *recognised central counterparty*	100,000	Date the application is made
Applicant for recognition as a *recognised central counterparty*:		
(1) by a person who is already a *UK RCH* at the date the application is made; or	75,000	Date the application is made
(2) by a person who is not a *UK RCH* at the date the application is made.	100,000	Date the application is made
Application by a *recognised central counterparty* to extend the services and activities linked to clearing (including the classes of *financial instruments*) which it is authorised to provide	25,000	Date the application is made
Applicant for recognition as an *RAP* (payable in addition to any other application fee due under this part)	35,000	Date the application is made
Additional fees for a *UK RIE* or *UK RCH* applicant including an applicant to be a *recognised central counterparty* who proposes to:		

~~- act as a central counterparty~~	~~25,000~~	~~Date the application is made~~
- offer safeguarding and administration services	25,000	Date the application is made
- use substantially new and untested information technology systems in the performance of its relevant functions	25,000	Date the application is made
Part 2 (overseas recognised bodies)		
Applicant for recognition as a recognised overseas investment exchange	50,000	Date the application is made
Applicant for recognition as a recognised overseas clearing house	50,000	Date the application is made
Additional fees for applicant who proposes to:		
~~- act as a central counterparty~~	~~25,000~~	~~Date the application is made~~
- offer safeguarding and administration services	25,000	Date the application is made

Annex C

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

Schedule 3 Fees and other required payments

…

3.2	G	The FSA's power to impose financial penalties is contained in:	
			…
			the *Cross-Border Payments in Euro Regulations*
			<u>the *OTC derivatives, central counterparties and trade repositories regulation*</u>

Schedule 4 Powers Exercised

…

4.2	G	The following additional powers and related provisions have been exercised by the *FSA* to make the statements of policy in *DEPP*:	
			…
			Regulation 14 (Guidance) of the *Cross-Border Payments in Euro Regulations*
			<u>Regulations 34 and 36 of the *OTC derivatives, central counterparties and trade repositories regulation*</u>

Annex D

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

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

1.1.1 G The *rules* and *guidance* in this sourcebook apply to *recognised bodies* and to applicants for recognition as *recognised bodies* under Part XVIII of the *Act* (Recognised Investment Exchanges and Clearing Houses) and (for *RAPs*) under the *RAP regulations*. In the case of *recognised clearing houses*, the sourcebook applies to both *recognised central counterparties* and to *recognised clearing houses* that are not *recognised central counterparties*.

…

1.1.2 G

(1) *Recognised bodies* are *exempt persons* under section 285 of the *Act* (Exemption for recognised investment exchanges and clearing houses).

(2) *UK recognised bodies* other than *RAPs* 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 implementing requirements* in the *MiFID Regulation*. *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 Regulation*. *Recognised central counterparties* must satisfy only limited *recognition requirements* but are subject to various directly applicable *EMIR requirements* set out in EU Regulations. *Overseas recognised bodies* must satisfy *recognition requirements* laid down in section 292 of the *Act* (Overseas investment exchanges and overseas clearing houses).

(3) *Recognised bodies* must also comply with notification requirements in, and with *notification rules* made under, sections 293 (Notification requirements) and 295 (Notification: overseas investment exchanges and clearing houses) of the *Act*.

1.1.3 G (1) The *recognition requirements* for *UK recognised bodies* and the *MiFID implementing requirements* 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.

(1A) Specific *recognition requirements* that only apply to *recognised central counterparties* are set out with guidance in *REC* 2B. Directly applicable *EMIR requirements* set out in EU Regulations that apply to *recognised central counterparties* are not reproduced in this sourcebook.

(2) The *notification rules* for *UK recognised bodies* are set out in *REC 3* together with *guidance* on those *rules*.

(3) *Guidance* on the *FSA's* approach to the supervision of *recognised bodies* is given in *REC 4*.

(4) *Guidance* for applicants (and potential applicants) for *UK recognised body* status is given in *REC 5*.

(5) The *recognition requirements*, *notification rules*, and *guidance* for *overseas recognised bodies* and *guidance* for applicants (and potential applicants) for *overseas recognised body* status are set out in *REC* 6.

(5A) *Guidance* for *EEA market operators* exercising their passporting rights in the *United Kingdom* is set out in *REC* 6A.

(6) The fees *rules* for *recognised bodies* and applicants are set out in *FEES* 1, 2, 3 and 4.

…

2 Recognition requirements

2.1 Introduction

2.1.1 G This chapter contains the *recognition requirements* for *UK recognised bodies* (other than *RAPs*) and sets out *guidance* on those requirements. This chapter also contains the *MiFID implementing requirements* for *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 *overseas recognised bodies* is set out in *REC 6* (Overseas Investment Exchanges and Overseas Clearing Houses).

2.1.1B G For *recognised central counterparties* many *recognition requirements* are disapplied by the *Recognition Requirement Regulations*. This is because there are directly applicable *EMIR requirements* which apply to central counterparties. However, some specific *recognition requirements* and *guidance* for *recognised central counterparties* are set out in *REC* 2B. The only other *recognition requirements* and *guidance* applicable to *recognised central counterparties* are those in *REC* 2.2.

2.1.2 G These *recognition requirements* must be satisfied by applicants for *recognised body* status before recognition is granted and by all *UK recognised bodies* at all times while they are recognised. In addition the

MiFID implementing requirements must be satisfied by applicants for *UK RIE* status before recognition is granted and by all *UK RIEs* at all times while they are recognised. The *EMIR requirements* must be satisfied by applicants for recognition as a *recognised central counterparty* and by *recognised central counterparties* at all times while they are recognised. The same standards apply both on initial recognition and throughout the period *recognised body* status is held. The terms *UK RIE* or *UK RCH* in the *guidance* should be taken, therefore, to refer also to an applicant when appropriate.

…

2.3 Financial resources

…

2.3.2 UK

Schedule to the Recognition Requirements Regulations, Paragraph 16
(1) The [*UK RCH*] must have financial resources sufficient for the proper performance of its [*relevant functions*] as a [*UK RCH*].
(2) In considering whether this requirement is satisfied, the [*FSA*] may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the [*UK RCH's*] connection with any *person*, and any activity carried on by the [*UK RCH*], whether or not it is an *exempt activity*.

2.3.2A G The *recognition requirement* set out in *REC* 2.3.2UK does not apply to a *UK RCH* that is a *recognised central counterparty*.

…

2.4 Suitability

…

2.4.2 UK

Schedule to the Recognition Requirements Regulations, Paragraph 17
(1) The [*UK RCH*] must be a fit and proper *person* to perform the [*relevant functions*] of a [*UK RCH*].
(2) In considering whether this requirement is satisfied, the [*FSA*] may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances including the [*UK RCH's*] connection with any *person*.

2.4.2A G The *recognition requirement* set out in *REC* 2.4.2UK does not apply to a *UK RCH* that is a *recognised central counterparty*.

…

2.5 Systems and controls and conflicts

…

2.5.2 UK Schedule to the Recognition Requirements Regulations, paragraph 18

(1)	The [*UK RCH*] must ensure that the systems and controls used in the performance of its [*relevant functions*] are adequate, and appropriate for the scale and nature of its business.	
(2)	This requirement applies in particular to systems and controls concerning-	
	(a)	the transmission of information;
	(b)	the assessment and management of risks to the performance of the [*UK RCH's relevant functions*];
	(c)	the operation of the arrangements mentioned in paragraph 19(2)(b); and
	(c)	(where relevant) the safeguarding and administration of assets belonging to users of the [*UK RCH's*] *facilities*.

2.5.2A G The *recognition requirement* set out in *REC* 2.5.2UK does not apply to a *UK RCH* that is a *recognised central counterparty*.

…

2.6 General safeguards for investors, provision of pre- and post-trade information about share trading and suspension and removal of financial instruments from trading

…

2.6.25 EU Schedule to the Recognition Requirements Regulations, Paragraph 19(1)

The [*UK RCH*] must ensure that its facilities are such as to afford proper protection to investors.

2.6.25A G The *recognition requirement* set out in *REC* 2.6.25UK does not apply to a *UK RCH* that is a *recognised central counterparty*.

…

2.7 Access to facilities

…

2.7.2 UK Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(a)

Without prejudice to the generality of sub-paragraph [19(1)], the [*UK RCH*] must ensure that -
access to the [*UK RCH's*] *facilities* is subject to criteria designed to protect the orderly functioning of those *facilities* and the interests of investors;

2.7.2A UK Schedule to the Recognition Requirements Regulations, Paragraph 21A

(1)	The [*UK RCH*] must make transparent and non-discriminatory rules, based on objective criteria, governing access to central counterparty, clearing or settlement *facilities* provided by it.
(2)	The rules under sub-paragraph (1) 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*.
(3)	The [*UK RCH*] may refuse access to those *facilities* on legitimate commercial grounds.

