

Quarterly Consultation No.10

September 2015



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The Financial Conduct Authority invites comments on this Consultation Paper. Comments should reach us by 5 October 2015 for part of Chapter 8 and all of Chapters 4 and 9, 16 October 2015 for Chapter 3 and 5 November 2015 for Chapters 2, 5, 6, 7 and the remaining part of Chapter 8 (see the Overview section for further details).

Comments may be sent by electronic submission using the form on the FCA's website at www.fca.org.uk/your-fca/documents/consultation-papers/cp15-28-response-form or by email to cp15-28@fca.org.uk.

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If you are responding in writing to several chapters then please send your comments to Emily How or Emma Elder in Communications, who will pass your responses on as appropriate.

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Abbreviations used in this paper

ABI	Association of British Insurers
AD	Accounting Directive 2013/34/EU
ADR	Alternative Dispute Resolution
AIF	Alternative Investment Fund (as per Directive 2011/61/EU)
APB	Auditing Practices Board
ASB	Accounting Standards Board
BBA	British Bankers' Association
BIS	Department for Business, Innovation and Skills
CASS	Client Assets sourcebook
CBA	cost benefit analysis
CCA	Consumer Credit Act
CCD	Consumer Credit Directive
CJ	Compulsory jurisdiction
CMAR	Client Money and Asset Return
COBS	Conduct of Business sourcebook
COMP	the Compensation sourcebook
CONC	Consumer Credit sourcebook
CONRED	Consumer Redress Schemes sourcebook
CP	Consultation Paper
CRD	Capital Requirements Directive
CRRA	credit-related regulated activities
DISP	Dispute Resolution: Complaints sourcebook

DMD	Distance Marketing Directive
DTR	Disclosure Rule and Transparency Rule sourcebook
EBA	European Banking Authority
EC	European Community
EEA	European Economic Area
EEC	European Economic Community
ESIS	European Standardised Information Sheet
ESMA	European Securities and Markets Authority
EU	European Union
FCA	Financial Conduct Authority
FCLD	Fourth Company Law Directive 78/660/EEC
FRC	Financial Reporting Council
FSA	Financial Services Authority
FSMA	Financial Services and Markets Act 2000
GAAP	Generally Accepted Accounting Practice
GABRIEL	GAthering Better Regulatory Information ELectronically (the FCA's electronic reporting system)
GEN	General Provisions
GENPRU	General Prudential sourcebook
HMT	Her Majesty's Treasury
IAS	International Accounting Standard
KFI	Key facts illustration
LR	Listing Rule sourcebook
MAS	Money Advice Service
MCD	Mortgage Credit Directive
MCOB	Mortgages and Home Finance: Conduct of Business sourcebook
MIPRU	Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries
MLA	Mortgage Lending and Administration

MS	Member State (of the EU)
OD2	Omnibus II Directive 2014/51/EU
PD	Prospectus Directive 2003/71/EC
PD Regulation	Prospectus Directive Regulation No 809/2004
PERG	The Perimeter Guidance manual
PIE	Public interest entity
PRIN	Principles for Businesses sourcebook
PR	Prospectus Rules sourcebook
PRA	Prudential Regulation Authority
PS	Policy Statement
PSD	Product sales data
RAG	Regulated Activity Group
RAO	Regulated Activities Order
RMA	Retail mediation activity
RMC	Regulated mortgage contract
RTS	Regulatory Technical Standards
SAAD	Statutory Audit Amending Directive 2014/56/EU
SAD	Statutory Audit Directive 2006/43/EC
SCLD	Seventh Company Law Directive 83/349/EEC
SI	Statutory Instrument
SUP	Supervision manual
TC	Training and Competence sourcebook
TD	Transparency Directive 2004/109/EC
UCITS	Undertaking for Collective Investment in Transferable Securities (as per Directive 2009/65/EC)
UK	United Kingdom
VJ	Voluntary jurisdiction

1. Overview

Chapter No.	Proposed changes to Handbook	Consultation Closing Period
2	Extension of the right to turn to the Financial Ombudsman Service and the application of the COBS suitability rules when investment advice or discretionary management services are provided in relation to offshore life insurance bonds.	5 November 2015
3	Minor changes across our Handbook completing the implementation of the Mortgage Credit Directive to reflect legislative changes and to address minor issues identified in the MCD rules we published in PS15/9.	16 October 2015
4	Changes to the Training and Competence sourcebook (TC) list of appropriate qualifications.	5 October 2015
5	We have reviewed the guidance previously published by the FSA on Consumer Redress Schemes (GN10) and are proposing to update the guidance and incorporate it into the CONRED part of our Handbook.	5 November 2015
6	We are proposing to make various amendments to the Supervision manual (SUP) Chapter 16 in order to improve the data collection process for both firms and the FCA.	5 November 2015
7	We are proposing amendments to our DISP rules to make commencement dates for complaints reporting requirements more consistent and clear, as well as some amendments to make it clearer for firms how to send written communications to complainants. We also propose some minor corrections to the complaints return and guidance.	5 November 2015
8	Changes to the Glossary, LR, DTR, GENPRU and SUP. Changes to PR and the Glossary definition of Prospectus RTS Regulation	5 November 2015 5 October 2015
9	Technical changes to provisions in GEN to ensure that the FCA's Handbook continues to work effectively, notwithstanding the PRA's ongoing deletion of its Handbook.	5 October 2015

2. Offshore bonds – Financial Ombudsman Service and the COBS suitability rules

Introduction

- 2.1** This chapter is a joint consultation with the Financial Ombudsman Service (the ombudsman service) on minor changes to our rules to deal with a gap in consumer protection which we became aware of following discussions with the industry on the tax position of offshore life insurance bonds. The power to make rules relating to the Financial Ombudsman Service is shared between the FCA and the Financial Ombudsman Service, and the proposals set out below are joint. Responses to this chapter should be regarded as responses to both the FCA and the ombudsman service.
- 2.2** An offshore life insurance bond is a life policy which is carried out by an offshore (i.e., non-UK) life company. The product provides the policyholder with exposure to the performance of an underlying portfolio of investments.
- 2.3** UK retail clients who buy an offshore life insurance bond following advice from a firm subject to our rules, such as a UK-based financial adviser, benefit from the protection of the FCA suitability rules in Chapter 9 of the Conduct of Business Sourcebook (COBS). These clients can make a complaint to the ombudsman service if they consider that they received poor advice from the firm. The Retail Distribution Review (RDR) adviser charging rules also apply to advice on the client's initial investment in the offshore life insurance bond, if a personal recommendation has been given to a retail client on a retail investment product (a life policy).
- 2.4** However, once the bond has been purchased, the life company may appoint a UK firm (referred to in this chapter as the UK investment manager), on a discretionary or advisory basis, to manage the assets held to meet their liability to the policyholder. If advice is given directly to the policyholder on the investment of those assets, the policyholder is, in effect, making investment decisions as an agent of the life company. In either case the life company, rather than the policyholder, is the client at this second stage. This means that the policyholder does not have the protection of the suitability rules or the right to turn to the ombudsman service if poor advice is provided or unsuitable discretionary decisions to trade are taken. The 'agent as client' rule (COBS 2.4.3R) does not apply to this situation.
- 2.5** This is a complex arrangement for a consumer to follow, and it is not clear whether consumers who take out these bonds understand the protections being given up. Even if there is disclosure at the stage the bond is first bought, the emphasis may be on the advantages rather than on the disadvantages of the arrangement. So, following discussions with the industry – the Association of British Insurers (ABI) and British Bankers' Association (BBA) – we propose to amend our rules to ensure that consumers benefit from the suitability rules and the right to make a complaint to the ombudsman service. The changes will apply in respect of advice provided, or investment management undertaken, in relation to offshore life insurance bonds,

even though the policyholder is, in effect, the agent of the life company for receiving these services. As such, we want to introduce rules that require the UK investment manager to apply the suitability rules in COBS 9 as if the policyholder (rather than the life company) were its client when it is instructed to engage directly with the policyholder (as agent of the life company) in the provision of its investment advisory or discretionary investment management service. This means that the UK investment manager will be required to consider the knowledge, experience, financial situation and investment objectives of the policyholder in providing any personal recommendations or taking any decisions to trade.

- 2.6** The proposed changes are to the Dispute Resolution: Complaints sourcebook (DISP) and COBS. We considered whether we should also change the rules to require application of the adviser charging rules to the second stage advice provided to clients on the assets to be held in their bond. However, we concluded that the benefits of applying adviser charging were not as clear as the benefits of access to the ombudsman service and application of the suitability rules, as the advice costs would then become the cost of the client and be treated as a withdrawal if facilitated from the product.
- 2.7** The industry comments included a suggestion that the appropriate remedy, where a complaint is upheld by the ombudsman service and compensation is payable, is that the compensation should be paid to the life company to place within the bond, to avoid affecting the policyholder's tax position. We do not propose to change the rules to require this.
- 2.8** Other comments from the industry are included in the section on the cost benefit analysis.

Proposed changes to DISP and COBS

- 2.9** The proposed changes, set out in Appendix 2, are to:
- DISP 2.7.6R on the jurisdiction of the ombudsman service, and
 - COBS 18 (Specialist regimes) to add a new section on offshore bonds, including a requirement for firms providing advice or discretionary investment management services to policyholders in relation to assets held in an offshore life insurance bond. This requirement will mean that these firms will need to disclose the circumstances in which the policyholder can refer complaints to the ombudsman service, with a six-month transitional period from the date on which the rules come into force to make the necessary changes to their disclosures on complaints.
- 2.10** The transitional period does not apply to the handling of complaints itself and relevant firms are required to handle complaints in accordance with the rules in force at the time they receive the complaint. This will mean telling consumers they have a right to complain to the ombudsman service in all final response letters and summary resolution communications issued from the date on which the new rules come into force.

Effect on firms and consumers

- 2.11** We understand from the ABI and BBA that many firms already operate as if the holders of offshore life insurance bonds are eligible to complain to the ombudsman service, but are unable to provide clear disclosure of that fact, because it is not clear on the face of our rules that this

right currently exists. The ABI and BBA support changes to our rules to specify that this right exists and agree that it should be a requirement for firms to inform clients that they have this right.

- 2.12** Consumers will benefit from the new clarity around ombudsman service protection and from the ability of the ombudsman service to assess whether advice provided was, or investment decisions taken were, suitable for the policyholder (as opposed to the life company) when looking at a complaint.

Effect on taxation of offshore life insurance bonds

- 2.13** If the proposed changes take the form outlined in this document and there is no legal change to the arrangements in place, adviser fees paid by the life company in these circumstances will not be a withdrawal from the bond for tax purposes. Therefore, such payments will not be included when calculating whether a policyholder has made withdrawals exceeding the net total allowable amount for any year or in the calculation of the gain at maturity or surrender. This will, however, depend on the specific facts of each arrangement.

Q2.1: Do you agree that consumers who have purchased an offshore life insurance bond should have access to the Financial Ombudsman Service and the protection of the COBS suitability rules when receiving advice or a discretionary investment management service in relation to assets within the bond? If not, please give your reasons.

Q2.2: Do you have any comments on our proposed changes to COBS and DISP relating to offshore life insurance bonds?

Cost benefit analysis

- 2.14** Section 138L of the Financial Services and Markets Act 2000 (FSMA), as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules, unless we consider that there will be no increase in costs or that there will be an increase in costs but that increase will be of minimal significance.
- 2.15** During informal pre-consultation with the ABI and BBA, we were told that UK firms currently providing advisory and discretionary investment management services in relation to offshore life insurance bonds (where the policyholder is effectively acting as the agent of the life company) do generally recognise that such policyholders should be able to refer any complaints to the ombudsman service and the firms do not object when this occurs. We were also told that the industry would generally consider the policyholder's risk profile in the provision of their advisory and discretionary services. This means that the cost of the new rules providing for access to the ombudsman service and the revised application of the suitability rules in respect of the advisory or discretionary management service would be low or zero.
- 2.16** Our proposed rules place the requirement to disclose the right to turn to the ombudsman service on the UK investment manager, rather than the offshore life company. The industry expects the costs for firms of amending their disclosures to be low. However, the suggestion has been made that the offshore life company should make the new disclosure to the policyholder, rather than the UK investment manager, given that the contract for the provision of advice or discretionary management services is between the two firms. Our view is that the new rules

do not prevent the UK investment manager agreeing with the offshore life company that the disclosure in respect of the advice or discretionary investment service should be included in the documents provided to the policyholder by the life company. The responsibility for ensuring disclosure is provided will remain with the UK investment manager.

- 2.17** It has also been suggested that there should be no time limit for changes to firms' literature to include the disclosure. Instead this should be left to firms to implement as part of their normal reprint process. The comment was made that there will be a cost to the affected firms to notify existing policyholders, given that the right to turn to the ombudsman service will apply to all policyholders and not just new ones going forward. We have allowed a six-month transitional period for firms to make the necessary changes to their documentation, which should be sufficient for most firms to make the changes when they make other amendments to their literature. We do not expect firms' costs to be significant for new policyholders. Since the new rules refer to disclosure 'in good time before the provision of the service', they only apply to new clients and do not require a new notification to existing policyholders. Instead firms can, if they wish, inform existing policyholders when sending other communications to them.
- 2.18** Existing rules in DISP on complaints handling will continue to apply when the new rules come into force, in relation to both new and existing policyholders. These include the requirement to tell consumers they have a right to complain to the ombudsman service in all final response letters and summary resolution communications issued from the date on which the new rules come into force. Firms will already have procedures for handling complaints, so there will not be any additional costs in extending the procedures to policyholders with offshore bonds.

Impact on mutual societies

- 2.19** There should not be any impact on mutual societies, as the proposed rule changes will only affect firms which provide investment advisory or discretionary investment management services in relation to assets held in offshore life insurance bonds.

Q2.3: Do you agree that any additional costs for firms as a result of giving consumers with offshore life insurance bonds access to the Financial Ombudsman Service and the protection of the COBS suitability rules are likely to be small? If not, please give your reasons and details of estimated costs.

Compatibility statement

- 2.20** Under section 138I(2)(d) of FSMA, we are required to include an explanation of why we believe that making the proposed rules is compatible with our strategic objective, advances one or more of our operational objectives, and how we have considered the regulatory principles in section 3B of FSMA. We believe that the proposals in this chapter are compatible with our objectives, in that they will provide an appropriate degree of protection for consumers and also remove a competitive distortion which currently exists as a result of some firms offering access to the ombudsman service, while others do not.

Equality and diversity

- 2.21** We have assessed the likely equality and diversity impacts and rationale of these proposals and have concluded that they do not give rise to any concerns for particular groups of consumers.

3. Mortgage Credit Directive: Minor changes to our rules and guidance

Introduction

- 3.1** In September 2014, we published CP14/20 which set out our proposals for the implementation of the Mortgage Credit Directive (MCD) and the application of our mortgage regime to second charge mortgages.¹ The final rules were published in March 2015.² We have also recently consulted on consequential changes to our Consumer Credit sourcebook (CONC) arising from MCD implementation (see CP15/6³) and minor amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) and the Training and Competence sourcebook (TC) (see CP15/19⁴).
- 3.2** We are now consulting on a number of minor changes across our Handbook to complete the implementation of the MCD, to reflect legislative changes and to address some minor issues identified in the rules that we published in PS15/9, including changes to:
- our Training and Competence sourcebook (TC), to specify the minimum standards for firms passporting into the UK under the Directive
 - the forms which firms need to complete to submit an application to passport under the Directive
 - the Glossary definition of 'regulated mortgage contract' to reflect the government's proposed amendment to the Regulated Activities Order (RAO) relating to equitable mortgage bridging loans
 - the Glossary definition of a 'credit-related regulated activity' to incorporate the new activity introduced by article 53DA of the RAO of advising on regulated credit agreements for the acquisition of land
 - the Consumer Credit sourcebook (CONC) and the Perimeter Guidance manual (PERG) to reflect the treatment of investment property brokers and introducers under the RAO
 - the Glossary, CONC and PERG to reflect the treatment of residential renovation agreements under the MCD

¹ CP14/20 *Implementing the Mortgage Credit Directive and the new regime for second charge mortgages* (September 2014) <https://www.fca.org.uk/news/cp14-20-mcd>

² PS15/9 *Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages, feedback to CP14/20 and final rules* (March 2015) <https://www.fca.org.uk/news/cp14-20-mcd>

³ CP15/6 *Consumer credit – proposed changes to our rules and guidance* (February 2015) <http://www.fca.org.uk/static/fca/documents/cp-15-06.pdf>

⁴ CP15/19 *Quarterly consultation (No 9)* (June 2015) <https://www.fca.org.uk/news/cp15-19-qcp-9>

- MCOB 5, removing from the Key Facts Illustration (KFI) template a reference to the Money Advice Service (MAS) providing comparative tables; and
 - MCOB 7.6.7R to ensure that firms making a further advance that varies an existing non-MCD contract will have the choice to issue either an European Standardised Information Sheet (ESIS) or a KFI
- 3.3** Following PS15/20, we are also consulting on the proposal not to introduce the CONC 11 cancellations rights for MCD lending not secured on the home (see section 4).

Summary of proposals

Knowledge and competence requirements for firms passporting into the UK

- 3.4** From 21 March 2016, the MCD allows credit intermediaries to do business in EEA member states other than their home member state without being subject to new admission requirements from the host member state. This is known as ‘passporting’ and can be done either by establishing a physical presence in the host member state (‘branch’ business) or remotely from the home member state (‘services’ business).
- 3.5** The MCD provides that the host member state is responsible for the establishing the minimum knowledge and competence requirements for incoming ‘branch’ firms. We propose to apply to such firms the full requirements of TC, including appropriate qualification requirements where relevant.
- 3.6** The MCD also allows host states to require incoming ‘services’ firms’ staff to have appropriate knowledge and understanding of:
- the laws related to the credit agreements for consumers (in particular, consumer protection)
 - the property purchasing process
 - the organisation and functioning of land registers, and
 - the market
- 3.7** We propose to apply only these knowledge and competency standards to incoming ‘services’ firms, and not to apply qualification requirements.
- 3.8** EEA firms authorised under the Capital Requirements Directive (CRD) (such as large banks) can currently provide mortgage lending and administration activities using a CRD passport. TC applies in full to such incoming firms operating on either a branch or a services basis. The MCD allows these firms to continue using their CRD passport for MCD activity, rather than having to reapply for an MCD passport. We propose that our MCD knowledge and competence requirements outlined above apply to both branch and services firms carrying out MCD activities using a CRD passport. There will be no changes to our current TC requirements for firms carrying out non-MCD activities using a CRD passport.

Q3.1: Do you agree with our proposed approach to knowledge and competency for incoming passporting firms?

Notification forms for passporting

- 3.9** The European Banking Authority (EBA) has adopted passporting notification guidelines for firms seeking to carry out MCD activities in other EU states. These requirements are intended to ensure that there is a consistent level of information exchanged between national regulators when a firm submits a passport notification.
- 3.10** We have created new passporting forms for firms wishing to passport MCD activities to other EU states in line with the EBA guidelines. These forms are included in Annex D and will be part of our Handbook.

Q3.2: Do you have any comments on the proposed new passporting forms?***Equitable mortgage bridging loans***

- 3.11** We propose to amend the FCA Glossary definition of 'regulated mortgage contract' to reflect the government's proposed changes to the legislative treatment of equitable mortgage bridging loans.
- 3.12** Bridging loans secured by an equitable charge or mortgage are currently exempt from mortgage regulation as they do not meet the definition of a regulated mortgage contract (RMC), and CONC App 1.3.1R removes these loans from the definition of a regulated credit agreement, provided that the firm in question is designated in CONC App 1.3.2R to 1.3.4R. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO), as amended by the Mortgage Credit Directive Order 2015 (the MCD Order), will capture equitable bridging loans within the definition of a RMC. For such lending to remain outside the regulatory perimeter, Her Majesty's Treasury (HMT) proposes to amend the definition of 'regulated mortgage contract' to exclude such agreements⁵, provided that they are exempt agreements under the relevant FCA rules (as above, this means CONC App 1.3.1R).
- 3.13** We do not propose any amendment to CONC App 1.3.1R. This means that only persons who currently benefit from exemption under CONC App 1.3.1R (that is, persons who are designated in CONC App 1.3.2R to 1.3.4R) will continue to benefit from an exemption from the RAO activities of entering into a regulated credit agreement as lender and entering into a regulated mortgage contract as lender for an equitable mortgage bridging loan.

Q3.3: Do you have any comments on the proposed glossary change to reflect the treatment of equitable mortgage bridging loans?***Amendment to definition of 'credit related regulated activity'***

- 3.14** The MCD Order introduces a new activity of 'advising on regulated credit agreements for the acquisition of land' (53DA activity) by amending the RAO. The amendment comes into force on 21 March 2016 and the new 53DA activity will apply to advice to a borrower, or potential borrower, under a regulated credit agreement the purpose of which is to acquire or retain property rights in land or in an existing or projected building. We use the term 'MCD loan not secured on the home' to refer to this type of loan⁶.

⁵ This change is being made by HMT through an affirmative instrument that has been laid before Parliament in draft but has not yet been debated and approved by Parliament or made by HMT. The draft instrument is available at <http://www.legislation.gov.uk/id/ukdsi/2015/9780111138373>

⁶ Article 3 sets out the scope of the MCD, and article 3(1)(b) covers lending for the purposes of acquisition or retention of property rights in land or in an existing or projected building.

- 3.15** Other activities in relation to these credit agreements, such as entering into them as a lender or arranging them, are already captured by the existing regulated activities of ‘entering into a regulated credit agreement as a lender’ and ‘credit broking’, respectively. However, a new regulated activity was required for advice on an MCD loan not secured on the home, because under the RAO advising on regulated credit agreements is not otherwise a regulated activity.
- 3.16** We propose to amend the Glossary definition of ‘credit-related regulated activities’ (CRRAs) to include the new 53DA activity. We consider the Handbook treatment of CRRAs to be more appropriate for activities relating to credit agreements, and this also brings the treatment of the 53DA activity in line with the other regulated activities associated with this type of lending, such as ‘entering into a regulated credit agreement as a lender’ and ‘credit broking’, which are already classified as CRRAs.
- 3.17** The classification of 53DA activity as a CRA has a number of practical impacts:
- firms carrying on CRRAs, but no other regulated activity, need only provide the FCA with a complaints report once a year (if their revenue from the activity is less than £5m a year) rather than twice a year under the Dispute Resolution: Complaints sourcebook (DISP 1.10.1R)
 - firms carrying on regulated activities which are CRRAs, but no other type of regulated activity, need not undertake client categorisation (PRIN 1.2.2R in the Principles of Business sourcebook)
 - firms carrying on regulated activities which are CRRAs, but no other type of regulated activity, would only be required to fulfil certain record-keeping requirements (Chapter 9 of Senior Management Arrangements, Systems and Controls (SYSC)) for the carrying on of ancillary services to the CRA and not the main activity
 - the Supervision manual (SUP) sets out rules on controlled functions, some of which differ in application for firms or individuals carrying out CRRAs. For example, SUP 10A sets out the limited controlled functions which apply to appointed representatives performing CRRAs in comparison to those performing other regulated activities
- 3.18** Several of the rules relating to procedural matters around CRRAs only apply when a firm carries on regulated activities which are CRRAs but no other type of regulated activity. This means that if a firm carries out mortgage business as well as activities relating to MCD lending not secured on the home, the non-CRA requirements would still apply.
- 3.19** We are not proposing to introduce separate and specific data reporting requirements for article 53DA activity under SUP 16 as we consider it to be a disproportionate burden not consistent with our approach to implementation of the MCD. Firms ‘entering into’ or ‘broking’ in relation to an MCD loan not secured on the home will be subject to the reporting requirements for CRRAs, but their reporting of this lending and broking activity will be included as part of their reporting of entering into and broking of credit agreements generally.

Q3.4: Do you have any comments on the proposed change to the definition of ‘credit-related regulated activity’ to include advising on MCD lending not secured on the home?

MCD lending not secured on the home (CONC 11)

- 3.20** In CP15/6, we consulted on our approach to MCD lending not secured on the home. We had proposed applying CONC 11 cancellation rights to this lending through CONC 1.2.8R,

which transposes the Distance Marketing Directive (DMD) 14-day right of withdrawal for the consumer after entering into a distance contract (for example, an online sale).

- 3.21** As set out in PS15/20, we received two pieces of feedback in respect of CONC 11. One queried whether notice of the cancellation rights could be given in the ESIS and the other questioned whether CONC 11 should apply to this lending at all, given that a seven-day pre-sale right of reflection is introduced by the MCD and DMD allows Member States not to confer the cancellation rights for a distance contract where the lending is primarily for the purposes of acquisition or retention of property rights in land. We removed the reference to CONC 11 from CONC 1.2.8R in the rules which were published in PS15/20 and stated that we would consult further on this issue.
- 3.22** Having considered the matter further, we think that the seven-day pre-contract right of reflection should give sufficient protection to consumers and that conferring a post-contract right of withdrawal in addition would be unduly burdensome on firms. We consider this view to be consistent with our approach of implementing the MCD in a proportionate manner and with the approach taken for MCD mortgages more generally, where consumers have only the seven-day right of reflection. As such, we propose not to confer CONC 11 cancellation rights for MCD loans not secured on the home which is a distance contract.

Q3.5: Do you have any comments on the proposal not to confer cancellation rights for an MCD loan not secured on the home which is a distance contract?

Amendments to PERG and CONC to reflect the treatment of investment property loan brokers and introducers under the RAO

- 3.23** We are proposing to make minor changes to guidance in PERG 2.8.6CG and CONC 15.1.2G to reflect amendments to the RAO provisions dealing with investment property loan broking and introducing.

Q3.6: Do you have any comments on the proposed changes to PERG and CONC to reflect the treatment of investment property loan brokers and introducers under the RAO?

Amendments to CONC to reflect the treatment of residential renovation agreements under the MCD

- 3.24** We are proposing to make consequential changes to CONC to reflect article 46 of the MCD amending the Consumer Credit Directive in relation to residential renovation agreements, meaning certain provisions in the CCA will apply, even if the agreement is above £60,260 in value.
- 3.25** We are also applying these changes to what the legislation terms 'article 36H agreements', commonly called 'peer-to-peer' agreements.

Q3.7: Do you have any comments on the proposed amendments to CONC to reflect the treatment of residential renovation agreements under the MCD?

Amendment to MCOB 5 Annex 1R

- 3.26** We are proposing to make a minor amendment to MCOB 5 Annex 1R, removing the reference in the KFI to the MAS comparative tables, as the tables are no longer provided.

Q3.8: Do you have any comments on the proposed changes to MCOB 5 Annex 1R?

Amendment to MCOB 7.6

- 3.27** Our post-sale disclosure rules in MCOB 7.6 allow a firm to issue a KFI or an ESIS when carrying out a rate switch or adding/removing a party to an existing contract. However, we have identified that our rules do not allow a firm this choice where it makes a further advance that varies an existing non-MCD contract (e.g., where it has been entered into prior to 21 March 2016 or is otherwise exempt). We propose to amend MCOB 7.6 to enable firms to issue either an ESIS or a KFI for such further advances.

Q3.9: Do you have any comments on the proposed amendment to MCOB 7.6?**Cost benefit analysis**

- 3.28** Section 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA provides that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance.
- 3.29** CP14/20, CP15/6 and PS15/9 contained cost benefit analyses relating to the implementation of the MCD. Many of the changes proposed in this QCP are minor amendments to ensure our intended policy is achieved and the MCD is correctly implemented, so we do not expect these proposals to result in costs additional to those already identified in the main.

Knowledge and competence requirements for firms passporting into the UK

- 3.30** The requirement for incoming branch firms to have appropriate qualifications for certain activities may result in some costs for new EEA intermediaries who wish to set up a branch in the UK. These costs are likely to be both one-off (ensuring relevant staff have the appropriate qualifications for a UK branch to be established) and ongoing (ensuring relevant new recruits are appropriately qualified and ensuring competency levels are maintained). Requiring appropriate qualifications for UK branches of EEA firms is in line with the requirements for domestic firms and existing lenders passporting under the CRD. We do not expect existing lenders to incur an increase in costs from the proposed requirements.
- 3.31** As part of MCD implementation, the FCA commissioned KPMG to undertake a cost benefit analysis of our policy proposals for second charge lending.⁷ Part of this report included an analysis of the cost to second charge firms of relevant sales staff obtaining the Level 3 qualification required by TC, and the cost of complying with the knowledge and competency requirements of MCD. Drawing upon the estimates provided for this analysis (as the qualification requirement for incoming branch firms will be the same), one-off costs for incoming branch firms are estimated to be between £1,000 and £1,500 per adviser to obtain the relevant qualification.
- 3.32** KPMG did not estimate the other costs of ensuring appropriate knowledge and competency levels for staff as required by MCD. One lender interviewed as part of the analysis suggested a figure of between £10,000 and £15,000 to assess competency levels and fill a training gap for fifteen staff who are not currently assessed for competence (between £700 and £1,000 per staff member). Costs may be similar for incoming branch firms if they identify training gaps in their UK-based staff but are likely to be lower if they employ staff in the UK branch who have existing experience in the UK mortgage market and can demonstrate an appropriate level of competence. The requirements for incoming service firms will be limited to ensuring

⁷ <http://www.fca.org.uk/static/documents/consultation-papers/cba-second-charge-lending.pdf>

that staff dealing with UK-based customers have the appropriate knowledge and competence in the areas indicated in this chapter and are, therefore, likely to be lower. There will also be some ongoing costs for both inward-branch and inward-service firms to ensure that staff competency levels are maintained and knowledge is kept up to date.

- 3.33** We believe that this proposal will result in consumer protection benefits through ensuring that staff dealing with UK consumers have an appropriate level of knowledge and expertise. However, we do not consider it reasonably practicable to quantify the full costs and benefits given that the total costs associated with this proposal will depend on the number of firms that choose to passport into the UK and whether these firms choose to do so on an inward-branch or inward-service basis. To attempt a sophisticated quantification exercise would not be a proportionate use of FCA resources as we would need to ascertain the passporting intentions of intermediary firms throughout the EEA.

Glossary definition of ‘regulated mortgage contract’

- 3.34** The proposed change to the definition of ‘regulated mortgage contract’ to exclude equitable mortgage bridging loans is a rule change required to reflect the amendments to the RAO being proposed by HMT.
- 3.35** We recognise that this change may result in some consumers no longer receiving the protection of those of our rules which relate to that activity, and that there is a risk of a negative impact on consumers which could potentially result in costs, e.g., the costs associated with being mis-sold a loan of this type. However, the regulatory perimeter is set by HMT and the proposed amendments to our rules are consequential on these legislative amendments to the RAO. To the extent that there may be any such costs, we do not consider that it is reasonably practicable to estimate them.

Amendments to CONC to reflect the treatment of residential renovation agreements under the MCD

- 3.36** The amendments to CONC to reflect the treatment of residential renovation agreements are primarily consequential changes driven by article 46 of the MCD, which brings such agreements into the scope of the Consumer Credit Directive (CCD) if they are above €75,000. A firm offering these agreements would now have to provide a pre-contractual explanation under CONC 4.2 and 4.3, which may lead to additional costs if they are not providing such an explanation for the affected agreements currently, e.g. costs in terms of staff time and/or systems changes. This change would be of benefit to consumers who are not currently receiving such an explanation in terms of understanding the features of a proposed agreement to allow them to assess whether it meets their needs and financial situation.
- 3.37** These amendments are consequential as a result of article 46 of the MCD. While we have set out here an analysis of likely costs and benefits, we consider it would be a disproportionate use of our resources (and not reasonably practicable) to give a full estimate of costs and benefits.
- 3.38** Some amendments will also impact on P2P agreements above €75,000 for residential renovation purposes that are not regulated credit agreements. In view of the way in which we understand such lending to be funded we do not consider that there are a material number of agreements above this limit. We therefore consider that any impact on firms will be of minimal significance and that it will be disproportionate use of our resources to give a full estimate of costs and benefits.

Amendment to definition of ‘credit-related regulated activity’

- 3.39** We do not consider that the change to the definition of CRRAs to include the new article 53DA activity will result in additional costs for firms. The Handbook treatment of firms who carry on

CRRAs but no other type of regulated activity is generally less onerous than that of firms who carry on other types of regulated activity, e.g. requirements relating to complaints reporting under DISP 1.10.1R and DISP 1.10A.1R. As with all CRRAs, firms conducting other regulated activities (e.g. advising on regulated mortgage contracts) in addition to CRRAs will not have the benefit of rules that apply to firms who carry on CRRAs but no other type of regulated activity. As above, the inclusion of the 53DA activity in the definition of CRRAs is, in our view, unlikely to result in an increase in costs for these firms resulting from this proposed rule change.

- 3.40** We do note that firms providing advice on this form of lending that deal exclusively with high net worth individuals and that currently enjoy an exemption from CONC and the relevant provisions of the Consumer Credit Act 1974 (CCA) will be subject to the regulatory requirements for regulated activities (e.g. complaints reporting) for the first time and will be subject to some additional costs. However, these additional costs are due to this activity becoming a regulated activity because there is no exemption in the MCD for lending to high net worth individuals, rather than as a result of our treating this activity as a CRA. Amending the definition of CRA will help reduce the costs to these firms because the requirements for CRRAs (and, as above, for firms carrying on CRRAs but no other types of regulated activity) are generally less onerous than the industry standard or because the affected firms are likely to be conducting other regulated activities (e.g. in relation to regulated mortgage contracts). Because we think the change to the definition of CRA would not result in an increase in costs for firms, we are not required to produce a cost benefit analysis for this proposal by virtue of section 138L(3) of FSMA.

Amendment to MCOB 5 Annex 1R

- 3.41** The change to MCOB 5 Annex 1R reflects the fact that MAS no longer provide comparison tools for mortgage customers. Although the change to the prescribed text will result in some costs to firms in amending their KFIs, this will be balanced by the benefit to consumers in not providing them with misleading information. We also consider it unlikely that the costs to firms will be significant because the change will take effect on 21 March 2016, in line with when firms will be making changes to their disclosure documents anyway as a result of MCD implementation. As such, we do not consider that it would be a proportionate use of resources to produce a quantified estimate of costs and benefits for this change.

Amendment to MCOB 7.6

- 3.42** The change to MCOB 7.6 is intended to ensure that firms can provide either an ESIS or a KFI when they make a further advance on a non-MCD contract. We consider that this will not result in additional costs for firms, as they will be able to issue whichever disclosure document they have chosen to provide for non-MCD contracts. Therefore, publication of a CBA is not required under section 138L(3) of FSMA.

Impact on mutual societies

- 3.43** Section 138K of the Financial Services and Markets Act 2000 (FSMA) requires us to provide an opinion on whether the impact of proposed rules on mutual societies is significantly different to the impact on other authorised persons. While our proposed changes will impact mutual societies involved in mortgage lending covered under the MCD, we do not believe the changes in this consultation will have a significantly different impact on authorised persons who are mutual societies, in comparison with other authorised persons. Our proposals do not apply differently to authorised persons who are mutual societies in comparison with other authorised persons. Furthermore, we are not aware that there are mutual societies active in the markets that some of our rule changes affect, e.g. MCD lending not secured on the home and residential renovation agreements, so we do not think these changes will have a significant or immediate impact on mutual societies. We would welcome the feedback of any mutual societies in relation to this, or any of our other proposals.

Compatibility statement

- 3.44** Section 138I(2)(d) of FSMA requires us to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives and have regard to the regulatory principles in section 3B of FSMA.
- 3.45** The proposals in this chapter are intended to advance our operational objective of securing appropriate levels of consumer protection by ensuring that our intended policy in implementing the MCD is achieved. We also consider that in preparing the proposals as set out in this chapter we have met our duty under section 1B(4) of FSMA, which provides that we must, so far as it is compatible with acting in a way that advances our consumer protection objective, carry out our general functions in a way that promotes effective competition in the interests of consumers.
- 3.46** As set out in the CBA above, we consider that the costs of our proposals are proportionate to the associated benefits. We have sought to ensure that our proposals are consistent with our overall approach to implementing MCD, which is to ensure the implementation is proportionate to the associated benefits for consumers and will product the least possible disruption for firms.

Equality and diversity

- 3.47** We have considered the equality and diversity issues that may arise from the proposals and do not consider that these proposals raise any concerns. We believe that many of the changes detailed above will have a very limited effect on consumers in general and we do not consider that these proposals adversely impact any of the groups with protected characteristics, i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender.
- 3.48** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim, we welcome any input to this consultation on such matters.

4. Changes to the Training and Competence sourcebook

Introduction

- 4.1** The Training and Competence (TC) sourcebook sets out the qualification requirements for individuals carrying out certain retail activities. We consult for one month each time a new qualification is added, or when other minor changes are made, to the list of appropriate qualifications.
- 4.2** This chapter will be of interest to firms and individuals who are subject to our TC requirements. The text of the proposed amendments and the statutory powers they will be made under are set out in Appendix 4.

Summary of proposals

- 4.3** We propose adding one new qualification and a new qualification provider to the appropriate qualifications list in TC.

New qualification – and provider

- 4.4** In relation to TC activities 4⁸ and 6⁹ we propose to add:
- University of South Wales – BSc (Hons) Financial Planning, Investment and Risk.

Q4.1: Do you know of any reason why this qualification should not be added and/or amended on our appropriate qualifications?

- 4.5** These proposals are intended to help ensure that the relevant markets function well and to help secure an appropriate level of protection for consumers. In particular, they build on consumer protection provided by having competent advisers that keep our TC rules up to date through the addition of relevant new qualifications and changes to current qualifications.

⁸ TC activity 4 (Advising on retail investment products which are not broker funds).

⁹ TC activity 6 (Advising on friendly society tax-exempt policies (other than Holloway sickness policies where the Holloway policy special application conditions are met)).

Cost benefit analysis

- 4.6** Section 138I of the Financial Services and Markets Act (FSMA) requires us to perform a cost benefit analysis (CBA) 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

- 4.7** Section 1B of FSMA requires the FCA, when discharging its general functions, as far as is reasonably possible, to act in a way that is compatible with its strategic objective and advances one or more of its operational objectives. The FCA also needs to, so as far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, carry out its general functions in a way that promotes effective competition in the interests of consumers.
- 4.8** We are satisfied that these proposals are compatible with our general duties under section 1B of FSMA, having regard to the matters set out in 1C(2) FSMA and the regulatory principles in section 3B.
- 4.9** In preparing the proposals as set out in this consultation, we have considered the FCA's duty to promote effective competition in the interests of consumers. It is our opinion that making changes to the appropriate qualifications lists has no impact on competition, as this simply increases the number of qualifications available.
- 4.10** The proposed changes are not expected to have a significantly different impact on mutual societies.

Equality and diversity

- 4.11** We have considered the equality and diversity issues that may arise from these proposals. Overall, we do not consider that the proposals raise concerns with regards to equality and diversity issues.
- 4.12** We do not consider that the proposals in this consultation adversely impact any of the groups with protected characteristics, i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 4.13** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim we welcome any feedback to this consultation on such matters.

5.

Consumer Redress Schemes: Updating our guidance on section 404

Introduction

- 5.1** Section 404 of the Financial Services and Markets Act 2000 (FSMA), which enables the FCA to implement a consumer redress scheme, came into force in 2010. A consumer redress scheme is a set of rules under which firms are required to take one or more of the following steps:
- investigate whether, on or after a specific date, they have failed to comply with particular requirements that are applicable to an activity that they have been carrying on
 - determine whether the failure has caused (or may cause) loss or damage to consumers
 - determine what the redress should be in respect of the failure; and
 - make the redress to consumers
- 5.2** Section 404F(7) of FSMA makes clear that the FCA can vary the permission or authorisation of a single firm. We can also vary or impose a requirement on a single firm to establish or operate a scheme similar or corresponding to a consumer redress scheme under section 404.
- 5.3** The FSA previously published guidance on Consumer Redress Schemes¹⁰ (GN10) but the FSA was replaced by the FCA in April 2013 as the financial conduct regulator. We have reviewed this guidance and are proposing to update the guidance and make changes which will:
- update our interpretation of the triggers for a consumer redress scheme
 - provide more detail about the role of the Financial Ombudsman Service (ombudsman service) in such schemes
 - set out our views about the use of section 404F(7) power to vary a person's permission or authorisation in order to impose requirements on it to implement a scheme similar or corresponding to a section 404 consumer redress scheme
 - reflect the changes made to FSMA since 2010; and
 - incorporate the guidance into the CONRED part of our Handbook
- 5.4** We are also proposing to make a number of minor and editorial changes.

¹⁰ <http://www.fsa.gov.uk/pubs/guidance/guidance10.pdf>

Summary of proposals

Triggers for a consumer redress scheme

- 5.5** Before exercising the power in section 404 to establish a scheme, three conditions must be met:
- it must appear to the FCA that there may have been a widespread or regular failure by relevant firms to comply with the requirements applicable to the carrying on by them of any activity
 - it must appear to the FCA that, as a result, consumers have suffered (or may suffer) loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings; and
 - the FCA must consider that it is desirable to make rules for the purpose of securing that redress is made to the consumers in respect of the failure (having regard to other ways in which consumers may obtain redress)
- 5.6** The FSA previously set out its views on when a failure was widespread or regular, what sort of failures can be dealt with under a consumer redress scheme and the types of matters that it would take into account when considering whether it was desirable to make such a scheme.
- 5.7** We are proposing some changes to the guidance to clarify what we think is meant by 'widespread or regular.' We are also proposing to specify the evidence we will use to determine if we think that there may have been a failure.

Widespread or regular

- 5.8** The previous guidance indicated that 'widespread' was a reference to the number of firms that have failed to comply with the requirements, as compared to the number of firms in the sector. The FSA described 'regular failures' as recurring failures, so action could be taken even if the failures were recurring but not widespread in the sector.
- 5.9** We have considered these tests further and believe that they draw an artificial distinction between the two concepts, and unnecessarily restrict the definitions in question. While we continue to believe that these tests are primarily directed at the volume of failings that have occurred, our assessment will need to consider the evidence available in each individual case. We have also clarified that the failures do not need to be in relation to a single rule or requirement and that the failures by firms could relate to a range of different requirements affecting the same activity.

Evidence of a failure

- 5.10** We are proposing to clarify that when we look for relevant evidence to determine if the tests for a consumer redress scheme have been met, the evidence does not need to prove that all or most of the firms who may be subject to the scheme have, or may have, failed to meet the requirements in respect of all consumers.

Q5.1: Do you have any comments on our proposed amendments to the guidance on the triggers for establishing a section 404 scheme?

The role of the ombudsman service

- 5.11** The Alternative Dispute Resolution (ADR) for Consumer Disputes (Competent Authorities and Information) Regulations 2015, which implement the EU ADR Directive, made changes to

section 404B of FSMA. Section 404B now sets out that if a consumer makes a complaint to the ombudsman service, and at the time the complaint is made the subject matter of the complaint falls to be dealt with (or has been dealt with) under a consumer redress scheme, the complaint is to be determined by what, in the opinion of the Ombudsman, the determination under the consumer redress scheme should have been had the complaint been assessed under the scheme (unless the firm and the consumer agree otherwise). (The same applies if a consumer is not satisfied with a determination made by a relevant firm under a consumer redress scheme or considers that the firm has failed to make a determination in accordance with the scheme.)

- 5.12** This means that, where a scheme is established and the complaint is to be determined by reference to what, in the opinion of the Ombudsman, the determination under the consumer redress scheme should be or should have been, the Ombudsman is bound to apply the requirements of the scheme, rather than the usual approach of determining what in the Ombudsman's opinion is fair and reasonable in all the circumstances of the case ('the fair and reasonable approach'). Where the scope of the scheme does not cover a certain matter or where the firm and the consumer agree that the complaint should not be determined by reference to what, in the opinion of the Ombudsman, the determination under the consumer redress scheme should be or should have been, the Ombudsman will take the fair and reasonable approach to resolving a complaint.
- 5.13** The proposed guidance explains how FSMA and the rules in the Dispute Resolution: Complaints sourcebook (DISP) work in the context of consumer redress schemes, and in particular, how the Ombudsman will deal with complaints received before a scheme is established, during the operation of a scheme and after a scheme has been ended.
- 5.14** Section 404B does not apply until a scheme has been established. If a scheme has not been established, the Ombudsman will deal with cases in accordance with the general fair and reasonable approach.
- 5.15** If the ombudsman service receives a complaint falling within the scope of the consumer redress scheme during the operation of a scheme, the Ombudsman will be required to determine the complaint by reference to what the determination under the scheme should be or should have been (unless the firm and the consumer agree that should not be the case).
- 5.16** If the complaint has not yet been dealt with by the firm and the time limit for dealing with it under the scheme has not yet expired, the Ombudsman will refer the cases back to the firm to deal with under the scheme (unless the firm and the consumer agree that the Ombudsman can consider the complaint).
- 5.17** If the Ombudsman considers it apparent, when the complaint is received, that the firm has issued a redress determination in accordance with the scheme, the Ombudsman may not charge a case fee in respect of that complaint (unless the complaint is one where the consumer and the firm agree that the complaint should not be determined by reference to what the determination under the scheme should be or should have been).
- 5.18** Any complaint that is outside the scope of the consumer redress scheme will be determined by the Ombudsman by reference to its usual fair and reasonable approach.
- 5.19** A scheme may carry on indefinitely or be set up for a limited period of time. If a scheme has ended and a consumer complains to the firm or attempts to opt in to the closed scheme, the Ombudsman's approach will be determined by what the complaint is about.

5.20 Where the Ombudsman receives a complaint about a redress determination made by a firm under a consumer redress scheme but the complaint should have been dealt with outside the scope of the consumer redress scheme, the Ombudsman will apply the general fair and reasonable approach to that complaint.

5.21 The guidance has been updated to make this position clear.

Q5.2: Do you have any comments on the proposed changes to the guidance relating to the role of the ombudsman service?

Implementing a consumer redress scheme under section 404F(7)

5.22 We are proposing to add a new section to the guidance that deals with the FCA's use of the power set out in section 404F(7). Under section 404F(7), the FCA is able to vary a permission or authorisation, or vary or impose a requirement, on a firm to establish and operate a scheme which corresponds to, or is similar to, a consumer redress scheme under section 404. We consider that it is useful for both consumers and firms that there is greater transparency about how such a scheme may be implemented. The proposed guidance also makes reference to section 234K, which requires the FCA, before using certain firm-specific FSMA powers, to consider whether it would be 'more appropriate' to proceed under the powers in the Competition Act 1998.

5.23 The proposed guidance sets out:

- the triggers for imposing a consumer redress scheme under section 404F(7)
- considerations regarding the role of the ombudsman service; and
- other matters that are relevant to whether a consumer redress scheme under section 404F(7) is desirable to further the FCA's operational objectives

Triggers for a section 404F(7) scheme

5.24 The triggers to impose a consumer redress scheme under section 404F(7) are different to those required to establish a consumer redress scheme under section 404. This reflects the distinction that a section 404 scheme is a rule based tool that applies to any firm which is within the scope of those rules. A section 404F(7) scheme, however, only applies to the specific firm or firms that have had their permission or authorisation varied, or a requirement varied or imposed. To be clear, this would not prevent the FCA from imposing a section 404F(7) scheme on multiple firms but it would only be able to do so by taking action in relation to each firm individually.

5.25 The FCA may impose a section 404F(7) scheme on a firm for a variety of reasons but it is likely that the FCA will need to be satisfied that the scheme advances its operational objective of securing an appropriate degree of protection for consumers.

The role of the ombudsman service

5.26 When imposing a scheme under section 404F(7), the FCA may decide to include provisions that bind the ombudsman service to determine complaints by reference to what the determination should be or should have been under the scheme. This does not happen automatically and we have set out in the guidance the types of considerations we will take into account when deciding whether or not to bind the ombudsman service.

5.27 It is our view that binding the ombudsman service in such a way is subject to the same triggers as those for imposing a section 404F(7) scheme. A key consideration is likely to be whether we consider that binding the ombudsman service is desirable in order to advance our consumer

protection objective of securing an appropriate degree of protection for consumers. Our assessment will also depend on the circumstances of the case and the information available to us. We will also consider the regulatory principles in section 3B of FSMA and follow the normal principles of administrative law.

- 5.28** We have described in the guidance how we will work with the ombudsman service where we are considering binding them to a scheme under section 404F(7). In particular, the ombudsman service can supply useful information about its approach to any complaints it may have already received, its views about possible forecasts of complaints (that would likely fall within a scheme, if made) and any possible impact on their operational practice.
- 5.29** We have also set out the governance arrangements that would apply to proposals to bind the ombudsman service and the types of issues the FCA's Executive Committee (or a sub-committee) would consider when making such a decision.

***Other matters
Consultation***

- 5.30** The decision to impose a consumer redress scheme under section 404F(7) is a firm-specific action. As with any other supervisory or enforcement action we take against a specific firm, the FCA is not obliged to consult when considering such action. We will engage with the affected firm or firms about the use of this power.

Consumer protection

- 5.31** As highlighted above, a key consideration will be whether a section 404F(7) will advance the FCA's operational objective of securing an appropriate degree of protection for consumers. We have set out some of the factors that are likely to impact on our consideration in the guidance. These include the number of consumers affected by the relevant act or omission, the speed with which consumers would obtain redress, the possible impact on individual consumers and the level of complaints currently with the ombudsman service.

Challenging a scheme

- 5.32** We have provided information in the guidance about how such schemes may be challenged. A firm can challenge a scheme in the Upper Tribunal which can either dismiss the challenge or require the FCA to reconsider its decision in accordance with the Tribunal's findings.

Q5.3: Do you have any comments on our proposed guidance regarding our use of consumer redress schemes under section 404F(7)?

Electronic money issuers / concurrency

- 5.33** Following the publication of GN10, we took on responsibility for the regulation of electronic money issuers. The Electronic Money Regulations 2011 specifically amended section 404(2) of FSMA to allow the FSA to establish a consumer redress scheme relating to such firms. We are proposing to amend the guidance to clarify that it applies to the establishment and operation of consumer redress schemes for electronic money issuers.
- 5.34** We are not extending the remit of what a consumer redress scheme can cover. This change only updates the guidance to reflect the changes made to FSMA since 2010.

- 5.35** The Financial Services (Banking Reform) Act 2013 introduced a duty on the FCA in section 234K of FSMA to consider whether to exercise its powers under the Competition Act 1998 in specified circumstances (the primacy duty).¹¹ When the FCA imposes a requirement on a firm under section 55L of FSMA, or of its own initiative varies a firm's Part 4A permission under section 55J(2), the FCA must consider whether it would be more appropriate to proceed under the Competition Act 1998. The proposed guidance refers to this new duty in the context of consumer redress schemes imposed under section 404F(7) of FSMA.

Q5.4: Do you have any comments on the reference to the new concurrency duty or on the proposed changes to the guidance to reflect the fact that consumer redress schemes may be made in relation to electronic money issuers?

Incorporating guidance on consumer redress schemes into the Handbook

- 5.36** When the guidance was first published in 2010 the FSA had not made any rules establishing a consumer redress scheme. Since then, the FSA implemented its first consumer redress scheme (for consumers who were given unsuitable advice to invest in the CF Arch cru funds) and, in doing so, created CONRED (Consumer Redress Schemes sourcebook).
- 5.37** We intend to incorporate the guidance into a new chapter of CONRED. This will ensure that CONRED provides information about how and when we will make rules requiring firms to establish and operate consumer redress schemes under section 404, which can then be considered alongside any such schemes that are incorporated in CONRED in the future.
- 5.38** We are not proposing to make new rules in CONRED itself. We are proposing to issue guidance for CONRED under section 139A of FSMA.

Q5.5: Do you agree with our proposal to incorporate the guidance on consumer redress schemes into CONRED?

Minor and editorial changes

- 5.39** We are also proposing a number of minor and editorial changes to the current guidance to:
- provide greater clarity about our processes
 - reflect the regulatory framework arising from the Financial Services Act 2012; and
 - convert GN10 into a format that is suitable for the Handbook
- 5.40** For example, where appropriate we have updated references from the FSA to the FCA. We have also clarified that when considering whether a remedy of relief would be available in legal proceedings, we would also need to consider issues of causation.

Q5.6: Do you have any comments about any of the minor or editorial changes made to the guidance?

¹¹ The FCA has published guidance on the primacy duty: <http://www.fca.org.uk/your-fca/documents/finalised-guidance/fg15-08>

Cost benefit analysis

- 5.41** Section 138I of FSMA requires us to perform a cost benefit analysis (CBA) 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.
- 5.42** The aim of the updates is to clarify to external stakeholders how consumer redress schemes are set up and how they work. This will in turn reduce the number of queries. The proposed updates do not impose incremental compliance costs on firms as the changes will not increase how often we decide to implement consumer schemes or the way that consumer redress schemes are set up and run. The proposed updates do not extend the remit of what a consumer redress scheme can cover. The proposed change to the guidance relating to changes in FSMA simply reflects the changes made to FSMA.

Compatibility statement

- 5.43** Section 1B of FSMA requires the FCA, when discharging its general functions so far as is reasonably possible, to act in a way that is compatible with its strategic objective and advances one or more of its operational objectives. The FCA also needs to, so far as is compatible with acting in a way that advances the consumer protection or integrity objectives, carry out its general functions to promote effective competition in the interests of consumers.
- 5.44** Consumer redress schemes are one of the FCA's regulatory tools for dealing with cases of mass detriment and can help us to further our consumer protection objective.
- 5.45** In preparing the proposals we have had regard to the FCA's duty to promote effective competition in the interests of consumers. It is our opinion that updating the guidance on section 404 has no impact on competition, as the guidance simply explains how the consumer redress schemes are set up and work. The changes to our rules are intended to align with the changes in FSMA. We have also had regard to the regulatory principles set out in section 3B of FSMA and consider, in particular, that the proposed guidance will assist the FCA in exercising its powers as transparently as possible.

Equality and diversity considerations

- 5.46** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper (CP). Overall, we do not consider that the proposals in this CP raise concerns in terms of equality and diversity issues. We do not consider that the proposals in this consultation adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 5.47** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim we welcome any input to this consultation on such matters.

6.

Changes to Consumer Credit, Retail Mediation Activity, Mortgage Second Charge Lending and Recovery and Resolution Reporting

Introduction

- 6.1** This chapter sets out our proposals to make amendments to several parts of Chapter 16 of the Supervision manual (SUP).
- 6.2** The proposals will be of interest to firms who are required to:
- complete consumer credit reporting data items
 - complete the RMA-C (client money and assets) data item
 - report their mortgage second charge lending data
 - submit their recovery and information for resolution plan data
 - submit Product Sales Data (PSD) items PSD001 and PSD007
 - be registered on the GABRIEL system
 - complete the Mortgage Lending & Administration (MLA) data items MLA-L and MLA-M
- 6.3** The proposed amendments, and the statutory powers they will be made under, are set out in Appendix 6.

Changes to Consumer Credit Reporting guidance notes

- 6.4** Under the consumer credit regime consulted on in CP13/10¹² and confirmed in PS14/3¹³, certain types of firms are required to submit information about their credit-related regulated activities to the FCA. Following feedback from firms who have already submitted the data items, we have taken the opportunity to improve the accompanying guidance notes to make the submission of the consumer credit data items easier for firms. Where specific questions have been raised by firms, we have sought to clarify the information required by the returns.

¹² CP13/10 *Detailed proposals for the FCA regime for consumer credit* (October 2013) <http://www.fca.org.uk/your-fca/documents/consultation-papers/cp13-10>

¹³ PS14/3 *Detailed rules for the FCA regime for consumer credit* (February 2014) <http://www.fca.org.uk/your-fca/documents/policy-statements/ps14-03>

In particular, we have rewritten the guidance notes for CCR007 (Consumer Credit data: Key data for credit firms with limited permissions) to try to prevent some of the issues which firms experience when trying to complete the data item.

Q6.1: Do you agree with our proposals to amend the consumer credit guidance notes?

Change to CCR007

- 6.5** The majority of firms with limited permissions for their credit-related regulated activities are required to submit the CCR007 (Consumer Credit data: Key data for credit firms with limited permissions) data item. Through firm feedback we have also discovered a discrepancy between the guidance notes and the data item CCR007. We propose to amend Question 5 of the data item to capture information from firms on the consumer credit activity which provides the highest amount of turnover. This will bring the data item into line with the guidance notes and provide us with the ability to monitor on an ongoing basis which credit-related regulated activities are generating the most revenue for limited permission firms.

Q6.2: Do you agree with our proposal to amend Question 5 of CCR007?

Changes to RMA-C

- 6.6** The FCA Handbook requires certain types of firms to submit data in respect of client money and assets. This requirement is set out in SUP 16.12.
- 6.7** We understand that there are variations of interpretation in some of the fields in the RMA-C data item which may mean inconsistent data is submitted to the FCA. Furthermore, the current questions relating to client money totals do not align to the requirements in the Client Assets sourcebook (CASS).
- 6.8** We are proposing to restrict the scope of RMA-C to money held in respect of insurance mediation activities by removing questions/fields relating to retail investments/mortgages. Data on money held in connection with MiFID business/designated investment business is gathered through alternative sources such as the Client Money and Asset Return (CMAR). We expect that this will reduce the reporting burden on firms.
- 6.9** We are also proposing to amend the questions in RMA-C so that the data submitted is better aligned to the CASS 5 requirements.
- 6.10** Additionally, we propose to include questions related to the client assets audit report. At present, auditors of insurance intermediaries must deliver a client assets report to the FCA only upon request.

Q6.3: Do you agree with our proposals to amend RMA-C?

Changes to mortgage second charge lending reporting forms

- 6.11** We consulted on a new reporting regime for second charge mortgages in CP14/20¹⁴ and the final rules were published in PS15/9.¹⁵ Following the publication of the policy statement, we are proposing some minor formatting amendments to the new data items, in order for them to be

¹⁴ CP14/20 *Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages* (September 2014) <http://www.fca.org.uk/your-fca/documents/consultation-papers/cp14-20>

¹⁵ PS15/9 *Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages, feedback to CP14/20 and final rules* (March 2015) <http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-09>

effectively implemented into the GABRIEL system. There will be no change to the information firms are required to provide in the data items.

Q6.4: Do you agree with our proposals to amend the mortgage second charge lending reporting forms?

Changes to Product Sales Data (PSD) items guidance notes (PSD001 & PSD007)

- 6.12** PSD reporting applies to certain types of firms as specified in SUP 16.11.1R. We are proposing to make minor amendments to the accompanying guidance notes in SUP 16 Annex 21R to ensure that the guidance provided matches the data items. For field 36 of PSD001, firms have the option of selecting either 'yes' or 'no'. The guidance notes refer to the options 'Y' or 'N'; we will amend the notes accordingly to reflect the data item.
- 6.13** Further, we will make an amendment to the PSD007 data item guidance to clarify that for field 21 of the data item we do not require firms to report to two decimal places. This will bring the guidance notes into line with the reporting form which does not allow firms to report to two decimal places.

Q6.5: Do you agree with our proposals to amend the Product Sales Data item guidance notes?

Change to MLA-L and MLA-M notes in SUP 16.12.18B

- 6.14** We are proposing to make a minor amendment to note 3 of SUP 16.12.18B to state that the reporting requirement for MLA-L and MLA-M under Regulated Activity Group (RAG) 5 is only applicable to firms subject to MIPRU 4.2D in addition to the existing caveats in note 3. This amendment is intended to clarify exactly which firms these two data items apply to. No new firms will be scheduled these returns as a result of this clarification.

Q6.6: Do you agree with our proposal to amend note 3 of SUP 16.12.18B?

Changes in Recovery and Resolution plans submission method

- 6.15** The new reporting rules concerning recovery and resolution plans were consulted on in CP14/15¹⁶ and confirmed in PS15/2¹⁷; these rules are set out in SUP 16.20. The changes proposed to SUP 16.20 in this consultation paper seek to clarify the method of submission for these reports, which will be through the GABRIEL system. To facilitate this method of reporting we propose to introduce two new data items, REPO06 (Recovery Plans) and REPO07 (Resolution Plans). These forms will allow firms to upload a pdf document of their plans, as well as providing information on which firms are being submitted on behalf of (if any).

Q6.7: Do you agree with our proposal to clarify the recovery and resolution plan submission method?

Change to standing data items

- 6.16** Firms are currently required to check annually that the information relating to them held by the FCA is accurate and up to date. We propose to extend the standing data that firms are required to keep up to date to include the firm's principle user and the principle user's email address on the GABRIEL system. This will help to ensure that any communications sent by the GABRIEL system are sent to the correct firm contacts. This will make the data collection process

¹⁶ CP14/15 *Recovery and Resolution Directive* (August 2015) <http://www.fca.org.uk/your-fca/documents/consultation-papers/cp14-15>

¹⁷ PS15/2 *Recovery and Resolution Directive: Feedback on CP14/15 and final rules* (January 2015) <http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-02>

more efficient for firms, and enhance the ability of the FCA to issue communications about the GABRIEL system and data reporting to firms.

Q6.8: Do you agree with our proposal to include a firm's GABRIEL system principle user email address in the standing data items?

Cost benefit analysis

6.17 Sections 138I and 138J of the Financial Services and Markets Act (FSMA) require us to publish a cost benefit analysis (CBA) when proposing draft rules. In particular, we are required to publish an analysis of the costs, the benefits and an estimate of those costs and benefits. This requirement does not apply if there will be no increase in costs or if any increase will be of minimal significance, as explained in more detail below.

Changes to consumer credit reporting guidance notes

6.18 The changes to the consumer credit guidance notes are intended to clarify what information should be submitted by firms in the various reporting fields of the consumer credit returns. We expect that any increase in costs as a result of these changes will be of minimal significance as there is no change to the reporting population or any increase in the number of questions.

Change to CCR007

6.19 We expect the amendment to question 5 of CCR007 to result in no increase in costs or an increase in costs of minimal significance. We expect that the information requested by this change in the question will be readily available to firms, and will not increase their reporting burden.

Changes to RMA-C

6.20 We note that amending RMA-C to delete some fields and include new fields is likely to impose costs on firms. However, as the new questions included are aligned to the CASS rules, firms should already hold the data required in-house. Therefore, we expect any incremental compliance costs on firms will be of minimal significance.

Changes to mortgage second charge lending reporting forms

6.21 The minor formatting amendments to the second charge lending reporting forms are not expected to result in any significant costs for firms. The information requested by the forms has not been amended and so there will be no additional reporting burden on firms. We expect that any further implementation costs as a result of the tweaks will be of minimal significance.

Changes to Product Sales Data items guidance notes (PSD001 & PSD007)

6.22 We expect that amending the guidance notes for PSD001 and PSD007 will result in no increase, or an increase in costs of minimal significance. The information which firms are required to report in these data items has not been changed, so there will be no additional reporting burden. The formatting change in PSDS007 is already in place in the system and the change will align the guidance notes with the reporting form.

Change to MLA-L and MLA-M notes in SUP 16.12.18B

6.23 The change to note 3 of SUP 16.12.18B will not result in any increase of costs for firms. This amendment is intended to clarify which firms are required to complete the MLA-L and MLA-M returns. Firms that are required to complete the returns are already being scheduled in the data

item correctly. The only impact would be to clarify for some firms that they are not in scope to complete MLA-L and MLA-M.

Changes in recovery and resolution plans submission method

- 6.24** The change of submission method of the recovery and resolution plans information will make the collection of this data more efficient for both firms and the FCA. This change will require firms to submit this information through the GABRIEL system, a system firms required to complete the returns are familiar with.

Change to standing data items

- 6.25** We expect that the incremental costs to firms as a result of the change to the standing data items will be of minimal significance. Firms are already required to check standing data annually for accuracy and the addition of checking a firm's principal user on the GABRIEL system will not be overly burdensome.

Q6.9: Do you have any questions or comments about our cost benefit analysis?

Compatibility statement

- 6.26** Section 1B of FSMA requires us, when discharging our general functions, so far as is reasonably possible, to act in a way that is compatible with our strategic objectives and advances one or more of our operational objectives. We also need, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, to carry out our general functions in a way that promotes effective competition in the interests of consumers.
- 6.27** The proposed changes to SUP 16 listed in this chapter will allow the FCA to collect more accurate firm data and identify emerging risks. This will allow us to more effectively supervise firms and help us to advance our consumer protection objective.
- 6.28** We do not anticipate that making the proposed changes to the reporting required by SUP 16 will have an impact on competition. These changes are expected to impose minimal costs on firms and do not affect firms' incentives or ability to compete in the market.
- 6.29** Our proposed changes are not expected to have any impact on mutual societies either.

Equality and diversity considerations

- 6.30** We have conducted an equality impact assessment on the proposals in this chapter and we do not believe that our plans create any negative impacts on protected groups. As a result of the assessment we do not believe that there are any equality or diversity implications arising, but we would welcome your comments.

7.

Clarifying the complaints recording, reporting and publication rules

Introduction

- 7.1** We are making further amendments to clarify our complaints handling requirements for firms. The following proposed amendments should be read in conjunction with the rules and policy made in PS14/30 and they apply to all firms that are subject to our complaints handling rules in the Dispute Resolution: Complaints sourcebook (DISP).
- 7.2** We are also proposing some changes to the Voluntary Jurisdiction of the Financial Ombudsman Service (ombudsman service). As the powers to make rules relating to the ombudsman service are shared between the FCA and the ombudsman service, this consultation is issued jointly by the FCA and the ombudsman service and the relevant amendments are highlighted below.

Summary of proposals

- 7.3** We are proposing amendments to our DISP rules to make commencement dates for complaints reporting requirements more consistent and clear, as well as some amendments to make it clearer for firms how to send written communications to complainants. We also propose some minor corrections to the complaints return and guidance.

Re-making of the complaints recording and complaints reporting rules

- 7.4** The FCA (and previously the FSA) is required to specify the provisions under which rules in a rule-making instrument are made.
- 7.5** In addition to its general rule-making power in section 137A of the Financial Services and Markets Act 2000 (FSMA) and paragraph 13 of Schedule 17 to FSMA, the FCA has two further specific powers relating to complaints recording and complaints reporting.
- 7.6** These two powers are in paragraph 15 of FSMA (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 and paragraph 9 of FSMA (Transitional Provisions) (Complaints relating to General Insurance and Mortgages) Order 2004.
- 7.7** Paragraph 15 of the 2001 Order gives the FCA an express power to make rules applying to authorised persons regarding the keeping of records and the making of complaints in relation to 'relevant complaints' under that Order (i.e. complaints about activities that occurred before 1 December 2001). Paragraph 9 of the 2004 Order gives the FCA an express power to make rules applying to authorised persons regarding the keeping of records and the making of reports in relation to 'relevant transitional complaints' under that Order (i.e. certain complaints about pre-regulation mortgage and insurance business).

- 7.8** The Complaints Handling and Call Charges Instrument 2015 did not cite these two powers and so we are proposing that the rules and guidance relating to complaints reporting are re-made.
- 7.9** In addition, to ensure that the position is now regularised, we are also proposing to remake all of the current rules and guidance in the complaints recording and complaints reporting chapters of DISP (DISP 1.9 and DISP 1.10) and accompanying Complaints Return form in DISP 1 Annex 1R and the Illustration of the Online Reporting Requirements in DISP 1 Annex 1CR. We propose to re-make these rules, guidance and forms as they currently appear in the online version of the Handbook.

Clarifying the disapplication of the complaints data publication rules for Voluntary Jurisdiction participants

- 7.10** The ombudsman service is consulting on a minor change to the standard terms for Voluntary Jurisdiction participants to clarify that the complaints data publication rules do not apply to them. This is already the effect of the rules so the proposed changes are for clarification only. This proposed change is contained in Part 2 of the Annex to the draft instrument.

Changes to commencement dates for complaints reporting and publication

- 7.11** We are proposing to change the date on which the rules on complaints reporting and publication in DISP 1.10 and 1.10A and the associated annexes come into force. We will also clarify how those rules and annexes apply to different reporting periods (Part 2 of the Annex).
- 7.12** In particular, we propose that the new complaints reporting and publication rules come into force on 1 January 2016. (The commencement date for these rules was previously 30 June 2016 but would apply to reporting periods which started on 1 January 2016). This will clarify the commencement of the complaints reporting and publication rules; however, the effect of the rules will remain substantively the same.
- 7.13** We will require firms to use our new complaints return and report all complaints, for reporting periods which commence on or after 1 January, subject to certain modifications. The precise modifications depend upon whether the firms reports on a six-month or twelve-month basis.

Firms with six-month reporting periods

- 7.14** For six-month reporting periods commencing on or before 31 December 2015, the current complaints reporting, complaints publication, and related forms continue to apply. Therefore, firms will not be required to report or publish information about all complaints received (including those resolved by next business day).
- 7.15** For six-month reporting periods commencing between 1 January and 29 June 2016, firms will have to report and publish information about all complaints received (including those resolved by close of the next business day), but will not be required to report and publish information about the percentage of complaints closed or resolved within three days, or closed after three days but within eight weeks. This means that firms will not have to report or publish such information in advance of the introduction of our new rules on resolving complaints by the close of the third business day.
- 7.16** For six-month reporting periods beginning on or after 30 June 2016, firms will be required to provide all the information in the new complaints reporting and publication rules and forms. A new form will be available on the GABRIEL online reporting system as of March 2016.

Firms with twelve-month reporting periods

- 7.17** For twelve-month reporting periods starting between 1 January and 31 December 2015, the current complaints reporting, complaints publication, and related forms continue to apply. Therefore, firms will not be required to report or publish information about all complaints received (including those resolved by next business day).
- 7.18** For twelve-month reporting periods commencing on or after 1 January but before 29 June 2016, firms will have to report and publish information about all complaints received (including those resolved by close of the next business day), but will not be required to publish information about the percentage of complaints closed or resolved within three days, or closed after three days but within eight weeks (Part B of the Complaints Return form is not being amended and does not require information on the speed with which complaints are dealt with). This means firms will not have to publish such information in advance of the introduction of our new rules on resolving complaints by the close of the third business day.
- 7.19** For twelve-month reporting periods commencing on or after 30 June 2016, firms will have to report and publish information about all complaints received (including those resolved by close of the next business day) and will be required to publish information about the percentage of complaints closed or resolved within three days, or closed after three days but within eight weeks.
- 7.20** By way of summary, the following table illustrates the effect of the commencement of the reporting rules for firms with different reporting periods:

Length of Reporting Period	Start of Relevant Reporting Period	Application of Relevant Rules¹
Six months	Between 1 July 2015 and 31 December 2015	As they stand at the start of the relevant reporting period
	Between 1 January 2016 and 29 June 2016	As they stand on 1 January 2016, with modifications relating to reporting and publication of the timeframe in which complaints are resolved
	From 30 June 2016	As they stand on 30 June 2016, with no modifications
Twelve months	Between 1 January 2015 and 31 December 2015	As they stand at the start of the relevant reporting period
	Between 1 January 2016 and 29 June 2016	As they stand on 1 January 2016, with modifications relating to publication of the timeframe in which complaints are resolved
	From 30 June 2016	As they stand on 30 June 2016, with no modifications

Complaints resolved by close of the third business day and the summary resolution communication

- 7.21** In relation to complaints which are resolved by the close of the third business day, following the day on which they are received, we propose to remove the application of DISP 1.6.1R(1) (Keeping the complainant informed). This rule requires respondents to send a complainant a prompt written acknowledgement providing early reassurance that it has received the complaint and is dealing with it, and ensuring the complainant is kept informed. However, given the short

timeframe in which complaints are resolved (by the close of the third business day) and the additional requirement that respondents should send a summary resolution communication to the complainant in writing, we believe it is unnecessary for firms to also have to send a written acknowledgement. This reflects the position as it currently exists under the 'next business day rule' (DISP 1.5).

- 7.22** DISP 1.5.4R concerns complaints which are resolved by the close of the third business day following the day on which they are received. It requires that, where a respondent considers a complaint to be resolved under this section, the respondent must send the complainant a 'summary resolution communication'. Within this written communication, the respondent must provide the complainant with information about their right to refer a complaint to the ombudsman service. We propose to amend this rule to clarify that the respondent must send the summary resolution communication promptly (after the complaint has been resolved). In making this rule, we did not previously specify a timeframe in which a summary resolution communication has to be sent and we wish to clarify this.
- 7.23** As noted above, the powers to make rules relating to the ombudsman service are shared between the FCA and the ombudsman service. The FCA propose to make these amendments in relation to complaints falling under the compulsory jurisdiction (CJ) of the ombudsman service. The ombudsman service proposes to make equivalent amendments to the rules governing complaints falling under the voluntary jurisdiction (VJ).

Complaints reporting form and guidance

- 7.24** We have made some minor typographical corrections to the names of products in the complaints reporting form and have also amended guidance to reflect changes to the categories.

Cost-benefit analysis

- 7.25** Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us, when making rules, to undertake a cost benefit analysis of our proposed requirements and to publish the result.
- 7.26** In relation to regularising the position in respect of the rules and guidance in DISP 1.9, DISP 1.10, the Complaints Return form (DISP 1 Annex 1R) and the Illustration of the Online Reporting Requirements (DISP Annex 1CR), we do not consider that this change will give rise to any additional costs for firms as the online version of the FCA Handbook already shows the rules and guidance in the form in which they are to be re-made. The benefit of re-making these provisions is to regularise the position for the future. In the circumstances, it is not possible to estimate the costs and benefits of this aspect of the proposals.
- 7.27** For the other proposals, we undertook a full cost benefit analysis of the proposals to which these rule changes relate, which is published in CP14/30, and this is not affected by re-making the rules and now citing the powers in the 2001 and 2004 Orders, the omission of which was an oversight.
- 7.28** We consider that these changes will not give rise to any additional costs for firms. By delaying the requirement to report certain timeframes over which complaints are resolved, and removing the requirement to send a written acknowledgement as well as a summary resolution communication, we would expect these proposals to reduce the cost of implementation for firms, although we do not believe the costs and benefits can be reasonably estimated. This will benefit firms in terms of compliance costs.

Compatibility statement

- 7.29** Section 1B of FSMA requires the FCA, when discharging its general functions, so far as reasonably possible, to act in a way that is compatible with its strategic objective and advances one or more of its operational objectives. The FCA also needs to, so far as is compatible with acting in a way that advances the consumer protection objective or integrity objective, carry out its general functions to promote effective competition in the interests of consumers.
- 7.30** We consider that complaints reporting and complaints data publication by firms advances our consumer protection objective by giving the FCA and consumers more information about the complaints received by firms and how they are resolved. We have had regard to the duty to promote effective competition and it is our opinion that the proposals may allow firms to compete to a greater extent on how far their services generate complaints and their complaints handling arrangements.
- 7.31** We have had regard to the regulatory principles and consider the proposals to be compatible. In particular, we consider that the proposals assist the FCA in exercising its functions transparently.
- 7.32** Section 138K(2) of FSMA requires the FCA to state our opinion about the impact of the proposed rules on mutual societies. The proposed changes are not expected to have a significantly different impact on mutual societies, compared to the impact on other authorised persons (although it is noted that the complaints reporting and complaints data publication rules do not apply to credit unions).

Equality and diversity

- 7.33** These changes mainly concern the commencement of the rules and we do not anticipate that they have any implications for equality and diversity issues. The remaining changes are intended to add further clarity to the operation of the rules.

8.

Changes to the requirements on cancellation of listing, audit committees and other changes to LR, DTR, PR, GENPRU, SUP and the Glossary

Introduction

- 8.1** In this chapter we are proposing some minor changes to various parts of the FCA Handbook, as listed below:
- Listing Rules sourcebook (LR)
 - Disclosure Rules and Transparency Rules sourcebook (DTR)
 - Prospectus Rules sourcebook (PR)
 - General Prudential sourcebook (GENPRU)
 - Supervision manual (SUP), and
 - Glossary
- 8.2** This chapter will be of interest to:
- UK and overseas issuers with UK listed securities
 - UK and overseas issuers of transferable securities, and other persons who make public offers of transferable securities or seek admission of transferable securities to regulated markets in the UK
 - issuers of transferable securities admitted to trading on a regulated market where the UK acts as home or host Member State and the FCA's DTRs apply
 - firms advising issuers
 - firms advising persons investing or dealing in listed securities or transferable securities
 - firms or persons investing or dealing in listed securities or transferable securities
 - authorised firms, and
 - auditors who are preparing client assets reports
- 8.3** The proposed amendments, and statutory powers they will be made under, are set out in Appendices 8A and 8B.

Summary of proposals

- 8.4** This chapter of the consultation paper is divided into five sections in which we set out the following proposals:
- Proposed modifications to the Listing Rules sourcebook (LR) that apply to the cancellation of listing of securities following a takeover offer. The aim of these modifications is to resolve disparity in terms of outcome with the procedures that apply in respect of a decision on cancellation by a premium listed issuer following a vote by shareholders.
 - How we propose to implement certain parts of Directive 2014/56/EU (Statutory Audit Amending Directive (SAAD)). In particular, we are consulting on the implementation of the changes to the requirements for public interest entities' (PIEs)¹⁸ audit committees introduced by the Statutory Audit Amending Directive.
 - Our proposals to amend the corporate governance rules in the Disclosure Rules and Transparency Rules sourcebook (DTR) to reflect the transposition of the Accounting Directive 2013/34/EU which repeals and replaces the Fourth Company Law Directive 78/660/EEC (FCLD) and Seventh Company Law Directive 83/349/EEC (SCLD).
 - How we propose to bring references to the former operating subsidiaries of the Financial Reporting Council (FRC) up to date, so as to refer only to the FRC itself, and to make some other minor changes to LR and DTR.
 - Small changes that we are proposing in order to align the Prospectus Rules sourcebook (PR) with regulatory technical standards (RTS) on the Prospectus Directive 2003/71/EC (PD) arising from the Omnibus II Directive 2014/51/EU (OD2).

Cancellation provisions in the Listing Rules

Background

- 8.5** In CP12/25¹⁹ and CP13/15²⁰ ('Enhancing the effectiveness of the Listing Regime') we set out a package of measures designed to strengthen minority shareholder rights and protections where they are at risk of being abused. The measures were particularly intended to deal with cases when a controlling shareholder does not maintain an appropriate relationship with a premium listed company. Our final measures were presented in PS14/8²¹ and were implemented in May 2014.
- 8.6** In developing the final package, we identified that the question of cancellation of a listing where a controlling shareholder is present raised important concerns about appropriate levels of investor protection within the premium listing segment of the market. At the same time, we also recognised the need to avoid situations where a small minority of holders could frustrate the legitimate actions of the large majority. Therefore, we recognised a need to revisit the cancellation provisions in completing an appropriate package of safeguards.

¹⁸ The Statutory Audit Amending Directive defines public interest entities as 1) entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State, 2) credit institutions, 3) insurance undertakings or 4) any entity so designated by a Member State.