2.7.2B G The *recognition requirements* set out in *REC* 2.7.2UK and *REC* 2.7.2AUK do not apply to a *UK RCH* that is a *recognised central counterparty*.

…

2.8 Settlement and clearing services

…

2.8.2 UK

Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(b)
Without prejudice to the generality of sub-paragraph [19(1)], the [*UK RCH*] must ensure that -
its clearing services involve satisfactory arrangements for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions in respect of which it provides such services, (being rights and liabilities in relation to those transactions);

2.8.2A G The *recognition requirement* set out in *REC* 2.8.2UK does not apply to a *UK RCH* that is a *recognised central counterparty*.

…

2.9 Transaction recording

…

2.9.2 UK Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(c)

Without prejudice to the generality of sub-paragraph [19(1)], the [*UK RCH*] must ensure that-
satisfactory arrangements are made for recording transactions which are cleared or to be cleared by means of its *facilities*;

2.9.2A G The *recognition requirement* set out in *REC* 2.9.2UK does not apply to a *UK RCH* that is a *recognised central counterparty*.

…

2.10 Financial crime and market abuse

…

2.10.2 UK Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(d)

Without prejudice to the generality of sub-paragraph [19(1)], the [*UK RCH*] must ensure that-
appropriate measures are adopted to reduce the extent to which the [*UK RCH's] facilities* can be used for a purpose connected with *market abuse* or *financial crime*, and to facilitate their detection and monitor their incidence;

2.10.2A G The *recognition requirement* set out in *REC* 2.10.2UK does not apply to a *UK RCH* that is a *recognised central counterparty*. However, a similar *recognition requirement* for *recognised central counterparties* relating to market abuse and financial crime is set out in *REC* 2B.2.3UK. The factors in *REC* 2.10.3G will therefore be relevant to that *recognition requirement*.

…

2.11 Custody

…

2.11.2 UK Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(e)

Without prejudice to the generality of sub-paragraph [19(1)], the [*UK RCH*] must ensure that-
Where the [*UK RCH's*] *facilities* include making provision for the safeguarding and administration of assets belonging to users of those *facilities*, satisfactory *arrangements* are made for that purpose.

2.11.2A G The *recognition requirement* set out in *REC* 2.11.2UK does not apply to a *UK RCH* that is a *recognised central counterparty*.

…

2.13 Promotion and maintenance of standards

…

2.13.2 UK Schedule to the Recognition Requirements Regulations, Paragraph 20

(1) The [*UK RCH*] must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of *regulated activities* by *persons* in the course of using the *facilities* provided by the [*UK RCH*].
(2) The [*UK RCH*] must be able and willing to cooperate, by the sharing of information or otherwise, with the [FSA], with any other authority, body or *person* having responsibility in the *United Kingdom* for the supervision or regulation of any *regulated activity* or other financial service, or with an *overseas regulator* within the meaning of section 195 of the *Act*.

2.13.2A G The *recognition requirement* set out in *REC* 2.13.2UK does not apply to a *UK RCH* that is a *recognised central counterparty*.

…

2.14 Rules and consultation

…

2.14.2 UK Schedule to the Recognition Requirements Regulations, paragraph 21

(1) The [*UK RCH*] must ensure that appropriate procedures are adopted for it to make rules, for keeping its rules under review and for amending them.
(2) The procedures must include procedures for consulting users of the [*UK RCH's*] *facilities* in appropriate cases.
(3) The [*UK RCH*] must consult users of its *facilities* on any arrangements it proposes to make for dealing with penalty income in accordance with paragraph 22(3) ... (or on any changes it proposes to make to those arrangements).

2.14.2A G The *recognition requirement* set out in *REC* 2.14.2UK does not apply to a *UK RCH* that is a *recognised central counterparty*.

…

2.15 Discipline

…

2.15.2 UK Schedule to the Recognition Requirements Regulations, Paragraph 22

(1) The [*UK RCH*] must have effective arrangements for monitoring and

enforcing compliance with its rules.
(2) The arrangements must include procedures for - (a) investigating complaints made to the [*UK RCH*] about the conduct of *persons* in the course of using the [*UK RCH's*] *facilities*; and (b) the fair, independent and impartial resolution of appeals against decisions of the [*UK RCH*].
(3) Where the arrangements include provision for requiring the payment of financial penalties, they must include arrangements for ensuring that any amount so paid is applied only in one or more of the following ways - (a) towards meeting expenses incurred by the [*UK RCH*] in the course of the investigation of the breach in respect of which the penalty is paid, or in the course of any appeal against the decision of the [*UK RCH*] in relation to that breach; (b) for the benefit of users of the [*UK RCH's*] *facilities*; (c) for charitable purposes.

2.15.2A G The *recognition requirement* set out in *REC* 2.15.2UK does not apply to a *UK RCH* that is a *recognised central counterparty*.

…

2.16 Complaints

…

2.16.2 UK Schedule to the Recognition Requirements Regulations, Paragraph 23

(1)	The [*UK RCH*] must have effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its *regulatory functions*.	
(2)	But sub-paragraph (1) does not extend to -	
	(a)	complaints about the content of rules made by the [*UK RCH*], or
	(b)	complaints about a decision against which the complainant has the right to appeal under procedures of the kind mentioned in paragraph 22(2)(b).
(3)	The arrangements must include arrangements for a complaint to be fairly and impartially investigated by a *person* independent of the [*UK RCH*], and for him to report on the result of his investigation to the [*UK RCH*] and to the complainant.	
(4)	The arrangements must confer on the *person* mentioned in sub-paragraph (3) the power to recommend, if he thinks it appropriate, that the [*UK RCH*] -	

	(a)	makes a compensatory payment to the complainant,
	(b)	remedies the matter complained of,
	or takes both of those steps.	
(5)	Sub-paragraph (3) is not to be taken as preventing the [*UK RCH*] from making arrangements for the initial investigation of a complaint to be conducted by the [*UK RCH*].	

2.16.2A G The *recognition requirement* set out in *REC* 2.16.2UK does not apply to a *UK RCH* that is a *recognised central counterparty*.

…

2.17 Recognition requirements relating to the default rules of UK recognised bodies

…

2.17.3 UK Schedule to the Recognition Requirements Regulations, Part IV

Paragraph 24 (Default rules in respect of market contracts)		
(1)	The [*UK RCH*] must have *default rules* which, in the event of a *member* of the [*UK RCH*] being or appearing to be unable to meet his obligations in respect of one or more *market contracts*, enable action to be taken to close out his position in relation to all unsettled *market contracts* to which he is a party.	
(2)	The [*default rules*] may authorise the taking of the same or similar action where a *member* appears to be likely to become unable to meet his obligations in respect of one or more *market contracts*.	
(3)	Sub-paragraph (4) applies where the clearing house has arrangements for transacting business with, or in relation to common members of, a [*recognised investment exchange*] or another [*recognised clearing house*].	
(4)	A [*UK RCH*] must have [*default rules*] which in the event of the investment exchange or the clearing house being or appearing to be unable to meet its obligations in respect of one or more [*market contracts*], enable action to be taken in respect of unsettled [*market contracts*] to which that person is a party.	
Paragraph 25 (Content of rules)		
(1)	The [*default rules*] must provide -	
	(a)	for all rights and liabilities of the defaulter under or in respect of unsettled *market contracts* to be discharged and for there to be

		paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the [*default rules*];	
	(b)	for the sums so payable by or to the defaulter in respect of different contracts entered into by the defaulter in one capacity for the purposes of section 187 of the Companies Act [1989] to be aggregated or set off so as to produce a net sum;	
	(bb)	if relevant, for that sum to be aggregated with, or set off against, any sum owed by or to the clearing house by or to AP under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the defaulter chose to participate so as to produce a net sum;	
	(c)	for the net sum referred to in [(1)](b) or, if relevant, the net sum referred to in [(1)](bb)	
		(i)	if payable by the defaulter to the clearing house, to be set off against -
			(aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);
			(bb) to the extent (if any) that any sum remains after set off under (aa), any default fund contribution provided by the defaulter remaining after any application of such contribution;
		(ii)	to the extent (if any) that any sum remains after set off under (i), to be paid from such other funds, including the default fund, or resources as the clearing house may apply under its [*default rules*];
		(iii)	if payable by the clearing house to the defaulter, to be aggregated with
			(aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);
			(bb) any default fund contribution provided by the defaulter remaining after any application of such contribution; and
	(d)	for the certification by or on behalf of the [*UK RCH*] of the sum finally payable or, as the case may be, of the fact that no sum is payable.	
(1A)	In sub-paragraph (1), "margin set off agreement" means an agreement between the clearing house and AP permitting any eligible position to		

	which the Participant Member is party with the clearing house and any eligible position to which the Participant Member is party with AP to be taken into account in calculating a net sum owed by or to the Participant Member to or by either the clearing house or AP and/or margin to be provided to, either or both, the clearing house and AP.	
(1B)	In sub-paragraph (1A) - "AP" means a [*recognised investment exchange*] or another [*recognised clearing house*] of whom a Participant Member is a member; "eligible position" means any position which may be included in the set off calculation; "Participant Member" means a person who - (a) is a member of the clearing house; (b) is a member or participant of AP; and (c) chooses to participate, in accordance with the rules of the clearing house, in such agreement.	
(1C)	The property, contribution, funds or resources referred to in (1)(c), against which the net sum is to be set off (or with which it is to be aggregated) are subject to any unsatisfied claims arising out of the default of a defaulter before the default in relation to which the calculation is being made.	
(2)	The reference in sub-paragraph (1) to the rights and liabilities of a defaulter under or in respect of an unsettled *market contract* includes (without prejudice to the generality of that provision) rights and liabilities arising in consequence of action taken under provisions of the [*default rules*] authorising -	
	(a)	the effecting by the *UK RCH* of corresponding contracts in relation to unsettled *market contracts* to which the defaulter is party;
	(b)	the transfer of the defaulter's position under an unsettled *market contract* to another *member* of the [*UK RCH*];
	(c)	the exercise by the [*UK RCH*] of any *option* granted by an unsettled *market contract*.
(3)	A "corresponding contract" means a contract on the same terms (except as to price or premium) as the *market contract* but under which the *person* who is the buyer under the *market contract* agrees to sell and the *person* who is the seller under the *market contract* agrees to buy.	
(4)	Sub-paragraph (3) applies with any necessary modifications in relation to a *market contract* which is not an agreement to sell.	
(5)	The reference in sub-paragraph (1) to the rights and liabilities of a defaulter under or in respect of an unsettled *market contract* does not	

<table>
<tr><td></td><td>include, where he acts as agent, rights or liabilities of his arising out of the relationship of principal and agent.</td></tr>
<tr><td colspan="2">Paragraph 25A (Content of rules)</td></tr>
<tr><td colspan="2">The rules of the [UK RCH] must provide that in the event of a default, any default fund contribution provided by the defaulter shall only be used in accordance with paragraph 25(1)(c)(i) or (ii).</td></tr>
<tr><td colspan="2">Paragraph 26 (Notification to other parties affected)
The [UK RCH] must have adequate arrangements for ensuring that parties to unsettled market contracts with a defaulter are notified as soon as reasonably practicable of the default and of any decision taken under the [default rules] in relation to contracts to which they are a party.</td></tr>
<tr><td colspan="2">Paragraph 27 (Cooperation with other authorities)
The [UK RCH] must be able and willing to cooperate, by the sharing of information and otherwise, with the Secretary of State, any relevant office-holder and any other authority or body having responsibility for any matter arising out of or connected with the default of a member of the [UK RCH] or the default of a [recognised investment exchange] or another [recognised clearing house].</td></tr>
<tr><td colspan="2">Paragraph 28 (Margin)</td></tr>
<tr><td>(1)</td><td>The [default rules] of the [UK RCH] must provide that in the event of a default, margin provided by the defaulter for his own account is not to be applied to meet a shortfall on a client account other than a client account of the defaulter.</td></tr>
<tr><td>(2)</td><td>This paragraph is without prejudice to the requirements of any rules relating to clients' money made by the [FSA] under sections 138 and 139 of the Act.</td></tr>
<tr><td>(3)</td><td>For the purposes of this paragraph, "client account of the defaulter" means an account held by the [UK RCH] in the name of the defaulter in which relevant transactions effected by the defaulter have been recorded.</td></tr>
<tr><td>(4)</td><td>In sub-paragraph (3) "relevant transaction" has the same meaning as in regulation 16(1) of the Financial Markets and Insolvency Regulations 1991.</td></tr>
</table>

2.17.3A G The *recognition requirements* set out in *REC* 2.17.3UK do not apply to a *UK RCH* that is a *recognised central counterparty*.

…

After REC 2A insert the following new chapter. The text is not underlined.

2B Recognised central counterparties

2B.1 Introduction

2B.1.1 G This chapter applies to a *UK RCH* that is a *recognised central counterparty* and to a person applying to become a *recognised central counterparty*. It sets out *recognition requirements* and *guidance* on those requirements that are specifically applicable to *recognised central counterparties*.

2B.2 The Recognition Requirements Regulations

EMIR requirements and additional recognition requirements

2B.2.1 G *EMIR requirements* relevant to a *recognised central counterparty* are contained in EU regulations which have direct legal effect in the *United Kingdom*. Therefore, those requirements must be complied with by a person applying to become a *recognised central counterparty* and by a person who has become a *recognised central counterparty*. Due to the length of the *EMIR requirements* they are not reproduced in this handbook.

[**Note:** Copies of the EMIR Regulation and directly applicable regulations made under it can be found at [http//www.insert website]]

2B.2.2 G In addition to *EMIR requirements*, a number of specific recognition requirements applicable to a *recognised central counterparty* are set out in Part V of the *Recognition Requirements Regulations*. Extracts from those *recognition requirements* and *guidance* are set out in this chapter.

Schedule to the Recognition Requirements Regulations, Part V

2B.2.3 UK

The [*recognised central counterparty*] must ensure that appropriate measures are adopted to reduce the extent to which the [*recognised central counterparty's*] facilities can be used for a purpose connected with *market abuse* or *financial crime*, and to facilitate their detection and monitor their incidence.

2B.2.4 G In determining whether a *recognised central counterparty's* measures are appropriate to reduce the extent to which its facilities can be used for a purpose connected with *market abuse* or *financial crime* and to facilitate their detection and to monitor their incidence, the *FSA* will have regard to the factors set out in *REC* 2.10.3G.

Schedule 2 to the Recognition Requirements Regulations

2B.2.5 UK

Part 1 General

Interpretation

1.—(1) In this Schedule, a "clearing member house account" means all the clearing member house contracts giving rise to positions recorded in the same account at the [*recognised central counterparty*].

(2) Expressions used in this Schedule which are defined in sections 155 and 190 of the Companies Act 1989 have the same meaning as in those sections.

Priority of transfer over settlement

2. The default procedures must ensure that the [*recognised central counterparty*] and a clearing member in default use all reasonable endeavours to transfer a clearing member client contract before it is closed out and settled under the default procedures.

Notification to parties affected

3. The default procedures must ensure that parties to unsettled market contracts with a defaulter are notified as soon as reasonably practicable of the default and of any decision taken under the default procedures in relation to contracts to which they are a party.

PART 2

Transfer of certain market contracts

Application of Part

4. This Part applies to the provisions of the default procedures which enable clearing member client contracts, client trades and qualifying collateral arrangements to be transferred on the default of a clearing member.

Initiation of transfers

5.—(1) The default procedures must—

(a) be capable of taking effect immediately on the default of a clearing member;

(b) specify the timetable in which transfer is expected to occur; and

(c) ensure that no transfer of—

(i) a client trade;

(ii) a clearing member client account connected to that client trade; or

(iii) a qualifying collateral arrangement connected to either the client trade or the clearing member client account,

can take place before the client which is a party to the client trade

requests its transfer.

(2) Where a [*recognised central counterparty*] has distinguished the assets and positions of a group of clients in accordance with Article 39(2) of the EU Regulation (omnibus client segregation), paragraph 5(1)(c) does not prevent the default procedures from containing rules and procedures for moving the assets and positions of a client within a group of clients to a separate clearing member client account.

Clearing member acting as principal: matching transfers

6.—(1) This paragraph applies where a clearing member enters into a clearing member client account as principal.

(2) Where a clearing member client account is transferred from a clearing member in default ("A") to another clearing member ("B"), the default procedures must ensure that—

(a) any client trades connected to the clearing member client account (the "relevant client trades") are also transferred to B;

(b) if any title transfer financial collateral arrangement connected to the clearing member client account is transferred to B, any title transfer financial collateral arrangements connected to the relevant client trades are also transferred to B;

(c) [A returns to clients any property, or interest in property, provided under security interest financial collateral arrangements connected to the relevant client trades; and

(d) any property, or interest in property, held by the CCP under a security interest financial collateral arrangement connected with the clearing member client account is held by the CCP as margin in relation to B's exposures arising out of the transferred clearing member client account.]

Clearing member acting as agent: release of margin and guarantees

7.—(1) This paragraph applies where a clearing member enters into a clearing member client account as agent for a client.

(2) Where a clearing member client account is transferred from a clearing member in default ("A") to another clearing member ("B"), the default procedures must ensure that —

(a) any guarantee provided by A to the [*recognised central counterparty*] in respect of the clearing member client contract is released and a replacement guarantee is provided by B to the authorised central counterparty;

(b) any margin or other assets provided by the client to A for onward transfer to the [*recognised central counterparty*] are returned to the

client; and

(c) any margin or other assets provided by the [*recognised central counterparty*] to A for onward transfer to the client are returned to the [*recognised central counterparty*].