¹⁹ CP12/25 *Enhancing the effectiveness of the Listing Regime and feedback on CP12/2* (October 2012) www.fca.org.uk/static/pubs/cp/cp12-25.pdf

²⁰ CP 13/15 *Enhancing the effectiveness of the Listing Regime: feedback to CP12/25 and further consultation on related issues* (November 2013) www.fca.org.uk/static/documents/consultation-papers/cp13-15.pdf

²¹ PS 14/8 *Response to CP13/15 – Enhancing the effectiveness of the Listing Regime* (May 2014) www.fca.org.uk/static/documents/policy-statements/ps14-08.pdf

- 8.7** The key enhanced protection we introduced, following consultation, is the requirement for a majority of votes of independent shareholders to support an application for a cancellation in cases where the company has a controlling shareholder (LR 5.2.5R(2)(b)). This is in addition to the requirement under LR 5.2.5R(2)(a), originally introduced in July 2005, that the support of 75% of votes cast in general meeting must also be gained.
- 8.8** Under these rules, where a controlling shareholder (instead of seeking shareholder approval) makes a takeover offer to buy out minority shareholders, separate arrangements apply under LR 5.2.10R to LR 5.2.12R. These are based on the same principle, i.e. if acceptances of the offer (or votes in favour of the proposed cancellation in the case of a shareholder vote) are received from independent shareholders which represent a minority of the voting rights held by independent shareholders and also the total voting rights held post the offer by the controlling shareholder or offeror (or exercised in the case of a shareholder vote) exceed 75%, the cancellation will be effective.
- 8.9** LR 5.2.11AR contains the key provisions relevant to companies where the offeror is interested in more than 50% of the voting rights before announcing its firm intention to make the offer.
- 8.10** In this situation, if the proportion of voting share capital held by the controlling shareholder post the offer exceeds 80%, the requirement in LR 5.2.11AR(3) for acceptances to have been received from independent shareholders which represent a majority of voting rights held by independent shareholders is disapplied under LR 5.2.11DR.
- 8.11** We introduced this disapplication because, in formulating the relevant rule governing cancellations following a takeover offer, we were resistant to the notion of allowing a company to remain listed on the Official List and of tolerating the resultant low level of free float where an offer was successful except for its failure to meet the independent shareholder acceptance threshold. Since we introduced the disapplication, however, we have become more conscious that in some specific situations there could be a different outcome under the two routes, with potentially significant consequential and unintended implications for investor protection.
- 8.12** In normal circumstances, where a minimum free float of 25% is required for listing²², a controlling shareholder would not be able to hold more than 75% of the share capital. If the controlling shareholder of a 75% controlled company subsequently made an offer for the remaining shares they would still need to clear the material hurdle of acquiring, in this case, a further 5% of the voting share capital by way of the offer.
- 8.13** However, if a company were, at the outset, permitted exceptionally to list with an 80% controlling shareholder and a 20% free float this would mean that a takeover offer could, at a subsequent time, be made on terms that garnered no acceptances but where the controlling shareholder could then procure a delisting. There would then be no indication arising from decisions made by some shareholders to accept the offer, of whether the terms provide fair compensation for those independent shareholders who would not wish, or be able, to hold the shares once unlisted.

Possible options

- 8.14** We have considered the following broad approaches for resolving this problem.

(a) Introduce new guidance on decisions to extend waivers on allowable free float on admission and on an ongoing basis or further rules for applicants with controlling shareholders. We have

²² Consolidated Admissions and Reporting Directive: Directive of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities (No 2001/34/EC).

considered expanding the guidance in LR 6.1.20AG (waiver of the free float requirement) to allow the FCA to take into account whether a company has a controlling shareholder. We have also considered including a new premium listing eligibility condition in LR 6 for applicants with a controlling shareholder (and a corresponding continuing obligation in LR 9). Such approaches might then help identify at an earlier stage those actual or prospective listed companies that could pose a greater risk of future problems. However, we have always stressed throughout our work on minority shareholder protection that the free float requirements are about determining liquidity, rather than acceptable governance standards. Accordingly, and in consistency with our stance as outlined in CP12/2²³, we do not propose to use the free float requirements in response to wider governance concerns.

(b) *Limit the scope of action of the controlling shareholder by expanding the list of mandatory independence provisions included in the agreement between a company and its controlling shareholder(s) in LR 6.1.4DR.* For example, a new independence provision could be introduced to require a controlling shareholder, if it makes a takeover offer for the company, to include a non-waivable condition in the terms of the offer that the offer will be declared unconditional in all aspects only if acceptances of the offer are received from independent shareholders which represent a majority of voting rights held by independent shareholders. However, introducing a provision of this nature into the agreement may be inconsistent with the principle we have followed that the agreement should do no more than codify existing market practice. Moreover, we believe that provisions of this nature would be disproportionate and possibly ineffective.

(c) *Maintain the current rules but seek to exercise discretion on an application to cancel the listing on a case-by-case basis.* However, this would remove the implication of an assurance that the 80% control provision in LR 5.2.11DR would be effective.

(d) *Delete the 80% control provision contained in LR 5.2.11DR.* This would require a controlling shareholder to obtain acceptances of their offer from independent which represent a majority of voting rights held by independent shareholders for a cancellation request to be made.

8.15 Given the difficulties of the options in (a) and (b) above, and the fact that it is the introduction of LR 5.2.11DR that has, in mitigating one difficulty, created another of potentially greater significance in terms of investor protection, we are proposing to follow approach (d), i.e. to delete LR 5.2.11.DR. The draft instrument text containing the proposed Handbook changes is provided in Appendix 8A.

8.16 In proposing this change we wish to emphasise that this should not be seen to imply a more general tolerance of low free floats. We still retain the ability, on a case-by-case basis, to initiate delisting where the remaining free float proves too small to support adequate liquidity.

Q8.1: Do you agree that deletion of LR 5.2.11DR, together with consequential amendments to LR 5.2.11AR and LR 5.2.11CR, would be the most appropriate way to resolve the disparity in the approaches to cancellation and maintain investor protection?

²³ CP 12/2 *Amendments to the Listing Rules, Prospectus Rules, Disclosure Rules and Transparency Rules* (January 2012) <http://www.fca.org.uk/your-fca/documents/consultation-papers/fsa-cp122>

Changes to requirements on audit committees

- 8.17** The EU Council of Ministers (the Council) adopted the Statutory Audit Directive (2006/43/EC) (SAD) in 2006. This sets out various requirements relating to the statutory audit of annual accounts and consolidated accounts. The requirements of the SAD relating to audit committees were implemented in the UK through corporate governance rules included in the Disclosure Rules and Transparency Rules sourcebook (DTR) made under Part VI of the Financial Services and Markets Act 2000 (FSMA). The SAD was amended in May 2014, when the European Parliament and Council adopted the SAAD and Regulation (EU) No. 537/2014 (the Regulation) – both relate to statutory audits and their oversight in the EU. The SAAD and the Regulation aim to strengthen the EU framework of standards and public oversight for the audit profession.
- 8.18** The Department for Business, Innovation and Skills (BIS)²⁴ and the FRC²⁵ consulted on the implementation of the SAAD in December 2014. Following those consultations, BIS have requested that we amend the existing rules in DTR on audit committees to reflect the revised provisions contained in the SAAD in relation to PIEs with transferable securities admitted to trading on a regulated market. BIS have asked the Prudential Regulation Authority (PRA) to update its Rulebook as well, to reflect requirements in the SAAD on audit committees for credit institutions and insurance undertakings. Respondents to this consultation should note that, because of the approach to the implementation that the PRA intends in the UK, credit institutions and insurance undertakings with transferable securities admitted to trading on a regulated market will be subject to requirements for audit committees both under DTR and under the PRA's rules.
- 8.19** We now wish to consult on our proposals for implementing the revised provisions in the SAAD. Our proposed changes are shown in Appendix 8B. The PRA will carry out a separate consultation in mid-September covering the requirements for those entities within its remit.
- 8.20** In addition, the FRC is responsible for the UK Corporate Governance Code which includes requirements for audit committees for listed companies. The FRC will also be consulting later in the year on possible changes to the Code, and to its associated Guidance on Audit Committees, which may be necessary following the implementation of the SAAD. We may need to make further amendments to our rules to reflect changes which are made to the Code.

Changes to the Statutory Audit Directive introduced by the Statutory Audit Amending Directive

- 8.21** This section explores the changes which the SAAD makes to chapter 10 of the SAD. The SAAD replaces existing article 41 of the SAD with a new article 39. The SAD gave each Member State the ability to decide how audit committees are composed (article 41(1)). The options were that audit committees be composed of:
- non-executive members of the administrative body of the audited entity and/or
 - members of the supervisory body of the audited entity and/or
 - members appointed by the general meeting of shareholders of the audited entity

The SAAD (in new article 39(1)) permits Member States to allow issuers to choose between options rather than providing for Member States to decide which option(s) to apply in their

²⁴ The BIS Discussion Document can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/400231/bis-14-1285-auditor-regulation-discussion-document-on-implications-of-eu-and-wider-reforms.pdf

²⁵ The FRC consultation paper can be found at <https://www.frc.org.uk/Our-Work/Publications/Audit-and-Assurance-Team/Consultation-Auditing-and-ethical-standards-implem-File.pdf>

jurisdiction. The following table sets out the principal differences between existing article 41 and the new article 39.

SAD provisions	Changes made by the SAAD
One member of the audit committee must be independent (art 41(1)).	A majority of the members of the audit committee must be independent (art 39(1)). Committee members as a whole must have competence relevant ²⁶ to the sector in which the audited entity is operating (art 39(1)). Chairman of the audit committee must be independent of the audited entity and appointed by committee members or by the supervisory body of the audited entity (art 39(1))
Duties of the audit committee are (art 41(2)) to monitor: <ul style="list-style-type: none"> • the financial reporting process • the effectiveness of the company's internal control, internal audit (where applicable) and risk management systems • the statutory audit of the annual and consolidated accounts • review and monitor the independence of the statutory auditor, especially any additional services provided to the audited entity 	Further responsibilities added (art 39(6)) for the audit committee to: <ul style="list-style-type: none"> • inform the administrative or supervisory body of the audited entity of the outcome of the statutory audit and explain how it contributed to the integrity of financial reporting and the committee's role in the process • submit recommendations or proposals to ensure the integrity of the financial reporting process • while monitoring the audit, take into account any findings and conclusions by the competent authority resulting from inspections of previous audits
Member States had the option to provide an exemption from the requirement to have an audit committee (art 41(6)(b)) for certain collective investment undertakings as defined in art 1(2) of Directive 85/611/EEC	Extends this exemption to alternative investment funds (AIFs) as defined in (art 4(1)(a)) of Directive 2011/61/EU (art 39(3)(b))

8.22 In addition, the SAAD clarifies duties of the audit committee that already existed under the SAD as follows:

- The audit committee must monitor the effectiveness of the undertaking's internal quality control and risk management systems as well as, where applicable, the internal audit. Responsibilities of the audit committee to monitor the effectiveness of the undertaking's internal quality control and risk management systems as well as, where applicable, the internal audit, need only cover those aspects relating to financial reporting and only in so far as would not breach the committee's independence.
- The audit committee must review and monitor the independence of the statutory auditor. However, this must be done in accordance with the enhanced requirements on auditor independence in the SAAD and the Regulation which, in particular, places certain further responsibilities on audit committees relating to non-audit services.

²⁶ We consider competence relevant to the sector to be broader than knowledge of the sector. We do not intend to prescribe how this requirement may be interpreted.

- The audit committee must also now be responsible for the procedure for the selection of the statutory auditor and recommend the statutory auditor to be appointed in accordance with the Regulation.

Proposed changes to the Handbook

- 8.23** Reflecting the changes introduced by the SAAD, we are proposing to make the following changes to DTR 7.1 and, as set out under ‘Member State options’, to DTR 1B.1.3R. We propose to amend DTR 7.1.1R and introduce a new rule, DTR 7.1.1AR. The effect of this would be to:
- extend the independence requirement from at least one member to a majority of the members of the relevant body and include this requirement in new DTR 7.1.1AR
 - include in new DTR 7.1.1AR the requirement that at least one member of the relevant body must have competence in accounting and/or auditing (previously this requirement was contained in DTR 7.1.1R), and
 - require the members of the body as a whole to have competence relevant to the sector in which the issuer is operating
- 8.24** Further, we propose to insert a new rule, DTR 7.1.2AR, to require that the chairman of the relevant body is independent and must be appointed by the members of the relevant body or by the administrative or supervisory body of the issuer.
- 8.25** We also propose to amend DTR 7.1.3R, which sets out the responsibilities of the relevant body, to reflect the amended scope of responsibilities, as set out above.
- 8.26** Finally, we propose to delete DTR 7.1.4R which requires a proposal to appoint a statutory auditor to be based on a recommendation by the relevant body. This requirement is now included in the list of responsibilities of the audit committee by the SAAD (and so should now be reflected in the revised DTR 7.1.3R) and in art 16(5) of the Regulation.

Q8.2: Do you agree with or have any comments on our proposed approach to the implementation of the SAAD as set out above?

Changes that we do not propose to reflect in our Handbook

- 8.27** The SAAD also makes changes to article 45 of the SAD which sets out requirements for the registration and oversight of the auditors of third-country issuers. The most significant change is to raise the denomination threshold for defining an issuer of debt securities of large denomination, above which the issuer is outside the scope of the EU regulatory requirement to use a registered third-country auditor. This brings the definition of a large denomination debt securities issuer into line with similar ones in the PD and the Transparency Directive 2004/109/EC (TD) which have been used in exemptions for large denomination debt securities issuers. DTR 4.4.2R was amended in 2012 to implement changes made to the TD by the PD Amending Directive 2010/73/EU so our rules already reflect the revised TD threshold.
- 8.28** BIS is proposing to amend regulation 43 of the Statutory Auditors and Third Country Auditors Regulations 2007 (SI 2007/3494) to reflect the revised denomination threshold for a large debt securities issuer. Regulation 43 of the 2007 Regulations sets out an exclusion from the definition of ‘UK-traded non-EEA company’ set out in section 1241 of the Companies Act 2006 for large debt securities issuers. Amending regulation 43 to reflect the revised denomination threshold for large denomination debt securities issuers will mean that more issuers will fall within the definition of ‘UK-traded non-EEA company’. DTR 4.1.7R(4) includes requirements in

respect of the audit of annual financial statements for issuers which are a 'UK-traded non-EEA company' within the meaning of section 1241 of the Companies Act 2006. Although these amendments do not require us to make changes to the DTRs, the scope of issuers caught by DTR 4.1.7R(4) may alter as a result.

- 8.29** We have liaised with BIS and it is our understanding that they intend to amend the application of Part 42 of the Companies Act 2006 so that further entities may be brought into the statutory requirement for their auditors to be regulated under that Part. If those entities have transferable securities admitted to trading on a regulated market then DTR 7.1 will also apply and, subject to any applicable exemptions, the entities will be required to appoint an audit committee or have a body performing equivalent functions. Again we would wish to alert stakeholders to the possibility that the scope of the issuers to which DTR 7.1 applies may be extended as a result of BIS's proposals. Depending on the changes proposed by BIS we may need to make further changes to DTR in due course.
- 8.30** The SAAD now requires the audit committee to be composed of non-executive members of the administrative body, members of the supervisory body and/or members appointed by the general meeting of the shareholders of the audited entity (or, for those entities without shareholders, by an equivalent body). This choice was previously expressed as a Member State option in the SAD although when implementing the SAD into our rules we left the choice of composition of that body to issuers and their shareholders or members. Our rules also reflected the Member State option in article 41(5) of the SAD to allow an issuer not to have an audit committee if it had a body performing equivalent functions. This Member State option is retained in new article 39(4) as set out in the SAAD.
- 8.31** We have no evidence that this decision not to implement specific rules on audit committee composition has disadvantaged issuers or led to problems. We believe that our original policy choice reflects the options now offered by the SAAD. Therefore, we do not intend to amend our DTR in this area.

Q8.3: Do you agree with our decision not to include specific requirements on audit committee composition in DTR?

- 8.32** Given our previous decision to implement the broad exemption in article 41(5) of the SAD (now in new article 39(4)), that an issuer need not have an audit committee if it has a body performing equivalent functions, we do not now intend to adopt the narrower Member State option contained in the first paragraph of new article 39(2) set out in the SAAD for PIEs that meet the criteria in the PD to be recognised as small or medium-sized entities or companies with reduced market capitalisation. These PIEs do not need to have a separate audit committee if the administrative or supervisory body as a whole performs that function (which is an extension of an existing Member State option in article 41(1) of the SAD which we also did not take). By the same logic, we do not intend to take the new Member State option in the second paragraph of new article 39(2) set out in the SAAD which exempts an issuer from having a separate audit committee if the administrative or supervisory body performs the functions of the audit committee for the purpose of the obligations in the SAD (as amended by the SAAD) and in the Regulation.

Q8.4: Do you agree that it is unnecessary to adopt the two Member State options contained in new article 39(2) set out in the SAAD because the wider exemption we have already adopted caters for the specific situations indicated?

Member State options

- 8.33** The changes introduced in the SAAD also include some new Member State options and extend some existing options. Our approach to those options is as follows.
- 8.34** We propose not to adopt an option to require annual election by shareholders of the audit committee chairman. Making annual election of the chairman obligatory through DTR could be a significant burden for some small businesses.

Q8.5: Do you agree that we should not require annual election of chairmen of audit committees by shareholders?

- 8.35** We intend to adopt a revised option to provide an exemption for alternative investment funds (AIFs), as well as for undertakings for collective investment in transferable securities (UCITS) that are PIEs, from having an audit committee. As a result, we propose to amend DTR 1B.1.3R to exempt AIFs and UCITS from the requirement to appoint an audit committee.
- 8.36** The exemption for collective investment undertakings in article 41(6)(b) of the SAD was not included as an explicit exemption in DTR when the SAD was transposed, on the basis that there was no specific requirement in the Companies Act 2006 for auditors appointed by collective investment undertakings to be regulated under Part 42 of that Act. However, some, but not all, UCITS are incorporated and so fall within the Companies Act requirements to appoint a statutory auditor who would be regulated in this way. As a result, not all UCITS are subject to the same requirements. The SAAD expands the exemption for UCITS to AIFs on the basis that UCITS and AIFs (as well as their management companies) operate in a strictly defined regulatory environment and are subject to specific governance mechanisms. BIS are now proposing to include a specific requirement for auditors of UCITS and AIFs to be regulated under the Companies Act as part of the SAAD implementation. Consequently, we propose to include an explicit exemption from the requirement to have an audit committee for both UCITS and AIFs in DTR 1B.13R to preserve a level playing field, as per our original policy intention.

Q8.6: Do you agree with our proposal to exempt AIFs and UCITS from the requirement to have an audit committee?

- 8.37** We propose not to adopt a new Member State option to exempt all the members of an audit committee and/or the chairman of the committee from the independence requirements where all members of the committee are also members of the administrative or supervisory body of the audited entity.
- 8.38** The SAAD requires a majority of the members of the committee and the chairman to be independent, whereas the SAD requirement has been for at least one member of the committee to be independent. In line with the policy decision taken on implementation of the SAD (CP07/24²⁷ and PS08/6²⁸), we do not propose to change our rules or to implement the Member State exemption. We do not intend to take the Member State option to exempt all members of the audit committee and/or the chairman from being independent as it is our view that taking this option would be a retrograde step compared to current UK best practice.

Q8.7: Do you agree with our proposal not to exempt the chairman and members of the audit committee from the revised independence requirements set out in the Statutory Audit Amending Directive?

²⁷ CP07/24 *Implementation of the 8 Company Law Directive* (December 2007) http://www.fsa.gov.uk/pubs/cp/cp07_24.pdf

²⁸ PS08/6 *Implementation of the 8th Company Law Directive: Feedback on CP07/24 and final rules* (June 2008) http://www.fsa.gov.uk/pubs/policy/ps08_06.pdf

Timing and transition

- 8.39** The provisions of the SAAD must be implemented in the UK by 17 June 2016. Subject to this consultation, we anticipate that our proposed new rules will come into effect in June 2016 for financial reporting periods beginning on or after 17 June 2016.
- 8.40** To assist issuers to prepare to meet the new requirements, we propose that the changes to DTR 1B and DTR 7.1 to implement the provisions of the SAAD in respect of audit committees would apply to financial years starting after the date of application of the new EU regulatory framework, i.e. for financial years beginning on or after 17 June 2016. This means that issuers with a financial year starting on or after 17 June 2016 will be subject to the new DTR requirements, whereas issuers with financial years beginning before 17 June 2016 will be subject to the existing DTRs until the end of that financial year. Accordingly, we have proposed transitional provisions in DTR.

Q8.8: Do you agree with our proposed transitional provisions in DTR?**Q8.9: Do you have any comments you would like to make on other items in this section on audit committees?****Accounting Directive transposition – DTR changes**

- 8.41** BIS implemented the Accounting Directive 2013/34/EU (AD) earlier this year through the Companies, Partnerships and Groups (Accounts and Reports) Regulations 2015 (SI 2015/980) which came into force on 6 April 2015. These regulations amend the law in the UK relating to the preparation of the annual accounts of companies (and partnerships all of whose members have limited liability) and related matters. The amendments made by the new regulations apply to financial years beginning on or after 1 January 2016.
- 8.42** The AD repeals and replaces the existing Fourth Company Law Directive 78/660/EEC (FCLD) and Seventh Company Law Directive 83/349/EEC (SCLD) which are referenced in the FCA's Disclosure Rules and Transparency Rules sourcebook (DTR). Consequently, some minor consequential changes are required to update DTR to align with the AD. The draft instrument text containing the proposed Handbook changes is provided in Appendix 8A
- 8.43** We propose to amend DTR 1B.1.4G to delete the reference to the Fourth Company Law Directive and the Seventh Company Law Directive and instead reference the Accounting Directive.

Q8.10: Do you agree with the proposal to amend DTR 1B.1.4G?

- 8.44** DTR 4.1.11R currently reflects the requirements in article 46 of the FCLD concerning certain information which the management report published as part of the annual financial statements must give an indication of, including any important events that have occurred since the end of the financial year. Article 19 of the AD is now the correlating provision and replaces article 46 of the FCLD. Article 46(2) has been replaced by article 19(2) but differs in one respect; the requirement to give an indication of any important events that have occurred since the end of the financial year has been deleted from the AD.
- 8.45** This requirement has therefore also been deleted from the Transparency Directive 2004/109/EC (TD). Article 4(5) of the TD cross refers to the FCLD and states that a 'management report shall

be drawn up in accordance with Article 46 of Directive 78/660/EEC' and going forward this cross reference is automatically updated to article 19 of the AD by virtue of article 52 of the AD.

- 8.46** However, article 17(1)(q) of the AD requires 'the nature and the financial effect of material events arising after the balance sheet date which are not reflected in the profit and loss account or balance sheet' to be included in the notes to the accounts. Although this is a change from the previous requirement to include this information in the management report, it means that issuers within scope of the AD will continue to provide the current level of information.
- 8.47** By contrast, the TD does not make any similar provision, which means that TD issuers who are out of scope of the AD may not be required to disclose any material post-balance sheet events, either in the management report or in the notes to the accounts. This inconsistency of information provided to investors by different issuers could potentially be misleading. Therefore, we propose retaining DTR 4.1.11R(1) which sets out the previous TD requirement to disclose important post balance sheet events in the management report. Retaining this rule will ensure that all entities provide the same information to investors. We appreciate that issuers subject to both AD and TD requirements may still have to repeat the information disclosed in the notes to their accounts and in their management report but we consider there is a benefit to investors receiving information from all issuers.

Q8.11: Do you agree with the proposal to retain DTR 4.1.11R(1) despite this requirement being removed from the TD?

- 8.48** Currently, DTR 7.2.10R refers to the SCLD requirement to report on the main features of the group's internal control and risk management systems in relation to the process for preparing consolidated accounts. The AD, however, uses different wording and requires a report on the main features of the internal control and risk management systems in relation to the financial reporting process for the undertakings included in the consolidation, taken as a whole. Although there is a change in wording, we consider that the underlying requirement has not changed. Therefore, we propose changing the wording of DTR 7.2.10R to reflect the revised AD wording but would not expect any change to the current practice under DTR 7.2.10R.

Q8.12: Do you agree with the proposal to amend DTR 7.2.10R and agree with our analysis that the substance of the requirement under the rule will not change following the amendment?

- 8.49** Article 36(2)(f) of the SCLD provided that an issuer who elects to include its corporate governance statement in a separate report must provide the information required by DTR 7.2.10R in that report. We have implemented this in DTR 7.2.11R. Although the explicit requirement has been omitted from the text in the AD, we consider that the underlying requirement remains unchanged. Consequently, we propose retaining DTR 7.2.11R and amending it to refer to DTR 7.2.9R(2) as well as DTR 7.2.9R(1).

Q8.13: Do you agree with the proposal to retain DTR 7.2.11R and to amend it to refer also to DTR 7.2.9R(2)?

- 8.50** In addition, we propose some minor changes to DTR 7.2.2R, DTR 7.2.3R and DTR 7.2.9R to reflect the revised wording contained in the text of the AD.

Q8.14: Do you agree with the minor changes we propose to DTR 7.2.2R, DTR 7.2.3R and DTR 7.2.9R?

- 8.51** We also propose updating the notes in DTR 1B, DTR 4.2 and DTR 7.2 which refer to the FCLD and the SCLD to replace references to articles in the FCLD and the SCLD with references to the relevant articles in the AD.
- 8.52** We are of the view that no transitional provisions are required in the DTRs as a result of the proposed changes to reflect the replacement of the FCLD and the SCLD by the AD.

Q8.15: Do you agree with our analysis that no transitional provisions are required as a result of the proposed changes to reflect the replacement of the FCLD and the SCLD by the AD?

The FRC and its constituents (predecessor bodies) references in the Handbook and other minor changes to LR and DTR

- 8.53** We are also consulting on some proposed changes to the Listing Rules sourcebook (LR), Disclosure Rules and Transparency Rules sourcebook (DTR), General Prudential sourcebook (GENPRU) and the Supervision manual (SUP) to update a number of references in our Handbook that are out of date. The draft instrument text containing the proposed Handbook changes is provided in Appendix 8A.
- 8.54** In March 2012, the FRC and BIS consulted on proposals to update the FRC's internal structure to align it more closely with the FRC's two key roles of standard setting and oversight of UK accounting, auditing and actuarial practice. These proposals were subsequently implemented with the effect of abolishing the statutory bodies that previously constituted the FRC, in particular the Accounting Standards Board (ASB) and the Auditing Practices Board (APB). As a result, we are proposing to amend our Handbook to remove all references to these Boards, replacing them with references to the FRC.
- 8.55** We are proposing to update:
- the references to the APB in DTR 4.2.9R and SUP 3.10.5BG
 - the references to the ASB in DTR 4.2.10R and GENPRU 1.3.4R
 - the reference to the relevant Auditing Practices Board Practice Note contained in GENPRU 2.2.103G to refer to relevant guidance issued by the FRC
- 8.56** Between November 2012 and March 2014, following earlier consultation, the FRC issued Financial Reporting Standards 100, 101, 102 and 103 which effectively repealed and replaced all previous accounting standards constituting UK Generally Accepted Accounting Practice (UK GAAP) for accounting periods beginning on or after 1 January 2015.
- 8.57** As a result of these changes we now propose to update our rules to remove all references to previous UK GAAP Financial Reporting Standards or Statements of Standard Accounting Practice issued by the ASB. Consequently, we are proposing to delete the reference to Statements of Standard Accounting Practice in GENPRU 1.3.4R.
- 8.58** In March 2015, following earlier consultation, the FRC issued Financial Reporting Standard 104 on interim financial reporting which replaced the previous pronouncement by the ASB on interim financial reporting, the Reporting Statement: Half-yearly financial reports.

- 8.59** We are therefore proposing to update the reference to pronouncements on interim reporting in DTR 4.2.10R(4)(b) to refer to Financial Reporting Standard 104: Interim Financial Reporting.
- 8.60** In 2013 the UK legislation giving effect to the requirement to maintain a list of third-country auditors for the purposes of the SAD was amended and updated. We consequently propose to update our Handbook reference in DTR 4.1.7R(4)(a) from regulation 34 of the Statutory Auditors and Third Country Audit Regulations 2007 (SI 2007/3494) to regulation 6 of the Statutory Auditors and Third Country Auditors Regulations 2013 (SI 2013/1672).
- 8.61** In 2012 the Second Company Law Directive 77/91/EEC was recast by Directive 2012/30/EU so we propose to update references in LR9.3.12R and DTR 4.1.11R(4) from the old directive to the new one.

Q8.16: Do you agree with these proposed amendments to DTR 4.1.7R, DTR 4.1.11R, DTR 4.2.9R, DTR 4.2.10R, LR 9.3.12R, GENPRU 1.3.4R, GENPRU 2.2.103G and SUP 3.10.5BG?

Prospectus Rules amendments pursuant to regulatory technical standards

- 8.62** In this section we are consulting on making some small amendments to the Prospectus Rules sourcebook (PR) in line with the draft regulatory technical standards (RTS) on the Prospectus Directive (PD) arising from the Omnibus II Directive (OD2), which were published by ESMA on 25 June 2015.²⁹
- 8.63** The draft RTS are potentially subject to change and have not yet been adopted by the Commission. It is possible that the RTS may take effect as early as Autumn 2015. We are therefore consulting now on the basis of the draft RTS, so that we may be in a position to amend the PR, to ensure that they are compatible with the RTS provisions, at the time the RTS take effect. Should any changes be made to the draft RTS, we will consider what impact this may have on our proposals.

Background to the draft RTS

- 8.64** The OD2 made changes to the PD. It required the European Securities and Markets Authority (ESMA) to submit, following public consultation, draft RTS to the Commission by 1 July 2015.
- 8.65** ESMA's draft RTS cover:
- approval of the prospectus
 - publication of the prospectus, and
 - advertisements
- 8.66** After its consultation, ESMA decided not to draft RTS on incorporation by reference, which had also been included in the OD2 mandate.³⁰

²⁹ Final Report *Draft RTS on prospectus related issue under the Omnibus II Directive* (ESMA/2015/1014; 25 June 2015)

³⁰ Paragraph 57, *ibid*.

8.67 The Commission are required to decide whether to endorse ESMA's draft RTS within three months of receiving them. If endorsed, the final RTS would come into force 20 days after their appearance in the Official Journal of the European Union in the form of a Commission delegated regulation supplementing the PD.

Reflecting the regulatory technical standards in PR

8.68 PR reproduces extracts from UK and EU legislation for the convenience of the reader. Such material appears in shaded text boxes accompanied by an icon – a Union Jack or an EU flag. When, in 2014, the Commission made its first set of PD regulatory technical standards (which arose from the Omnibus I Directive (2010/78/EU) and related to supplementary prospectuses) we reproduced extracts in PR 3.4.4 EU. This was done without consultation, as no changes to the FCA's substantive rules in the PR were made.

8.69 Similarly, we will be including, for the convenience of the reader, extracts of the RTS, arising from the OD2, in our PR. These will be made in PR 3.1 (for approval of the prospectus), PR 3.2 (for publication of the prospectus) and PR 3.3 (for advertisements). The draft RTS also delete a number of articles from the PD Regulation. We will also delete these from the PR (where they are currently reproduced). For completeness, we have included these changes in the draft instrument text (see Appendix 8A). However, we are not consulting on these changes as the affected text only reproduces, for the convenience of the reader, directly applicable EU legislation.

8.70 We do need to consult, however, on some consequential changes to the PR because the draft RTS address areas where the PR currently makes provisions.

8.71 Our proposed changes to the PR on which we are consulting are as follows:

- Amend the defined term 'Prospectus RTS Regulation', to reflect the arrival of a second RTS regulation, and update references to this term in PR 1.1.6G, PR 1.1.7G and PR 1.1.8G.
- Amend PR 2.2.9R(1)(b) to make a more general reference to PR 3.2, which will contain the RTS's requirements regarding making final terms available to the public.
- Amend PR 2.5.3R to reflect article 2(2)(b) of the draft RTS.
- Delete PR 3.1.1R as the requirements are generally dealt with in article 2 of the draft RTS.
- Add PR 3.1.1AR. Due to the proposed deletion of PR 3.1.1R(3), which exercises a Member State option, we need to retain this provision. To provide clarity over the nature and EU origins of this provision, we have added a non-legislative 'note' which cross refers to articles 25(4) and 26(3) of the PD Regulation.
- Delete PR 3.1.2G. Instead, we have added a non-legislative note under PR 3.1.3R(1)(b) to highlight the location of the relevant fees provisions.
- Amend PR 3.1.3R, primarily to take into account the provisions in article 2 of the draft RTS (in relation to the draft prospectus and additional information) and article 4 of the draft RTS (in relation to final form documents). Applicants currently submit a range of forms to the UKLA alongside the first draft of the prospectus and we propose including these forms within the scope of PR 3.1.3R. The current versions of these forms are available on the UKLA section of the FCA website and appear in Appendix 8C.

- Delete PR 3.1.4R and PR 3.1.5R as a result of the draft RTS, which specifically address the prospectus review process.
- Delete PR 3.1.6G as a result of article 3.2(c) of the draft RTS which addresses passporting requests.
- Delete PR 3.1.8G as a result of article 4 of the draft RTS.
- Add PR 3.1.17R to reflect that Regulation 7 of the Financial Services and Markets Act 2000 (Service of Notice Regulations) 2001 (SI 2001/1420) will need to be disapplied, in acknowledgement that article 2 of the draft RTS mandates the electronic submission of prospectuses to the FCA.
- Amend PR 3.2.7G as a result of article 10 of the draft RTS, which addresses how prospectuses are made available and where they can be obtained.

8.72 The above changes appear in the attached draft instrument in Appendix 8A.

8.73 We have reduced the consultation period from the normal two months to one month, so that we are best positioned to amend the PR in Autumn 2015, should this be required.

Q8.17: Do you agree with our proposals to make these miscellaneous changes to the Handbook?

Cost benefit analysis (CBA)

8.74 Section 138I of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules unless we consider the proposals will not give rise to any increase in costs or the increase in costs will be of minimal significance.

8.75 The rule changes on which we are consulting seek to ensure that:

- the tension between LR provisions on cancellation of premium listing following a takeover offer and the procedures that apply in respect of a decision by a premium listed issuer following a vote by shareholders is reduced or resolved
- the proposed changes to DTR implement relevant EU directive requirements in a manner that avoids disproportionate burdens on issuers
- the other proposed changes to LR, DTR, GENPRU and SUP update references as a result of statutory changes or changes to EU directives, and
- PR is compatible with, and its relevant provisions are not more onerous than, the draft RTS provisions

8.76 We believe that our proposals regarding cancellation of premium listing in the context of takeover offers would increase costs only for affected listed companies in circumstances where, and to the extent that, independent and unconflicted shareholders judge that listing of the shares of those companies continues to be of commensurate or greater value.

- 8.77** The proposal to maintain the DTR 4.1.11R(1) requirement will not impose any new costs on issuers. The information required has previously been provided under this rule and systems are already in place to identify and prepare it. Removing the requirement might result in a marginal decrease in costs to issuers who are no longer required to produce this information under the TD. However, the benefit of maintaining this rule is to retain transparency and consistency of information provided to investors.
- 8.78** We do not believe our proposals regarding other elements of EU directive transposition to LR and DTR and other affected sourcebooks will add significant costs. In particular, for the proposed changes on audit committees, we have sought to ensure that in deciding whether to exercise member state options we have balanced cost effectiveness against the flexibility already present in the UK regime.
- 8.79** We do not consider that any of the miscellaneous changes relating to the designation of the FRC will have any impact on any of the firms we regulate as they do not impose any extra compliance requirements or costs.
- 8.80** Our proposed PR changes will not add significant costs to the prospectus approval process.

Compatibility with the FCA's general duties

- 8.81** When consulting on new rules, we are required by section 138I of FSMA to include an explanation of why we believe the proposed rules are compatible with our strategic objective, advance one or more of our operational objectives and have regard to the regulatory principles in section 3B of FSMA. We are also required by section 138K(2) of FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.

The FCA's objectives and regulatory principles

- 8.82** The proposals set out in this chapter of the Consultation Paper are compatible with our strategic objective of ensuring that the relevant markets function well and are primarily intended to advance our operational objectives, as set out below.
- *Enhancing market integrity* – by protecting and enhancing the integrity of the UK financial system, through ensuring that the Listing Rules (LR), the Disclosure Rules and Transparency Rules (DTR), the corporate governance rules, the Prospectus Rules (PR), General Prudential sourcebook (GENPRU) and Supervision manual (SUP) remain proportionate and effective.
 - *Delivering consumer protection* – maintaining and securing an appropriate degree of protection for consumers, including by ensuring that an appropriate level of information continues to be made available to investors.
- 8.83** In preparing our proposals, we have considered the regulatory principles in section 3B of FSMA. In particular:

The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons

We do not believe that our proposals discriminate against any particular business model or approach.

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

We believe that by consulting on our proposals we are acting in accordance with this principle.

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

The proposals in this chapter of the Consultation Paper will have minimal impact on our resources.

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

We believe the proposals in this chapter of the Consultation Paper are proportionate to the benefits.

The desirability of publishing information relating to persons

We believe that our proposals do not undermine this principle.

Expected effect on mutual societies

- 8.84** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, in comparison with other authorised persons.
- 8.85** The relevant LR, DTR, PR, and SUP provisions that we propose to delete, amend or include, apply equally to relevant issuers, offerors, persons requesting admission to trading on a regulated market, auditors and authorised persons, regardless of whether they are an authorised person which is a mutual society or another authorised person. The amendments to GENPRU do not apply to mutual societies.
- 8.86** We believe that the impact of our proposals, in terms of their relevance to mutuals, will not significantly differ depending on whether the person to whom the rule applies is an authorised person which is a mutual society or another authorised person.

Equality and diversity

- 8.87** We have considered the equality and diversity issues that may arise from the proposals in this chapter of the CP. We do not consider that these proposals raise any concerns. Moreover, we do not consider that the proposals adversely impact any of the groups with protected characteristics, i.e. age, disability, sex, pregnancy and maternity, race, religion and belief, marriage/civil partnership, sexual orientation and transgender.
- 8.88** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim, we welcome any feedback to this consultation.

9. Technical amendments to GEN

Introduction

- 9.1** In CP12/24³¹, the FSA consulted on a number of rule changes to help users understand how provisions that appear in both the FCA and PRA Handbooks will apply and how they should be interpreted. The final rules were published in FSA PS13/5³².
- 9.2** The PRA is in the process of deleting its Handbook and replacing it with a Rulebook. As a result, some technical amendments need to be made to ensure that the FCA's Handbook continues to work effectively. We are therefore consulting on the following:
- an amendment to GEN to help ensure that cross references continue to work, including cross references to PRA provisions that are now deleted by the PRA
 - an amendment to GEN to help ensure that the provisions in the FCA's Handbook continue to be within its regulatory scope

Summary of proposals

Cross references to deleted PRA provisions

- 9.3** In FSA CP12/24 the FSA proposed a number of new provisions designed to ensure that the new regulators' Handbooks continued to work effectively. We confirmed that we would proceed with that approach in FSA PS13/5.
- 9.4** Our final rules included a new provision (GEN 2.2.13AR) to ensure that cross references continued to work where a reference might need to be made to the PRA's Rulebook. As the PRA continues to construct its new Rulebook and deletes provisions from its Handbook, it is necessary to amend the wording of GEN 2.2.31AR to reflect the fact that the FCA Handbook may include cross references to a provision made by the PRA which the PRA has now deleted. Where this happens, the provision being referred to will be treated as having been made by the FCA (but only to the extent needed to ensure that the cross reference works).