Certification under section 162(1A) of the Companies Act 1989

8. The transfer procedures must contain suitable provision enabling the [*recognised central counterparty*] to comply with section 162(1C) of the Companies Act 1989.

PART 3

Settlement of certain market contracts

Application of Part

9. This Part applies to the provisions of the default procedures which enable the closing out and settlement of clearing member house accounts and clearing member client accounts, and the application of margin, default fund contributions and other resources in relation to settlement.

Interpretation

10.—(1) In paragraph 11(1)(b), "margin set off agreement" means an agreement between the [*recognised central counterparty*] and AP permitting any eligible position to which the Participant Member is party with the [*recognised central counterparty*] and any eligible position to which the Participant Member is party with AP to be taken into account in calculating a net sum owed by or to the Participant Member to or by either the [*recognised central counterparty*] or AP and/or margin to be provided to, either or both, the [*recognised central counterparty*] and AP.

(2) In sub-paragraph (1)—

"AP" means a recognised investment exchange or another [*recognised central counterparty*] of whom a Participant Member is a member;

"eligible position" means any position which may be included in the set off calculation;

"Participant Member" means a person who—

(a) is a clearing member;

(b) is a member or participant of AP; and

(c) chooses to participate, in accordance with the rules of the [*recognised central counterparty*], in such agreement.

(3) The property, contribution, funds or resources referred to in paragraph

11(1)(c), against which a net sum is to be set off (or with which it is to be aggregated) are subject to any unsatisfied claims arising out of the default of a defaulter before the default in relation to which the calculation is being made.

(4) The reference in paragraph 11 to the rights and liabilities of a defaulter under or in respect of an unsettled market contract includes (without prejudice to the generality of that provision) rights and liabilities arising in consequence of action taken under provisions of the default rules authorising—

(a) the effecting by the [*recognised central counterparty*] of corresponding contracts in relation to unsettled market contracts to which the defaulter is party;

(b) the transfer of a defaulter's position under an unsettled market contract to another clearing member;

(c) the exercise by the [*recognised central counterparty*] of any option granted by an unsettled market contract.

(5) A "corresponding contract" means a contract on the same terms (except as to price or premium) as the market contract but under which the person who is the buyer under the market contract agrees to sell and the person who is the seller under the market contract agrees to buy.

(6) The reference in paragraph 11(1)(a) to the rights and liabilities of a defaulter under or in respect of an unsettled market contract does not include, where the defaulter acts as agent, rights or liabilities of the defaulter's arising out of the relationship of principal and agent.

Calculation of net sums

11.—(1) In respect of each clearing member house account and clearing member client account, the default rules must provide—

(a) for all rights and liabilities of the defaulter under or in respect of unsettled market contracts included within that account to be discharged and for there to be paid by or to the defaulter in respect of that account such sum of money (if any) as may be determined in accordance with the rules;

(b) if relevant, for the sum calculated in respect of that account to be aggregated with, or set off against, any sum owed by or to the [*recognised central counterparty*] by or to AP under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the defaulter chose to participate in respect of that account so as to produce a net sum;

(c) for each net sum referred to in paragraph (a) or, if relevant, each net sum referred to in paragraph (b)—

(i) if payable by the defaulter to the [*recognised central counterparty*], to be set off against—

(aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property) in relation to the account to which that net sum relates;

(bb) to the extent (if any) that any sum remains after set off under paragraph (aa), any default fund contribution provided by the defaulter remaining after any application of such contribution;

(ii) to the extent (if any) that any sum remains after set off under paragraph (i), to be paid from such other funds, including the default fund, or resources as the [*recognised central counterparty*] may apply under its default rules;

(iii) if payable by the [*recognised central counterparty*] to the defaulter, to be aggregated with any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property) in relation to the account to which that net sum relates; and

(d) for the certification by or on behalf of the [*recognised central counterparty*] of the sum finally payable or, as the case may be, of the fact that no sum is payable in respect of that account.

After the certification of net sums in respect of each account in accordance with paragraph 11, the [*recognised central counterparty*] must certify the amount of any default fund contribution provided by or on behalf of the defaulter remaining after any application of such contribution.

3 Notification rules for UK recognised bodies

3.1 Application and purpose

…

3.1.3B G The *notification rules* in this chapter also apply to a *UK RCH* that is a *recognised central counterparty*. Any applicable *notification rules* are without prejudice to *EMIR requirements* which may require notifications to be made by a central counterparty to a competent authority.

…

3.4 Key individuals and internal organisation

Purpose

3.4.1 G The purpose of *REC* 3.4 is to enable the *FSA* to monitor changes in the arrangements a *UK recognised body* makes for the carrying out of its *relevant functions* or for overseeing the work of *key individuals* or departments responsible for its *relevant functions*.

Key individuals

3.4.1A R Where it is proposed to appoint or elect a *person* as a *key individual* of a *recognised central counterparty*, the *recognised central counterparty* must, at least 30 days before the appointment or election, give notice of that event and give the information specified in *REC* 3.4.4AR to the *FSA*.

3.4.1B R Where a *person* has resigned, or ceased to be, a *key individual* of a *recognised central counterparty*, the *recognised central counterparty* must immediately give notice of that event, and give the information specified in *REC* 3.4.4R to the *FSA*.

3.4.2 R Where, in relation to a *UK RCH* that is not a *recognised central counterparty*, a *person* has been appointed or elected, has resigned as, or has ceased to be, a *key individual*, that *UK RCH* must immediately give notice of that event, and give the information specified for the purposes of this *rule* in *REC* 3.4.4R to the *FSA*.

…

3.4.4 R The following information is specified for the purposes of *REC* 3.4.1BR and *REC* 3.4.2R:

(1) where a *person* has been appointed or elected as a *key individual*:

(a) that *person's* name;

(b) his date of birth;

(c) a description of the responsibilities which he will have in the post to which he has been 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; or

(2) where a *person* has resigned as or otherwise ceased to be a *key individual*, that *person's* name.

3.4.4A R The following information is specified for the purposes of *REC* 3.4.1AR *and* *REC* 3.4.2AR:

(1) that *person's* name;

(2) his date of birth;

(3) a description of the responsibilities which he will have in the post to which he is to be appointed or elected.

[**Note:** Article 37(1), paragraph 1, second sentence of *MiFID*]

…

4.2E Information: compliance of UK ~~RIEs~~ recognised bodies with the MiFID Regulation, the EMIR Regulation and the Auction Regulation

4.2E.1 G Under section 293A of the *Act*, the *FSA* may require a *UK RIE* to give such information as it reasonably requires in order to satisfy itself that the *UK RIE* is complying with the *MiFID Regulation*, and (if the *UK RIE* operates an *RAP*) the *auction regulation.*

4.2E.2 G Under section 293B of the *Act*, the *FSA* may require a *recognised central counterparty* to give such information as it reasonably requires in order to satisfy itself that the *recognised central counterparty* is complying with the *EMIR regulation* and any directly applicable regulation made under it.

…

4.5 FSA supervision of action by UK recognised bodies under their default rules

4.5.1 G *UK recognised bodies* which, under their *rules*, have *market contracts* are required to have *default rules* enabling them (among other things) to take action in relation to a *member* who appears to be unable to meet his obligations in respect of one or more unsettled *market contracts*. The detailed *recognition requirements* relating to the *default rules* are set out in *REC* 2.17 and, for *recognised central counterparties*, in *REC* 2B.

4.5.2 G The *default rules* are designed to ensure that rights and liabilities between the defaulter and any counterparty to an unsettled *market contract* are discharged, and for there to be paid between the defaulter and each

counterparty one net sum. The Companies Act 1989 contains provisions which protect action taken under *default rules* from the normal operation of insolvency law which might otherwise leave this action open to challenge by a *relevant office-holder*.

4.5.2A G In addition, the *default rules* for *recognised central counterparties* are designed to ensure that, on the default of a clearing member, contracts, trades and collateral can be transferred to another clearing member.

4.5.3 G The Companies Act 1989 also gives the *FSA* powers to supervise the taking of action under *default rules*. Under section 166 of the Companies Act 1989 (Powers of the FSA to give directions) (see *REC* 4.5.4G), the *FSA* may direct a *UK recognised body* to take, or not to take, action under its *default rules*. Before exercising these powers the *FSA* must consult the *recognised body* concerned. The *FSA* may also exercise these powers if a *relevant office-holder* applies to it under section 167 of the Companies Act 1989 (Application to determine whether default proceedings to be taken) (see *REC* 4.5.9G).