Q9.1: Do you have any comments on our amendment to GEN 2.2.13AR?

³¹ FSA CP12/24 *Regulatory reform: PRA and FCA regimes relating to aspects of authorisation and supervision* (September 2012) <http://fca.org.uk/your-fca/documents/consultation-papers/fsa-cp1224>

³² PS15/9 *The new FCA Handbook – feedback on Regulatory Reform proposals relating to the FCA Handbook, including final Handbook rules* (March 2013) <http://fca.org.uk/your-fca/documents/policy-statements/fsa-ps-13-05>

Application of provisions made by both the FCA and the PRA

- 9.5** Our final rules in FSA PS13/5 included provisions (GEN 2.2.23R to GEN 2.2.25G) to ensure that provisions carried over by the FCA and PRA were within their respective regulatory scope.
- 9.6** Some provisions were adopted from the FSA's former Handbook by both the PRA and the FCA. At adoption, these provisions appeared identically in each regulator's Handbook. However, some elements of these identical provisions were only relevant to the PRA's regulatory scope, and were therefore applied only by the PRA. Some other elements were only relevant to the FCA's regulatory scope, and were applied by the FCA only. As a result, GEN 2 was amended to explain that these provisions must be interpreted by a firm as applying only to the extent that they are within each regulator's powers.
- 9.7** We propose to amend GEN 2.2.23R to make it clear that it covers the scenario where the PRA has deleted Handbook provisions but those deleted provisions are still set out in the FCA's Handbook.
- 9.8** GEN 2.2.25G sets out some examples of rules being interpreted as cut back by GEN 2.2.23R. One such example uses COMP 5.2.1R for illustrative purposes. The PRA has removed COMP from its Rulebook, so this example is being amended to avoid confusion for users.

Q9.2: Do you have any comments on our amendment to GEN 2.2.23R and GEN 2.2.25G?

Cost benefit analysis

- 9.9** Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us, when we are making rules, to perform a cost benefit analysis of our proposed requirements and to publish the result, unless we consider the proposal will not give rise to any cost or to an increase in cost of minimal significance.
- 9.10** We are consulting on minor, technical amendments to the FCA's Handbook as a result of the PRA's deletion of its Handbook. We consider that our proposals will not give rise to any increased costs or, if there are any additional costs, that they would be of minimal significance. Accordingly, we are providing no cost benefit analysis in relation to our proposals.

Compatibility statement

- 9.11** Section 138I(2)(d) of FSMA requires us to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B of FSMA. In addition, section 138K(2) of FSMA requires us to state whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
- 9.12** We believe that the proposals in this chapter are compatible with our strategic objective, and advance our operational objectives, particularly our consumer protection and integrity objectives, because they help ensure that the FCA's Handbook continues to be effective. The proposals demonstrate regard to the regulatory principle of the need to use the FCA's resources in the most efficient and economic way in particular.

- 9.13** The proposed rules will not have a significantly different impact on mutual societies as opposed to other authorised persons.

Equality and diversity

- 9.14** We have considered the equality and diversity issues that may arise from the proposals and do not consider that these proposals raise any concerns. We do not consider that these proposals adversely impact any of the groups with protected characteristics, i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender.
- 9.15** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim, we welcome any input to this consultation on such matters.

Appendix 1

List of questions

- Q2.1:** Do you agree that consumers who have purchased an offshore life insurance bond should have access to the Financial Ombudsman Service and the protection of the COBS suitability rules when receiving advice or a discretionary investment management service in relation to assets within the bond? If not, please give your reasons.
- Q2.2:** Do you have any comments on our proposed changes to COBS and DISP relating to offshore life insurance bonds?
- Q2.3:** Do you agree that any additional costs for firms as a result of giving consumers with offshore life insurance bonds access to the Financial Ombudsman Service and the protection of the COBS suitability rules are likely to be small? If not, please give your reasons and details of estimated costs.
- Q3.1:** Do you agree with our proposed approach to knowledge and competency for incoming passporting firms?
- Q3.2:** Do you have any comments on the proposed new passporting forms?
- Q3.3:** Do you have any comments on the proposed glossary change to reflect the treatment of equitable mortgage bridging loans?
- Q3.4:** Do you have any comments on the proposed change to the definition of 'credit-related regulated activity' to include advising on MCD lending not secured on the home?
- Q3.5:** Do you have any comments on the proposal not to confer cancellation rights for an MCD loan not secured on the home which is a distance contract?
- Q3.6:** Do you have any comments on the proposed changes to PERG and CONC to reflect the treatment of investment property loan brokers and introducers under the RAO?

- Q3.7:** Do you have any comments on the proposed amendments to CONC to reflect the treatment of residential renovation agreements under the MCD?
- Q3.8:** Do you have any comments on the proposed changes to MCOB 5 Annex 1R?
- Q3.9:** Do you have any comments on the proposed amendment to MCOB 7.6?
- Q4.1:** Do you know of any reason why this qualification should not be added and/or amended on our appropriate qualifications?
- Q5.1:** Do you have any comments on our proposed amendments to the guidance on the triggers for establishing a section 404 scheme?
- Q5.2:** Do you have any comments on the proposed changes to the guidance relating to the role of the ombudsman service?
- Q5.3:** Do you have any comments on our proposed guidance regarding our use of consumer redress schemes under section 404F(7)?
- Q5.4:** Do you have any comments on the reference to the new concurrency duty or on the proposed changes to the guidance to reflect the fact that consumer redress schemes may be made in relation to electronic money issuers?
- Q5.5:** Do you agree with our proposal to incorporate the guidance on consumer redress schemes into CONRED?
- Q5.6:** Do you have any comments about any of the minor or editorial changes made to the guidance?
- Q6.1:** Do you agree with our proposals to amend the consumer credit guidance notes?
- Q6.2:** Do you agree with our proposal to amend Question 5 of CCR007?
- Q6.3:** Do you agree with our proposals to amend RMA-C?
- Q6.4:** Do you agree with our proposals to amend the mortgage second charge lending reporting forms?
- Q6.5:** Do you agree with our proposals to amend the Product Sales Data item guidance notes?

- Q6.6:** Do you agree with our proposal to amend note 3 of SUP 16.12.18B?
- Q6.7:** Do you agree with our proposal to clarify the recovery and resolution plan submission method?
- Q6.8:** Do you agree with our proposal to include a firm's GABRIEL system principle user email address in the standing data items?
- Q6.9:** Do you have any questions or comments about our cost benefit analysis?
- Q8.1:** Do you agree that deletion of LR 5.2.11DR, together with consequential amendments to LR 5.2.11AR and LR 5.2.11CR, would be the most appropriate way to resolve the disparity in the approaches to cancellation and maintain investor protection?
- Q8.2:** Do you agree with or have any comments on our proposed approach to the implementation of the SAAD as set out above?
- Q8.3:** Do you agree with our decision not to include specific requirements on audit committee composition in DTR?
- Q8.4:** Do you agree that it is unnecessary to adopt the two Member State options contained in new article 39(2) set out in the SAAD because the wider exemption we have already adopted caters for the specific situations indicated?
- Q8.5:** Do you agree that we should not require annual election of chairmen of audit committees by shareholders?
- Q8.6:** Do you agree with our proposal to exempt AIFs and UCITS from the requirement to have an audit committee?
- Q8.7:** Do you agree with our proposal not to exempt the chairman and members of the audit committee from the revised independence requirements set out in the Statutory Audit Amending Directive?
- Q8.8:** Do you agree with our proposed transitional provisions in DTR?
- Q8.9:** Do you have any comments you would like to make on other items in this section on audit committees?
- Q8.10:** Do you agree with the proposal to amend DTR 1B.1.4G?

- Q8.11:** Do you agree with the proposal to retain DTR 4.1.11R(1) despite this requirement being removed from the TD?
- Q8.12:** Do you agree with the proposal to amend DTR 7.2.10R and agree with our analysis that the substance of the requirement under the rule will not change following the amendment?
- Q8.13:** Do you agree with the proposal to retain DTR 7.2.11R and to amend it to refer also to DTR 7.2.9R(2)?
- Q8.14:** Do you agree with the minor changes we propose to DTR 7.2.2R, DTR 7.2.3R and DTR 7.2.9R?
- Q8.15:** Do you agree with our analysis that no transitional provisions are required as a result of the proposed changes to reflect the replacement of the FCLD and the SCLD by the AD?
- Q8.16:** Do you agree with these proposed amendments to DTR 4.1.7R, DTR 4.1.11R, DTR 4.2.9R, DTR 4.2.10R, LR 9.3.12R, GENPRU 1.3.4R, GENPRU 2.2.103G and SUP 3.10.5BG?
- Q8.17:** Do you agree with our proposals to make these miscellaneous changes to the Handbook?
- Q9.1:** Do you have any comments on our amendment to GEN 2.2.13AR?
- Q9.2:** Do you have any comments on our amendment to GEN 2.2.23R and GEN 2.2.25G?

Appendix 2

Offshore bonds instrument

OFFSHORE BONDS INSTRUMENT 2016

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes the rules, and fixes and varies the standard terms for Voluntary Jurisdiction participants relating to the Voluntary Jurisdiction as set out in Annexes A and C of this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
 - (2) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (3) paragraph 22 (Consultation) of Schedule 17.
- B. The making of voluntary jurisdiction rules and the fixing and variation of the standard terms in Annexes A and C by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Act:
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance); and
 - (d) section 226 (Compulsory Jurisdiction); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority approves the voluntary jurisdiction rules made, and the standard terms fixed and varied, by the Financial Ombudsman Service Limited.

Commencement

- F. This instrument comes into force on [date].

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Dispute Resolution: Complaints sourcebook (DISP)	Annex C

Citation

H. This instrument may be cited as the Offshore Bonds Instrument 2016.

By order of the Board of the Financial Ombudsman Service Limited

[*date*]

By order of the Board of the Financial Conduct Authority

[*date*]

Annex A**Amendments to the Glossary of definitions**

In this Annex, all text is new and is not underlined.

Insert the following new definition in the appropriate alphabetical position.

*relevant offshore
bond*

a *contract of insurance* which has the following features:

- (a) the contract is carried out by an *insurance undertaking* that does not carry on its activities, or offer to do so, from a permanent place of business maintained by it in the *United Kingdom*;
- (b) the contract provides exposure to the performance of one or more assets which are not owned (legally or beneficially) by the *policyholder*;
- (c) the *insurance undertaking* that carries out the contract is a *client* of a *firm* at least for the purposes of that *firm advising on investments or managing investments*, or both; and
- (d) that *firm* is instructed by the *insurance undertaking* to engage directly with the *policyholder* in relation to the provision of that *firm's* service.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

Insert the following new section after COBS 18.11. This text is not underlined.

18.12 Offshore bonds

Application

- 18.12.1 R This section applies to a *firm* with respect to a service provided to an *insurance undertaking* where:
- (1) the service comprises at least *advising on investments* or *managing investments*, or both;
 - (2) the *firm* is aware that the service is provided to the *insurance undertaking* in relation to a *relevant offshore bond*; and
 - (3) the *firm* is instructed by the *insurance undertaking* to engage directly with the *policyholder* in relation to the provision of the *firm's* service.

Disclosure of complaints process

- 18.12.2 R The *firm* must disclose:
- (1) the process by which the *policyholder* of the *relevant offshore bond* can complain to the *firm*; and
 - (2) the circumstances in which the *policyholder* of the *relevant offshore bond* can refer the matter to the *Financial Ombudsman Service*;
- to the *policyholder* of the *relevant offshore bond* in writing, in good time before the provision of the service to which this section applies.

Modification of suitability rules

- 18.12.3 R The *firm* must apply the suitability rules in *COBS 9* as if the *policyholder* of the *relevant offshore bond* were its *client*.
- 18.12.4 G The effect of *COBS 18.12.3R* is that the *firm* must ensure that any *personal recommendation* or decision to trade is suitable for the *policyholder* of the *relevant offshore bond*, rather than for the provider of the *relevant offshore bond*, and the remainder of *COBS 9* must be applied accordingly.

...

Amend the following text as shown.

TP 2 Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
...					
2.8E	...	...	...	...	...
<u>2.8EA</u>	<u>COBS 18.12.2R</u>	<u>R</u>	<u>A firm is not required to comply with COBS 18.12.2R.</u>	<u>Until [date six months after date in force]</u>	<u>[date]</u>
...					

Annex C

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text.

- 2.7.6 R To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:
- ...
- (15) the complainant is either a *borrower* or a lender under a *P2P agreement* and the *respondent* is the *operator of an electronic system in relation to lending*;
- (16) the complainant is the *policyholder of a relevant offshore bond in relation to which the respondent provides the services of advising on investments, managing investments, or both, and any services provided in connection with them but only to the extent that:*
- (a) the *respondent* engages directly with the *policyholder*; or
- (b) the *respondent* is instructed by the *insurance undertaking* to engage directly with the *policyholder* but fails to do so.

Appendix 3

Mortgage Credit Directive: Minor changes to our rules and guidance

MORTGAGE CREDIT DIRECTIVE (AMENDMENT NO 2) INSTRUMENT 2015**Powers exercised**

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

Commencement

- C. This instrument comes into force on 21 March 2016 immediately after the Mortgage Credit Directive Instrument 2015 comes fully into force.

Amendments to the FCA Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Training and Competence sourcebook (TC)	Annex B
Mortgage and Home Finance: Conduct of Business sourcebook (MCOB)	Annex C
Supervision manual (SUP)	Annex D
Consumer Credit sourcebook (CONC)	Annex E

Amendments to material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex F to this instrument.

Notes

- F. In the Annexes 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

- G. This instrument may be cited as the Mortgage Credit Directive (Amendment No 2) Instrument 2015.

By order of the Board of the Financial Conduct Authority
[*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 definition in the appropriate alphabetical position. This text is not underlined.

residential renovation agreement an unsecured *credit agreement* the purpose of which is the renovation of residential property, as described in paragraph 2a of article 2 of the *Consumer Credit Directive*.

Amend the following definitions as shown.

credit-related regulated activity (1) ~~(except in FEES)~~ (in accordance with section 22 of the *Act* (the classes of activity and categories of investments)) any of the following activities specified in Part 2 or 3A of the *Regulated Activities Order* (Specified Activities):

...

(ga) *advising on regulated credit agreements for the acquisition of land* (article 53DA);

...

(2) ~~(in FEES)~~ (in accordance with section 22 of the *Act* (the classes of activity and categories of investments)) any of the following activities specified in Part 2 or 3A of the *Regulated Activities Order* (Specified Activities):

(a) ~~the activities in (1)(a)–(m); and~~

(b) *advising on regulated credit agreements for the acquisition of land* (article 53DA);

~~which is carried on by way of business and relates to a specified investment applicable to that activity or, in the case of (j) and (k) listed in (1), relates to information about a person's financial standing. [deleted]~~

customer

...

(5) (in relation to a *credit-related regulated activity*, other than in relation to an *MCD credit agreement*) an *individual* who enters, may enter or has entered into a *credit agreement* or a *consumer hire agreement*; and:

regulated mortgage contract

...
(a) (in relation to a contract) a contract which:

...
(ii) is not a *home purchase plan*, a limited payment second charge bridging loan, a second charge business loan, an investment property loan, an exempt consumer buy-to-let mortgage contract, an exempt equitable mortgage bridging loan or a limited interest second charge credit union loan within the meaning of article 61A(1) or (2) of the *Regulated Activities Order*.

Annex B

Amendments to the Training and Competence sourcebook (TC)

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

2.1 Assessing and maintaining competence

...

Knowledge and competence requirements before starting MCD credit agreement activities

...

- 2.1.5F G ...Additionally, *firms* will need to meet ~~the separate requirements in this sourcebook such as the assessment of competence in TC 2.1.1R~~ any other requirements in this or other sourcebooks that are applicable, taking into account the *employee's* role and responsibilities.

...

App 2.1 Territorial scope subject to the limitation in TC Appendix 3

App R
2.1.1

	<i>UK domestic firm</i>	<i>Incoming EEA firm</i>	<i>Overseas firm (other than an incoming EEA firm)</i>
<i>Regulated mortgage activity and reversion activity</i> <u>Mortgage activities and reversion activities numbers 20, 20A, 21, 21A, 21B, 22 and 23 in TC App 1.1.1R; and MCD credit agreement activities numbers 23A to 23E in TC App 1.1.1R</u>	TC applies if the <u>customer is resident and located in the United Kingdom</u> at the time the regulated mortgage activity or reversion activity <u>activity</u> is carried on; and TC also applies if the <u>customer is resident and located in another EEA State</u> (at the time that the activity is carried on) but only if the	Same as for <i>UK domestic firm</i> <u>except that:</u> <u>if the firm carries on the activity from an establishment maintained by the firm or its appointed representative in the United Kingdom and the customer is resident and located in another EEA State when the activity is carried on, TC does not apply; and</u>	Same as for <i>UK domestic firm</i>

	<p>activity is carried on from an establishment maintained by the <i>firm</i> or its <i>appointed representative</i> in the <i>United Kingdom</i>.</p> <p>[Note: article 9(3)(ii) of the <i>MCD</i>]</p>	<p><u>if the <i>firm</i> carries on the activity from an establishment maintained by the <i>firm</i> in another <i>EEA State</i> (and the <i>customer</i> is resident and located in the <i>United Kingdom</i> when the activity is carried on), the following provisions of <i>TC</i> apply: <i>TC 2.1.5A R</i>; <i>TC 2.1.5B R(2)</i>, (3), (5) and (6); <i>TC 2.1.5C R</i>; <i>TC 2.1.5D G</i>; <i>TC 2.1.5E R</i>; and <i>TC 2.1.5F G</i>.</u></p> <p>[Note: article 9(3) of the <i>MCD</i>]</p>	
Any other activity in Appendix 1	...	<p>...</p> <p>[Note: article 9(3)(i) of the <i>MCD</i>]</p>	...

Annex C

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook
(MCOB)

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

5 Pre-application disclosure

...

5 Annex 1R The mortgage illustration: table of contents, prescribed text and prescribed section headings and subheadings.

...

[...]. Where can you get more information about mortgages?

The Money Advice Service publishes useful guides on choosing a mortgage. These are available free through its website: www.moneyadvice.service.org.uk, or by calling 0300 500 5000. The website also provides ~~Comparative Tables to help you shop around.~~

...

...

7.6 Mortgages: event-driven information

...

Further advances

- 7.6.7 R Before a *customer* submits an application to a *firm* for a further advance on an existing *regulated mortgage contract* or for a further advance that is a new *regulated mortgage contract*, if the further advance requires the approval of the *mortgage lender*, the *firm* must provide the *customer* with an *illustration* that complies with the requirements of ~~MCOB 5 (Pre-application disclosure) and MCOB 7.6.9R to MCOB 7.6.17R for the further advance, unless an *illustration* has already been provided or the *regulated mortgage contract* is for a business purpose or to a *high net worth mortgage customer* and the *firm* has chosen to comply with the tailored provisions for *regulated mortgage contracts* for a business purpose or loans to *high net worth mortgage customers* (see MCOB 7.7 (Business loans and loans to high net worth mortgage customers: tailored provisions)).~~ either

- (1) an *illustration* that complies with the requirements of MCOB 5 (Pre-application disclosure) and MCOB 7.6.9R to MCOB 7.6.17R; or

(2) an ESIS that complies with MCOB 5A (MCD pre-application disclosure) and MCOB 7B.1.4R (MCD: further advances)

unless

(3) such an illustration or ESIS has already been provided; or

(4) the regulated mortgage contract is for a business purpose and the firm has chosen to comply with the tailored provisions for regulated mortgage contracts for a business purpose; or

(5) the regulated mortgage contract is with a high net worth mortgage customer and the firm has chosen to comply with the tailored provisions for loans to high net worth mortgage customers;

(see MCOB 7.7 (Business loans and loans to high net worth mortgage customers: tailored provisions)).

7.6.8 G ...the illustration or ESIS required by MCOB 7.6.7R.

7.6.9 R ~~The~~ An illustration provided in accordance with MCOB 7.6.7R(1) must:

... ...

7.6.14 R (1) The illustration provided in accordance with MCOB 7.6.7R(1) may diverge...

(2) The ESIS provided under MCOB 7.6.7R(2) may diverge from the requirements of MCOB 5A where it is necessary to do so to reflect that the ESIS is being provided for a further advance.

...

7.6.16 R (1) ...

(2) ~~(In all other cases~~ the case of any other illustration), MCOB 5.6.16R is replaced...

7.6.17 R (1) ...

(a) may, instead of providing an illustration or ESIS in accordance with MCOB 7.6.7R...

...

...

...

Annex D

Amendments to the Supervision manual (SUP)

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

13 Annex 1R Notification under SUP 13.5.1R

...

Filling in the Form

...

3. All firms should answer sections 1, 2 and ~~11~~ 12. Sections 3 - ~~10~~ 11 refer to specific directives...

...

11 Mortgage Credit Directive ('MCD')

<u>11.1</u>	<u>1</u>	<u>Type of notification</u>	<input type="checkbox"/> <u>First notification</u> <input type="checkbox"/> <u>Change to previous notification</u>
	<u>2</u>	<u>Name of MCD credit intermediary</u>	.....
	<u>3</u>	<u>If MCD credit intermediary is a natural person, date of birth</u>	
	<u>4</u>	<u>Head office address</u>	..........
	<u>5</u>	<u>E-mail</u>	.....
	<u>6</u>	<u>Telephone number</u>	.....
	<u>7</u>	<u>Fax number</u>	
	<u>8</u>	<u>Branch e-mail</u>	.....
	<u>9</u>	<u>Name(s) and dates of birth of natural person(s) managing the branch</u>	..........

11.2 You must select those activities that you wish to carry out under MCD as listed in article 4(5) or 4(21) of MCD.

<u>offers/presents credit agreements</u>	
<u>assists in preparatory/pre-contractual administration work</u>	
<u>concludes credit agreements</u>	
<u>provides advisory services</u>	
<u>Tied credit intermediary</u>	<input type="checkbox"/> <u>Yes</u> <input type="checkbox"/> <u>No</u>
<u>In case of a tied credit intermediary:</u> a) <u>Identification of creditors or groups to which it is tied in the host Member State (name and type, including their registration number(s))</u> b) <u>Whether the MCD credit intermediary is exclusively tied to only one creditor (name and type including their registration number)</u> c) <u>Confirmation the creditors take full and unconditional responsibility for the MCD credit intermediation activities</u>	a) b) c)

11 12 Declaration

...

I enclose the following sections (mark the appropriate section)

...	
<u>Section 11 – Mortgage Credit Directive</u>	<input type="checkbox"/>
<u>Section 11 12 – Declaration (mandatory)</u>	...

...

After SUP 13 Annex 8 insert the following new Annex. The text is not underlined.

13 Annex 9R Notification under SUP 13.5.2R(7)

[see next page]



Notice of intention to provide cross border services in another EEA state in accordance with the Mortgage Credit Directive (MCD)

FIRM NAME:

FRN:

Purpose of this form

You should complete this form if you are a *UK firm* that wishes to exercise a passport right to provide *cross border services* in another *EEA State* under the *MCD*.

Important information you should read before completing this form

A *UK firm* can only use this form if it is entitled to provide *cross border services* into another *EEA State* subject to the conditions of the *MCD* (see Schedule 3A of the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. *UK firms* should consult the legislation or take legal advice both in the *UK* and in the relevant *EEA State(s)* if they are in any doubt.

We give guidance on this in the Supervision manual (*SUP*). In particular, a *UK firm* that wants to exercise an *EEA right* must have the specific activity included in its Scope of Permission.

Filling in the form

- 1.** If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 4.
- 2.** If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 4.
- 3.** All firms should answer sections 1, 2 and 3.
- 4.** Please e-mail this form to passport.notifications@fca.org.uk

Please send to:

:

Financial Conduct Authority
25 The North Colonnade
London

Canary Wharf
E14 5HS

1 Contact details

1.1 Details of the person at the firm we should contact about this notification

Firm reference number	
Title	
Contact name	
Address Line 1	
Address Line 2	
Postcode	
Country	
Telephone number	
Fax number	
Email address	

2 Details of the services to be provided

2.1 Please indicate the *EEA State(s)* into which services are to be provided.

States required	
Austria	<input type="checkbox"/>
Belgium	<input type="checkbox"/>
Bulgaria	<input type="checkbox"/>
Cyprus	<input type="checkbox"/>
Croatia	<input type="checkbox"/>
Czech Republic	<input type="checkbox"/>
Denmark	<input type="checkbox"/>
Estonia	<input type="checkbox"/>
Finland	<input type="checkbox"/>
France	<input type="checkbox"/>
Germany	<input type="checkbox"/>
Gibraltar	<input type="checkbox"/>
Greece	<input type="checkbox"/>
Hungary	<input type="checkbox"/>
Iceland	<input type="checkbox"/>
Italy	<input type="checkbox"/>
Ireland	<input type="checkbox"/>
Latvia	<input type="checkbox"/>
Liechtenstein	<input type="checkbox"/>
Lithuania	<input type="checkbox"/>
Luxembourg	<input type="checkbox"/>
Malta	<input type="checkbox"/>
Netherlands	<input type="checkbox"/>
Norway	<input type="checkbox"/>
Poland	<input type="checkbox"/>
Portugal	<input type="checkbox"/>
Romania	<input type="checkbox"/>
Slovak Republic	<input type="checkbox"/>
Slovenia	<input type="checkbox"/>
Spain	<input type="checkbox"/>
Sweden	<input type="checkbox"/>
All States	<input type="checkbox"/>

Note to Question 2.1

UK firms have the right to provide cross border services to Gibraltar. So, references in this form to an EEA State include references to Gibraltar (see the Financial Services and Markets Act (Gibraltar) Order

2.2 Tell us the proposed date for the business to start*.

Date	dd/mm/yy
------	----------

3 Mortgage Credit Directive (MCD)

3.1

1	Name of MCD credit intermediary	
---	---------------------------------	--

* There may be restrictions on the date which business can start which arise from EU law. We will notify you if this applies.

2	Type of notification (first/change)	
3	Head office address	
4	If <i>MCD credit intermediary</i> is a natural person, date of birth	
5	E-mail	
6	Telephone number	
7	Fax number	
8	Services to be provided by the <i>MCD credit intermediary</i> in the host Member State	<input type="checkbox"/> offers/presents credit agreements <input type="checkbox"/> assists in preparatory/pre-contractual administration work <input type="checkbox"/> concludes credit agreements <input type="checkbox"/> provides advisory services
9	<i>Tied MCD credit intermediary</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	In case of a <i>tied MCD credit intermediary</i> : a) Name and registration number of the creditor(s) or groups to which the intermediary is tied in the host Member State b) Whether the <i>MCD credit intermediary</i> is exclusively tied to only one creditor (name and type including their registration number) c) Confirmation the creditors take full and unconditional responsibility for the activities of the <i>tied MCD credit intermediary</i>	a) b) c)

4 Declaration

Note to Declaration

If you are submitting this notification electronically you do not need to provide a signature here. However, you still need to have the authority to make this notification on behalf of the *firm*.

It is a criminal offence to knowingly or recklessly give us information that is false or misleading. If necessary, please seek appropriate professional advice before supplying information to us.

There will be a delay in processing the notification if any information is inaccurate or incomplete. And failure to notify us immediately of any significant change to the information provided may result in a serious delay in the notification process.

- **I understand it is a criminal offence knowingly or recklessly to give the *FCA/PRA* information that is false or misleading in a material particular.**
- **I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.**
- **I confirm that I am authorised to sign on behalf of the *firm*.**

Name	
Position	
Signature	
Date	dd/mm/yy

I enclose the following sections (mark the appropriate section)

Section 1 – Contact details	<input type="checkbox"/>
Section 2 – Details of the services	<input type="checkbox"/>
Section 3 – Mortgage Credit Directive	<input type="checkbox"/>
Section 4 – Declaration	<input type="checkbox"/>

Amend the following as shown.

16.12 Integrated Regulatory Reporting

...

Regulated Activity Group 12

16.12.29B G *SUP* 16.12.29CR does not apply:

...

(2A) to a firm if the only credit-related regulated activity it carries on is advising on regulated credit agreements for the acquisition of land;

...

...

16 Annex 38B NOTES FOR COMPLETION OF THE DATA ITEMS RELATING TO CONSUMER CREDIT ACTIVITIES

G ...

Scope

7. The credit-related regulated activities are:

...

(ga) advising on regulated credit agreements for the acquisition of land (article 53DA);

...

Annex E

Amendments to the Consumer Credit sourcebook (CONC)

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

4 Pre-contract requirements

...

4.2 Pre-contract disclosure and adequate explanations

Application

4.2.1 R This section, unless otherwise stated in or in relation to a *rule*:

...

(3) does not apply to an agreement under which the *lender* provides the *customer* with *credit* which exceeds £60,260, unless the agreement is a residential renovation agreement;

...

4.3 Adequate explanations: P2P agreements

Application

...

4.3.2 R This section (apart from *CONC* 4.3.6R) does not apply to:

(1) an agreement under which the *lender* provides the prospective *borrower* with *credit* which exceeds £60,260, unless the agreement is a residential renovation agreement; or

...

11 Cancellation

11.1 The right to cancel

...

11.1.3 G Section 66A of the *CCA* (right to withdraw) does not apply to an agreement for *credit* exceeding £60,260 (unless the agreement is a residential renovation agreement), an agreement secured on *land*, a *restricted-use*

credit agreement to finance the purchase of *land* or an agreement for a bridging loan in connection with the purchase of *land*. ...

...

11.2 Right of withdrawal: P2P agreements

Application

...

- 11.2.2 R This section does not apply to a *P2P agreement* under which *credit* exceeding £60,260 is, was or would be provided unless the agreement is a *residential renovation agreement*.

...

15 Second charge lending

15.1 Application

...

- 15.1.2 G *Firms* which carry on *consumer credit lending* or *credit broking* should comply with all *rules* which apply to that *regulated activity* in *CONC* and other parts of the Handbooks. For example, *CONC 7* applies to matters concerning arrears, default and recovery (including repossession) and applies generally to agreements to which this chapter applies. This chapter sets out specific requirements and *guidance* that apply in relation to agreements secured on *land*. Certain arranging and introducing activities in relation to investment property loans (as defined by article 61A of the *Regulated Activities Order*), ~~Regulated regulated mortgage contracts~~ and *home purchase plans* ~~are not regulated credit agreements~~ and are excluded, to the extent specified in article 36E of the *Regulated Activities Order*, from *credit broking*.

Annex F

Amendments to the Perimeter Guidance manual (PERG)

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

2 Authorisation and regulated activities

...

2.7 Activities: a broad outline

...

High net worth exemption

2.7.19J G A *credit agreement* is an exempt agreement if:

...

- (3) the agreement is either:
 - (a) secured on *land*; or
 - (b) for *credit* which exceeds £60,260 and for a purpose other than
 - (i) ~~for a purpose other than~~ the renovation of residential property, or
 - (ii) ...

...

2.8 Exclusions applicable to particular regulated activities

...

Credit broking

2.8.6C G The following activities are excluded from the *regulated activity* of *credit broking*:

...

Activities in relation to certain agreements relating to land (article 36E of the *Regulated Activities Order*)

(3A) Activities carried on with a view to an *individual* entering into an investment property loan (within the meaning of article 61A of the *Regulated Activities Order*) are excluded from *credit broking*.

- (3B) The regulated activities of arranging (bringing about) regulated mortgage contracts, making arrangements with a view to regulated mortgage contracts, arranging (bringing about) a home purchase plan and making arrangements with a view to a home purchase plan are excluded from credit broking.
- (3C) Also excluded from credit broking, when not excluded by (3A) or (3B), are activities which consist of effecting an introduction with a view to an individual entering into regulated mortgage contract or a home purchase plan, if the person to whom the introduction is made is an authorised person who has permission to:
- (a) enter into such an agreement as lender or home purchase provider; or
- (b) make an introduction to an authorised person who has permission to enter into such an agreement as lender or home purchase provider.
- (4) ~~Activities carried on with a view to an individual entering into a regulated mortgage contract are excluded from credit broking if the person carrying on the activity is an authorised person who has permission to:~~
- (a) ~~enter into a regulated mortgage contract as lender (see PERG 4.7); or~~
- (b) ~~make an introduction to an authorised person who has permission to enter into a regulated mortgage contract as lender (see PERG 4.5 on arranging regulated mortgage contracts). [deleted]~~
- (5) ~~Activities carried on with a view to an individual entering into a home purchase plan are excluded from credit broking if the person carrying on the activity is an authorised person who has permission to:~~
- (a) ~~enter into a home purchase plan as home purchase provider (see PERG 14.4); or~~
- (b) ~~make arrangements for a client to enter into a home purchase plan as home purchaser by introducing the client to an authorised person who has permission to a home purchase plan as home purchase provider (see PERG 14.4). [deleted]~~

...

2.9 Regulated activities: exclusions applicable in certain circumstances

...

2.9.24 G ...

- (3) The exclusion relating to *entering into a regulated credit agreement as lender and exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement* applies only to *credit agreements* of a kind to which the *Consumer Credit Directive* does not apply under article 2(2) of that Directive. In summary, these include *credit agreements*:

...

- (c) involving a total amount of credit less than £160 or more than £60,260, except where the agreement is a residential renovation agreement;

...

2 Annex 2 Regulated activities and the permission regime

G ...

Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]	
...	
Regulated home finance activity	
... (xa) <i>advising on regulated credit agreements for the acquisition of land</i> (article 53DA) [deleted] ...	<i>regulated mortgage contract</i> (article 88), except for (xa), see note 11 to table 1
Credit-related regulated activity	
... (zx) <i>advising on regulated credit agreements for the acquisition of land</i> (article 53DA) ...	Rights under a <i>credit agreement</i> (article 88D) (see note 9 to Table 1), <u>except for (zx): see note 11 to Table 1</u>

Appendix 4

Changes to the Training and Competence sourcebook

**TRAINING AND COMPETENCE SOURCEBOOK (QUALIFICATIONS
AMENDMENTS NO 13) INSTRUMENT 2015**

Powers exercised

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

Commencement

- C. This instrument comes into force on [*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 13) Instrument 2015.

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

Annex

Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text.

Appendix 4.1.1E Appropriate Qualification tables

Part 2: Appropriate Qualifications Tables

Qualification provider	Qualification	Activity Number(s)	Key
...			
University of Northampton	...	...	...
<u>University of South Wales</u>	<u>BSc (Hons) Financial Planning, Investment and Risk</u>	<u>4 and 6</u>	<u>a</u>
University of Stirling	...	...	...
...			

Appendix 5

Consumer Redress Schemes changes to section 404

**CONSUMER REDRESS SCHEMES
(GENERAL MATERIAL) INSTRUMENT 2015**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the power in section 139A(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 Consumer Redress Schemes sourcebook (CONRED) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Consumer Redress Schemes (General Material) Instrument 2015.

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

Annex

Amendments to the Consumer Redress Schemes sourcebook (CONRED)

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

1 General

~~{To follow}~~

The following text is new and is not underlined.

1.1 Introduction

- 1.1.1 G This part of the *FCA Handbook* relates to *consumer redress schemes*. For these purposes, a *consumer redress scheme* is a set of *rules* under which a firm is required to take one or more of the following steps:
- (1) investigate whether, on or after a specified date, the firm has failed to comply with particular requirements that are applicable to an activity it has been carrying on;
 - (2) determine whether the failure has caused (or may cause) loss or damage to consumers; and
 - (3) if the firm determines that the failure has caused (or may cause) loss or damage to consumers, the firm must:
 - (a) determine what the redress should be in respect of the failure; and
 - (b) make the redress to the consumers.
- 1.1.2 G Chapter 1 contains *guidance* on *consumer redress schemes* in general and explains what they are and the circumstances in which the *FCA* may impose a requirement to establish and operate a *consumer redress scheme*. The *rules* and *guidance* relating to particular *consumer redress schemes* are set out in the remainder of the sourcebook.
- 1.1.3 G Chapter 1 is relevant to current and former *authorised persons*, *electronic money issuers* and *payment service providers*. Except where otherwise specified, it uses “firm” to refer to all such persons.
- 1.1.4 G *CONRED* 1.2 to 1.7 explain the power in section 404 of the *Act* which enables the *FCA* to make *rules* requiring firms to establish and operate *consumer redress schemes*. Unless the context otherwise requires, references to *consumer redress scheme* in *CONRED* 1.2 to 1.7 are

references to a scheme established under section 404 of the *Act* (that is, a scheme falling within paragraph (a) of the *Glossary* definition) and references to a “scheme” in those sections should be read accordingly.

- 1.1.5 G *CONRED* 1.8 explains the circumstances in which the *FCA* can impose a requirement on a firm under section 404F(7) to establish and operate a scheme that corresponds to or is similar to a scheme under section 404 of the *Act*. References to *consumer redress scheme* in *CONRED* 1.8 are (unless the context otherwise requires) references to a scheme established under section 404F(7) of the *Act* (that is, a scheme falling within paragraph (b) of the *Glossary* definition) and references to a “scheme” in that section should be read accordingly.
- 1.1.6 G The term “consumer” has a number of different meanings both in the *Glossary* and in the *Act*. For this reason, except where indicated, *CONRED* does not use the term as defined in the *Glossary*. However, *CONRED* 1.4.6G to 1.4.14G explains which consumers can be covered by a *consumer redress scheme* established under section 404 of the *Act*.

1.2 Process for making a consumer redress scheme

Consultation

- 1.2.1 G The power in section 404 of the *Act* is a *rule-making* power. *Rules* made by the *FCA* under this power will be subject to a formal public consultation, including a cost-benefit analysis (CBA). The consultation paper will fully and clearly explain the *rules* of the scheme and set out the sources of evidence upon which the scheme is based. The consultation period will usually be three *months* long. Although there is an exemption from the *FCA* consultation requirements for cases where the *FCA* considers that the delay would be prejudicial to the interests of consumers, this is very unlikely to be applicable in relation to *consumer redress schemes*. This is because the importance of consulting to ensure a scheme is appropriate and workable in practice would be likely to outweigh any prejudice that delay from the consultation process may bring.
- 1.2.2 G The *FCA* must have regard to any representations made to it during the consultation process. The *FCA* will issue a statement following the consultation which will explain how the *FCA* has taken these into account in formulating the final *rules*. A further cost-benefit analysis will be provided if the final *rules* differ significantly from the consultation draft. In addition, an explanation of any differences between the rules consulted on and the final *rules* made will be provided.
- 1.2.3 G All *FCA rules* are made by the *FCA* Board. The Treasury appoints the *FCA* Board and the majority of Board members are non-executive.

Pre-consultation

- 1.2.4 G The *FCA* will actively seek to engage in discussions with the industry

and consumer groups about the issue. This process will assist in the consideration of all the available options and, if it is ultimately decided to pursue a scheme in order to address the issue, will ensure the *FCA* has a clear understanding of the issues that will need to be addressed in the formal consultation.

- 1.2.5 G This discussion process will allow the particular nature of the issue in relation to which a scheme is proposed to already be visible to key stakeholders. In addition, the issue may have been publicised more widely through comment and action by the *FCA* (e.g. the *FCA* may have published the findings of thematic projects, mystery shopping exercises or enforcement actions).
- 1.2.6 G The *FCA* will also consult with the Financial Services Practitioner Panel, the Smaller Businesses Practitioner Panel, the Financial Services Consumer Panel, the *Financial Services Compensation Scheme Limited* and the *Financial Ombudsman Service Limited* before issuing a formal consultation.

1.3 Trigger for making a consumer redress scheme

- 1.3.1 G The trigger is set out in section 404(1) of the *Act*. It states that the power can be used if:
- (1) it appears to the *FCA* that there may have been a widespread or regular failure by relevant firms to comply with requirements applicable to the carrying on by them of any activity;
 - (2) it appears to the *FCA* that, as a result, consumers have suffered (or may suffer) loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings; and
 - (3) the *FCA* considers that it is desirable to make *rules* for the purpose of securing that redress is made to consumers in respect of the failure (having regard to the other ways in which consumers may obtain redress).

Meaning of “widespread or regular” failure

- 1.3.2 G There is no further explanation in the *Act* of what is meant by “widespread or regular”. The *FCA*’s view is that the phrase is primarily directed at the volume of failings that have occurred. However, we do not think the test is subject to further precise definition. Rather, we think the test is a matter for regulatory judgement, to be interpreted in the round with reference to all the relevant evidence.
- 1.3.3 G The *FCA* will not need to have specific evidence of failure by each of the firms subject to the scheme. The *FCA* will be entitled to extrapolate reasonably from the evidence it has to determine whether the failure appears to be “widespread or regular”.

- 1.3.4 G Section 404(1)(a) of the *Act* refers to “failure...to comply with requirements”. The reference to “requirements” rather than “requirement” means that there does not have to be evidence of widespread or regular failure for each requirement covered by a scheme. Rather, the failure may exist in relation to different requirements affecting the same type of activity.
- 1.3.5 G The *FCA* will only proceed if it has robust evidence to support its view that it appears there may have been a widespread or regular failure. Sources of evidence which the *FCA* might use and extrapolate from include the results of the *FCA*’s thematic work, enforcement investigations, mystery shopping, complaints to the *FCA*, firms or to the *Financial Ombudsman Service*, and information from consumer groups and reports from *skilled persons*.
- 1.3.6 G However, it is important to understand that the purpose of section 404(1)(a) is to require the *FCA* to establish whether there may have been a widespread or regular failure. The purpose is not to prove that all or most relevant firms have failed (or may have failed) to comply with requirements in respect of all or most relevant consumers.

Failures that can be dealt with under a consumer redress scheme

- 1.3.7 G The requirements that can be included in a *consumer redress scheme* include both *FCA rules* and the general law (e.g. the tort of negligence or the *Unfair Terms Regulations* – see section 404F(3) and (4) of the *Act*).
- 1.3.8 G The failures that the *FCA* can take into account in deciding if the trigger is satisfied are those where, as a result of the failure, consumers have suffered (or may suffer) loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings (see section 404(1)(b) of the *Act*). The relevance of the “may suffer” wording is that it makes clear that schemes may cover cases where loss is foreseeable but may not yet have crystallised (e.g. pensions mis-selling cases where the loss may not crystallise until retirement).
- 1.3.9 G The *FCA* will be able to give examples of things done or omitted to be done that are to be regarded as constituting a failure to comply with a requirement. However, the *FCA* can only give examples that have been, or would be, held by a court or tribunal to constitute a failure (see section 404A(2) of the *Act*).
- 1.3.10 G So in other words, the section 404 power is limited so that the only failures a *consumer redress scheme* can address are those that a court or tribunal would find to have been failures at the time the activities were carried on (rather than through a subjective assessment by the *FCA* of the reasonableness of a firm’s actions). Consumers will not need to have actually brought an action forward for the *FCA* to be able to make a scheme.

- 1.3.11 G Deciding whether a particular act or omission constitutes a failure will necessarily involve the *FCA* interpreting its *rules* and the general law. If the law is unclear in a particular area, the *FCA* will have two broad options available to it. It may decide either:
- (1) not to develop a scheme, having regard to the other ways in which consumers can seek redress, including through the courts; or
 - (2) to take steps to clarify the law.
- 1.3.12 G The *FCA* will seek an opinion from a Queen’s Counsel for any *consumer redress scheme* it proposes in relation to the question of whether the failures proposed to be addressed by a scheme are those that a court or tribunal would find to constitute as failures to comply with a requirement. If stakeholders disagree with the *FCA*’s interpretation of the law as expressed in the draft scheme *rules*, they will be able to say so during the consultation process. Any representations made will be carefully considered by the *FCA* as set out in *CONRED 1.2*.
- 1.3.13 G In addition, the *FCA* has the option of seeking a court declaration to clarify the law (the bank charges test case brought by the Office of Fair Trading which the *FCA* supported with a *waiver* of certain *DISP rules* is an example of this sort of approach).
- 1.3.14 G The process of interpreting what the *FCA*’s *rules* require will involve the usual process of analysing relevant surrounding materials (e.g. consultation papers) as is the practice when interpreting any piece of legislation. Other *FCA rules* and *guidance* may also be relevant to interpreting what a particular *rule* requires. The *FCA*’s *rules* are given a purposive interpretation (see *GEN 2.2.1R*). The purpose of a *rule* is gathered predominantly from the text of the *rule* itself as well as its context among other relevant *rules*.
- 1.3.15 G The *FCA* will not be able to impose higher requirements on firms retrospectively. The requirements to be applied by the *FCA* will be those in force at the time of the relevant act or omission, not current or later requirements.
- 1.3.16 G *Consumer redress schemes* can only be used to require redress in relation to those failures in respect of which a remedy or relief would be available in legal proceedings. A *consumer redress scheme* could not, therefore, be used to require redress for:
- (1) breaches of the *Principles* (*FCA rules* currently provide that breaches of the *Principles* do not give rise to a right of action in court under section 138D of the *Act* – a change to this would be subject to the consultation requirements under the *Act* in the usual way); or

- (2) breaches of any other *FCA rules* where the right of action under section 138D of the *Act* has been switched off in the *rules* (e.g. the *rules* in the *SYSC* sourcebook); or
- (3) departure from *FCA guidance*; or
- (4) non-compliance with any non-binding code of practice (e.g. industry guidance confirmed by the *FCA*).

- 1.3.17 G The fact that a *consumer redress scheme* cannot be used to require redress in relation to breaches of the *Principles* would not prohibit a consideration of the *Principles* for the purposes of interpreting one of the *FCA*'s more detailed *rules*. This is because the *FCA* believes that a court would also take into account surrounding legislative provisions when seeking to interpret a particular piece of law. However, this does not mean that the scheme could be based on the *Principles*: there always needs to be a legally-actionable failure.
- 1.3.18 G Finally, it is necessary that the loss or damage which was suffered (or may be suffered) is as a result of the failure. As part of this, the *FCA* will need to consider whether any indirect or consequential loss is recoverable under the applicable law.

‘Desirability’ of making a consumer redress scheme

- 1.3.19 G The *FCA* will be required to make an objective, evidence-based judgement on the overall appropriateness of a *consumer redress scheme* as a remedial tool. Cost-benefit analysis (CBA) is likely to be a key part of this decision. An important characteristic of a *consumer redress scheme* is that it can ensure consumers obtain redress without the *FCA* having to first identify every individual firm specifically involved. CBA will necessarily rely in part upon the *FCA*'s judgement as to how widespread or regular the failure is.
- 1.3.20 G A comparison of the advantages and disadvantages of a *consumer redress scheme* against other available tools will form part of the decision-making process. The *Act* provides a range of other tools (e.g. imposition of requirements on a firm under section 55L to take remedial action in respect of past conduct) and the *FCA* will need to consider which power is most appropriate in the circumstances.
- 1.3.21 G As a public body, the *FCA* will also have regard to general administrative law principles such as proportionality and reasonableness. For example, the extent to which firms have already provided redress will be a factor to which the *FCA* will have regard (e.g. following enforcement action or the implementation of a voluntary industry redress scheme). See also *CONRED* 1.5.25G.
- 1.3.22 G Lastly, the *FCA*'s *operational objectives* (particularly its *consumer protection objective*), together with the regulatory principles in section 3B of the *Act*, will also be relevant. For example, the *Act* requires the

FCA to have regard to the principle that a burden or restriction which is imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.

1.4 Scope of a consumer redress scheme

The financial services that a consumer redress scheme can apply to

- 1.4.1 G In accordance with section 404E(2) of the *Act*, a *consumer redress scheme* can secure redress for consumers of services provided by:
- (1) *authorised persons* in carrying on *regulated activities*;
 - (2) *authorised persons* in carrying on a consumer credit business in connection with the accepting of deposits (in so far as section 404E relates to, or applies for the purposes of, anything done under the *Act* concerning things done (or not done) before 1 April 2014);
 - (3) *authorised persons* in communicating, or approving the communications by others of, invitations or inducements to engage in investment activity;
 - (4) *authorised persons* who are *investment firms*, or *credit institutions*, in providing relevant ancillary services;
 - (5) *persons* acting as *appointed representatives*;
 - (6) *payment service providers* in providing *payment services*; and
 - (7) *electronic money issuers* in issuing *electronic money*.
- 1.4.2 G A scheme could apply to all *authorised persons*, *electronic money issuers* or *payment service providers* or to a specified description of *authorised person*, *electronic money issuer* or *payment service provider*. This means the *FCA* could create a scheme that applied to a named list of firms. Given that a scheme can apply to *authorised persons*, it could also apply to *incoming EEA firms* that are authorised under Schedule 3 to the *Act*. However, the *FCA* would need to consider on a case-by-case basis the extent to which this was both practicable and appropriate (bearing in mind the division of responsibilities between *Home* and *Host State regulators* under the various *EU Directives* that apply to financial services firms).
- 1.4.3 G The *FCA* will be able to determine, on reasonable grounds, how to characterise the particular activity that a scheme applies to. This will enable the *FCA* to ensure that a scheme is appropriately focused (e.g. limited to activities carried on in relation to particular products or sectors of the market in question, during specified periods of time). It is possible that a scheme could be combined with the use of other regulatory tools (i.e. a package of measures would be put in place to ensure an issue was

addressed comprehensively). Should this be the case, the *FCA* will clearly set out in its consultation paper how the different elements of the package inter-relate.

- 1.4.4 G Where the financial services to which a scheme applies are those provided by *authorised persons* in carrying on *regulated activities*, the limitation to ‘*regulated activities*’ means that a *consumer redress scheme* cannot apply to services that were provided before the activity in question first became regulated by the *FSA* or *FCA* (e.g. the start date of a scheme applying to general insurance mediation could not be earlier than 14 January 2005, which was the commencement of regulation of general insurance mediation).
- 1.4.5 G That said, it would be possible for the Treasury by order to widen the type of financial services that a *consumer redress scheme* can cover in order to encompass pre-regulation activities (see section 404G of the *Act*).

Consumers that can be covered by a consumer redress scheme

- 1.4.6 G For the purposes of a scheme, a consumer can be any person who has used, or may have contemplated using, any of the financial services listed in section 404E(2) of the *Act* (see *CONRED* 1.4.1G), or have relevant rights or interests in relation to any of those services. As such, the section 404 power is not limited to retail customers only.
- 1.4.7 G That said, a *consumer redress scheme* can only be used to secure redress for consumers who have a legal cause of action. In some cases, the cause of action is limited to private persons in any event. For example, rights of action in respect of breaches of *FCA rules* are generally limited to private persons, and the *Unfair Terms Regulations* are limited to individuals acting outside their trade, business or profession. In contrast, claims for misrepresentation can be brought under the general law by all types of *person*.
- 1.4.8 G In addition, the *FCA* may choose to focus a scheme on retail customers, having regard in particular to the fact that they tend to have less experience and expertise. However, the *FCA* will also have regard to the fact that many retail customers are also investors in, or beneficiaries of, funds and pension schemes which may have incurred loss from the failure. It may be that the inclusion of such funds or pension schemes amongst those to whom redress ought to be given will bring benefit to the underlying retail customers.
- 1.4.9 G The section 404 power could be used in relation to non-UK consumers if they are protected by the underlying law (e.g. some *FCA rules* apply to UK firms doing business in another *EEA State*).
- 1.4.10 G The fact that a consumer “who may have contemplated using” a relevant financial service can be covered by a *consumer redress scheme* is unlikely to catch many cases in practice. One example of a case where it

might be used is where there has been widespread discrimination: the section 404 power could be used to ensure redress for consumers who were unlawfully denied access to a financial service contrary to any relevant equality legislation. All the restrictions and evidence requirements explained in *CONRED 1* would apply equally to any scheme developed in this sort of area.

- 1.4.11 G The Treasury may by order widen (or cut back) the type of consumers that a *consumer redress scheme* can cover (see section 404G of the *Act*).

Applicability of a scheme to other situations

- 1.4.12 G The limits of a *consumer redress scheme*'s application will be clearly defined within the scheme *rules* and a scheme will only bind those firms to which it applies. Firms that are unsure whether or not a scheme applies to their activities are encouraged to raise the issue with their supervisor in the normal way.
- 1.4.13 G It is possible that the approach taken by the *FCA* in a particular scheme could influence its approach to other situations. The *FCA* will aim to be consistent in its regulatory approach where possible.
- 1.4.14 G For example, the *FCA* could put in place a scheme in relation to unfair variation terms in *regulated mortgage contracts*. The underlying reasons for the *FCA*'s decision that a variation term in a *regulated mortgage contract* is unfair could potentially apply to a variation term in an insurance contract that fell outside the scope of the scheme. However, the *Unfair Terms Regulations* expressly state that all the circumstances attending the conclusion of the contract must be taken into account when assessing the unfairness of a contractual term. Therefore, if the *FCA* wanted to take action in relation to the term in the insurance contract using its other regulatory powers, it would need to ensure that it had considered all the relevant issues separately to those considered as part of the scheme for *regulated mortgage contracts*.

1.5 Operation of a consumer redress scheme

Investigation of cases under a consumer redress scheme

- 1.5.1 G Firms will be responsible for investigating individual cases, within the framework set out by the *FCA*. The *FCA* will have a number of options when formulating a scheme. For example, the *FCA* could:
- (1) require firms to undertake a proactive file review of all cases falling within the period covered by the scheme;
 - (2) require firms to contact their customers individually to ask whether they wish their cases to be investigated under the scheme and only investigate the cases of those customers who opt-in;
 - (3) require firms to publicise the existence of the scheme (e.g.

through newspaper advertisements) and only investigate the cases of those customers who opt-in; or

- (4) publicise the existence of the scheme through an *FCA* publicity campaign and require firms to investigate the cases of those customers who subsequently opt-in.

- 1.5.2 G It would also be possible to require a combination of these methods within a scheme (e.g. for different types of case). The choice of investigation method would be one of the issues on which the *FCA* would consult and perform cost-benefit analysis (CBA). In doing so, the *FCA* will have to consider the likely effectiveness of consumer contact exercises.
- 1.5.3 G In the event that a scheme required customers to ‘opt-in’ by a specified date, the *FCA* would ensure that the scheme covered how to deal with customers who nevertheless contacted firms after that date.
- 1.5.4 G In some cases, the *FCA* (or someone acting on its behalf) may carry out the investigation under the scheme instead of the relevant firm (see section 404A(1)(k) of the *Act*). The scheme rules may provide for this in relation to, for instance, a firm which was refusing to operate a scheme. Another example is provided in *CONRED* 1.5.6G in relation to formerly *authorised persons*.
- 1.5.5 G The *FCA* will be mindful of issues relating to professional indemnity insurance when making *rules* in this area. For example, the *FCA* is aware that certain policies prohibit admissions of liability without the written consent of the *insurer*.

Firms that are no longer authorised by the *FCA* or have transferred their business to another firm

- 1.5.6 G The *FCA* has a number of options for dealing with firms that have ceased to be authorised. For example:
- (1) Where the firm continues to exist and still has assets, the scheme could still apply to that firm (see section 404F(5)(a) of the *Act*). Alternatively, the scheme *rules* could provide for the *FCA* itself (or a third party acting on its behalf) to investigate the cases of formerly *authorised persons*.
 - (2) Where the firm has ceased to exist, cannot readily be traced or has no assets, the *FSCS* could declare the firm in default. See *CONRED* 1.6.23G for details of how the *FSCS* will deal with cases that fall within a scheme.
- 1.5.7 G Where there has been a transfer of business, the *FCA* can apply the scheme to the successor firm if it has assumed liability (e.g. where there has been a transfer of a banking business under Part VII of the *Act* or a firm is otherwise legally liable for the failures of another firm – see

section 404F(5)(b) of the *Act*). Where the successor firm has no legal liability for the failures, the scheme itself could not apply to the successor firm (and so redress would need to be obtained through the options set out above). It may be the case, however, that the successor firm has access to information that may assist in the investigation of persons who have ceased to be authorised. The *FCA* will be mindful of this.

- 1.5.8 G In these sorts of cases it would be for either the *FCA*, the third party acting on its behalf, the *FSCS* or the successor firm (as relevant) to contact affected consumers. The *FCA* and the *FSCS* will work together closely to ensure all relevant firms are captured.

Other matters that may be included in the rules of a consumer redress scheme

- 1.5.9 G Section 404A of the *Act* sets out an illustrative list of particular matters that the *FCA* may cover in the *rules* of a scheme.
- 1.5.10 G One of the most important areas where the *FCA* may be likely to make *rules* is to set out examples of things done or omitted to be done that are to be regarded as constituting a failure to comply with a requirement (see section 404A(1)(b) of the *Act*). However, as explained in *CONRED* 1.3.7G to 1.3.18G, the *FCA* can only give examples that have been, or would be, held by a court or tribunal to constitute a failure.
- 1.5.11 G Giving examples that are clear and sufficiently comprehensive will be an area to which the *FCA* pays particular attention, both in its work leading up to a consultation and during the consultation process itself. The *FCA* will work with relevant stakeholders to ensure the final scheme *rules* give examples which provide clarity and certainty as to how a firm is expected to operate under the scheme.
- 1.5.12 G Another important area where the *FCA* can make *rules* concerns setting out matters to be taken into account, or steps to be taken, by firms for the purpose of:
- (1) assessing evidence as to a failure to comply with a requirement; or
 - (2) determining whether such a failure has caused (or may cause) loss or damage to consumers (see section 404A(1)(c) of the *Act*).

Again, the *FCA* will only be able to do this if the matters set out have been, or would be, taken into account by a court or tribunal for the purpose mentioned. In particular, the *FCA* cannot disregard the normal legal rules on causation or remoteness of loss. The reference to ‘matters’ is to legally relevant considerations, not to any procedural steps which firms may be required to take. For example, firms may be required to gather certain categories of evidence. Examples of ‘steps’ would be requiring firms to gather evidence by specified methods or to record their decision making in a certain form.

- 1.5.13 G A third significant area relates to the period under review. The *consumer redress scheme rules* will specify a start date (referred to as the ‘specified date’ in section 404(3) of the *Act*) and most likely also an end date (see section 404A(1)(f) of the *Act*) for the activities and sales to be reviewed. This will limit the scope of a firm’s investigations under a scheme.
- 1.5.14 G A fourth area that could be covered in *consumer redress scheme rules* is the content of a firm’s communication to consumers about the outcome of their investigation under a scheme. Detailing the content of the communications that consumers can expect to receive will ensure consistency across firms as well as clarity for consumers. It will also be of benefit to firms should *complaints* subsequently be referred to the *Financial Ombudsman Service*. This is because a comprehensive communication may help to make it apparent to the *Ombudsman* at the outset that a firm has undertaken its investigation in accordance with the scheme. Firms may also be required to draw the scheme to the attention of the *Financial Ombudsman Service* in any individual cases that are referred to it. As such, the *FCA* will consult the *Financial Ombudsman Service* on the content of such communications.
- 1.5.15 G Fifthly, the scheme *rules* could require firms to provide information to the *FCA* (e.g. information about how they are conducting their investigations under the scheme, how many consumers have opted to have their cases reviewed, etc.).

Issues that come to light during the period in which the scheme is running

- 1.5.16 G The *FCA* will monitor schemes whilst they are running. If it became apparent during the operation of a scheme that it would be desirable for the scheme *rules* to cover other issues (e.g. if firms or consumer groups informed the *FCA* that it would be helpful if further examples of failures pursuant to section 404A(1)(b) of the *Act* were given), the *FCA* would be able to amend the *rules* accordingly. Any such amendments would be subject to the usual consultation process as set out in *CONRED* 1.2.
- 1.5.17 G Alternatively, the *FCA* could give general or individual *guidance* to firms on issues that arise during the operation of a scheme. General *guidance* would also be subject to the consultation process.

Types of redress a firm can be required to make under a consumer redress scheme

- 1.5.18 G The *FCA* is able to set out in scheme *rules* the kinds of redress that are to be made to consumers. The only kinds of redress the *FCA* can secure in this way are those which it considers to be just (see section 404A(4) and section 404F(1) of the *Act*). For example, instead of providing cash compensation, the *FCA* could require firms to top-up pensions or offer to alter the terms of a contract.

- 1.5.19 G That said, the *FCA* is required to have regard to the nature and extent of the losses or damage in question (see section 404A(5) of the *Act*) and so will take into account the type of relief that a court would grant.
- 1.5.20 G Redress made under a *consumer redress scheme* may include interest (see section 404F(1) of the *Act*). Decisions regarding the rate of interest and the basis for calculation will be made on a scheme-by-scheme basis and will be subject to the consultation process.
- 1.5.21 G A *consumer redress scheme* cannot extend normal limitation periods. Under the Limitation Act 1980, the general position regarding time limits for bringing a claim in England and Wales is as follows:
- (1) 6 years from the event for claims in contract and claims in tort concerning non-latent damages; and
 - (2) 3 years from actual or constructive awareness for claims in tort concerning latent damages until 15 years from the event at which point (for most cases) the right to claim expires irrespective of any awareness considerations.
- Note that this is only a summary of the position and the legislation itself should be consulted when determining the limitation period applicable to any particular case. It should also be noted that the position under the law in Scotland and Northern Ireland is different.
- 1.5.22 G Firms may only be required to make redress to consumers who are within the limitation period for bringing their case to court at the time the *FCA* makes the *rules* (see section 404(8) of the *Act*). In other words, once a scheme has been made the ‘clock will stop’ on the relevant limitation period. For example, if a scheme began in July 2015 and the limitation period for a consumer to take their case to court would have expired in September 2015, the firm would still need to deal with the consumer’s case under the scheme, even if it did not investigate that consumer’s particular case until, for example, November 2015.
- 1.5.23 G The *FCA* will endeavour to provide as much direction as possible in the scheme *rules* as to how redress is to be calculated (e.g. by setting out a formula or other methodology) in order to assist both firms and the *Ombudsman*.
- 1.5.24 G The section 404 power does not in itself remove a consumer’s right to take a case to the courts. However, any redress received in court proceedings would be discounted from compensation payable under a *consumer redress scheme* and vice versa. Scheme *rules* would also deal with the situation where a consumer had previously received redress from the *Financial Ombudsman Service*.

Waivers or modifications of the scheme rules

- 1.5.25 G Firms can apply for a *waiver* or modification of the scheme *rules*. For example, if a firm believes that it has already provided redress to relevant customers through a voluntary past business review it can apply to the *FCA* for a *waiver* from, or modification of, the *rules* in the usual way (see section 138A of the *Act*).
- 1.5.26 G The *FCA* may not give a *waiver* or modification unless it is satisfied that:
- (1) compliance by the firm with the *rules*, or with the *rules* as unmodified, would be unduly burdensome, or would not achieve the purpose for which the *rules* were made; and
 - (2) the *waiver* or modification would not adversely affect the advancement of any of the *FCA*'s *operational objectives*.
- 1.5.27 G The *FCA* may impose conditions on a *waiver* or modification (e.g. additional reporting requirements).

Dealing with complaints when a consumer redress scheme is in place

- 1.5.28 G To avoid the risk of potential overlaps between the *rules* in *DISP* and the operation of any *consumer redress scheme*, the *FCA* has switched off the *complaints resolution rules*, the *complaints time limit rules*, the *complaints record rules* and the *complaints reporting rules* in relation to complaints where the subject matter falls to be dealt with (or has been dealt with) under a *consumer redress scheme*. *Complaints* which fall outside the scope of a scheme will continue to be subject to *DISP* in the usual way.
- 1.5.29 G The *FCA* will also consider whether it is appropriate to grant a *waiver* or modification of the *DISP rules* whilst a scheme is being consulted on. As set out in *CONRED* 1.5.27G, the *FCA* may impose conditions on a *waiver* or modification (e.g. conditions relating to handling *complaints* from complainants who claim to be in financial difficulty).

Non-compliance with the consumer redress scheme rules

- 1.5.30 G The *FCA* has a variety of tools at its disposal if a firm does not comply with a scheme. For example, the *FCA* will be able to take disciplinary action if a firm is failing to operate a scheme properly (see Part XIV and section 404C of the *Act*). The *FCA* is also able to take over the conduct of the investigation required under the scheme, or appoint a third party to do so (see section 404A(1)(k) of the *Act*).

Publication of the existence of a scheme

- 1.5.31 G The *FCA* will apply the approach to transparency it has set out in its 'Transparency discussion paper: Summary of feedback and our

response' (FS13/1) at <https://www.fca.org.uk/static/fca/documents/feedback-statements/fca-transparency-framework.pdf>. The *FCA* has a presumption in favour of transparency, unless there are compelling regulatory, legal or other reasons to the contrary, when considering whether, when and how to publicise a scheme or proposed scheme, over and above its publicity obligations under the *Act*.

- 1.5.32 G As set out in *CONRED* 1.2.4G, the *FCA* would be likely to publicise the work it has been doing in the run up to the launch of a formal consultation paper. The consultation paper itself will be available on the *FCA*'s website.
- 1.5.33 G Assuming the scheme *rules* are made following consultation, the final *rules* will also be available on the *FCA*'s website. The *rules* will clearly set out the type of firms and activities to which the scheme applies. The information available on the website will enable third parties such as consumer groups to disseminate information about the scheme.
- 1.5.34 G The *FCA* will also be able to go further than this in appropriate cases and run its own publicity campaign. This might include newspaper or radio advertisements designed to increase awareness of the scheme amongst consumers. Such advertisements would aim to make clear the scope of the scheme (e.g. the types of products and services the scheme covers) and any action that consumers need to take (e.g. the extent to which they need to contact their firm directly or whether their case will automatically be investigated by the firm without the need for any action on their part).
- 1.5.35 G In addition, the *FCA* has the option to include in the scheme *rules* a requirement on firms to publicise the scheme themselves.
- 1.5.36 G In considering whether to publish the names of individual firms that are subject to a scheme, the *FCA* will also have regard to the *FCA*'s transparency framework, and in particular its confidentiality restrictions, the extent to which naming firms will enable consumers to make informed judgments (e.g. it may not always be possible to ensure that the list of firms subject to a scheme is exhaustive), as well as relevance and timeliness (e.g. the extent to which consumers will be made aware of the firms involved in a scheme through any customer contact exercise prescribed in the scheme).

1.6 Role of the Financial Ombudsman Service and the Financial Services Compensation Scheme

How the Financial Ombudsman Service will deal with complaints where there is a relevant consumer redress scheme

- 1.6.1 G *Complaints* about:
- (1) an act or omission of a firm where the subject matter of the

complaint falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*; or

- (2) a determination made by a firm under a *consumer redress scheme*; or
- (3) a failure by a firm to make a determination under a *consumer redress scheme*;

will all fall within the compulsory jurisdiction of the *Financial Ombudsman Service* (see section 404B(11) of the *Act*).

- 1.6.2 G Whether the *Ombudsman* will, or will not, consider a complaint and, if so, on what basis will depend on the circumstances of the complaint, including in particular on when the complaint is received by the *Financial Ombudsman Service* and also on whether the firm and consumer agree that the *complaint* should not be determined by reference to what, in the opinion of the *Ombudsman*, the determination under the consumer redress scheme should be or should have been (see section 404B(1A) and (2B) of the *Act*).

Complaints received by the Financial Ombudsman Service before a scheme comes into effect

- 1.6.3 G A scheme must be established by the *FCA* in accordance with the *FCA*'s rule-making processes, including consultation and cost-benefit analysis (CBA). Publicity in the run-up to formal consultation may lead to a rapid rise in the number of *complaints* to the *Financial Ombudsman Service* about the issue in question. Alternatively, the *Financial Ombudsman Service* may already have received a number of *complaints* about the issue for which a scheme is being developed to address.
- 1.6.4 G As these are *complaints* that were referred to the *Financial Ombudsman Service* before the scheme came into effect, the *Ombudsman* would have to determine the *complaint* on the usual fair and reasonable basis under section 228 of the *Act*.

Complaints received by the Financial Ombudsman Service whilst a consumer redress scheme is in effect

- 1.6.5 G Where the *complaint* is about the subject matter of a scheme or a failure by a firm to make a determination under a scheme (where the firm has not yet dealt with it because the time limit for the firm to deal with cases under the scheme has not expired) under *DISP 3* the *Ombudsman* will (unless *DISP 2.8.1.R(4)* applies) refer the *complaint* back to the firm to be dealt with in accordance with the scheme.
- 1.6.6 G In other cases the *Ombudsman* may have to consider the merits. However, the *complaint* will be determined by reference to what, in the opinion of the *Ombudsman*, the determination under the *consumer redress scheme* should be or should have been (unless the firm and

consumer agree that the *complaint* should not be so determined – see *CONRED* 1.6.7G). Examples would be where:

- (1) the firm does not offer redress in the determination, or makes no determination within the time limit for doing so, and the consumer claims that (under the terms of the scheme) the firm should have done so; or
- (2) the scheme provides for different forms of redress depending on the circumstances of the case, but the firm has offered one form of redress and the consumer claims that (under the terms of the scheme) the firm should have offered another form of redress.

- 1.6.7 G Where the firm and the consumer agree that the *complaint* should not be determined by reference to what, in the opinion of the *Ombudsman*, the determination under the consumer redress scheme should be or should have been (see section 404B(1A) and (2B) of the *Act*), the *Ombudsman* will determine the complaint by reference to what is fair and reasonable in all the circumstances of the case (see *DISP* 3.6).

Complaints received by the Financial Ombudsman Service after a consumer redress scheme has ended

- 1.6.8 G If a *complaint* is about:
- (1) a firm’s determination under the scheme (or failure to make a determination in accordance with the scheme); or
 - (2) an act or omission the subject matter of which has been dealt with under the scheme;

the *complaint* will be determined by reference to what, in the opinion of the *Ombudsman*, the *redress determination* under the *consumer redress scheme* should have been, rather than by reference to what is ‘fair and reasonable’ (unless the firm and the consumer agree otherwise – see *CONRED* 1.6.7G).

- 1.6.9 G The point at which a scheme ends will be set out in the scheme and some schemes may be of indefinite duration. In relation to an ‘opt-in’ scheme, the *FCA* would ensure that the scheme covers how to deal with customers who nevertheless contacted firms after that date.

- 1.6.10 G The *Financial Ombudsman Service* may also receive *complaints* about cases that have been dealt with by a firm under a *consumer redress scheme* when the firm should have dealt with the issue under the normal *complaints* process in *DISP*. In such cases the *Ombudsman* will determine the *complaint* in accordance with its usual ‘fair and reasonable’ jurisdiction and the usual *DISP* rules will apply. *DISP* seeks to clarify this point by referring (in appropriate places) to *complaints* that have properly been dealt with under a *consumer redress scheme*. It is important to note that “properly” here refers to the scope of the scheme

(i.e. should the *complaint* have been dealt with under the scheme at all?) rather than the way in which the scheme has been applied in a particular case (i.e. the *complaint* did fall within the scheme but the firm applied the scheme incorrectly).

Non-consideration and dismissal of complaints by the Ombudsman

- 1.6.11 G The relevant *DISP* provisions provide that the *Ombudsman* can usually (unless the firm and the consumer consent) only consider a complaint which falls to be dealt with under a *consumer redress scheme* if the firm has already provided a *redress determination* (akin to a *final response*) or failed to do so within the time limits specified in the scheme (see *DISP* 2.8.1R).
- 1.6.12 G *DISP* sets out the circumstances in which the *Ombudsman* may dismiss a *complaint*. There are no express rules which allow the *Ombudsman* to dismiss a *complaint* which falls to be dealt with (or has been dealt with) under a *consumer redress scheme* (see *DISP* 3.3.4AR). Whether a *complaint* which falls to be dealt with (or has been dealt with) under a *consumer redress scheme* should be dismissed is a matter for the *Ombudsman* to decide.

Case fees

- 1.6.13 G The definition of *chargeable case* contains an exception which provides that a case fee may not be charged where the *Ombudsman* considers it apparent from the *complaint*, when it is received, and from any *redress determination* issued by the firm, that the firm has reviewed the subject matter of the *complaint* and issued a *redress determination* in accordance with the terms of the *consumer redress scheme*. However, this exception does not apply where the complainant and the *respondent* agree that the *complaint* should not be dealt with by the *Ombudsman* in accordance with the *consumer redress scheme*.
- 1.6.14 G If it is not apparent to the *Ombudsman* from the *complaint* when it is received, and from any *redress determination* issued by the firm, that the firm has reviewed the subject matter of the *complaint* and issued a *redress determination* in accordance with the terms of the *consumer redress scheme*, a case fee will be chargeable. It will therefore be in firms' interests to ensure that a *redress determination* clearly sets out the outcome of their investigation under the scheme as well as the basis for it.

Time limits

- 1.6.15 G Similar time limits will apply to *complaints* to the *Financial Ombudsman Service* about the outcome of a firm's investigation under a scheme as currently apply to other complaints referred to the *Financial Ombudsman Service*.
- 1.6.16 G Consumers will have six months from the date on which the firm sent

them a *redress determination* to complain to the *Financial Ombudsman Service*. If a firm has failed to provide a *redress determination* (e.g. because it omitted to deal with a particular consumer's case under the scheme), consumers will have the longer of six years from the event complained of and three years from the date on which the consumer became aware (or ought reasonably to have become aware) that they had cause for complaint, to complain to the *Financial Ombudsman Service* (in accordance with the existing standard time limits in *DISP* 2.8). A firm cannot consent to the *Ombudsman* considering the complaint outside these standard time limits where the *complaint* is a "relevant complaint" within the meaning of section 404B(3) of the *Act*. However, the *Ombudsman* can consider complaints outside of these standard time limits where, in the view of the *Ombudsman*, the consumer's failure to comply with the time limits was as a result of exceptional circumstances.

Awards

- 1.6.17 G Where a *consumer redress scheme* is in place, money awards and directions will reflect what, in the opinion of the *Ombudsman*, the outcome of the firm's investigation should be (or should have been) under the *consumer redress scheme* (see section 404B(5) and section 404B(8) of the *Act*). This applies unless the firm and the consumer agree that the *complaint* should not be determined in this way (see section 404B(1A), (2B) and (3) of the *Act*).
- 1.6.18 G The money award may specify the date by which the amount awarded is to be paid and may provide for interest to be payable, at a rate specified in the award, on any amount not paid by that date (see section 404B(7) of the *Act*).
- 1.6.19 G The cap on the maximum money award the *Ombudsman* can make will also apply in relation to *consumer redress schemes* (see section 404B(5) of the *Act*). Even so, when making *scheme rules*, the *FCA* may decide to specify a different monetary limit in relation to *complaints* falling within the scope of the scheme (see section 229(7) of the *Act*). Such a *rule* would normally be subject to consultation before the scheme takes effect (see *CONRED* 1.2.1G). As is usual practice, the *Ombudsman* will be able to recommend that the firm pay a larger amount than the cap (but this will not be binding on firms in any way). This does not mean that the *Ombudsman* can recommend a larger amount than should be paid under the scheme.

Firm-by-firm past business reviews that have already been agreed by a firm before a consumer redress scheme is made

- 1.6.20 G If a firm had fairly reached a voluntary settlement with its consumers on a full and final settlement basis, the *Financial Ombudsman Service* would not usually look to re-open this.

Waivers of the scheme rules for particular firms

- 1.6.21 G If a firm is granted a *waiver* of the scheme *rules* as a whole, the *consumer redress scheme* will not apply to that firm. Consequently, any complaints about the firm that are referred to the *Financial Ombudsman Service* will be dealt with in accordance with the *Ombudsman's* usual approach of determining what is, in their view, fair and reasonable in all the circumstances of the case.

Failures by firms that span the period before and after an activity became regulated by the FCA

- 1.6.22 G In this situation, the *Act* would require the *Financial Ombudsman Service* to decide *complaints* within the scope of a scheme by applying the scheme (unless the relevant firm and consumer otherwise agreed – see section 404B of the *Act*) and *complaints* outside the scope of a scheme on the basis of its usual approach (section 228 of the *Act*). However, as explained in *CONRED* 1.4.5G, it would be possible for the Treasury by order to widen the type of financial services that *consumer redress schemes* can cover in order to encompass the pre-regulation activities (see section 404G of the *Act*).

The FSCS

- 1.6.23 G The *FSCS* will consider claims that fall within the scope of a *consumer redress scheme* in accordance with the scheme (see *COMP* 12.4.22R). However, the *FSCS* has discretion to depart from the terms of the scheme where it considers it essential in order to provide the claimant with fair compensation. An example might be the *FSCS* paying compensation in cash rather than augmenting a consumer's current pension plan (as the *FSCS* is not in a position to advise the consumer to set up a new, or amend an existing, pension plan in the way that a firm may be able to).
- 1.6.24 G The *FSCS's* limits on the amount of compensation it can pay in the event of a claim will apply.

1.7 Challenging a consumer redress scheme

Method of challenge

- 1.7.1 G Any *person* (e.g. firms, consumers or their representatives) may apply to the Upper Tribunal for a review of any *rules* made (see section 404D of the *Act*). The contact details for the Upper Tribunal are as follows:

The Upper Tribunal (Tax and Chancery Chamber)

5th floor, Rolls Building

7 Rolls Buildings

Fetter Lane

London EC4A 1NL Tel: 020 7612 9730

Email: uttc@hmcts.gsi.gov.uk

- 1.7.2 G The Upper Tribunal is independent of the *FCA*. Its usual role in relation to financial services is to hear references arising from *decision notices* or *supervisory notices* issued by the *FCA*. However, it has also been given a special role in relation to *consumer redress schemes*.
- 1.7.3 G The judge presiding at *consumer redress scheme* proceedings in the Upper Tribunal will be a judge of the High Court, the Court of Appeal or Court of Session (or such other person as may be agreed by the Lord Chief Justice, the Lord President or the Lord Chief Justice of Northern Ireland; and the Senior President of Tribunals) (see section 404D(12) of the *Act*).

Dealing with consumer redress scheme cases

- 1.7.4 G The general rule is that, in determining an application, the Upper Tribunal will apply the principles applicable on an application for judicial review (see section 404D(5) of the *Act*). Therefore, the Tribunal will consider issues such as:
- (1) whether the *FCA* has acted within its powers;
 - (2) whether the *FCA* has followed a fair process;
 - (3) whether the *FCA* has specified kinds of redress that are ‘just’; and
 - (4) whether the *FCA* has acted irrationally or unreasonably (e.g. is the amount of time in which firms are given to conduct an investigation unreasonable?).
- 1.7.5 G Nonetheless, in relation to two particular aspects of a *consumer redress scheme*, the Upper Tribunal will be able to conduct a full merits review to consider whether the *FCA*’s interpretation of the law was correct (see section 404D(6) and (7) of the *Act*). These two aspects are:
- (1) any examples that the *FCA* has set out in the scheme *rules* of things done, or omitted to be done, that are to be regarded as constituting a failure to comply with a requirement; and
 - (2) any matters to be taken into account, or steps to be taken, that the *FCA* has set out in the scheme *rules* for the purposes of:
 - (a) assessing evidence as to a failure to comply with a requirement; or

- (b) determining whether such a failure has caused (or may cause) loss or damage to consumers.

1.7.6 G In relation to these two aspects, the *FCA* is restricted to what a court or Tribunal would do. As such, the Upper Tribunal’s role will be to check whether the *FCA* came to the correct view.