…

4.6 The section 296 power to give directions

4.6.1 G Under section 296 of the *Act* (FSA's power to give directions) and (for *RAPs*) under regulation 3 of the *RAP regulations*, the *FSA* 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*) or a *recognised central counterparty* those steps may include granting the *FSA* access to the *UK RIE's* or *recognised central counterparty's* premises for the purposes of inspecting those premises or any documents on the premises and, in the case of a *UK RIE*, the suspension of the carrying on of any *regulated activity* by the *UK RIE* for the period specified in the direction.

…

4.7 The section 297 power to revoke recognition

…

4.7.3 G The *FSA* will usually consider revoking a *recognition order* for a *recognised body* (other than a *recognised central counterparty*) if:

(1) the *recognised body* is failing or has failed to satisfy one or more of the *recognised body requirements* and that failure has or will have serious consequences; or

(2) it would not be possible for the *recognised body* to comply with a direction under section 296 of the *Act* (FSA'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 *FSA* 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; or

(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.

…

4.7.4A G The *FSA* may revoke a *recognition order* for a *recognised central counterparty* if it:

(1) has not carried on the business of a central counterparty 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 a central counterparty at any time during the period of six *months* ending with the day the *recognition order* is revoked; or

(2) has expressly renounced the *recognition order*; or

(3) obtained the *recognition order* by making false statements or by any other irregular means; or

(4) has seriously and systematically infringed a requirement set out in the *EMIR regulation*; or

(5) has infringed a *recognition requirement* applicable to it.

4.7.4B G The *FSA* may also withdraw recognition in relation to a particular service, activity or class of *financial instruments* which the *recognised central counterparty* is authorised to provide in the circumstances referred to in *REC* 4.7.4AG.

4.8 The section 298 procedure

…

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 *FSA's* guidance about the actions it proposes to take in following these procedures, in the table at *REC* 4.8.9G. These procedures apply to a refusal to make a *recognition order* under section 290, the making of a direction made under section 296 and the revocation of a *recognition order* under section 297. But it should be noted that they do not apply to the revocation of a *recognition order*, or withdrawal of recognition in relation to a particular service, activity or class of *financial instruments*, for a *recognised central counterparty*. The procedures for such a revocation or withdrawal in relation to a *recognised central counterparty* are set out in article 20 of the *EMIR Regulation*.

…

5 Applications for Recognition (UK recognised bodies)

5.1 Introduction and legal background

5.1.1 G A *body corporate* or an unincorporated association may apply to the *FSA* for recognition as a *UK recognised body* under sections 287 (Application by an investment exchange) or 288 (Application by a clearing house) of the *Act*.

5.1.1A G A *UK RIE* may apply to the *FSA* for recognition as an *RAP* under regulation 2 of the *RAP regulations*.

5.1.1B G The process for applying to be a *recognised central counterparty* is also subject to the procedures set out in articles 14, 15 and 17 of the *EMIR regulation*.

5.1.1C G The *Act* requires the *FSA* to specify in the *recognition order* for a *recognised central counterparty* the services and activities linked to clearing (including the classes of *financial instruments*) which the *recognised central counterparty* is authorised to provide. It also provides a process for extending or varying the services or activities that the *recognised central counterparty* is authorised to provide.

5.1.2 G This chapter sets out *guidance* for *UK* applicants and for *UK* entities which are considering making an application. *Guidance* for applicants and prospective applicants for *overseas recognised body* status is given in *REC* 6.

5.1.3 G The Director General of Fair Trading, the Competition Commission and the Treasury also have specific roles in relation to competition issues raised by applications to become a *recognised body* but not in relation to an application by a *UK RIE* to become an *RAP* or an application by a person to become a *recognised central counterparty*.

5.1.4 G (1) Under section 303 of the *Act* (Initial report by the Director), the Director General of Fair Trading must issue a report on whether any of the applicant's *regulatory provisions* have a significantly adverse effect on competition. He must send copies of his report to the Treasury, the Competition Commission and the *FSA*.

(2) If the Director General of Fair Trading concludes that any of the applicant's *regulatory provisions* have a significantly adverse effect on competition, or if the Director General of Fair Trading concludes that none of the applicant's *regulatory provisions* has a significantly adverse effect on competition, but he nonetheless asks the Competition Commission to consider his report, the Competition Commission must normally make its own report under section 306 of the *Act* (Consideration by Competition Commission) on whether any of the applicant's *regulatory provisions* would have a significantly adverse effect on competition, whether any such effect is justified and, if it is not justified, what action, if any, the Treasury should direct the *FSA* to take.

(3) The Treasury's approval is required under section 307 of the *Act* (Recognition orders: role of the Treasury) before a *recognition order* (other than one relating to an *RAP* or a *recognised central counterparty*) can be made. (See also *REC* 5.2.11G.)

5.1.5 G The *FSA* must therefore send the Director General of Fair Trading copies of any *regulatory provisions* provided with the application. The *FSA* must also send to the Director General of Fair Trading such information in its possession as a result of the application, including supplementary information received after the application is made, but before it is determined by the *FSA*, as the *FSA* considers will assist the Director General of Fair Trading in discharging his functions in connection with the application.

5.1.6 G The Office of Fair Trading may also make informal requests for further information from an applicant. The Director General of Fair Trading also has powers under section 305 of the *Act* (Investigations by Director) to obtain compulsorily *documents* or information from the applicant or other *persons*.

5.1.7 G Potential applicants may wish to consult the Office of Fair Trading separately if they have any queries about the competition assessment or there are any aspects of their rules, guidance or clearing arrangements which they consider they may need to discuss with them.

5.2 Application process

5.2.1 G An applicant for *recognised body* status needs to demonstrate to the *FSA* that it is able to meet the *recognised body requirements* before a *recognition order* can be made. Once it has been recognised, a *recognised body* has to comply with the *recognised body requirements* at all times. (*Guidance* on the *recognised body requirements* applicable to *UK recognised bodies* (and applicants) is given in *REC* 2 and *REC* 2A).

5.2.1A G In addition, under section 290A of the *Act* (Refusal of recognition on ground of excessive regulatory provision), the *FSA* must refuse to make a *recognition order* in relation to a body applying for recognition as a *UK RIE* or *UK RCH* (other than as a *recognised central counterparty*) if it appears to

the *FSA* that an existing or proposed *regulatory provision* of the applicant in connection with the applicant's business as an investment exchange or the provision by the applicant of clearing services imposes, or will impose, an excessive requirement (as defined in section 300A of the *Act*) on *persons* directly or indirectly affected by it.

5.2.2 G (1) There is no standard application form. A prospective applicant should contact the Markets Division at the *FSA* at an early stage for advice on the preparation, scheduling and practical aspects of its application.

(2) It is very important, if an application is to be processed smoothly and in a reasonable time, that it is comprehensively prepared and based on a well-developed and clear proposal.

5.2.3 G An application should:

(1) be made in accordance with any directions the *FSA* may make under section 287 (Application by an investment exchange), section 288 (Application by a clearing house) of the *Act* or (for *RAPs*) regulation 2 of the *RAP regulations*;

(2) in the case of an application under sections 287 or 288 of the *Act*, be accompanied by the applicant's *regulatory provisions* and in the case of an application under section 287 of the *Act* information required pursuant to sub-sections 287(3)(c), (d) and (e) of the *Act* (see *REC* 5.2.3AG) (the material specifically prescribed in section 287 or section 288);

(3) be accompanied by the information, evidence and explanatory material (including supporting documentation) necessary to demonstrate to the *FSA* that the *recognised body requirements* will be met; and

(4) be accompanied by the appropriate fee (see *REC* 7).

5.2.3A G The information required pursuant to sub-sections 287(c), (d) and (e) of the *Act* is:

(1) a programme of operations which includes the types of business the applicant proposes to undertake and the applicant's proposed organisational structure;

(2) particulars of the persons who effectively direct the business and operations of the exchange; and

(3) particulars of the ownership of the exchange, and in particular the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly.

5.2.4 G Other information and documentation which should normally accompany an

application is listed in more detail in *REC* 5.2.14G.

5.2.5 G A prospective applicant who is an *authorised person* may wish to consult the *FSA* about the extent to which information which it has already supplied in connection with its status as an *authorised person* can be used to support an application to become a *UK recognised body*.

5.2.5A G A *UK RIE* applying for recognition as an *RAP* may wish to consult the *FSA* 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*.

5.2.6 G Under section 289 of the *Act* (Applications: supplementary) or (for an *RAP* applicant) regulation 2 of the *RAP regulations*, the *FSA* 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 *FSA* 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 *FSA* before the end of the period of six *months* beginning with the date on which it receives the completed application.

5.2.7 G At any time after making a formal application, the applicant may make amendments to its rules, guidance or any other part of its application submitted to the *FSA*. Any amendments or additional information (except in relation to an *RAP* applicant or an applicant to be a *recognised central counterparty*) are likely to be forwarded by the *FSA* to the Director General of Fair Trading and the Treasury under section 303 of the *Act* (Initial report by Director) (see *REC* 5.1.5G).