Procedure in the Upper Tribunal

1.7.7 G The detailed rules that govern the practice and procedure to be followed in the Upper Tribunal are available on the Government’s website (<https://www.gov.uk/government/publications/upper-tribunal-procedure-rules>) and are subject to periodic revision.

Possible outcomes of an application to the Upper Tribunal

- 1.7.8 G The Upper Tribunal may:
- (1) dismiss the application (so that the scheme *rules* will stand); or
 - (2) make an order quashing any rules made under section 404 or any provision of those *rules* (see section 404D(2) of the *Act*).
- 1.7.9 G The Upper Tribunal may also award damages to the applicant (see section 404D(10) of the *Act*).
- 1.7.10 G It is possible to appeal an Upper Tribunal decision to the Court of Appeal on a point of law.

1.8 Imposing a consumer redress scheme on a firm under section 404F(7) of the Act

Triggers that must be met before the *FCA* can impose a *consumer redress scheme* under section 404F(7)

- 1.8.1 G Section 404F(7) of the *Act* empowers the *FCA* to require a firm “to establish and operate a scheme which corresponds to, or is similar to, a consumer redress scheme” established under section 404 of the *Act* (see *CONRED* 1.2 to 1.7).
- 1.8.2 G The process by which the *FCA* may vary the authorisation of a *payment service provider* or *electronic money issuer* is not specifically addressed in this *guidance*.
- 1.8.3 G The relevant triggers for determining whether the *FCA* can require an *authorised person* with a *permission* to establish and operate a scheme which corresponds to, or is similar to, a *consumer redress scheme* are different to those that apply for an ‘industry wide’ *consumer redress scheme* established under section 404 of the *Act*. Rather than considering the test set out in section 404(1) of the *Act*, the *FCA* has to consider the relevant legal triggers for varying a *permission* or varying or imposing a

requirement on a firm (see sections 55H, 55J and 55L of the *Act*).

- 1.8.4 G However, before the *FCA* varies a firm's *permission* under section 55J(2) of the *Act* on its own initiative, or imposes a *requirement* on a firm under section 55L of the *Act*, the *FCA* must consider whether it would be 'more appropriate' to proceed under the Competition Act 1998. If the *FCA* considers that it would be more appropriate to proceed under the Competition Act 1998, the *FCA* must not exercise its powers under sections 55J(2) or 55L of the *Act* (see section 234K of the *Act*). In the remainder of this section, it is assumed that the *FCA* considers that it is able to exercise its powers under the *Act* rather than under the Competition Act 1998.
- 1.8.5 G The *FCA* may vary a firm's *permission* under section 55J of the *Act* or impose or vary a *requirement* under section 55L of the *Act*, on its own initiative, if it appears to the *FCA* that:
- (1) the firm is failing, or likely to fail, to satisfy the *threshold conditions* for which the *FCA* is responsible;
 - (2) the firm has failed, for at least a year, to carry on a *regulated activity* to which its *permission* relates; or
 - (3) it is desirable to exercise the power in order to advance one or more of the *FCA*'s *operational objectives*, for example, its *consumer* protection objective of securing an appropriate degree of protection for *consumers*.
- 1.8.6 G Further information about varying a firm's *permission* or varying or imposing *requirements* on the *FCA*'s own initiative under section 55J or section 55L of the *Act* is set out in EG 8.
- 1.8.7 G The *FCA* has no power to accept an application from an *authorised person* to vary its *permission* where the *authorised person* is a *PRA-authorised person* (see sections 55H and 55I of the *Act*). For all other firms, an *authorised person* with a *permission* can voluntarily apply to the *FCA* to vary its *permission* under section 55H of the *Act*. The *FCA* may refuse the application if it appears to the *FCA* that it is desirable to do so in order to advance any of its *operational objectives*, for example, its *consumer* protection objective (see section 55H(4) of the *Act*). The *FCA* also has the power to impose or vary a requirement under section 55L of the *Act*, in order to establish and operate a scheme which corresponds to, or is similar to, a scheme established under section 404 of the *Act*. However, where the *authorised person* is a *PRA-authorised person* (or is a member of a group which includes a *PRA-authorised person*), the *FCA* must consult the *PRA* (see section 55L(7) of the *Act*). As with voluntary applications to vary a *permission*, the *FCA* may refuse an application to voluntarily impose, vary or cancel a requirement if it appears to the *FCA* that it is desirable to do so in order to advance any of its *operational objectives* (see section 55L(5) of the *Act*).

- 1.8.8 G Further information about the voluntary variation of a *permission* or the voluntary imposition or variation of a *requirement* is set out in SUP 6.

Consultation

- 1.8.9 G The decision to require a firm to establish and operate a scheme pursuant to section 404F(7) affects a firm, or a small number of firms, each individually rather than the whole industry or sector of the industry. As with any supervisory or enforcement action it takes against a specific firm, the *FCA* is not obliged to consult before deciding to vary a firm's *permission* or impose or vary a *requirement*.

Circumstances in which the *FCA* will engage section 404B

- 1.8.10 G As already explained, when determining whether to vary a firm's *permission* under sections 55H or 55J or to impose a *requirement* under section 55L to establish and operate a scheme pursuant to section 404F(7), the *FCA* will need to consider whether the statutory tests referred to in *CONRED* 1.8.5G (for own initiative action) and *CONRED* 1.8.7G (where a firm applies voluntarily) have been met. This will often involve a consideration of the *FCA*'s *operational objectives* and, in particular, the *consumer* protection objective. The *FCA* will also consider the regulatory principles in section 3B of the *Act* and follow the normal principles of administrative law.
- 1.8.11 G This exercise will be undertaken on a case-by-case basis and in the round by looking at all of the proposed terms, including any terms which have been included to make provision corresponding to section 404B (under section 404F(7)(b)). It is important to note that engaging section 404B will not automatically or always advance one or more of the *FCA*'s *operational objectives*, for example its *consumer* protection objective, even if the other terms of the proposed scheme do.
- 1.8.12 G If section 404B is engaged then broadly the *Ombudsman* is normally required to decide a *complaint* referred to the *Financial Ombudsman Service* after the scheme comes into effect on the basis of what, in the opinion of the *Ombudsman*, the determination under the scheme should be (or should have been). This will mean that the *Ombudsman* will not determine the *complaint* by reference to what in their view they consider to be fair and reasonable in all the circumstances of the case. To assist the *Financial Ombudsman Service* in identifying relevant cases, firms may be required to draw the scheme to the attention of the *Financial Ombudsman Service* in any individual cases that are referred to it. However, if the firm and the consumer agree that the *complaint* should not be determined by reference to what, in the opinion of the *Ombudsman*, the determination under the *consumer redress scheme* should be or should have been, or if the subject matter of the *complaint* does not fall to be dealt with under the scheme (or part of it does not) then the *Ombudsman* may determine the *complaint* (or that aspect of the *complaint*) in accordance with what they consider to be fair and

reasonable in the usual way.

- 1.8.13 G It is likely that many section 404F(7) schemes will be set up because, in the *FCA*'s view, it is desirable to advance the *consumer* protection objective of securing an appropriate degree of protection for *consumers*. In determining what is desirable to advance that objective, the *FCA* will have regard to a wide range of factors. Many of these are likely to be interdependent considerations rather than standalone issues. These may include (but are not limited to):
- (1) how many consumers have been (or may be) affected by the act or omission to which the proposed scheme relates. It will normally only be appropriate to consider engaging section 404B where the issue affects a large number of consumers;
 - (2) whether engaging section 404B would result in higher or faster redress for consumers (whether or not they have complained individually) than would otherwise be the case. In other words, the extent of any difference in redress between the proposed scheme and what consumers may receive through the *Financial Ombudsman Service* or the courts;
 - (3) the extent to which the overall effect of the proposed scheme provides a fair and reasonable outcome for individual consumers, having regard to the desired outcome for the group of affected consumers overall;
 - (4) whether the *Financial Ombudsman Service* has had a material number of *complaints* about the act or omission, has an established approach to dealing with them and the extent to which the proposed scheme aligns with this approach.

Consultation with the Financial Ombudsman Service when the FCA is considering engaging section 404B

- 1.8.14 G Where the *FCA* is considering engaging section 404B, it will consult with the *Financial Ombudsman Service* at an early stage and allow time for a fully-considered, written response. The *Financial Ombudsman Service* is in a position to say:
- (1) whether it has already received cases about the particular firm and acts/omissions, whether any cases have been decided and (if so) what the outcomes were;
 - (2) insofar as the acts/omissions are not fact-specific, whether it has previously considered similar cases and has adopted a particular approach;
 - (3) the sorts of *complaints* it can foresee might be made in future by consumers about the firm in relation to the acts/omissions concerned;

- (4) how the outcomes of cases decided by the *Ombudsman*, or the *Ombudsman's* approach to similar cases, would compare to the outcomes under the proposed scheme; and
- (5) if the *Financial Ombudsman Service* is likely to encounter any practical issues in implementing the proposed scheme.

1.8.15 G The *Financial Ombudsman Service* is impartial between consumers and firms. The *FCA* will not treat the *Financial Ombudsman Service's* input as a proxy for input on behalf of consumers.

1.8.16 G The *Financial Ombudsman Service* cannot lawfully guarantee how it will decide cases that fall outside the scope of the scheme (e.g. pre-regulation cases or those referred to the *Financial Ombudsman Service* before the scheme came into effect). It may, however, be willing to describe its general approach to such cases.

Internal process to be followed if the *FCA* proposes to engage section 404B

- 1.8.17 G Where the proposal is to engage section 404B, the *FCA* will apply the following governance procedure in addition to its usual processes:
- (1) all decisions to engage section 404B will be taken by the *FCA's* Executive Committee or a sub-committee;
 - (2) the committee/sub-committee will need to be satisfied that there has been adequate consultation internally to ensure full consideration of consumers' interests;
 - (3) the committee/sub-committee will consider written views from the *Financial Ombudsman Service* before reaching a decision; and
 - (4) if section 404B is engaged, the document outlining the terms of the scheme will be published on the *FCA* website, either in the *FCA* Register or (with cross-reference from the *FCA* Register) in a register of such schemes.

Challenging a consumer redress scheme imposed under section 404F(7)

1.8.18 G If the firm has voluntarily applied to establish and operate the scheme, it is unlikely to challenge the *FCA* for accepting its application. If the *FCA* proposes to refuse a firm's application for a section 404F(7) scheme, the *FCA* must give the firm a *warning notice* (section 55X(2)). If, after consideration by the *FCA's* decision maker, the *FCA* decides to refuse the application, the *FCA* must give the firm a *decision notice* (section 55X(4)). The firm would be able to challenge the *decision notice* by referring the *FCA's* decision to the Upper Tribunal (section 55Z(3)).

1.8.19 G If the *consumer redress scheme* was imposed on the *FCA's* own initiative, the *FCA* must give the firm a *supervisory notice* (section 55Y).

The firm would be able to challenge the *supervisory notice* by referring the *FCA's* decision to the Upper Tribunal (section 55Z(3)). The Tribunal may dismiss the reference or remit the matter to the *FCA* with a direction to reconsider and reach a decision in accordance with the Tribunal's findings (section 133(6) of the *Act*).

Appendix 6

Changes to SUP

**SUPERVISION MANUAL (AMENDMENT NO 21)
INSTRUMENT 2015**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance); and
 - (4) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. (1) Part 1 of the Annex to this instrument comes into force on 31 December 2015.
(2) Part 2 of the Annex to this instrument comes into force on 21 March 2016.
(3) Part 3 of the Annex to this instrument comes into force on 31 March 2016.

Amendments to the FCA Handbook

- D. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Supervision Manual (Amendment No 21) Instrument 2015.

By order of the Board of the Financial Conduct Authority
[date]

Annex

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force on 31 December 2015

16.10 Verification of standing data

...

16.10.4A R (1) A *firm* other than:

- (a) a *credit union*; or
- (b) an *FCA-authorised person* with *permission* to carry on only *credit-related regulated activity*;

must submit any corrected standing data under *SUP* 16.10.4R(3) online at the *appropriate regulator's* website using the *ONA* system and any other appropriate systems accessible from the *appropriate regulator's* website.

...

16.12 Integrated Regulatory Reporting

...

Regulated Activity Group 5

...

16.12.18B R The applicable *data items*, reporting frequencies and submission deadlines referred to in *SUP* 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of data item	Data item (note 1)	Frequency	Submission deadline
...	...		
Note 3	<p>Only applicable to a <i>firm</i> that:</p> <ul style="list-style-type: none"> - is subject to <i>MIPRU 4.2D</i>; - has no restriction to its <i>Part 4A permission</i> preventing it from undertaking new <i>home financing</i> or <i>home finance administration</i> connected to <i>regulated mortgage contracts</i>; and - has permission to carry on any <i>home financing</i> or <i>home finance administration</i> connected to <i>regulated mortgage contracts</i>. 		

...

Method for submitting recovery plans and information for resolution plans

16.20.6 R A firm must submit its recovery plan and the information required for its resolution plan to the FCA online through the appropriate systems accessible from the FCA's website, using the forms specified in SUP 16 Annex 40R.

...

16 Annex 16AR Standing data (See SUP 16.10.4R)

16 R ...
Annex ...
16A.1 18. The name and email address of the firm's principal user of the appropriate systems accessible from the FCA's website

...

16 Annex 21R Reporting Fields

...	...
2	SPECIFIC REPORTING FIELDS
...	
(c)	Mortgages
The following data reporting fields must be completed, where applicable for all relevant regulated mortgage contracts:	
...	
Data reporting	Code (where
	Notes

field	applicable)	
...		
Sales Data (report for all <i>regulated mortgage contracts</i>)		
...
Was this mortgage advanced under a government supported initiative?	<u>Y</u> = yes <u>Yes</u> <u>N</u> = no <u>No</u>	Report whether the mortgage was advanced under a government supported initiative, e.g. through provision of a shared equity loan or indemnity insurance.
...
Performance Data (report for all <i>regulated mortgage contracts</i>)		
...
Current amount of <i>payment shortfall</i>	Numeric £	Report current amount of <i>payment shortfall</i> at date of reporting. Report to two decimal places (i.e. pounds and pence). Report as a positive rather than a negative number. ...
...

...

The form CCR007 (Consumer Credit Data: key data for credit firms with limited permission) at SUP 16 Annex 38AR (Data Items relating to Consumer Credit activities) is deleted in its entirety and replaced with the form shown below. The deleted text is not shown and the new text is not shown underlined.

CCR007 - Consumer Credit data: Key data for credit firms with limited permissions

A

1	Revenue from credit-related regulated activities	<input type="text"/>
2	Total revenue (including from activities other than credit-related regulated activities)	<input type="text"/>
3	Number of transactions involving credit-related regulated activities in reporting period	<input type="text"/>
4	Number of complaints related to credit-related regulated activities received in period	<input type="text"/>
5	Credit-related regulated activity which generated the highest amount of turnover in the reporting period	<input type="text"/>
6	Total annual income as defined in FEES 4 Annex 11BR for the purposes of FCA fees reporting	<input type="text"/>

Amend the following text as shown.

16 Annex 38BG Notes for completion of Data Items relating to Consumer Credit activities

Contents

...

CCR008: Credit-broking websites

...

Data elements

9. These are referred to by row first, then by column, so data element 2B will be the element numbered 2 in column B.

General reporting guidelines

10. The consumer credit returns in SUP 16 Annex 38AR (Data Items relating to Consumer Credit activities) should reflect the standard accounting practices followed in the preparation of a firm's annual report and accounts, unless otherwise stated.

11. The information reported in the returns should cover the reporting period specified, unless otherwise stated.

...

CCR002 – Consumer Credit data: volumes

...

Column C: Total Customers:

...

A *credit repair firm* should count the number of individual customers who have engaged their services during the period.

In the case of jointly owned products, each individual should be recorded as a customer for the purposes of this column. For example, a joint account held by two individuals would be recorded as two customers.

Column D: Total Transactions

In this column, firms should identify the total number of transaction that were made during the period. ~~This figure should always be equal to or greater than the figure in column C.~~ For example, if the same customer has taken out three loans, this counts as three towards the “total transactions” figure.

Jointly owned products should be recorded as a single transaction. For example, a joint account held by two individuals would be recorded as one transaction.

...

Row 12: Total annual income for FCA fees reporting

This figure should be calculated with reference to the FEES 4 Annex 11BR.

CCR003 – Consumer Credit data: Lenders

...

Column G: Highest rate of interest (in period)

...

Row 7: Running-account credit

The information recorded in this row should be on the utilisation of the running-account credit, not the facility.

CCR007 – Key data for credit firms with limited permission

...

Revenue from credit-related regulated activities	1A	<p>A firm should include the total revenue received from all credit-related regulated activities during the period.</p> <p><u>A firm should report the total amount of income (before expenses) actually received by the firm for their credit-related business activities during the reporting period.</u></p> <p><u>Example 1:</u></p> <p><u>A firm sells a product for £1000 after referring the customer for financing. The firm receives £50 commission for the referral, as well as the £1000 for the product sale.</u></p> <p><u>For data field 1A, the firm would need to report their credit-related income of £50. The income from activities unrelated to credit should not be included here.</u></p> <p><u>Example 2:</u></p> <p><u>A firm sells a product for £1,000. The customer pays £500 cash and firm refers customer for financing for the remaining balance. The firm receives £50 commission for the referral.</u></p> <p><u>For data field 1A, the firm would need to report their credit-related income of £50. The amount of finance referred should not be reported here.</u></p>
Total revenue (including from activities other than credit-related regulated activities)	2A	<p>A firm should include all the total revenue received from all its business undertaken during the reporting period, both regulated and unregulated.</p> <p><u>A firm should report all income (before expenses) received for all its business, both regulated and unregulated.</u></p> <p><u>For example, if a firm has sold a product for £1000 and received £50 commission for referring the customer for credit. For data field 2A, the firm should report the total amount of money received, £1050.</u></p>
Number of credit-related regulated transactions in reporting period	3A	<p>A firm should identify how many credit-related regulated activity transactions it has undertaken during the period.</p> <p><u>A firm should report every credit-related regulated transaction which occurred in the reporting period.</u></p> <p><u>For example, if one customer has been referred for</u></p>

		<p><u>credit twice, then this should be recorded as two transactions.</u></p> <p>In relation to debt counselling, the amount should relate to the number of <u>separate</u> occasions on which advice has been given.</p>
Number of complaints relating to credit-related activities received in period	4A	<p>A firm should submit the total number of complaints received in relation to credit-related activities undertaken by the firm which it has been required to deal with under the rules in DISP. <u>during the reporting period. Any complaints about the firm's non-credit-related business should not be included here.</u></p>
Credit-related regulated activity carried on in relation to the greatest number of customers <u>which generated the highest amount of turnover</u> in reporting period	5A	<p>Selecting from the following options, a firm should identify which <i>credit-related regulated activity</i> generated the highest amount of turnover.</p> <ul style="list-style-type: none"> • Lending • Consumer hire • Not-for-profit debt counselling • Secondary credit broking • Other
<u>Total annual income as defined in FEES 4 Annex 11BR for the purposes of FCA fees reporting</u>	6A	<p>Firms should refer to <i>FEES 4 Annex 11BR</i> to calculate this figure. This can be found in the following location: http://fshandbook.info/FS/html/FCA/FEES/4/Annex11B</p> <p><u>Firms which receive grants or funding for their activities should only include this information here when it relates specifically to credit-related activity.</u></p>

CCR008: Credit broking websites

The purpose of this data item is to give the FCA an understanding of the ownership of websites used by firms undertaking the credit-related regulated activity of credit broking.

Where a firm has not acquired or disposed of a domain name in the reporting period, columns B and C should be left blank.

Column A: Domain name

Firms should record all website domain names held by the firm during the reporting period, regardless of whether they were acquired or disposed of during the reporting period.

The domain names should be the full website addresses, beginning with either http:// or https://

For example, http://www.fca.org.uk

Column B: If the firm acquired or first used the domain name during the reporting period, the date of acquisition or first use

If the website was purchased or used for the first time during the reporting period, the date of this should be entered here. Otherwise, this field should be left blank.

Column C: If the firm disposed of or ceased using the domain name during the reporting period, the date of disposal or cessation

If the firm stopped using or sold the website during the reporting period, the date of this should be entered here. Otherwise, this field should be left blank.

...

The following annex is new and the new text is not underlined.

- *SUP* 16 Annex 40R Data items related to recovery and information for resolution plans

REP006 Recovery Plans

Group Reporting

1 Does the data reported in the Recovery Report cover more than one entity?

A

B

2 If yes, list the firm reference numbers (FRNs) and/or Legal Entity Identifiers (LEIs) of all additional firms included in this report.

FRN	LEI

Nil Return

3 If you wish to declare a nil return, enter the FRN, LEI or name of the group for the firm submitting on your behalf.

REP007 Resolution Plans

Group Reporting

- 1 Does the data reported in the Resolution Report cover more than one entity?
- 2 If yes, list the firm reference numbers (FRNs) and/or Legal Entity Identifiers (LEIs) of all additional firms included in this report.

A	B
FRN	LEI

Nil Return

- 3 If you wish to declare a nil return, enter the FRN, LEI or name of the group for the firm submitting on your behalf.

Part 2: Comes into force on 21 March 2016

16.12 Integrated Regulatory Reporting

...

Regulated Activity Group 5

...

16.12.18C R Additional applicable *data items*, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below for a *firm* carrying on *home finance administration* or *home finance providing activities* in relation to *second charge regulated mortgage contracts*. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of <i>data item</i>	<i>Data item</i> (note 1)	Frequency	Submission deadline
Analysis of second charge loans to customers	Section A3(a) <u>A4</u> MLAR	Quarterly	20 <i>business days</i>
Second charge business flow and rates	Sections D1(a) and D2(a) MLAR	Quarterly	20 <i>business days</i>
Second charge lending to individuals	Sections E1(a) and E2(a) <u>MLAR</u>	Quarterly	20 <i>business days</i>
Second charge lending – arrears analysis	Section F(a) <u>F1</u> <u>MLAR</u>	Quarterly	20 <i>business days</i>
Second charge mortgage administration – arrears analysis	Sections H1(a) and H2(a) <u>MLAR</u>	Quarterly	20 <i>business days</i>
...	...		

...

The following forms in SUP 16 Annex 19AA R (Mortgage Lenders & Administrators Return (MLAR) - sub-forms for second charge regulated mortgage activity):

A(3)a – Balance Sheet (second charge);

D(1)a – Second charge lending: Business flows & rates;

D(2)a – Second charge lending: Business flows;

E(1)a – Second charge loans to individuals: Income Multiple & LTV;

E(2)a – Second charge loans to individuals: Nature of loan and purpose;

F(1)a – Second charge lending: Arrears analysis;

F(2)a – Second charge lending: Arrears analysis;

H(1)a – Second charge mortgage administration: Arrears analysis; and

H(2)a – Mortgage administration: Arrears analysis

are deleted in their entirety and replaced with the forms shown below. The deleted text is not shown and the new text is not shown underlined.

MLA-A4 Analysis of second charge loans to customers

	A	B	C	D	E	F	G
	<u>Unsecured balances</u>			<u>Securitized balances</u>			
	Gross balances	Provisions	Net balances	Gross balances	Provisions	Non recourse finance	Net balances
Residential loans to individuals, of which							
1 Second (or subsequent) charge	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

MLA-D1 Second Charge Lending - Business flow and rates

	A	B	C	D	E	F	G	H	I
Loans: Advances/Repayments									
	Balance at end of previous quarter	Advances made in quarter	Repayment of principal	Write offs in quarter	Other debits/(credits) and transfers (net)	Balance at end of quarter	Loans excluding overdrafts	Of which: Overdrafts	Overdrafts: Aggregate of credit limits
Residential loans to individuals, of which									
1 Second (or subsequent) charge									

	Transactions in quarter included in 1E					Balance at end of quarter on loan assets subject to non-recourse funding
	Loans acquired	Loans sold	Loans securitised	Other	Total	
Loans: Book movements						
Residential loans to individuals, of which						
2 Second (or subsequent) charge						

	A	B	C	D	E	F	G	H	I	J
Loans: Interest rates										
	Balances at end of quarter						Interest rates at end of quarter (to 2 decimal places)			
	TOTAL	Of which at:			Of which at:			Weighted average nominal annual rate on:		
		Fixed rates	Variable rates	Less than 2% above BBR	2 < 3% above BBR	3 < 4% above BBR	4% or more above BBR	All balances	Balances at fixed rates	Balances at variable rates
	(£000's)	(£000's)	(£000's)	(£000's)	(£000's)	(£000's)	(£000's)	%	%	%
Second (or subsequent) charge										
3 Total book										
4 Advances in quarter										

	A	B	C	D	E	F
Loans: Commitments						
	Commitments outstanding at end of previous quarter	Commitments made since end of previous quarter	Cancellations in quarter	Advances made in quarter	Other debits/(credits) and transfers (net)	Commitments outstanding at end of quarter
Residential loans to individuals, of which						
Second (or subsequent) charge						
5 New loan						
6 Remortgage						
7 Total						

MLA-E1 Second Charge Lending - Loans to Individuals

		A	B	C	D
Income Multiple & LTV		Gross advances in quarter : (amount) by LTV			
SINGLE income multiple		<= 75 %	Over 75 <= 90 %	Over 90 <= 95 %	Over 95 %
Second (or subsequent) charge mortgages					
1	Less than 2.50				
2	2.50 < 3.00				
3	3.00 < 3.50				
4	3.50 < 4.00				
5	4.00 or over				
6	Other				
7	TOTAL				
8	of which: Not evidenced				

		A	B	C	D
JOINT income multiple					
Second (or subsequent) charge mortgages					
9	Less than 2.00				
10	2.00 < 2.50				
11	2.50 < 2.75				
12	2.75 < 3.00				
13	3.00 or over				
14	Other				
15	TOTAL				
16	of which: Not evidenced				

		A	B	C	D
Nature of loan and purpose		Gross advance in quarter		Balances outstanding	
Second (or subsequent) charge mortgages		Number	Amount	Number	Amount
By credit history					
17	Impaired credit history				
18	Other				
19	TOTAL second (or subsequent) charge				

By payment type					
20	Repayment (capital & interest)				
21	Interest only				
22	Combined				
23	Other				
24	TOTAL second (or subsequent) charge				

By drawing facility					
Loans with extra drawing facility:					
25	(a) Loans including unused facility				
26	(b) Unused facility				
27	(c) Net loans (a-b)				
28	Loans with no extra drawing facility				
29	TOTAL second (or subsequent) charge				

By purpose					
House Purchase:					
30	Home improvement				
31	Debt consolidation				
32	Home improvement and debt consolidation				
33	Other				
34	TOTAL second (or subsequent) charge				

MLA-F1 Second Charge Lending - Arrears Analysis

		A	B	C	D	E	F	G
Arrears categorisation by type of loan		Cases entering higher (i.e. more serious) arrears band in quarter			Position on all arrears cases at end of quarter			Performance of current arrears cases during the quarter (%)
		Number	Amount of arrears	Balance outstanding	Number	Amount of arrears	Balance outstanding	
Second (or subsequent) charge								
1	1.5 < 2.5 %							
2	2.5 < 5 %							
3	5.0 < 7.5 %							
4	7.5 < 10 %							
5	10% or more							
6	In possession							
7	TOTAL							

Arrears management		A	B	C	D	E	F	G	H	
		Possession sales during quarter			Capitalisation of arrears cases in quarter			Number of cases for which there is in place:		
		Number	Balance outstanding	Number	Amount of arrears	Balance outstanding	A temporary concession	A formal arrangement	No concession arrangement	
Residential loans to individuals, of which										
8	Second (or subsequent) charge									

MLA-H1 Second Charge Mortgage Administration - Arrears Analysis

		A	B	C	D	E	F	G
Arrears categorisation by type of loan		Cases entering higher (i.e. more serious) arrears band in quarter			Position on all arrears cases at end of quarter			Performance of current arrears cases during the quarter (%)
		Number	Amount of arrears	Balance outstanding	Number	Amount of arrears	Balance outstanding	
Second (or subsequent) charge mortgages								
1	1.5 < 2.5 %							
2	2.5 < 5 %							
3	5.0 < 7.5 %							
4	7.5 < 10 %							
5	10% or more							
6	In possession							
7	TOTAL							

Arrears management		A	B	C	D	E	F	G	H	
		Possession sales during quarter			Capitalisation of arrears cases in quarter			Number of cases for which there is in place:		
		Number	Balance outstanding	Number	Amount of arrears	Balance outstanding	A temporary concession	A formal arrangement	No concession arrangement	
Residential loans to individuals, of which										
8	Second (or subsequent) charge									

Part 3: Comes into force 31 March 2016

16 Reporting Requirements

...

Annex 18A Retail Mediation Activities Return ('RMAR')

Section C of the form is deleted in its entirety and replaced with the following. The deleted text is not shown and the new text is not shown underlined.

SECTION C: Client money and assets

11 Does your firm receive or hold money in the course of or in connection with its insurance mediation activity?

A	B	C

12 Has your firm elected under CASS 7.10.3R(1) or (2) to comply with CASS 7?

--

13 How does your firm hold money received in the course of or in connection with its insurance mediation activity? (select all that apply)

CASS 5 client money		As agent of insurer*
Statutory	Non-statutory	

14 Is your firm's CASS 5 client money held under the CASS 5.3 statutory trust or under one or more CASS 5.4 non-statutory trusts? (select all that apply)

* under a written risk transfer agreement and so not client money (see CASS 5.1.5R and CASS 5.2)

15 If non-statutory, has an auditor's confirmation of systems and controls been obtained? (as required by CASS 5.4.4R(2))

--

16 Is client money invested or placed in anything other than a client bank account? (see CASS 5.5.14R)

--

During the reporting period what was the highest:

17 client money requirement (for money held as client money, taken from the firm's client money calculations)

18 account balance (for money held as client money, taken from the firm's records)

19 account balance for money held purely as agent of insurer (and not co-mingled with client money)

CASS 5 client money		As agent of insurer
Statutory	Non-statutory	

Questions 20 to 23 should be based on the firm's last client money calculation performed within the reporting period

20 Client money requirement as at end of the reporting period

21 Client money resource as at end of the reporting period

22 Surplus (+) or deficit (-) of client money resource against client money requirement

23 Adjustments made to withdraw an excess or rectify a deficit

CASS 5 client money	
Statutory	Non-statutory

Client money audit

24 Is your firm exempt from the client asset audit requirement?

--

25 If not exempt, have you obtained a client money audit in the last 12 months?

--

26 What is the name of your firm's client money auditor?

--

27 According to your last audit report, what was the auditor's opinion on your firm's compliance with the client money rules as at period end date?

--

1 Have any notifiable client money issues been raised, either in the firm's last client assets audit report or elsewhere, that have not been notified to the FCA since the last reporting period for this return?

--

Client Assets

28 Does your firm hold any client documents or other assets (other than client money) in accordance with CASS 5.8?

--

Amend the following as shown.

16 Notes for Completion of the Retail Mediation Activities Return ('RMAR')
Annex
18BG

...

Section C: Client Money and assets

~~Note: Home purchase and reversion activity should be included under the existing mortgage headings in this section of the RMAR.~~

...

The *client money rules* define further what is and is not *client money*, and set out requirements on *firms* for the proper handling of and accounting for *client money*. If a *firm holding client money* fails, there is a greater direct risk to consumers, and a greater adverse impact on market confidence, if it is a holder of *client money* compared (for example) to a *firm that only holds money under risk transfer arrangements*.

Note 1: a *firm* should complete section C of the RMAR for the *money* it receives or holds in the course of, or in connection with, its *insurance mediation activity* (see CASS 5).

~~**Note 12:** *firms* that only carry on *home finance mediation activity* or *insurance mediation activity* in respect of *reinsurance contracts* are exempt from the *client money rules*, and are not therefore required to complete this section C of the RMAR. However, a *firm* may make an election under CASS 5.1.1R(3) to comply with CASS 5.1 to CASS 5.6 in respect of *client money* it receives in the course of carrying on *insurance mediation activity* in relation to *reinsurance contracts*. Where a *firm* has made such an election it should also complete this section C of the RMAR.~~

Note 3: a *firm* that receives or holds money for its *MiFID business* or *designated investment business* that is not *MiFID business* and holds *money* to which CASS 5 applies, may make an election under CASS 7.10.3R(1) or (2) to comply with CASS 7 for *money* it receives in the course of, or in connection with, its *insurance mediation activity*. Where a *firm* has made such an election, it should not complete section C of the RMAR, except to confirm that it holds *money* in connection with *insurance mediation activities* and has elected to comply with CASS 7.

Note 4: a *firm* (e.g., a property management *firm*) that complies with the Royal Institute of Chartered Surveyors (RICS) Members' Accounts rules or, in relation to a service charge, the requirement to segregate such money in accordance with section 42 of the Landlord and Tenant Act (LTA) 1987 is deemed to comply with CASS 5.3 to CASS 5.6, provided that it satisfies the requirements of CASS 5.5.49R to the extent that the *firm* will hold *money* as trustee or otherwise on behalf of its clients. Such a *firm* should only complete the questions in section C of the RMAR indicated in the guide for completion of individual fields below.

Note 25: an *authorised professional firm* regulated by The Law Society (of England and Wales), The Law Society of Scotland or The Law Society of Northern Ireland must comply with the rules of its *designated professional body* as specified in CASS 5.1.4R, and if it does

so, it will be deemed to comply with CASS 5.2 to CASS 5.6. These *firms* are not therefore required to complete this section C of the RMAR.

Note 36: *firms* should complete all applicable fields.

Section C: guide for completion of individual fields

<u>Question</u>	<u>Guidance notes</u>
Have any notifiable issues been raised in relation to client money or other assets, either in the firm's last client assets audit report or elsewhere, that have not previously been notified to the FCA?	<i>SUP 3.10</i> sets out the requirement for auditors to report annually on the <i>firm's</i> systems and controls in relation to <i>client money or custody assets</i> . Auditors and <i>firms</i> are required to report significant issues to the <i>FCA</i> (see <i>SUP 3.8.10G</i> and <i>SUP15.3</i>). Therefore, if you answer 'yes' here, you should ensure that the relevant issues are notified to us.
Risk transfer	See <i>CASS 5.2</i> — holding money as agent of <i>insurance undertaking</i>
Statutory Trust	See <i>CASS 5.3</i> and <i>CASS 7.7</i>
Non-statutory Trust	See <i>CASS 5.4</i>
Client money credit total as at reporting date	This should be the total of credits on the <i>firm's client money</i> account(s) as at the current date of return. These should be taken from the <i>firm's</i> ledgers.
Client money debit total as at reporting date	This should be the total of any debits on the <i>firm's client money</i> account(s) as at the current date of return. These should be taken from the <i>firm's</i> ledgers.
Net client money balance as at reporting date	This should be the aggregate balance on the <i>firm's client money</i> account(s).
If non-statutory, has auditor's confirmation of systems and controls been obtained?	This refers to the requirement in <i>CASS 5.4.4R(2)</i> that the <i>firm</i> must obtain and keep current, written confirmation from its auditor that the <i>firm</i> has adequate systems and controls in place to meet the requirements under <i>CASS 5.4.4R(1)</i> .
Is any client money invested (other than on deposit)?	You should indicate 'yes' here if the <i>firm</i> has invested any <i>client money</i> other than in a bank account. See <i>CASS 5.5.14</i> . (Note: this is only permitted for <i>client money</i> that is held in a non-statutory trust.)
Does the <i>firm</i> hold any client assets (other than client money)?	If the <i>firm</i> holds client assets and is subject to the requirements of <i>CASS 5.8</i> or <i>CASS 6</i> , state 'yes' here.
Does your <i>firm</i> receive or hold	<i>Firms</i> should answer 'yes' here if they hold <i>money</i>

<u>money in the course of, or in connection with, its insurance mediation activity?</u>	such that CASS 5.1 to CASS 5.6 applies (see CASS 5.1.1R). <u>Firms to which note 4 applies should also answer ‘yes’</u>
<u>Has your firm elected under CASS 7.10.3R(1) or (2) to comply with CASS 7?</u>	<u>See note 3.</u>
<u>How does your firm hold money received in the course of, or in connection with, its insurance mediation activity?</u>	<u>You should answer ‘yes’ or ‘no’ under each of the headings, as appropriate.</u> <u>CASS 5 Client money:</u> <u>See CASS 5.1</u> <u>As agent of insurer:</u> <u>See CASS 5.1.5R and CASS 5.2 – holding money as agent of insurance undertaking under a written risk transfer agreement and not as client money.</u> <u>Firms to which note 4 applies should select ‘no’ under each heading, unless they hold money when acting both in the capacity of an insurance broker and of a property management company.</u> <u>A firm may answer ‘yes’ under both headings.</u>
<u>Is your firm's CASS 5 client money held under the CASS 5.3 statutory trust or under one or more CASS 5.4 non-statutory trusts?</u>	<u>You should indicate here the type of trust under which client money is held:</u> <u>Statutory trust – see CASS 5.3</u> <u>Non-statutory trust – see CASS 5.4</u> <u>A firm may answer ‘yes’ under both headings.</u>
<u>If non-statutory, has an auditor’s confirmation of systems and controls been obtained?</u>	<u>This refers to the requirement in CASS 5.4.4R(2) that the firm must obtain and keep current, written confirmation from its auditor that the firm has adequate systems and controls in place to meet the requirements under CASS 5.4.4R(1).</u> <u>This requirement is separate to the annual audit requirement in SUP 3.10.</u>
<u>Is client money invested or placed in anything other than a client bank account?</u>	<u>You should indicate ‘yes’ here if the firm has invested any client money other than in a client bank account.</u> <u>See CASS 5.5.14R which states that a firm may satisfy the requirement to segregate client money by segregating or arranging for the segregation of designated investments with a value at least equivalent to such money as would otherwise be segregated.</u> <u>This means of segregation is only permitted for client</u>

	<u>money held under a non-statutory trust.</u>
<u>Highest client money requirement (for money held as client money, taken from the firm's client money calculations)</u>	<p>See CASS 5.5.63R and CASS 5.5.66R to CASS 5.5.67R</p> <p><u>A firm should enter the highest client money requirement calculated during the period. This would be taken from the firm's client money calculations performed during the period.</u></p> <p><u>Only the single highest client money requirement figure should be entered, not the aggregate of the client money requirements calculated during the period.</u></p>
<u>Highest account balance (for money held as client money, taken from the firm's records)</u>	<p><u>This refers to money held as CASS 5 client money under a statutory trust or non-statutory trust(s). The amount should be taken from the firm's own records and should include client money held as agent of insurer which is co-mingled with other client money in a client money account (see CASS 5.1.5AR).</u></p> <p><u>If your firm segregates designated investments under a non-statutory trust (see CASS 5.5.14R), you should also include the value of these investments.</u></p> <p><u>If your firm operates both statutory and non-statutory trust accounts, you should enter two balances; one for the highest balance in statutory trust accounts and one for the highest balance in non-statutory trust accounts.</u></p>
<u>Highest account balance for money held purely as agent of insurer (and not co-mingled with client money)</u>	<p><u>This refers to money held purely as agent of insurer under risk transfer agreements (see CASS 5.2) and held separate to any CASS 5 client money. The amount should be taken from the firm's own records.</u></p> <p><u>If money held as agent of insurer is co-mingled with CASS 5 client money in a client bank account (see CASS 5.1.5AR), it should be reported in the previous field and therefore should not be reported in this field.</u></p>
	<u>The data reported in questions 20 to 23 should be taken from the firm's client money calculation performed closest, and prior, to the end of the reporting period.</u>
<u>Client money requirement as at end of the reporting period</u>	See CASS 5.5.63R and CASS 5.5.66R to CASS 5.5.68R
<u>Client money resource as at end of the reporting period</u>	See CASS 5.5.63R and CASS 5.5.65R
<u>Surplus (+) or deficit (-) of client money resource against client money requirement</u>	<p>See CASS 5.5.63R</p> <p><u>This should be the difference between the client money requirement and the client money resource.</u></p>

<p><u>Adjustments made to withdraw an excess or rectify a deficit</u></p>	<p>See <u>CASS 5.5.63R</u></p> <p><u>This should be the amount of money paid into or withdrawn from the <i>client bank account</i> following the <i>client money</i> calculation performed closest, and prior to, the end of the reporting period.</u></p>
<p><u>Is your <i>firm</i> exempt from the client asset audit requirement?</u></p>	<p>See <u>SUP 3.1.2R Note 4</u></p> <p><u>If the <i>firm</i> does not hold <i>client money</i> or other client assets in relation to <i>insurance intermediation activities</i> or only holds up to, but not exceeding, £30,000 of <i>client money</i> under a statutory trust arising under <u>CASS 5.3</u> state ‘yes’ here.</u></p> <p><u><i>Firms</i> to which note 4 applies should answer this question.</u></p>
<p><u>If not exempt, have you obtained a client assets audit in the last 12 months?</u></p>	<p>See <u>SUP 3.1 to SUP 3.7 and SUP 3.11.</u></p> <p><u>If the <i>firm</i> has obtained a client assets audit in the last 12 months enter ‘yes’. If it has not, enter ‘no’.</u></p> <p><u><i>Firms</i> to which note 4 applies should answer this question.</u></p>
<p><u>What is the name of your <i>firm's</i> client assets auditor?</u></p>	<p><u>Enter the name of the <i>firm's</i> auditor as it appears on the Financial Reporting Council’s register of statutory auditors.</u></p> <p><u><i>Firms</i> to which note 4 applies should answer this question.</u></p>
<p><u>According to your last client assets audit report, what was the auditor’s opinion on your <i>firm's</i> compliance with the <i>client money rules</i> as at the period end date?</u></p>	<p><u>This refers to the opinion at the end of the audit period.</u></p> <p><u>The <i>firm</i> should select from ‘clean’, ‘qualified’ or ‘adverse’, as appropriate.</u></p> <p><u>In this question, the period end date refers to the period covered by the audit report and will therefore refer to a different period to the reporting period for this return.</u></p> <p><u><i>Firms</i> to which note 4 applies should answer this question.</u></p>
<p><u>Have any notifiable <i>client money</i> issues been raised, either in the <i>firm's</i> last client assets audit report or elsewhere, that have not been notified to the <i>FCA</i> since the last reporting period for this return?</u></p>	<p><u>Answer yes if the <i>firm</i> has not, since the last reporting period for this return, notified the <i>FCA</i> of any breaches in relation to the following notification requirements:</u></p> <p><u><i>CASS 5.5.61R</i>: failure of a bank, broker or <i>settlement agent</i>.</u></p> <p><u><i>CASS 5.5.76R</i>: failure to perform calculations or reconciliation.</u></p> <p><u><i>CASS 5.5.77R</i>: failure to make good a <i>shortfall</i> by the close of business on the day the calculation is</u></p>

	<u>performed.</u>
<u>Does your <i>firm</i> hold any client documents or other assets (other than <i>client money</i>) in accordance with CASS 5.8?</u>	<u>If the <i>firm</i> is subject to the requirements of CASS 5.8, state 'yes' here.</u>

Appendix 7

DISP amendments instrument

**DISPUTE RESOLUTION: COMPLAINTS SOURCEBOOK (AMENDMENT NO 5)
INSTRUMENT 2015**

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited fixes and varies the standard terms for Voluntary Jurisdiction participants as set out in Parts 2 and 4 of the Annex to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
 - (2) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (3) paragraph 22 (Consultation) of Schedule 17.
- B. The fixing and variation of the standard terms in Parts 2 and 4 of the Annex by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (FCA’s general rule-making power);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance);
 - (d) section 226 (Compulsory jurisdiction);
 - (e) paragraph 23(1) (Fees) of Schedule 1ZA (the Financial Conduct Authority); and
 - (f) paragraph 13 (FCA’s rules) of Schedule 17 (the Ombudsman Scheme);
 - (2) paragraph 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints relating to General Insurance and Mortgages) Order 2004 (SI 2004/454);
 - (3) paragraph 15 (Record-keeping and reporting requirements relating to relevant complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 (SI 2001/2326); and
 - (4) the other powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- D. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

- E. The Financial Conduct Authority approves the standard terms fixed and varied by the Financial Ombudsman Service Limited.