5.2.8 G (1) The *FSA* will keep the applicant informed of the progress of the application.

(2) It may be necessary to ask the applicant to clarify or amplify some aspects of its proposals. The *FSA* may wish to discuss various aspects of the application and may invite the applicant to attend one or more meetings for that purpose. When requested to do so, the *FSA* will explain the nature of the information which it has asked an applicant to supply in connection with its application.

5.2.9 G (1) While the *FSA* is considering an application under section 287 or 288 of the *Act*, the Office of Fair Trading will be reviewing the *regulatory provisions* so that the Director General of Fair Trading is able to make the report required by section 303 of the *Act*.

(2) When the Director General of Fair Trading has issued his report, if the circumstances described in *REC* 5.1.4G apply, the Competition Commission must normally make its own report under section 306 of

the *Act*.

5.2.10 G In relation to an application under section 287 or 288 of the Act, where the *FSA* considers that an applicant satisfies the *recognition requirements* and in the case of an application to become a *UK RIE*, the *MiFID implementing requirements* , and that the Treasury has had an opportunity to consider any reports from the Director General of Fair Trading and the Competition Commission, the *FSA* will then seek the Treasury's approval, under section 307 of the *Act* (Recognition orders: role of the Treasury), to the making of a *recognition order*.

5.2.10A G In relation to an application under section 288 of the *Act* to be a *recognised central counterparty*, the *FSA* must consider whether the applicant satisfies the *EMIR requirements* as well as any applicable *recognition requirements*. The *EMIR requirements* set out various requirements for central counterparties including requirements relating to corporate governance, organisational structure, systems, risk management and the need to be a system specified for the purposes of the Directive 98/26/EC on settlement finality in payment and securities settlement systems.

[**Note:** The text of the *EMIR requirements* can be found at [http//www.insert website]

5.2.10B G An application under section 288 of the *Act* to be a *recognised central counterparty* will need to specify the services or activities linked to clearing (including the classes of *financial instruments*) for which recognition is sought (see *REC* 5.1.1C G).

5.2.12 G Where the *FSA* considers that it is unlikely to make a *recognition order*, or (in the case of a *UK RIE* or *UK RCH* that is not a *recognised central counterparty*) to seek the Treasury's approval, 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 *FSA* 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.

5.2.13 G In relation to an application under section 287 or 288 of the *Act*, the *FSA* will notify the applicant if the Treasury does not give its approval under section 307 of the *Act* (Recognition orders: role of the Treasury). Under section 290 (Recognition orders), the *FSA* does not have to follow the section 298 procedure (see *REC* 4.8) in this case and will not normally do so. The Treasury is required in those circumstances to follow a similar procedure under section 310 of the *Act* (Procedure on the exercise of certain powers by the Treasury).

5.2.13A G While the procedure for applying to be a *recognised central counterparty* follows some of the same processes set out for applications by other *recognised bodies*, there are a number of differences which arise due to the application of the *EMIR regulation*. These include, in summary,

requirements for the *FSA*:

(1) to establish a college of supervisors;

(2) to provide all information relating to the application to members of the college;

(3) to duly consider the opinion of the college relating to the application;

(4) not to authorise the application in certain circumstances;

(5) to refer the matter to *ESMA* in certain circumstances;

(6) to inform the applicant in writing whether recognition is granted or refused within six months of the submission of a complete application.

5.2.14 G Information and supporting documentation (see *REC* 5.2.4G).

(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*.
(2)	Details of all business to be conducted by the applicant, whether or not a *regulated activity* (if not contained in the information listed in *REC* 5.2.3AG).
(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 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.
(4)	Copies of the last three annual reports and accounts and, for the current financial year, quarterly *management accounts*.
(5)	Details of its business plan for the first three years of operation as a *UK recognised body* (if not contained in the information listed in *REC* 5.2.3AG).
(6)	A full organisation chart and a list of the posts to be held by *key individuals* (with details of the duties and responsibilities) and the names of the *persons* proposed for these appointments when these names are available (if not contained in the information listed in *REC*

	5.2.3AG).
(7)	Details of its auditors, bankers, solicitors and any *persons* providing corporate finance advice or similar services (such as reporting accountants) to the applicant.
(8)	Details of any *relevant functions* to be outsourced or delegated, with copies of relevant agreements.
(9)	Details of information technology systems and of arrangements for their supply, management, maintenance and upgrading, and security.
(10)	Details of all plans to minimise disruption to operation of its *facilities* in the event of the failure of its information technology systems.
(11)	Details of internal systems for financial control, arrangements for risk management and insurance arrangements to cover operational and other risks.
(12)	Details of its arrangements for managing any counterparty risks, including details of margining systems, guarantee funds and insurance arrangements.
(13)	Details of internal arrangements to safeguard confidential or privileged information and for handling conflicts of interest.
(14)	Details of arrangements for complying with the *notification rules* and other requirements to supply information to the *FSA*.
(15)	Details of the arrangements to be made for monitoring and enforcing compliance with its rules and with its clearing, settlement and default arrangements.
(16)	A summary of the legal due diligence carried out in relation to ascertaining the enforceability of its rules (including *default rules*) and arrangements for margin against any of its *members* based outside the *United Kingdom*, and the results and conclusions reached.
(17)	Details of the procedures to be followed for declaring a *member* in default, and for taking action after that event to close out positions, protect the interests of other *members* and enforce its *default rules*.
(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.
(19)	Details of arrangements for recording transactions effected by, or cleared through, its *facilities*.
(20)	Details of arrangements for detecting *financial crime* and *market abuse*, including arrangements for complying with *money laundering*

	law.
(21)	Details of criteria, rules and arrangements for selecting *specified investments* to be admitted to trading on (or cleared by) an *RIE*, or to be cleared by an *RCH* and, where relevant, details of how information regarding *specified investments* will be disseminated to users of its *facilities*.
(22)	Details of arrangements for cooperating with the *FSA* and other appropriate authorities, including draft memoranda of understanding or letters.
(23)	Details of the procedures and arrangements for making and amending rules, including arrangements for consulting on rule changes.
(24)	Details of disciplinary and appeal procedures, and of the arrangements for investigating complaints.
(25)	In the case of an application to be a *recognised central counterparty*, any other information that is necessary to demonstrate how the applicant will comply with *EMIR requirements* applicable to a central counterparty.

6 Overseas Investment Exchanges and Overseas Clearing Houses

6.1 Introduction and legal background

6.1.1 G The *Act* prohibits any *person* from carrying on, or purporting to carry on, *regulated activities* in the *United Kingdom* unless that *person* is an *authorised person* or an *exempt person*. If an *overseas investment exchange* or *overseas clearing house* wishes to undertake *regulated activities* in the *United Kingdom*, it will need to:

(1) obtain a *Part IV permission* from the *FSA*; 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

(3) (in the case of an *EEA market operator*) obtain *exempt person* status by exercising its passport rights under Articles 31(5) and 31(6) of *MiFID* (in the case of arrangements relating to a *multilateral trading facility*) or Article 42(6) of *MiFID* (in the case of arrangements relating to a *regulated market*); or

(3A) (in the case of a legal person established in another *EEA State* that is providing *clearing services* as a *central counterparty*), obtain authorisation as a *central counterparty* from its supervisory authority in that State in accordance with the *EMIR regulation*; or

(3B) (in the case of a legal person established outside the *EEA* that is providing *clearing services* as a *central counterparty*), obtain recognition as a central counterparty from *ESMA* in accordance with the *EMIR regulation*; or

(4) obtain *exempt person* status by being declared by the *FSA* to be (in the case of an *overseas investment exchange*) an *ROIE* or (in the case of an *overseas clearing house* that is not providing *clearing services* as a *central counterparty*) an *ROCH*.

6.1.2 G Having the status of an *overseas recognised body* facilitates the participation of *overseas investment exchanges* and *overseas clearing houses* in *UK markets*. In comparison with *authorisation*, it reduces the involvement which *UK* authorities need to have in the day-to-day affairs of an *overseas recognised body* because they are able to rely substantially on the supervisory and regulatory arrangements in the country where the applicant's head office is situated.

6.1.3 G A legal person established outside the *United Kingdom* who wishes to provide *clearing services* as a *central counterparty* in the *United Kingdom* will, in accordance with the procedures set out in the *EMIR regulation*, need to either seek authorisation from the supervisory authority of another *EEA State* (if it is a legal person established in that other *EEA State*) or seek recognition from *ESMA* (if it is a legal person established outside the *EEA*).