Revocation of certain amendments made by the Complaints Handling and Call Charges Instrument 2015 (FCA 2015/39)

- F. The following amendments made in Part 3 and Part 5 of Annex C to the Complaints Handling and Call Charges Instrument 2015 (FCA 2015/39) are revoked in accordance with paragraph G:
- (1) the amendments to DISP 1.10;
 - (2) the amendments to DISP 1.10A;
 - (3) the amendments to DISP 1 Annex 1R;
 - (4) the deletion of DISP 1 Annex 1AR;
 - (5) the amendments to DISP 1 Annex 1BR; and
 - (6) Transitional Provision 39 in DISP TP 1.

Commencement

- G. (1) Paragraph F of this instrument comes into force on the making of this instrument.
- (2) Parts 1 and 2 of the Annex come into force immediately after (1).
 - (3) Part 3 of the Annex comes into force on 1 January 2016.
 - (4) Part 4 of the Annex comes into force on 30 June 2016.

Amendments to the Handbook

- H. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with the Annex to this instrument.

Notes

- I. In the Annex to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- J. This instrument may be cited as the Dispute Resolution: Complaints Sourcebook (Amendment No 5) Instrument 2015.

By order of the Board of the Financial Ombudsman Service Limited
[date]

By order of the Board of the Financial Conduct Authority
[date]

Annex

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Part 1: Coming into force [on the day the instrument is made]

DISP 1.9, DISP 1.10, DISP 1 Annex 1R and DISP 1 Annex 1CR are deleted in their entirety and are substituted by the following text. The deleted text is not shown and the replacement text is not underlined.

1 Treating complainants fairly

...

1.9 Complaints record rule

1.9.1 R A *firm*, including, in the case of *MiFID business* or *collective portfolio management* services for a *UCITS scheme* or an *EEA UCITS scheme*, a *branch* of a *UK firm* in another *EEA state*, must keep a record of each *complaint* received and the measures taken for its resolution, and retain that record for:

- (1) at least five years where the *complaint* relates to *MiFID business* or *collective portfolio management* services for a *UCITS scheme* or an *EEA UCITS scheme*; and
- (2) three years for all other *complaints*;

from the date the *complaint* was received.

[**Note:** article 10 of the *MiFID implementing Directive* and article 6(2) of the *UCITS implementing Directive*]

1.9.2 G The records of the measures taken for resolution of *complaints* may be used to assist with the collection of management information pursuant to *DISP 1.3.3BG(1)* and regular reporting to the *senior personnel* pursuant to *DISP 1.3.3BG(6)*.

1.10 Complaints reporting rules

1.10.1 R (1) Unless (2) applies, twice a year a *firm* must provide the *FCA* with a complete report concerning *complaints* received from *eligible complainants*.

- (2) If a *firm* has *permission* to carry on only *credit-related regulated activities* or *operating an electronic system in relation to lending* and has revenue arising from those activities that is less than or equal to £5,000,000 a year, the *firm* must provide the *FCA* with a complete report concerning *complaints* received from *eligible complainants* once a year.
- (3) The report required by (1) and (2) must be set out in the format in *DISP 1 Annex 1R*.
- (4) Paragraphs (1) and (2) do not apply to a *firm* with only a *limited permission* unless that *firm* is a *not-for-profit debt advice body* that at any point in the last 12 *months* has held £1 million or more in *client money* or as the case may be, projects that it will hold £1 million or more in *client money* in the next 12 *months*.

1.10.1-A G A *firm* with only a *limited permission* to whom *DISP 1.10.1R*(1) and (2) do not apply is required to submit information to the *FCA* about the number of complaints it has received in relation to credit-related activities under the reporting requirements in *SUP 16.12* (see, in particular, *data item CCR007* in *SUP 16.12.29CR*). A *firm* with *limited permission* to whom *DISP 1.10.1R* (1) and (2) do not apply is also subject to the complaints data publication rules in *DISP 1.10A*.

Forwarded complaints

- 1.10.1A R A *firm* must not include in the report a *complaint* that has been forwarded in its entirety to another *respondent* under the complaints forwarding *rules*.
- 1.10.1B G Where a *firm* has forwarded to another *respondent* only part of a *complaint* or where two *respondents* may be jointly responsible for a *complaint*, then the *complaint* should be reported by both *firms*.

Joint reports

- 1.10.1C R *Firms* that are part of a *group* may submit a joint report to the *FCA*. The joint report must contain the information required from all *firms* concerned and clearly indicate the *firms* on whose behalf the report is submitted. The requirement to provide a report, and the responsibility for the report, remains with each *firm* in the *group*.
- 1.10.1D G Not all the *firms* in the *group* need to submit the report jointly. *Firms* should only consider submitting a joint report if it is logical to do so, for example, where the *firms* have a common central *complaints* handling team, the same *accounting reference date* and are all subject to the same reporting frequencies and submission deadlines.

Information requirements

- 1.10.2 R Part A of *DISP 1 Annex 1R* requires (for the relevant reporting period) information about:

- (1) the total number of *complaints* received by the *firm*;
- (2) the total number of *complaints* closed by the *firm*:
 - (a) within four weeks or less of receipt;
 - (b) more than four weeks and up to eight weeks of receipt; and
 - (c) more than eight weeks after receipt;
- (3) the total number of *complaints*:
 - (a) upheld by the *firm* in the reporting period; and
 - (b) outstanding at the beginning of the reporting period; and
- (4) the total amount of redress paid in respect of *complaints* during the reporting period.

1.10.2-A R Part B of *DISP* 1 Annex 1R requires (for the relevant reporting period) information about:

- (1) the total number of *complaints* received by the *firm*;
- (2) the total number of *complaints* closed by the *firm*;
- (3) the total number of *complaints*:
 - (a) upheld by the *firm* in the reporting period; and
 - (b) outstanding at the beginning of the reporting period; and
- (4) the total amount of redress paid in respect of *complaints* during the reporting period.

1.10.2A R (1) Twice a year a *firm* must provide the *FCA* with a complete report concerning *complaints* received from *eligible complainants* about matters relating to activities carried out by its *employees* when acting as *retail investment advisers*. The report must be set out in the format in *DISP* 1 Annex 1CR.

- (2) *DISP* 1 Annex 1CR requires (for the relevant reporting period) information about:
 - (a) the total number of *complaints* received by the *firm* about matters relating to activities carried out by its *employees* when acting as *retail investment advisers*;
 - (b) the total number of *complaints* closed by the *firm* about matters relating to activities carried out by its *employees* when acting as *retail investment advisers*;

- (c) the total number of *complaints* upheld by the *firm* about matters relating to activities carried out by its *employees* when acting as *retail investment advisers*; and
 - (d) the total amount of redress paid in respect of *complaints* upheld during the reporting period about matters relating to activities carried out by its *employees* when acting as *retail investment advisers*.
- (3) For the purpose of *DISP* 1 Annex 1CR *retail investment adviser* information must be reported by Individual Reference Number (IRN).
- 1.10.3 G For the purpose of *DISP* 1.10.2R, *DISP* 1.10.2-AR and *DISP* 1.10.2AR, when completing the return, the *firm* should take into account the following matters.
- (1) If a *complaint* could fall into more than one category, the *complaint* should be recorded in the category which the *firm* considers to form the main part of the *complaint*.
 - (2) Under *DISP* 1.10.2R(3)(a) or *DISP* 1.10.2-AR, a *firm* should report any *complaint* to which it has given a response which upholds the *complaint*, even if any redress offered is disputed by the complainant. For this purpose, 'response' includes a response under the complainant's written acceptance *rule* (*DISP* 1.6.4R) and a *final response*. Where a *complaint* is upheld in part, or where the *firm* does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, a *firm* should treat the *complaint* as upheld for reporting purposes. However, where a *firm* rejects a *complaint*, yet chooses to make a goodwill payment to the complainant, the *complaint* should be recorded as 'rejected'.
 - (3) If a *firm* reports on the amount of redress paid under *DISP* 1.10.2R(4), *DISP* 1.10.2-AR(4) or *DISP* 1.10.2AR, redress should be interpreted to include an amount paid, or cost borne, by the *firm*, where a cash value can be readily identified, and should include:
 - (a) amounts paid for distress and inconvenience;
 - (b) a free transfer out to another provider which transfer would normally be paid for;
 - (c) goodwill payments and goodwill gestures;
 - (d) interest on delayed settlements;
 - (e) waiver of an excess on an insurance policy; and
 - (f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred.

- (4) If a *firm* reports on the amount of redress paid under *DISP* 1.10.2R(4), *DISP* 1.10.2-AR(4) or *DISP* 1.10.2AR, the redress should not, however, include repayments or refunds of premiums which had been taken in error (for example where a *firm* had been taking, by direct debit, twice the actual premium amount due under a policy). The refund of the overcharge would not count as redress.

[**Note:** See *SUP* 10A.14.24R for the ongoing duty to notify *complaints* about matters relating to activities carried out by an *employee* when acting as a *retail investment adviser*.]

- 1.10.4 R Unless *DISP* 1.10.4AR applies, the relevant reporting periods are:
- (1) the six *months* immediately following a *firm's accounting reference date*; and
 - (2) the six *months* immediately preceding a *firm's accounting reference date*.
- 1.10.4A R If a *firm* has *permission* to carry on only *credit-related regulated activities* or *operating an electronic system in relation to lending* and has revenue arising from those activities that is less than or equal to £5,000,000 a year, the relevant reporting period is the year immediately following the *firm's accounting reference date*.
- 1.10.5 R Reports are to be submitted to the *FCA* within 30 *business days* of the end of the relevant reporting periods through, and in the electronic format specified in, the *FCA Complaints Reporting System* or the appropriate section of the *FCA* website.
- 1.10.6 R If a *firm* is unable to submit a report in electronic format because of a systems failure of any kind, the *firm* must notify the *FCA*, in writing and without delay, of that systems failure.
- 1.10.6A R
- (1) If a *firm* does not submit a complete report by the date on which it is due, in accordance with *DISP* 1.10.5R, the *firm* must pay an administrative fee of £250.
 - (2) The administrative fee in (1) does not apply if the *firm* has notified the *FCA* of a systems failure in accordance with *DISP* 1.10.6R.
- 1.10.7 R A closed *complaint* is a *complaint* where:
- (1) the *firm* has sent a *final response*; or
 - (2) the complainant has indicated in writing acceptance of the *firm's* earlier response under *DISP* 1.6.4R.
- 1.10.8 G [deleted]

Notification of contact point for complainants

- 1.10.9 R For the purpose of inclusion in the public record maintained by the *FCA*, a *firm* must:
- (1) provide the *FCA*, at the time of its *authorisation*, with details of a single contact point within the *firm* for complainants; and
 - (2) notify the *FCA* of any subsequent change in those details when convenient and, at the latest, in the *firm's* next report under the *complaints reporting rules*.

Meaning of revenue

- 1.10.10 G In *DISP* 1.10, references to revenue in relation to any *firm* do not include the amount of any repayment of any *credit* provided by that *firm* as *lender*.

1 Annex 1R Complaints return form

Illustration of the reporting requirements, referred to in *DISP* 1.10.1R

Complaints Return (DISP 1 Ann 1R)

GROUP REPORTING / NIL RETURN DECLARATION

- 1 Does the data reported in this return cover complaints relating to more than one entity? If 'Yes', then list the *firm* reference numbers (FRNs) of all the entities included in this return.

Yes / No

- 2 We wish to declare a nil return

Yes / No

RETURN DETAILS REQUIRED

- 3 Total complaints outstanding at reporting period start date

PART A

Complaints closed and total redress paid during the reporting period

		A	B	C	D	E
	Product/service grouping	Complaints closed within 4 weeks	Complaints closed > 4 but within 8 weeks	Complaints closed > 8 weeks	Total complaints upheld by firm	Total redress paid
4	Banking and credit cards					
5	Home finance					
6	General insurance and pure protection					
7	Decumulation, life and pensions					
8	Investments					

Complaints opened

	Product/service grouping	Product/service	A	B	C	D	E
			Advising, selling and arranging	Terms and disputed sums/charges	General admin/customer service	Arrears related	Other
9	Banking and credit cards	Current accounts					
10		Credit cards					
46		Overdrafts					
11							
12		Savings (inc. Cash ISA) and other banking					
13	Home finance	Equity release products					
14		Impaired credit mortgages					
15		Other regulated home finance products (including second and subsequent charge mortgages)					
16		Other unregulated home finance products					
17	General insurance &	Payment protection insurance					
18		Other general insurance					

19	pure protection	Critical illness					
20		Income protection					
21		Other pure protection					
22	Decumulation, life and pensions	Personal pensions and FSAVCs					
23		Investment linked annuities					
24		Income drawdown products					
25		Endowments					
26		Other decumulation, life and pensions					
27	Investments	Investment bonds					
28		PEPs/ISAs (exc. cash ISAs)					
29		Investment trusts					
30		Unit trusts/OEICs					
31		Structured products					
32		Other investment products/funds					
33		Investment management/services (inc. platforms)					

PART B

		A	B	C	D	E
	Activities	Total complaints outstanding at reporting period start date	Complaints received	Complaints closed	Complaints upheld by firm	Total redress paid £

Lending						
35	Debt purchasing (including complaints in relation to the underlying debt that has been purchased)					
36	Hire purchase/conditional sale agreements					

37	Home credit loan agreements					
38	Bill of sale loan agreements, e.g. logbook lending					
39	Pawnbroking					
40	High-cost short-term credit					
41	Other lending					

42	Credit Broking					
----	-----------------------	--	--	--	--	--

43	Debt Management activity					
----	---------------------------------	--	--	--	--	--

44	Debt collecting					
----	------------------------	--	--	--	--	--

45	All other credit-related activity					
----	--	--	--	--	--	--

NOTES ON THE COMPLETION OF THIS RETURN

Nil returns

If no *complaints* have been received during the reporting period and no *complaints* were outstanding at the beginning of the period, the *firm* may submit a NIL RETURN by clicking on the relevant box.

Product/service groupings

Unless otherwise specified, *complaints* should be allocated to these groupings based on the product or service the *complaint* relates to.

If a *firm* has not received any *complaints* relating to a particular product or service during the reporting period, the relevant box should be left blank.

Product and cause categories

The 'other' categories should only be used in exceptional circumstances when none of the specific product or cause categories are appropriate.

A *complaint* should be reported against the product/service element complained about; this may be different to the main policy itself. For example, for a term assurance policy with an attaching critical illness option, where the *complaint* relates to the term assurance element, it should be reported under 'other pure protection' but where the *complaint* relates to the critical illness element, it should be reported under 'critical illness'.

A *complaint* should only be reported in Part B if it is not covered by a specific category in Part A.

A lender should report *complaints* about the way in which it collects debts due under loans where it is the lender in the relevant lending category.

Annex 1CR Illustration of the online reporting requirements, referred to in DISP 1.10.2AR

This annex belongs to *DISP* 1.10.2AR

COMPLAINTS BY RETAIL INVESTMENT ADVISERS REPORTING / NIL RETURN DECLARATION

1	Does the data reported in this return cover <i>complaints</i> about matters relating to activities carried out by one or more <i>employees</i> when acting as a <i>retail investment adviser</i> (RIA)? If 'Yes', then please list the individual reference numbers (IRNs) of all the RIAs included in this return.	Yes	No
2	We wish to declare a nil return	Yes	No

Total complaints, complaints closed, complaints upheld and total redress paid during the reporting period

	A	B	C	D	E	F
	IRN	Name of RIA	Total number of complaints received	Total number of complaints closed	Total number of complaints upheld	Total redress paid
1						
2						
3						
4						

NOTES ON THE COMPLETION OF THIS RETURN**Nil Returns**

If no *complaints* have been received during the reporting period or none of the *complaints* received is about matters relating to

activities carried out by an *employee* when acting as a *retail investment adviser* the *firm* may submit a NIL RETURN by clicking on the relevant box.

Part 2: Coming into force on the day the instrument is made

4 Standard terms

...

4.2 Standard terms

...

4.2.3 R The following rules and guidance apply to *VJ participants* as part of the *standard terms*, except where the context requires otherwise:

(1) *DISP* 1 (Treating complainants fairly), except:

...

(b) *DISP* 1.10 (Complaints reporting rules); ~~and~~

(ba) *DISP* 1.10A (Complaints data publication rules); and

(c) ...

...

Part 3: Coming into force on 1 January 2016

1.10 Complaints reporting rules

...

Information requirements

1.10.2 R ~~Part A of *DISP-1 Annex 1* requires (for the relevant reporting period) information about:~~

(1) ~~the total number of *complaints* received by the *firm*;~~

(2) ~~the total number of *complaints* closed by the *firm*:~~

(a) ~~within four weeks or less of receipt;~~

(b) ~~more than four weeks and up to eight weeks of receipt; and~~

(c) ~~more than eight weeks after receipt;~~

(3) ~~the total number of *complaints*:~~

- (a) ~~upheld by the *firm* in the reporting period; and~~
- (b) ~~outstanding at the beginning of the reporting period; and~~
- (4) ~~the total amount of redress paid in respect of *complaints* during the reporting period.~~
- (1) Where a *firm* receives less than 500 *complaints* in a reporting period, Part A-1 of *DISP* 1 Annex 1 requires, for the relevant reporting period and in respect of particular categories of products:
 - (a) in Table 1, information about the total number of *complaints* received by the *firm* and the cause of the *complaint*;
 - (b) in Table 2, information about the number of *complaints* that were:
 - (i) closed or upheld within different periods of time; and
 - (ii) the total amount of redress paid by the *firm* in relation to *complaints* upheld and not upheld in the relevant reporting period; and
 - (c) in Table 3, information providing context about the *complaints* received.
- (2) Where a *firm* receives 500 or more *complaints* in a reporting period, Part A-2 of *DISP* 1 Annex 1 requires, for the relevant reporting period and in respect of particular categories of products:
 - (a) in Table 4, information about the total number of *complaints* received by the *firm* and the cause of the *complaint*;
 - (b) in Table 5, information about the number of *complaints* that were:
 - (i) closed or upheld within different periods of time; and
 - (ii) the amount of redress paid by the *firm* in relation to *complaints* upheld and not upheld in the relevant reporting period; and
 - (c) in Table 6, information providing context about the *complaints* received.

...

1.10.3 G ...

- (2) Under ~~*DISP* 1.10.2R(3)(a)~~ *DISP* 1.10.2R(1)(b)(i), ~~*DISP* 1.10.2R(2)(b)(i)~~ or ~~*DISP* 1.10.2-AR~~, a *firm* should report any *complaint* to which it has given a response which upholds the

complaint, even if any redress offered is disputed by the complainant. For this purpose, 'response' includes a response under the complainant's written acceptance rule (*DISP 1.6.4R*), ~~and a final response and a summary resolution communication~~. Where a *complaint* is upheld in part or where the *firm* does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, a *firm* should treat the *complaint* as upheld for reporting purposes. However, where a *firm* rejects a *complaint*, yet chooses to make a goodwill payment to the complainant, the *complaint* should be recorded as 'rejected'.

- (3) If a *firm* reports on the amount of redress paid under ~~*DISP 1.10.2R(4)*, *DISP 1.10.2R(1)(b)(ii)*, *DISP 1.10.2R(2)(b)(ii)*, *DISP 1.10.2-AR(4)* or *DISP 1.10.2AR*~~, redress should be interpreted to include an amount paid, or cost borne, by the *firm*, where a cash value can be readily identified, and should include:

...

- (4) If a *firm* reports on the amount of redress paid under ~~*DISP 1.10.2R(4)*, *DISP 1.10.2R(1)(b)(ii)*, *DISP 1.10.2R(2)(b)(ii)*, *DISP 1.10.2-AR(4)* or *DISP 1.10.2AR*~~, the redress should not, however, include repayments or refunds of premiums which had been taken in error (for example where a *firm* had been taking, by direct debit, twice the actual premium amount due under a policy). The refund of the overcharge would not count as redress.

...

1.10A Complaints data publication rules

...

Mode and content of publication

...

- 1.10A.8 G (1) ~~The *FCA* recommends that *firms* should publish additional information alongside their *complaints* data summaries or total number of *complaints* (as appropriate) in order to relate the number of *complaints* to the scale of the *firm's* relevant business. *Firms* are recommended to publish the relevant standard metrics set out in the table at *DISP 1 Annex 1A G* with the summaries. Where the *complaints* data summary or total number of *complaints* (as appropriate) relates to a joint report the metrics should cover all the *firms* included in the joint report.~~
- (2) ~~If the recommended metrics do not accurately reflect the scale of the *firm's* relevant business, the *FCA* recommends that the *firm* should publish metrics which best reflect the scale of its business based on the number of its customers or accounts or policies. *Firms* may also~~

~~publish other metrics where they consider that these would better reflect the scale of their business.~~

- (3) ~~Firms may also publish other information to aid understanding, for example details of their internal processes for dealing with complaints. [deleted]~~

...

Publication of complaints data by the FCA

- 1.10A.10 G (1) To improve consumer awareness and to help firms compare their performance against their peers, the FCA publishes:
- (a) complaints data about the financial services industry as a whole; and
- (b) firm-level complaints data for those firms that are required to publish a complaints data summary or the total number of complaints (as appropriate) under DISP 1.10A.1R.
- (2) The FCA also publishes firm-level information giving context to the complaints data reported to it for those firms that are required to publish that information under DISP 1.10A.1R.
- 1.10A.11 G For firms reporting 500 or more complaints under DISP 1.10.1R(1) or 1000 or more complaints under DISP 1.10.1R(2) in the relevant reporting period, the FCA will publish the firm-level complaints data and information providing context to the complaints data reported to it either:
- (1) after the firm provides the appropriate consent in the complaints data report and confirms that the reported data accurately reflects the data which it will publish under DISP 1.10A.1R; or
- (2) after the FCA receives an email from the firm under DISP 1.10A.4R confirming that the complaints data summary accurately reflects the report submitted to the FCA, that the summary has been published and where it has been published.
- 1.10A.12 G For firms with only a limited permission that report complaints to the FCA under the reporting requirements in SUP 16.12, the FCA will publish the firm-level complaints data reported to it after the FCA receives an email from the firm under DISP 1.10A.4R. That email should confirm that the total number of complaints accurately reflects the report submitted to the FCA under SUP 16.12, that the total number of complaints has been published and where the information has been published.

...

1 Annex 1R Complaints return form

Illustration of the reporting requirements, referred to in *DISP* 1.10.1R

Complaints Return (DISP 1 Ann 1R)

GROUP REPORTING / ~~NIL RETURN DECLARATION~~

1 Does the data reported in this return cover ~~complaints~~ complaints relating to more than one entity? If 'Yes', then list the ~~firm~~ reference numbers (FRNs) of all the entities included in this return.

Yes / No

34 If 'Yes' to 1 (above) list the firm reference numbers (FRNs) of all of the additional entities included in this return. Use the 'add' button to add additional FRNs.

111111

NIL RETURN DECLARATION

2 We wish to declare a nil return
(If 'Yes', leave all tables blank, including the contextualisation metrics in tables 3 and 6).

Yes / No

RETURN DETAILS REQUIRED

3 Total ~~complaints~~ complaints outstanding at reporting period start date

100

49 Total number of *complaints* opened during the reporting period

100

COMPLAINTS DATA PUBLICATION BY FCA AND FIRMS

47 If you are reporting 500 or more *complaints* under *DISP* 1.10.1R(1) or 1000 or more *complaints* under *DISP* 1.10.1R(2), do you consent to the *FCA* publishing the *complaints* data and information on context contained in this report and due to be published under *DISP* 1.10A in advance of the *firm* publishing the data itself?

Yes/No

48 If 'Yes' to 47 (above), does the *firm* confirm that the *complaints* data and information on context contained in this report accurately reflects the information to be published by the reporting *firm* under *DISP 1.10A*?

Yes/No

PART A

Complaints closed and total redress paid during the reporting period

	A	B	C	D	E
Product/service grouping	Complaints closed within 4 weeks	Complaints closed > 4 but within 8 weeks	Complaints closed > 8 weeks	Total complaints upheld by firm	Total redress paid
4 Banking and credit cards					
5 Home finance					
6 General insurance and pure protection					
7 Decumulation, life and pensions					
8 Investments					

Complaints opened

		A	B	C	D	E
Product/service grouping	Product/service	Advising, selling and arranging	Terms and disputed sums/charges	General admin/customer service	Arrears related	Other
9 Banking and	Current accounts					

10	credit cards	Credit cards					
46		Overdrafts					
41							
12		Savings (inc. Cash ISA) and other banking					
13	Home finance	Equity release products					
14		Impaired credit mortgages					
15		Other regulated home finance products (including second and subsequent charge mortgages)					
16		Other unregulated home finance products					
17	General insurance & pure protection	Payment protection insurance					
18		Other general insurance					
19		Critical illness					
20		Income protection					
21		Other pure protection					
22	Decumulation, life and pensions	Personal pensions and FSAVCs					
23		Investment linked annuities					
24		Income drawdown products					
25		Endowments					
26		Other decumulation, life and pensions					
27	Investments	Investment bonds					
28		PEPs/ISAs (exc. cash ISAs)					
29		Investment trusts					
30		Unit trusts/OEICs					
31		Structured products					
32		Other investment products/funds					
33		Investment management/services (inc. platforms)					

Part A-1, DISP Annex 1R

For firms receiving less than 500 complaints in the reporting period

Table 1

Complaints opened when fewer than 500 total opened

		<u>A</u>	<u>D</u>	<u>H</u>	<u>L</u>	<u>N</u>	<u>N</u>
		Total	<u>Advising, selling and arranging</u>	<u>Information, sums/charges or product performance</u>	<u>General admin/customer service</u>	<u>Arrears related</u>	<u>Other</u>
<u>50</u>	<u>Current accounts</u>						
<u>51</u>	<u>Credit cards</u>						
<u>52</u>	<u>Overdrafts</u>						
<u>53</u>	<u>Packaged accounts</u>						
<u>54</u>	<u>Banking and credit cards</u> <u>Savings (including ISAs)</u>						
<u>55</u>	<u>Other banking - Please provide details below</u>						
	<u>55 X</u>						
<u>56</u>	<u>Total banking and credit cards</u>						
<u>57</u>	<u>Home finance</u> <u>Equity release</u>						
<u>58</u>	<u>Impaired credit</u>						

59		<u>Second and subsequent charge</u>							
60		<u>Other regulated home finance products - Please provide details below</u>							
		60 X							
61		<u>Other unregulated home finance products - Please provide details below</u>							
		61 X							
62		<u>Total home finance</u>							
63	<u>Insurance & pure protection</u>	<u>Property</u>							
64		<u>Motor & Transport</u>							
65		<u>Travel</u>							
66		<u>Pet</u>							
67		<u>Warranty</u>							
68		<u>Assistance</u>							
69		<u>Medical/health</u>							
70		<u>General insurance packaged multi products</u>							
71		<u>Other general insurance - Please provide details below</u>							
			71 X						
72			<u>Payment protection insurance</u>						
73			<u>Income protection and other accident, sickness and unemployment</u>						
74			<u>Whole of life/term assurance/critical illness</u>						
75			<u>Protection packaged multi products</u>						
76		<u>Other pure protection - Please provide</u>							

		details below						
		76 X						
77		Total insurance & pure protection						
78	Decumulation & pensions	<u>Workplace personal pensions (e.g. SIPP, SHPs, PPPs)</u>						
79		<u>Non-workplace personal pensions (e.g. SIPP, SHPs, PPPs)</u>						
80		<u>Trust based pensions (e.g. occupational and DB)</u>						
81		<u>Pensions packaged multi products</u>						
82		<u>Other pensions - Please provide details below</u>						
		82X						
83		<u>Annuities (including enhanced and impaired)</u>						
84		<u>Drawdown and UFPLS</u>						
85		<u>Third way products (e.g. investment linked, variable, fixed term)</u>						
86		<u>Decumulation packaged multi products</u>						
87		<u>Other decumulation - Please provide details below</u>						
		87X						
88		Total decumulation & pensions						
89		<u>Investment bonds</u>						
90		<u>Endowments</u>						

91	<u>Investments</u>	<u>ISAs (where investment held)</u>					
92		<u>Investment trusts</u>					
93		<u>Unit trusts/OEICs</u>					
94		<u>Structured products</u>					
95		<u>ETPs</u>					
96		<u>Discretionary management services</u>					
97		<u>Non-discretionary management services</u>					
98		<u>Platforms</u>					
99		<u>Crowdfunding / peer to peer</u>					
100		<u>FX/CFD/Spreadbetting</u>					
101		<u>UCITS</u>					
102		<u>Investment packaged multi products</u>					
103		<u>Other investment products/funds - Please provide details below</u>					
			<u>103X</u>				
104		<u>Total investments</u>					

Table 2**Complaints closed, upheld and redress when fewer than 500 opened complaints**

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>
<u>Product/service grouping</u>	<u>Complaints closed within 3 days</u>	<u>Complaints closed > 3 days but within 8 weeks</u>	<u>Complaints closed > 8 weeks</u>	<u>Total complaints closed</u>	<u>Total complaints upheld</u>	<u>Total redress paid for upheld complaints</u>	<u>Total redress paid for complaints not upheld</u>	<u>Total redress paid</u>
<u>111</u> <u>Total banking and credit cards</u>								
<u>117</u> <u>Total home finance</u>								
<u>132</u> <u>Total insurance & pure protection</u>								
<u>143</u> <u>Total decumulation & pensions</u>								
<u>159</u> <u>Total investments</u>								

Table 3**Contextualisation metrics when fewer than 500 total opened complaints**

<u>Product/service grouping:</u>	<u>A</u>	<u>B</u>
	<u>Provision (at reporting period end date)</u>	<u>Intermediation (within the reporting period)</u>
<u>164 Banking and credit cards</u>	<input type="text"/> <u>Number of accounts</u>	
<u>173 Home finance</u>	<input type="text"/> <u>Number of balances outstanding</u>	<input type="text"/> <u>Number of sales</u>
<u>190 Insurance & pure protection</u>	<input type="text"/> <u>Number of policies in force</u>	<input type="text"/> <u>Number of policies sold</u>
<u>203 Decumulation & pensions</u>	<input type="text"/> <u>Number of policies in force</u>	<input type="text"/> <u>Number of policies sold</u>
<u>218 Investments</u>	<input type="text"/> <u>Number of distinct funds or investments accounts</u>	<input type="text"/> <u>Number of sales or equivalent transactions</u>

Part A-2, DISP Annex 1R

For firms receiving more than 500 complaints in the reporting period

Table 4

Complaints opened when greater than or equal to 500 opened complaints

		<u>A</u>	<u>B</u>	<u>C</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>I</u>	<u>J</u>	<u>K</u>	<u>M</u>	<u>N</u>	<u>O</u>
		<u>Total</u>	<u>Advising, selling and arranging</u>	<u>Information, sums/charges or product performance</u>			<u>General admin/customer service</u>			<u>Arrears Related</u>	<u>Other</u>	<u>Claims</u>	
<u>Product/service grouping</u>	<u>Product/service</u>	<u>Total</u>	<u>Unsuitable advice</u>	<u>Unclear guidance/arrangement</u>	<u>Disputes over sums/charges</u>	<u>Product performance/features</u>	<u>Product disclosure information</u>	<u>Errors / not following instructions</u>	<u>Delays / timescales</u>	<u>Other general admin/customer service</u>	<u>Arrears related</u>	<u>Other</u>	<u>Of which claims related</u>
<u>50</u>	<u>Current accounts</u>												
<u>51</u>	<u>Credit cards</u>												
<u>52</u>	<u>Overdrafts</u>												
<u>53</u>	<u>Packaged accounts</u>												

54		<u>Savings (including ISAs)</u>																	
55		<u>Other banking - Please provide details below</u>																	
		55 X																	
56		<u>Total banking and credit cards</u>																	
57	Home finance	<u>Equity release</u>																	
58		<u>Impaired credit</u>																	
59		<u>Second and subsequent charge</u>																	
60		<u>Other regulated home finance products - Please provide details below</u>																	
		60 X																	
61		<u>Other unregulated home finance products - Please provide details below</u>																	
		61 X																	
62			<u>Total home finance</u>																
63	Insurance & pure protection	<u>Property</u>																	
64		<u>Motor & Transport</u>																	
65		<u>Travel</u>																	
66		<u>Pet</u>																	
67		<u>Warranty</u>																	
68		<u>Assistance</u>																	
69		<u>Medical/health</u>																	
70		<u>General insurance packaged multi products</u>																	
71		<u>Other general insurance - Please provide details below</u>																	

	71 X														
72		<u>Payment protection insurance</u>													
73		<u>Income protection and other accident, sickness and unemployment</u>													
74		<u>Whole of life/term assurance/critical illness</u>													
75		<u>Protection packaged multi products</u>													
76		<u>Other pure protection - Please provide details below</u>													
	76 X														
77		<u>Total insurance & pure protection</u>													
78	<u>Decumulation & pensions</u>	<u>Workplace personal pensions (e.g. SIPPs, SHPs, PPPs)</u>													
79		<u>Non-workplace personal pensions (e.g. SIPPs, SHPs, PPPs)</u>													
80		<u>Trust based pensions (e.g. Occupational and DB)</u>													
81		<u>Pensions packaged multi products</u>													
82		<u>Other pensions - Please provide details below</u>													
		82X													
83			<u>Annuities (including enhanced and impaired)</u>												
84		<u>Drawdown and UFPLS</u>													
85		<u>Third way products (e.g. investment linked, variable, fixed term)</u>													
86		<u>Decumulation packaged multi products</u>													

87	<u>Other decumulation - Please provide details below</u>																		
	87 X																		
88	<u>Total decumulation & pensions</u>																		
89	<u>Investment bonds</u>																		
90	<u>Endowments</u>																		
91	<u>ISAs (where investment held)</u>																		
92	<u>Investment trusts</u>																		
93	<u>Unit trusts/OEICs</u>																		
94	<u>Structured products</u>																		
95	<u>ETPs</u>																		
96	<u>Discretionary management services</u>																		
97	<u>Non-discretionary management services</u>																		
98	<u>Platforms</u>																		
99	<u>Crowdfunding / peer to peer</u>																		
100	<u>FX/CFD/Spreadbetting</u>																		
101	<u>UCITS</u>																		
102	<u>Investment packaged multi products</u>																		
103	<u>Other investment products/funds - Please provide details below</u>																		
	103 X																		
104	<u>Total investments</u>																		

Table 5

Complaints closed, upheld and redress when greater than or equal to 500 opened complaints*Redress paid reported in single units*