6.1.4 G For *overseas recognised bodies* which are authorised under the *Act* to provide *clearing services* as a *central counterparty* before regulatory technical standards under the *EMIR regulation* are adopted, the *EMIR regulation* provides for a six month transitional period during which the body may apply to *ESMA* or its supervisory authority in another *EEA State* (as the case may be) for recognition as a *central counterparty* under the regulation. Once *ESMA* or the other supervisory authority makes a determination in relation to the application under the *EMIR regulation*, the *recognition order* for the body made under the *Act* will cease to be valid.

6.2 Applications

6.2.1 G (1) *Overseas investment exchanges* and *overseas clearing houses* which are considering whether to seek *authorisation* or recognition should first consider whether they will be carrying on *regulated activities* in the *United Kingdom*. *Overseas investment exchanges* and *overseas clearing houses* which do not carry on *regulated activities* in the *United Kingdom* need take no action.

(2) Prospective applicants should discuss *authorisation* and recognition with the *FSA* before deciding whether to seek *authorisation* or recognition.

6.2.1A G A legal person established outside the *United Kingdom* who wishes to provide *clearing services* as a *central counterparty* will need to apply in accordance with the *EMIR regulation* to *ESMA* (if it is a legal person

established outside the *EEA*) or to its supervisory authority (if it is a legal person established in another *EEA State*) to be recognised as a central counterparty once the relevant provisions of that regulation are in force.

6.2.2 G A prospective applicant (other than an overseas applicant who wishes to provide *clearing services* as a *central counterparty*) may wish to contact the Markets Division at the *FSA* at an early stage for advice on the preparation, scheduling and practical aspects of an application to become an *overseas recognised body*.

6.2.3 G Applicants for *authorised person* status should refer to the *FSA* website "How do I get authorised": *http://www.fsa.gov.uk/Pages/Doing/how/index.shtml* . Applications for recognition as an *overseas recognised body* should be addressed to:
The Financial Services Authority (Markets Division)
25 The North Colonnade
Canary Wharf
London E14 5HS

6.2.4 G There is no standard application form for application for recognition as an *overseas recognised body*. An application should be made in accordance with any direction the *FSA* may make under section 287 (Application by an investment exchange) or section 288 (Application by a clearing house) of the *Act* and should include:

(1) the information, evidence and explanatory material necessary to demonstrate to the *FSA* that the *recognition requirements* (set out in *REC* 6.3) will be met;

(2) the application fee (see *REC* 7);

(3) the address of the applicant's head office in its *home territory*;

(4) the address of a place in the *United Kingdom* for the service on the applicant of notices or other *documents* required or authorised to be served on it under the *Act* (see section 292(1));

(5) the applicant's *regulatory provisions*;

(6) one copy of each of the following *documents*:

(a) its most recent *annual report and accounts*; and

(b) the applicant's memorandum and articles of association or any similar or analogous *documents*; and

(7) information identifying the following (if not contained in the *documents* listed in (5) or (6) or the material referred to in (1)):

(a) any type of *regulated activity* which the applicant envisages carrying on in the *United Kingdom*;

(b) any type of *specified investment dealt* in on, or cleared by, the applicant;

(c) the date by which the applicant wishes the *recognition order* to take effect; and

(d) any body or authority which supervises the applicant under the law of the *home territory*, the status of the applicant under that law, and the enactment or regulation under which the supervision is conducted.

6.2.5 G The *FSA* may require further information from the applicant and may need to have discussions with the appropriate authorities in the applicant's *home territory*. To allow sufficient time for applications to be processed and for the necessary contacts to be made with the appropriate *home territory* authorities, applications should be made not later than six months before the applicant wishes the *recognition order* to take effect. No guarantee can be given that a decision will be reached within this time, although the *FSA* will endeavour to meet the applicant's reasonable timing requirements.

6.2.6 G All material should be supplied in English, or accompanied, if appropriate, by an accurate English translation. An English glossary of technical or statistical terms may be sufficient to accompany tables of statistical or financial information.

6.3 Recognition requirements

6.3.1 G Before making a *recognition order*, the *FSA* will need to be satisfied that the *recognition requirements* in section 292(3) of the *Act* (Overseas investment exchanges and clearing houses) have been met. These requirements are the only *recognition requirements* applicable to *overseas recognised bodies*.

6.3.1A G A legal person established outside the *United Kingdom* who wishes to provide *clearing services* as a *central counterparty* will need to apply in accordance with the *EMIR regulation* to *ESMA* or its supervisory authority in another *EEA State* (as the case may be) to be recognised as a *central counterparty*. The relevant requirements that must be satisfied for recognition by *ESMA* or its supervisory authority are those set out in that regulation.

6.3.2 UK Sections 292(3) and 292(4) state:

Section 292(3)	
The requirements are that-	
(a)	investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with *recognition requirements*;

(b)	there are adequate procedures for dealing with a *person* who is unable, or likely to become unable, to meet his obligations in respect of one or more *market contracts* connected with the [*ROIE*] or [*ROCH*];
(c)	the applicant is able and willing to co-operate with the [*FSA*] by the sharing of information and in other ways; and
(d)	adequate arrangements exist for co-operation between the [*FSA*] and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.
Section 292(4)	
In considering whether it is satisfied as to the requirements mentioned in subsections (3)(a) and (b), the [*FSA*] is to have regard to-	
(a)	the relevant law and practice of the country or territory in which the applicant's head office is situated;
(b)	the rules and practices of the applicant.

6.3.3 G The reference to *recognition requirements* in section 292(3)(a) of the *Act* is a reference to the requirements applicable to *UK RIEs* or *UK RCHs* in the *Recognition Requirements Regulations*. These requirements are set out, together with *guidance*, in *REC* 2.

6.4 Competition scrutiny

6.4.1 G Applications from *overseas investment exchanges* and *overseas clearing houses* are subject to the same competition scrutiny as applications from prospective *UK recognised bodies* (see *REC* 5). The *FSA* will therefore follow the relevant steps set out in *REC* 5.2 and may not make a *recognition order* without the approval of the Treasury. As set out in *REC* 6.2 and *REC* 6.3 this procedure does not apply to a legal person established outside the *United Kingdom* wishing to provide *clearing services* as a *central counterparty* who must apply to *ESMA* or its supervisory authority in another *EEA State* (as the case may be) for recognition as a central counterparty in accordance with separate procedures set out in the *EMIR regulation*.

6.4.2 G Potential applicants may wish to consult the Office of Fair Trading separately if they have any queries about the competition assessment or there are any aspects of their rules or guidance which they consider they may need to discuss with the Office of Fair Trading.

6.5 FSA decision on recognition

6.5.1 G If the *FSA* considers that the requirements of the *Act* are satisfied, it may make a *recognition order*, which will state the date on which it takes effect.

6.5.2 G Where the *FSA* considers that it is unlikely to make a *recognition order*, it will discuss its concerns with the applicant with a view to enabling the applicant to make changes to its rules or guidance, or other parts of the application. If the *FSA* decides to refuse to make a *recognition order*, it will follow the procedure set out in section 298 of the *Act* (Directions and revocation: procedure) (which applies in consequence of section 290(5) of the *Act* (Recognition orders)) which is described in more detail in *REC 4.8*.

6.5.3 G The *FSA* will notify the applicant if the Treasury fails to give its approval under section 307 of the *Act* (Recognition orders: role of the Treasury). Under section 290, the *FSA* is not required to follow the procedure under section 298 in this case and will not normally do so.

6.6 Supervision

6.6.1 G An *overseas recognised body* is required to notify the *FSA* of certain events and give information to it on a regular basis and when certain specified events occur. Section 295 of the *Act* (Notification: overseas investment exchanges and overseas clearing houses) requires each *overseas recognised body* to provide the *FSA*, the Treasury and the Director General of Fair Trading with a report (at least once a year) which contains:

(1) a statement as to whether any events have occurred which are likely:

(a) to affect the *FSA's* assessment of whether it is satisfied that the *overseas recognised body* continues to satisfy the *recognition requirements* set out in section 292(3) of the *Act* (Overseas investment exchanges and overseas clearing houses)(see *REC* 6.3); and

(b) to have any effect on competition;

(2) the information specified in the *FSA's notification rules* for *overseas recognised bodies* (see *REC* 6.7).

6.6.1A G An *overseas recognised body* that provides *clearing services* as a *central counterparty* will, after a transitional period provided for in the *EMIR regulation*, need to apply for recognition under that regulation from *ESMA* (if it is a legal person established outside the *EEA*) or its supervisory authority in another *EEA State* (if it is a legal person established in that *EEA State*). Once its application is determined under that regulation it will cease to be an *overseas recognised body* (see *REC* 6.1.3G and *REC* 6.1.4G) and the rules in this Chapter will cease to apply.

6.6.2 G The following events are examples of events likely to affect an assessment of whether an *overseas recognised body* is continuing to satisfy the *recognition requirements*, or to have an effect on competition:

(1) significant changes to any relevant law or regulation in its *home territory*, including laws or regulations:

(a) governing exchanges or *clearing houses*;

(b) designed to prevent insider dealing, market manipulation or other forms of market abuse or misconduct;

(c) designed to protect the interests of *clients* of *members* of the *overseas recognised body*, or of a class of bodies which includes the *overseas recognised body*;

(d) which affect:

(i) the ability of the *overseas recognised body* to seek information (whether compulsorily or voluntarily) from its *members*, including information relating to the price and volume of transactions, the identity of parties to transactions, and the movement of funds associated with transactions;

(ii) which affect the ability of the *overseas recognised body* to pass such information, on request, to *UK* authorities;

(2) significant changes to its internal organisation or structure;

(3) significant changes to the practices of the *overseas recognised body* applying to any *regulated activities* carried on by it in the *United Kingdom*;

(4) any other event or series of events in relation to the body which:

(a) affects or may significantly affect cooperation between the *overseas recognised body*, or its supervisor in its *home territory*, and the *FSA*; or

(b) has or may have a substantial effect on the structure of the markets in which the body operates; or

(c) brings about or may bring about a substantial change in the nature and composition of its *membership* in the *United Kingdom*; or

(d) brings about or may bring about a substantial change in the *regulated activities* undertaken by it in the *United Kingdom*.

6.6.3 G The period covered by a report submitted under section 295(1) of the *Act* starts on the day after the period covered by its last report or, if there is no

such report, after the making of the *recognition order* recognising the *overseas recognised body* as such, and ends on the date specified in the report or, if no date is specified, on the date of the report.

6.6.4 G If an *overseas recognised body* changes the period covered by its report, it should ensure that the first day of the period covered by a report is the day immediately following the last day of the period covered by the previous report.

6.6.5 G The period covered by a report submitted under section 295(1) of the *Act* would most conveniently be one year.

6.6.6 G Copies of the report should be sent to the *FSA*, the Treasury and the Director General of Fair Trading within two months after the end of the period to which it relates.

6.7 Notification rules for overseas recognised bodies

Application

6.7.1 R The *notification rules* in this chapter, which are made under sections 293 (Notification requirements) and 295 of the *Act* (Notification: overseas investment exchanges and overseas clearing houses), apply to all *overseas recognised bodies*.

6.7.1A G The *notification rules* will no longer be relevant to an *overseas recognised body* which provides *clearing services* as a *central counterparty* once *ESMA* or its supervisory authority in another *EEA State* (as the case may be) determines its application under the *EMIR regulation* as its *recognition order* under the *Act* will cease to be valid (see *REC* 6.1.3G and *REC* 6.1.4G).

…

Annex E

Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text.

OTC Derivatives, Central counterparties and Trade Repositories Regulation

19.120 G The *OTC derivatives, central counterparties and trade repositories regulation* sets out information gathering and sanctioning powers enabling the FSA to investigate and take action for breaches of the *EMIR requirements*.

Information gathering powers

19.121 G The information gathering powers include the power for the FSA to require a non-authorised counterparty that is subject to obligations under the *EMIR regulation* to provide specified information or specified documents. It also includes the power for the FSA to require a person to provide specified information or documents to enable the FSA to determine whether the person is subject to obligations under the *EMIR regulation*, for example, to determine whether a person meets certain quantitative criteria that trigger obligations under that regulation. The information gathering powers, for the most part, mirror similar powers under the *Act*.

Sanctioning powers

19.122 G The sanctioning powers of the FSA in relation to the *EMIR requirements* are the power to publish a statement to the effect that a person has contravened a requirement imposed on it by or under the *EMIR regulation* and/or to impose a financial penalty of such amount as it considers appropriate on a person who has contravened such a requirement. These sanctioning powers apply to *recognised central counterparties* and to other persons subject to obligations under the *EMIR regulation*.

19.123 G As the sanctioning powers mirror similar powers under the *Act*, the FSA has decided to adopt procedures and policies in relation to the use of those powers akin to those it has adopted under the *Act*.

19.124 G The FSA will use the sanctioning powers where it is appropriate to do so and with regard to the relevant factors listed in *DEPP* 6.2.1G. In deciding between a financial penalty or a public statement, the FSA will also have regard to the relevant factors listed in *DEPP* 6.4. In determining the appropriate level of financial penalty the FSA will have regard to the principles set out in *DEPP* 6.5, *DEPP* 6.5A, *DEPP* 6.5B, *DEPP* 6.5D and *DEPP* 6.7.

19.125 G When the FSA proposes or decides to take action to publish a statement or impose a financial penalty referred to in *EG* 19.122G, it must give the *person* concerned a *warning notice* or a *decision notice* respectively. Those

notices must state the amount of the penalty or the terms of the statement, as applicable. On receiving a *warning notice*, the person concerned has a right to make representations on the FSA's proposed decision. A person that receives a *decision notice* may refer the matter to the *Tribunal*.

19.126 G If it is proposing to impose a penalty or publish a censure statement under those regulations, the FSA's decision maker will be the *RDC*. The *RDC* will make its decisions following the procedure set out in *DEPP* 3.2 or, where appropriate, *DEPP* 3.3.

19.127 G Sections 393 and 394 of the *Act* apply to notices referred to in this section. See *DEPP* 2.4 (Third party rights and access to FSA material).

19.128 G The FSA will apply the approach to publicity that is outlined in *EG* 6.

19.129 G In relation to *authorised persons* and *recognised central counterparties* who are subject to obligations under the *EMIR regulation* other information gathering powers and sanctions may also be applicable under the *Act* to enable the FSA to supervise or enforce those obligations.

Annex F

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text.

Recognised Investment Exchanges, Recognised Clearing Houses and Recognised Auction Platforms

2.10.6	G	Investment exchanges and *clearing houses* can apply for recognition under Part XVIII of the *Act* (Recognised investment exchanges and clearing houses). An application for recognition as a *recognised clearing house* may be as a *recognised central counterparty* or another type of *recognised clearing house* (for example, the operator of a settlement system). *Auction platforms* can apply for recognition under the *RAP Regulations*. See *REC*.

Appendix 9A

Designation of Handbook provisions

1. FSA Handbook provisions will be 'designated' to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website[1] for further details about this process.

2. We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
EG 19.120G	FCA and PRA
EG 19.121G	FCA and PRA
EG 19.122G	FCA and PRA
EG 19.123G	FCA and PRA
EG 19.124G	FCA and PRA
EG 19.125G	FCA and PRA
EG 19.126G	FCA and PRA
EG 19.127G	FCA and PRA
EG 19.128G	FCA and PRA
EG 19.129G	FCA and PRA

1 www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml

Appendix 10

Proposed changes to Chapters 8 and 18 of the Listing Rules sourcebook (LR)

LISTING RULES (AMENDMENT NO 9) INSTRUMENT 2013

Powers exercised

A. 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:

(1) section 73A (Part 6 Rules);
(2) section 75 (Applications for listing);
(3) section 79 (Listing particulars and other documents);
(4) section 80 (General duty of disclosure in listing particulars);
(5) section 81 (Supplementary listing particulars);
(6) section 88 (Sponsors);
(7) section 96 (Obligations of issuers of listed securities);
(8) section 101 (Part 6 rules: general provisions); and
(9) schedule 7 (the Authority as Competent Authority for Part VI).

Commencement

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

Amendments to the Handbook

C. The Listing Rules sourcebook (LR) is amended in accordance with the Annex to this instrument.

Citation

D. This instrument may be cited as the Listing Rules (Amendment No 9) Instrument 2013.

By order of the Board
[*date*]

Annex

Amendments to the Listing Rules sourcebook (LR)

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

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 *equity shares* must appoint a *sponsor* on each occasion that it:

(1) is required to submit any of the following documents to the *FSA* in connection with an application for *admission* of *equity shares* to *premium listing*:

(a) a *prospectus*, *supplementary prospectus* or *equivalent document*; or

…

(d) *listing particulars* referred to in *LR* 15.3.3R or *LR* 16.3.4R or *supplementary listing particulars*; or

…

…

Additional requirements for a depositary

18.2.13 R ~~A *depositary* that issues *certificates representing certain securities* must be a suitably authorised and regulated financial institution acceptable to the *FSA*.~~ [deleted]

18.2.14 R A *depositary* that issues *certificates representing certain securities* must ~~hold on trust (or under equivalent arrangements) for the sole benefit of the certificate holders~~ maintain adequate arrangements to safeguard certificate holders' rights to the *securities* to which the certificates relate, and to all rights relating to the *securities* and all money and benefits that it may receive in respect of them, subject only to payment of the remuneration and proper expenses of the *issuer* of the certificates.

Appendix 10A

Designation of Handbook provisions

1. FSA Handbook provisions will be 'designated' to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website[1] for further details about this process.

2. We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
LR 8.2.1R(1)	FCA
LR18.2.13R	FCA
LR18.2.14R	FCA

1 www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml

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