		A	B	C	D	E	F	G	H
<u>Product/service grouping</u>	<u>Product/service</u>	<u>Complaints closed within 3 days</u>	<u>Complaints closed > 3 days but within 8 weeks</u>	<u>Complaints closed > 8 weeks</u>	<u>Total complaints closed</u>	<u>Total complaints upheld</u>	<u>Total redress paid for upheld complaints</u>	<u>Total redress paid for complaints not upheld</u>	<u>Total redress paid</u>
<u>105</u>	<u>Current accounts</u>								
<u>106</u>	<u>Credit cards</u>								
<u>107</u>	<u>Overdrafts</u>								
<u>108</u>	<u>Banking and credit cards</u>								
	<u>Packaged accounts</u>								
<u>109</u>	<u>Savings (including ISAs)</u>								
<u>110</u>	<u>Other banking</u>								
<u>111</u>	<u>Total banking and credit cards</u>								
<u>112</u>	<u>Equity release</u>								
<u>113</u>	<u>Impaired credit</u>								
<u>114</u>	<u>Home finance</u>								
	<u>Second and subsequent charge</u>								
<u>115</u>	<u>Other regulated home finance products</u>								
<u>116</u>	<u>Other unregulated home finance products</u>								

117		Total home finance							
118		<u>Property</u>							
119		<u>Motor & Transport</u>							
120		<u>Travel</u>							
121		<u>Pet</u>							
122		<u>Warranty</u>							
123		<u>Assistance</u>							
124		<u>Medical/health</u>							
125	<u>Insurance & pure protection</u>	<u>General insurance packaged multi products</u>							
126		<u>Other general insurance</u>							
127		<u>Payment protection insurance</u>							
128		<u>Income protection and other accident, sickness and unemployment</u>							
129		<u>Whole of life/term assurance/critical illness</u>							
130		<u>Protection packaged multi products</u>							
131		<u>Other pure protection</u>							
132			Total insurance & pure protection						
133	<u>Decumulation & pensions</u>	<u>Workplace personal pensions (e.g. SIPP, SHP, PPP)</u>							
134		<u>Non-workplace personal pensions (e.g. SIPP, SHP, PPP)</u>							
135		<u>Trust based pensions (e.g. Occupational and DB)</u>							

136		<u>Pensions packaged multi products</u>							
137		<u>Other pensions</u>							
138		<u>Annuities (including enhanced and impaired)</u>							
139		<u>Drawdown and UFPLS</u>							
140		<u>Third way products (e.g. investment linked, variable, fixed term)</u>							
141		<u>Decumulation packaged multi products</u>							
142		<u>Other decumulation</u>							
143		<u>Total decumulation & pensions</u>							
144	<u>Investments</u>	<u>Investment bonds</u>							
145		<u>Endowments</u>							
146		<u>ISAs (where investment held)</u>							
147		<u>Investment trusts</u>							
148		<u>Unit trusts/OEICs</u>							
149		<u>Structured products</u>							
150		<u>ETPs</u>							
151		<u>Discretionary management services</u>							
152		<u>Non-discretionary management services</u>							
153		<u>Platforms</u>							
154		<u>Crowdfunding / peer to peer</u>							
155		<u>FX/CFD/Spreadbetting</u>							
156		<u>UCITS</u>							
157		<u>Investment packaged multi products</u>							

158	Other investment products/funds								
159	Total Investments								

Table 6

Reported in single units

Contextualisation metrics when greater than or equal to 500 opened complaints

A
Provision (at reporting period end date)

B
Intermediation (within reporting period)

Product/service grouping

Product/service

Number of accounts:

160	<u>Banking and credit cards</u>	<u>Current accounts</u>	
161		<u>Credit cards</u>	
162		<u>Savings (inc. ISAs)</u>	
163		<u>Other banking</u>	
164		<u>Total banking and credit cards</u>	
165		<u>of which have overdraft facility</u>	
166		<u>of which are packaged accounts</u>	

167 **Banking contextualised**

Number of complaints opened per 1000 accounts

--

		<u>Number of balances outstanding:</u>	<u>Number of sales</u>
168	<u>Equity release</u>		
169	<u>Impaired credit</u>		
170	<u>Second and subsequent charge</u>		
171	<u>Other regulated home finance products</u>		
172	<u>Other unregulated home finance products</u>		
173	<u>Total home finance</u>		

174	<u>Number of complaints opened per 1000 balances outstanding</u>		
	<u>Home finance contextualised</u>		
175	<u>Number of complaints opened per 1000 sales</u>		

		<u>Number of policies in force</u>	<u>Number of policies sold</u>
176	<u>Property</u>		
177	<u>Motor & Transport</u>		
178	<u>Travel</u>		
179	<u>Pet</u>		
180	<u>Warranty</u>		
181	<u>Assistance</u>		
182	<u>Medical/health</u>		

183	<u>General insurance packaged multi products</u>		
184	<u>Other general insurance</u>		
185	<u>Payment protection insurance</u>		
186	<u>Income protection and other accident, sickness and unemployment</u>		
187	<u>Whole of life/term assurance/critical illness</u>		
188	<u>Protection packaged multi products</u>		
189	<u>Other pure protection</u>		
190	<u>Total insurance & pure protection</u>		

191	<u>Insurance & pure protection contextualised</u>	<u>Number of complaints opened per 1000 policies in force</u>	
192		<u>Number of complaints opened per 1000 policies sold</u>	

		<u>Number of policies in force</u>	<u>Number of policies sold</u>
193	<u>Decumulation & pensions</u>	<u>Workplace personal pensions (e.g. SIPPs, SHPs, PPPs)</u>	
194		<u>Non-workplace personal pensions (e.g. SIPPs, SHPs, PPPs)</u>	
195		<u>Trust based pensions (e.g. Occupational and DB)</u>	
196		<u>Pensions packaged multi products</u>	

197	Other pensions		
198	Annuities (including enhanced and impaired)		
199	Drawdown and UFPLS		
200	Third way products (e.g. investment linked, variable, fixed term)		
201	Decumulation packaged multi products		
202	Other decumulation		
203	Total decumulation & pensions		

204	Decumulation & pensions contextualised	Number of complaints opened per 1000 policies in force	
205		Number of complaints opened per 1000 policies sold	

		Number of distinct funds or investment accounts	Number of sales or equivalent transactions
206	Investments	Investment bonds	
207		Endowments	
208		ISAs (where investment held)	
209		Investment trusts	
210		Unit trusts/OEICs	
211		Structured products	
212		ETPs	
213		Crowdfunding / Peer to Peer	

214	FX/CFD/Spreadbetting		
215	UCITS		
216	Investment packaged multi products		
217	Other investment products/funds		
218	Total Investments		
219	of which have discretionary management services		
220	of which have non-discretionary management services		
221	of which sold through a platform		

222	<u>Number of complaints opened per 1000 distinct funds or investment accounts</u>	
	<u>Investments contextualised</u>	
223	<u>Number of complaints opened per 1000 sales or equivalent transactions</u>	

PART B

...

NOTES ON THE COMPLETION OF THIS RETURN

Nil returns

...

Valuing data to be reported

Firms should report the actual data requested in this complaints return, using single units. When reporting information on context in Table 6 of Part A-2, lines 167, 174, 175, 191, 192, 204, 205, 222 and 223 firms may use decimals.

Product/service groupings

...

Product and cause categories

...

A complaint should be reported against the product/service element complained about; this may be different to the main policy itself. For example, for a term assurance policy with an attaching critical illness option, where the complaint relates to the term assurance element, it should be reported under 'other pure protection' but where the complaint relates to the critical illness element, it should be reported under 'critical illness'. For example, for a current account with attached packaged account products or policies, where the complaint relates to the current account element, it should be reported under 'Current accounts' but where the complaint relates to the packaged account element, it should be reported under 'Packaged accounts'.

In Table 1 of Part A-1 and Table 4 of Part A-2, in relation to complaints about platforms in the investments product/service grouping, firms should include complaints about the platform rather than the underlying funds or investments.

A complaint should only be reported in Part B if it is not covered by a specific category in Part A.

A lender should report complaints about the way in which it collects debts due under loans where it is the lender in the relevant lending category.

Where Table 1 of Part A-1 and Table 4 of Part A-2 refer to 'Other' products or services (for example, 'Other banking' or 'Other regulated home finance products'), a firm should provide information for up to a maximum of five products or services.

In Table 1 of Part A-1, and Tables 4 and 5 of Part A-2, a complaint should only be reported in a 'packaged multi product' category (for example, 'General insurance packaged multi products' or 'Pensions packaged multi products'), if it is not apparent to which underlying product the complaint relates. For insurance purposes, this may cover both households or small businesses.

In Table 6 of Part A-2, a product should only be included in a 'packaged multi product' category if it is not apparent to which underlying category the policy, pension, investment or account relates.

In Table 4 of Part A-1, a complaint should only be reported in the 'of which claims related' category if the complaint relates to an insurance product.

A complaint should only be reported in Part B if it is not covered by a specific category in Part A.

A lender should report complaints about the way in which it collects debts due under loans where it is the lender in the relevant lending category.

Contextualisation

When providing information giving context to its complaints data, a firm should choose the metric which best reflects whether the majority of business undertaken by the firm involves the provision of products or services by the firm itself or intermediation. A firm should only provide information on context for either provision or intermediation, not both activities.

For provision, information on context should indicate the total volume of a *firm's* relevant business at the end date of the reporting period; this is likely to include accounts opened, loans provided, policies sold and funds and investments provided, and that are still in force, before the commencement of the relevant reporting period.

For intermediation, information on context provided by a *firm* should indicate the number of sales within the relevant reporting period only.

In Table 3 of Part A-1 or Table 6 of Part A-2:

- (1) When reporting information about the 'number of balances outstanding' in the 'Home Finance' product category, *firms* should report the total number of balances outstanding (all loans) as reported by the *firm* at row E.45 or E.53 of E(2) in SUP 16 Annex 19A (Mortgage Lenders and Administrators Return) on the *firm's* most recent return.
- (2) When reporting information about intermediation sales in the 'Crowdfunding / peer to peer' product category, *firms* should provide the number of funded pitches within the reporting period.
- (3) When reporting information about the 'number of policies in force' or the 'number of distinct funds or investment accounts', the reported information should cover the number of existing accounts or policies or any relevant past policies that relate to the *complaint(s)* being reported. For example, in relation to payment protection insurance, a *firm* may no longer have any current policies in force and the *firm* may wish to include the total number of past policies issued/sold.
- (4) Where reporting information about a product which is contained within a wrapper, platform or packaged multi product, only the wrapper, platform or packaged multi product should be counted rather than all of the underlying policies, funds or investments. However, for insurance purposes where there are packages of underlying and identifiable separate policies these should be counted separately.
- (5) When reporting the number of policies sold/number of sales or equivalent transactions, renewals should be included.

Transparency

To improve *consumer* awareness and to help *firms* compare their performance against their peers, the *FCA* publishes:

- (1) *complaints* data about the financial services industry as a whole; and
- (2) *firm*-level data for *firms* required to publish their data under DISP 1.10A.1R.

The *FCA* also publishes *firm*-level information giving context to the *complaints* data reported where *firms* are due to publish that information under DISP 1.10A.1R. This will be the data in Table 6 of Part A-2, lines 167, 174, 175, 191, 192, 204, 205, 222 and 223.

For *firms* reporting 500 or more *complaints* under DISP 1.10.1R(1) or 1000 or more *complaints* under DISP 1.10.1R(2) in the relevant reporting period, the *FCA* will publish the *complaints* data of the *firm* either:

- (1) after the *firm* provides consent in the report; or
- (2) (if the *firm* does not provide consent) after the *FCA* receives an email from the *firm* confirming that the *complaints* data summary accurately reflects the report submitted to the *FCA*, that the summary has been published and where it has been published as required by DISP 1.10A.4R.

If the *firm* ticks the 'Yes' box in this report consenting to the *FCA* publishing the *firm's* *complaints* data, it must also confirm that the data contained in the report accurately reflects the information to be published by the reporting *firm*.

If the *firm* has submitted a joint report on behalf of a *group*, the *firm* should only tick the 'Yes' box consenting to the *FCA* publishing the *complaints* data if the *firm* is authorised to do so by those *firms* on whose behalf it is submitting this report.

A firm which does not provide consent in this report must still ensure that the *complaints* data contained in this report accurately reflects the data which the *firm* is required to publish under *DISP* 1.10A.1R and confirm this to the *FCA* under *DISP* 1.10A.4R.

DISP 1 Annex 1A is deleted in its entirety. The deleted text is not shown.

1 Annex 1BR Complaints publication report

This table belongs to *DISP* 1.10A.2R.

Complaints publication report

Firm name:

Group: (if applicable):

Other firms included in this report (if any):

Period covered in this report: [e.g. 1 January – 30 June 2015 or 1 January – 31 December 2015]

Brands/trading names covered:

	Number of complaints opened	Number of complaints closed	Complaints closed within 8 weeks (%)	Closed complaints upheld by firm (%)
Banking and credit cards				
Home finance				
General insurance and pure protection				
Decumulation, life and pensions				
Investments				
Credit related			Not applicable	

	<u>Number of complaints opened by volume of business</u>							
<u>Product / service grouping</u>	<u>Provision (at reporting period end date)</u>	<u>Intermediation (within the reporting period)</u>	<u>Number of complaints opened</u>	<u>Number of complaints closed</u>	<u>Percentage closed within 3 days</u>	<u>Percentage closed after 3 days but within 8 weeks</u>	<u>Percentage upheld</u>	<u>Main cause of complaints opened</u>
<u>Banking and credit cards</u>	per 1000 accounts	N/A						
<u>Home finance</u>	per 1000 balances outstanding	per 1000 sales						
<u>Insurance and pure protection</u>	per 1000 policies in force	per 1000 policies sold						
<u>Decumulation and pensions</u>	per 1000 policies in force	per 1000 policies sold						
<u>Investments</u>	per 1000 distinct funds or investment accounts	per 1000 sales or equivalent transactions						
<u>Credit related</u>	<i>(Recommended only) per 1000 accounts / loans</i>	<i>(Recommended only) per 1000 sales</i>			N/A	N/A		N/A

Note 1: When providing the appropriate information on the context of complaints, a *firm* should choose the metric which best reflects whether the majority of business undertaken by the *firm*

involves the provision of products or services by the *firm* itself or intermediation. A *firm* should only provide information on context in respect of either provision or intermediation, not both activities.

Note 2: For provision, information on context should relate the number of complaints opened within the reporting period to the total volume of a *firm's* relevant business at the end date of the reporting period. This is likely to include accounts opened, loans provided, policies sold and funds and investments provided before the commencement of the relevant reporting period.

Note 3: For intermediation, information on context published by a *firm* should relate the number of complaints opened within the reporting period to the number of sales within the relevant reporting period only.

Note 4: It is recommended that *firms* publish appropriate information on context in respect of credit-related complaints. However, publication of this data is not mandatory.

Note 5: When a *firm* publishes the 'main cause of complaints opened', this should be the cause category prompting the largest number of complaints for the relevant product/service grouping in Table 4 of Part A-2, *DISP* 1 Annex 1.

...

TP 1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provisions	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
...					
39	<u><i>DISP</i> 1.5, <i>DISP</i> 1.10 and <i>DISP</i> 1.10A, <i>DISP</i> 1 Annex 1R, <i>DISP</i> 1 Annex 1BR</u>	R	<p><u>(1) For six month reporting periods commencing on or before 31 December 2015, the rules and guidance in column (2) apply as they stood at the start of the relevant reporting period.</u></p> <p><u>(2) For six month reporting periods commencing on or after 1 January 2016 and on or before 29 June 2016 the rules and guidance in column (2) apply as they stood on 1 January 2016 subject to the following modifications:</u></p> <p><u>(i) the reference in <i>DISP</i> 1.10.3G(2) to a summary resolution communication is ignored;</u></p> <p><u>(ii) <i>firms</i> are not required to complete columns A and B of Table 2 of Part A-1 of <i>DISP</i> 1</u></p>	<u>From 1 January 2016</u>	<u>From 1 January 2016</u>

			<p><u>Annex 1R, and references in DISP 1.10.2R(1)(b)(i) are to be construed accordingly;</u></p> <p><u>(iii) firms are not required to complete columns A and B of Table 5 of Part A-2 of DISP 1 Annex 1R, and references in DISP 1.10.2R(2)(b)(i) are to be construed accordingly;</u></p> <p><u>(iv) firms are not required to publish information about the percentage of complaints closed within three days, or closed after three days but within eight weeks; and</u></p> <p><u>(v) DISP 1.5.1R(3) and (5) are to be disregarded.</u></p> <p><u>(3) For six month reporting periods commencing on or after 30 June 2016, the rules and guidance in column (2) apply as they stood on 30 June 2016 (with no modifications).</u></p> <p><u>(4) For twelve month reporting periods commencing on or before 31 December 2015, the rules and guidance in column (2) apply as they stood at the start of the relevant reporting period.</u></p> <p><u>(5) For twelve month reporting periods commencing on or after 1 January 2016 but on or before 29 June 2016:</u></p> <p><u>(i) DISP 1.10 DISP 1 Annex 1R apply as they stood on 1 January 2016;</u></p> <p><u>(ii) DISP 1.10A and DISP 1 Annex 1BR apply as they stood on 1 January 2016 save that firms are not required to publish information about the percentage of complaints closed within three days, or closed after three days but within eight weeks; and</u></p> <p><u>(iii) DISP 1.5.1R(3) and (5) are to</u></p>	
--	--	--	--	--

			<p><u>be disregarded.</u></p> <p><u>(6) For twelve month reporting periods commencing on or after 30 June 2016, the rules and guidance in column (2) apply as they stood on 30 June 2016 (with no modifications).</u></p>		
--	--	--	---	--	--

Part 4: Coming into force on 30 June 2016

1.5 Complaints resolved by close of the third business day

1.5.1 R The following *rules* do not apply to a *complaint* that is resolved by a *respondent* by close of business on the third *business day* following the day on which it is received:

- (1) the *complaints time limit rules* (~~except DISP 1.6.1R(1) (Keeping the complainant informed)~~); and

...

...

Summary resolution communication

1.5.4 R Where the *respondent* considers a *complaint* to be resolved under this section, the *respondent* must promptly send the complainant a 'summary resolution communication', being a written communication from the *respondent* which:

...

Appendix 8A

Miscellaneous changes to LR, DTR, PR, GENPRU, SUP and the Glossary

**LISTING, PROSPECTUS AND DISCLOSURE AND TRANSPARENCY RULES
SOURCEBOOKS (MISCELLANEOUS AMENDMENTS NO [4]) INSTRUMENT 2015**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under the following sections of the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 73A (Part 6 Rules);
 - (2) section 84 (Matters which may be dealt with by prospectus rules);
 - (3) section 89C (Transparency rules);
 - (4) section 89O (Corporate governance rules);
 - (5) section 96 (Obligations of issuers of listed securities);
 - (6) section 137A (General rule-making power);
 - (7) section 137T (General supplementary powers); and
 - (8) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the FCA Handbook

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

(1)	(2)
Glossary of definitions	Annex A
General Prudential sourcebook (GENPRU)	Annex B
Supervision manual (SUP)	Annex C
Listing Rules sourcebook (LR)	Annex D
Prospectus Rules sourcebook (PR)	Annex E
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex F

Notes

- E. In Annexes E and F to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

European Union Legislation

- F. Although European Union legislation is reproduced in this instrument, only European Union legislation as printed in the paper edition of the Official Journal of the European Union is deemed authentic.

Citation

- G. This instrument may be cited as the Listing, Prospectus and Disclosure and Transparency Rules Sourcebooks (Miscellaneous Amendments No [4]) Instrument 2015.

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

Annex A**Amendments to the Glossary of definitions**

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

Amend the following definition as shown.

- Prospectus RTS
Regulation
Regulations*
- (1) ~~the~~ Commission Delegated Regulation (EU) No 382/2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus; and
- (2) Commission Delegated Regulation (EU) No [xxx]/2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004.

...

Annex B

Amendments to the General Prudential sourcebook (GENPRU)

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

1 Application

...

1.3 Valuation

...

General requirements: Accounting principles to be applied

1.3.4 R ...

- (2) Financial Reporting Standards ~~and Statements of Standard Accounting Practice~~ issued ~~or adopted~~ by the ~~Accounting Standards Board~~ Financial Reporting Council;
- (3) Statements of Recommended Practice, issued by industry or sectoral bodies recognised for this purpose by the ~~Accounting Standards Board~~ Financial Reporting Council;

...

2 Capital

...

2.2 Capital resources

...

Core tier one capital: externally verified interim net profits

...

- 2.2.103 G A *firm* may include interim profits before a formal decision has been taken only if these profits have been verified, in accordance with the relevant ~~Auditing Practices Board's Practice Note~~ guidance issued by the Financial Reporting Council, by *persons* responsible for the auditing of the accounts.

Annex C

Amendments to the Supervision manual (SUP)

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

3 Auditors

...

3.10 Duties of auditors: notification and report on client assets

...

Client assets report

...

- 3.10.5B G *SUP* 3.10.4R provides that an auditor must ensure that a client assets report is prepared in accordance with the terms of, as the case may be, a *reasonable assurance engagement* or a *limited assurance engagement*. However, the *FCA* also expects an auditor to have regard, where relevant, to material published by the ~~Auditing Practices Board~~ Financial Reporting Council that deals specifically with the client assets report which the auditor is required to submit to the *FCA*. In the *FCA's* view, a client assets report that is prepared in accordance with that material is likely to comply with *SUP* 3.10.4R and *SUP* 3.10.5R where that report is prepared for a *firm* within the scope of the material in question.

Annex D

Amendments to the Listing Rules sourcebook (LR)

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

5 Suspending, cancelling and restoring listing and reverse takeovers: All securities

...

5.2 Cancelling listing

...

Cancellation in relation to takeover offers: offeror interested in more than 50% of voting rights

5.2.11A R *LR 5.2.5R* does not apply to the cancellation of *equity shares* with a *premium listing* in the case of a takeover offer if:

...

- (3) ~~unless *LR 5.2.11D R* applies~~, the *offeror* has obtained acceptances of its takeover offer or acquired or agreed to acquire *shares* from *independent shareholders* that represent a majority of the voting rights held by the *independent shareholders* on the date its firm intention to make its takeover offer was announced; and
- (4) the *offeror* has stated in the offer document or any subsequent *circular* sent to the holders of the *shares* that a notice period of not less than *20 business days* prior to cancellation will commence either on the *offeror* obtaining the relevant shareholding and acceptances as described in *LR 5.2.11AR(2) to (3)* ~~or as described in *LR 5.2.11DR*~~ or on the first date of issue of compulsory acquisition notices under section 979 of the Companies Act 2006.

...

5.2.11C R The *issuer* must notify shareholders that the relevant thresholds described in *LR 5.2.11AR(2) to (3)* ~~or *LR 5.2.11DR*~~ have been obtained and that the notice period has commenced and of the anticipated date of cancellation, or the explanatory letter or other material accompanying the section 979 notice must state that the notice period has commenced and the anticipated date of cancellation.

5.2.11D R ~~*LR 5.2.11AR(3)* does not apply where the *offeror* has by virtue of its shareholdings and acceptances of its takeover offer acquired or agreed to acquire issued share capital carrying more than 80% of the voting rights of the *issuer*.~~ [deleted]

...

9 Continuing obligations

9.3 Continuing obligations: holders

...

Pre-emption rights

...

9.3.12 R LR 9.3.11R does not apply to:

...

- (4) an *overseas company* with a *premium listing* if a disapplication of statutory pre-emption rights has been authorised by shareholders that is equivalent to an authority given in accordance either with section 570 or section 571 of the Companies Act 2006 or in accordance with the law of its country of incorporation provided that the country has implemented article 29 of Directive 77/91/EEC or article 33 of Directive 2012/30/EU and the issue of *equity securities* or sale of *treasury shares* that are *equity shares* by the *listed company* is within the terms of the authority; or

...

Annex E

Amendments to the Prospectus Rules sourcebook (PR)

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

1 Preliminary

1.1 Preliminary

...

Provisions implementing the prospectus directive

1.1.6 G The *FCA* considers that the following documents together determine the effect of the *prospectus directive*:

...

(6) ...; and

(7) the *Prospectus RTS ~~Regulation~~ Regulations*.

1.1.7 G To assist readers, extracts from the *Act*, the *PD Regulation* and the *Prospectus RTS ~~Regulation~~ Regulations* are reproduced in the text of these *rules*. Readers should however consult those documents themselves to see the full text.

ESMA materials

1.1.8 G In determining whether Part 6 of the *Act*, these *rules*, the *PD Regulation* and the *Prospectus RTS ~~Regulation~~ Regulations* have been complied with, the *FCA* will consider whether a *person* has acted in accordance with the *ESMA Prospectus Recommendations*, the *ESMA Prospectus Questions and Answers* and the *ESMA Prospectus Opinion*.

...

2.2 Format of the prospectus

...

Base prospectus

...

2.2.9 R If the final terms of the *offer* are not included in the *base prospectus* or a *supplementary prospectus*:

- (1) the final terms must be:
 - (a) filed with the *FCA*; and
 - (b) made available to the public ~~in accordance with PR 3.2.4R to PR 3.2.6R.~~

[Note: see ~~PR TR 2~~ See PR 3.2 for the requirements regarding making final terms available to the public]

...

...

2.5 Omission of information

...

Request to omit information

2.5.3 ~~R~~ G Article 2(2) of Commission Delegated Regulation (EU) No [xxx]/2015 sets out requirements regarding the submission of requests to omit information from a *prospectus*. The *FCA* considers that a reasoned request for this purpose would ~~A request to the *FCA* to authorise the omission of specific information must:~~

- (1) be in writing from the *applicant*;
- (2) identify the specific information concerned and the specific reasons for its omission; and
- (3) state why in the *applicant's* opinion one or more of the grounds in section 87B(1) of the *Act* applies.

[Note: Extracts of Article 2 of Commission Regulation EU [xxx]/2015 are reproduced for the convenience of readers in PR3.1.-1EU.]

...

3 Approval and publication of prospectus

3.1 Approval of prospectus

Prospectus review process

3.1.-1 EU Articles 2, 3 and 4 of Commission Delegated Regulation (EU) No [xxx]/2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004 provide that:

Article 2Submission of an application for approval

1. The issuer, offeror or person asking for admission to trading on a regulated market shall submit all drafts of the prospectus in searchable electronic format via electronic means to the competent authority. A contact point to which the competent authority can submit all notifications in writing, via electronic means, shall be specified when the first draft of the prospectus is submitted.
2. Along with the first draft of the prospectus submitted to the competent authority, or during the prospectus review process, the issuer, offeror or person asking for admission to trading on a regulated market shall also submit in searchable electronic format:
 - (a) if required by the competent authority of the home Member State according to Article 25(4) of Regulation (EC) No 809/2004 or on their own initiative, a cross reference list which shall also identify any items from Annexes I to XXX to Regulation (EC) No 809/2004 that have not been included in the prospectus because, given the nature of the issuer, offeror or person asking for admission to trading or the securities being offered to the public or admitted to trading, they were not applicable.
 - ...
 - (b) if the issuer, offeror or person asking for admission to trading on a regulated market is requesting the competent authority of the home Member State to authorise the omission of information from the prospectus according to Article 8(2) of Directive 2003/71/EC, a reasoned request to that effect;
 - (c) if the issuer, offeror or person asking for admission to trading on a regulated market wishes the competent authority of the home Member State to notify the competent authority of a host Member State, upon approval of the prospectus, with a certificate of approval according to Article 18(1) of Directive 2003/71/EC, a request to this effect;
 - (d) any information which is incorporated by reference into the prospectus, unless such information has already been approved by or filed with the same competent authority in accordance with Article 11 of Directive 2003/71/EC;
 - (e) any other information considered necessary, on reasonable grounds, for the review by the competent authority of the home Member State and expressly required by the competent authority for that purpose.

Article 3Changes to the draft prospectus

1.	<p><u>Following submission of the first draft of the prospectus to the competent authority of the home Member State, where the issuer, offeror or person asking for admission to trading on a regulated market submits subsequent drafts of the prospectus, the subsequent drafts shall be marked to highlight all changes made to the preceding unmarked draft of the prospectus as submitted to the competent authority. Where only limited changes are made, marked extracts of the draft prospectus, showing all changes from the preceding draft, shall be acceptable. An unmarked draft of the prospectus shall always be submitted along with the draft highlighting all changes made.</u></p> <p><u>Where the issuer, offeror or person asking for admission to trading on a regulated market is unable to comply with the requirement set out in the first subparagraph due to technical difficulties related to the marking of the prospectus, each change made to the preceding draft of the prospectus shall be identified to the competent authority of the home Member State in writing.</u></p>
2.	<p><u>Where the competent authority of the home Member State has, in accordance with Article 5(2) of this Regulation, notified the issuer, offeror or person asking for admission to trading on a regulated market that it considers that the draft prospectus does not meet the requirement of completeness, including consistency of the information given and its comprehensibility, the subsequently submitted draft of the prospectus shall be accompanied by an explanation as to how the incompleteness notified by the competent authority has been addressed.</u></p> <p><u>Where changes made to a previously submitted draft prospectus are self-explanatory or clearly address the incompleteness notified by the competent authority, an indication of where the incompleteness has been addressed shall be considered sufficient.</u></p>
<p><u>Article 4</u></p>	
<p><u>Final submission</u></p>	
<p><u>With the exception of the cross reference list mentioned in Article 2(2)(a), submission of the final draft of the prospectus for approval shall be accompanied by any information mentioned in Article 2(2) which has changed since a previous submission. The final draft of the prospectus shall not be annotated in the margin.</u></p>	
<p><u>Where no changes have been made to the previously submitted information mentioned in Article 2(2), the issuer, offeror or person asking for admission to trading on a regulated market shall not be required to resubmit such information. In those cases, the issuer, offeror or person asking for admission to trading on a regulated market shall confirm in writing that no changes have been made to the previously submitted information.</u></p>	

- 3.1.1 R ~~An applicant must submit to the FCA the following information:~~
- ~~(1) a completed form A;~~
 - ~~(2) the prospectus;~~
 - ~~(3) if the order of items in the prospectus does not coincide with the order in the schedules and building blocks in the PD Regulation, a cross reference list identifying the pages where each item can be found in the prospectus;~~
 - ~~(4) a letter identifying any items from the schedules and building blocks that have not been included because they are not applicable;~~
 - ~~(5) if information is incorporated in the prospectus by reference to another document, a copy of the document (annotated to indicate which item of the schedules and building blocks in the PD Regulation it relates to);~~
 - ~~(6) if the applicant is requesting the FCA to authorise the omission of information from the prospectus, the information required by PR 2.5.3R;~~
 - ~~(7) [deleted]~~
 - ~~(8) [deleted]~~
 - ~~(9) contact details of individuals who are:

 - ~~(a) [sufficiently knowledgeable about the documentation to be able to answer queries from the FCA; and~~
 - ~~(b) available to answer queries between the hours of 7 a.m. and 6 p.m.; and]~~~~
 - ~~(10) any other information that the FCA may require. [deleted]~~
- 3.1.1A R If the order of disclosure items in the prospectus does not coincide with the order set out in the schedules and building blocks in the PD Regulation, an applicant must provide the FCA with a cross reference list identifying the pages where each disclosure item can be found in the prospectus.
- [Note: articles 25(4) and 26(3) of the PD Regulation]
- 3.1.2 G ~~FEES 3 sets out the relevant application fee payable to the FCA. [deleted]~~
- 3.1.2A R An applicant must take all reasonable care to ensure that any prospectus submitted for approval, for which it is responsible, contains:
- (1) ...
 - (2) the information items required in Annexes I to XVII and Annexes

XX to XXX of the ~~PD regulation~~ Regulation, as appropriate to its application.

...

~~When information must be submitted~~ Timeframe for submission

- 3.1.3 R (1) The *applicant* must submit to the *FCA* by the date specified in paragraph (2):
- (a) ~~the completed form A in final form;~~
- (i) a completed Form A;
- (ii) a completed Prospectus Publication Form;
- (iii) a completed Issuer Contact Details Form; and
- (iv) a completed Transaction Review Submissions Information Sheet;
- [Note: Article 2(2)(e) of Commission Delegated Regulation (EU) No [xxx]/2015. These forms are available on the UKLA section of the *FCA*'s website.]
- (b) the relevant fee; and
- [Note: FEES 3 sets out the relevant fee payable to the *FCA*.]
- (c) ~~the other information referred to in PR 3.1.1R in draft form~~ the first draft of the *prospectus* (accompanied, where relevant, by the additional information set out in article 2(2) of Commission Regulation EU [xxx]/2015).
- [Note: Extracts of article 2 of Commission Regulation EU [xxx]/2015 are reproduced for the convenience of readers in PR 3.1.-1EU.]
- (2) The date referred to in paragraph (1) is:
- ...
- (b) at least 20 *working days* before the intended approval date of the *prospectus* if the *applicant* does not have *transferable securities admission admitted to trading* and has not previously made an *offer*; or
- ...
- (3) The *applicant* must submit the final version of the draft *prospectus* and the additional information set out in Article 4 of Commission Regulation EU [xxx]/2015 to the *FCA* ~~the information referred to in~~

~~paragraph (1)(c) in final form~~ before midday on the day on which approval is required to be granted.

[Note: Article 4 of Commission Regulation EU [xxx]/2015 is reproduced for the convenience of readers in PR3.1.-1EU.]

Drafts of documents

- 3.1.4 R ~~Drafts of documents must be submitted to the FCA:~~
- ~~(1) in a substantially complete form;~~
 - ~~(2) in duplicate in hard copy or an agreed electronic format; and~~
 - ~~(3) annotated in the margin to indicate compliance with all applicable requirements of Part 6 of the Act and these rules. [deleted]~~
- 3.1.5 R ~~If further drafts of documents are required, they must be submitted to the FCA:~~
- ~~(1) marked to show all changes made since the last draft was reviewed by the FCA;~~
 - ~~(2) marked to show all changes made to the documents as a consequence of the FCA's comments (in a way that differentiates those changes from other changes);~~
 - ~~(3) in duplicate in hard copy or an agreed electronic format; and~~
 - ~~(4) annotated in the margin to indicate compliance with all applicable requirements of the Act and these rules. [deleted]~~

...

Request for certificate of approval

- 3.1.6 G ~~If an applicant wishes the FCA to provide a certificate of approval to another competent authority at the time the prospectus is approved, it should include a request for the supply of the certificate with its application for approval of the prospectus (PR 5.3.2R sets out the requirements for such a request). [deleted]~~

Approval of prospectus

- 3.1.7 UK ...
- [Note: Section 87C of the Act sets out time limits for the FCA to notify an applicant of its decision on an application for approval.]
- 3.1.7A EU Article 5(2) and (4) of Commission Delegated Regulation (EU) No [xxx]/2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of

advertisements and amending Commission Regulation (EC) No 809/2004 provides that:

2.	<u>Where the competent authority of the home Member State considers, on reasonable grounds, that the documents submitted to it are incomplete or that supplementary information is needed, for instance due to inconsistencies or incomprehensibility of certain information provided, it shall notify the issuer, offeror or person asking for admission to trading of the need for supplementary information and the reasons therefor, in writing, via electronic means.</u>
4.	<u>Where the issuer, offeror or person asking for admission to trading on a regulated market is unable or unwilling to provide the supplementary information requested in accordance with paragraph 2, the competent authority of the home Member State shall be entitled to refuse the approval of the prospectus and terminate the review process.</u>

- 3.1.8 G ~~The FCA will only approve a prospectus when it considers that the information provided with the application is complete and is in final form.~~
 Note: ~~Section 87C of the Act sets out time limits for the FCA to notify an applicant of its decision on an application for approval. [deleted]~~

...

Service of Notice Regulations

- 3.1.17 G Regulation 7 of The Financial Services and Markets Act 2000 (Service of Notice Regulations) 2001 (SI 2001/1420) contains provisions relating to the possible methods of serving documents on the FCA. Regulation 7 does not apply to the submission of a draft prospectus to the FCA for approval because of the provisions set out in PR 3.1.-1EU.

3.2 Filing and publication of prospectus

...

Method of publishing

...

- 3.2.6A EU Commission Delegated Regulation (EU) No [xxx]/2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004 provides that:

Recital 7

... Requiring investors to agree to a disclaimer limiting legal liability, pay a fee or go through a registration process to gain access to the prospectus impedes easy accessibility and should not be permitted. Filters warning in which jurisdictions an offer is being made and requiring investors to disclose their country of residence or indicate that they are not resident in a particular country or jurisdiction should not be considered as disclaimers limiting legal liability.

Article 6Publication of the prospectus in electronic form

1. When published in electronic form pursuant to points (c), (d) or (e) of Article 14(2) of Directive 2003/71/EC, the prospectus, whether a single document or comprising several documents, shall:

(a) be easily accessible when entering the website;

(b) be in searchable electronic format that cannot be modified;

(c) not contain hyperlinks with the exception of links to the electronic addresses where information incorporated by reference is available;

(d) be downloadable and printable.

2. Where a prospectus containing information incorporated by reference is published in electronic form, it shall include hyperlinks to each document containing information incorporated by reference or to each webpage on which that document is published.

3. If a prospectus for offer of securities to the public is made available on the websites of issuers or financial intermediaries or of regulated markets, these shall take measures to avoid targeting residents in Member States or third countries where the offer of securities to the public does not take place, such as the insertion of a disclaimer as to who are the addressees of the offer.

4. Access to the prospectus published in electronic form shall not be subject to:

(a) completion of a registration process;

(b) acceptance of a disclaimer limiting legal liability;

(c) payment of a fee.

Article 7

<u>Publication of final terms</u>	
<u>The publication method for final terms related to a base prospectus does not have to be the same as the one used for the base prospectus as long as the publication method used is one of the methods indicated in Article 14 of Directive 2003/71/EC.</u>	
<u>Article 8</u>	
<u>Publication in newspapers</u>	
1.	<u>In order to comply with point (a) of Article 14(2) of Directive 2003/71/EC the publication of a prospectus shall be made in a general or financial information newspaper having national or supra-regional scope.</u>
2.	<u>If the competent authority is of the opinion that the newspaper chosen for publication does not comply with the requirements set out in paragraph 1, it shall determine a newspaper whose circulation is deemed appropriate for this purpose taking into account, in particular, the geographic area, number of inhabitants and reading habits in each Member State.</u>

FCA will publish a list of approved prospectuses

- 3.2.7 G The FCA will publish on its website, a list of *prospectuses* approved over the previous 12 months. The list will ~~specify how a prospectus is made available and where it can be obtained, including~~ include, if applicable, a hyperlink to the *prospectus* published on the *issuer's* or *regulated market's* website.

[Note: article 14.4 PD]

...

- 3.2.9 EU ~~Articles 29, 30 and 33 of the PD Regulation provide for further requirements relating to publication of *prospectuses*:~~

<u>Article 29</u>	
<u>Publication in electronic form</u>	
1.	The publication of the prospectus or base prospectus in electronic form, either pursuant to [PR 3.2.4R(3) and PR 3.2.4R(4)], or as an additional means of availability, shall be subject to the following requirements:
- (1)	the prospectus or base prospectus shall be easily accessible when entering the website;

-	(2)	the file format shall be such that the prospectus or base prospectus cannot be modified;
-	(3)	the prospectus or base prospectus shall not contain hyper links, with exception of links to the electronic addresses where information incorporated by reference is available;
-	(4)	the investors shall have the possibility of downloading and printing the prospectus or base prospectus.
-		The exception referred to in point (3) of the first subparagraph shall only be valid for documents incorporated by reference; those documents shall be available with easy and immediate technical arrangements.
2.		If a prospectus or base prospectus for offer of securities to the public is made available on the web sites of issuers and financial intermediaries or of regulated markets, these shall take measures, to avoid targeting residents in Members States or third countries where the offer of securities to the public does not take place, such as the insertion of a disclaimer as to who are the addressees of the offer.
Article 30 Publication in newspapers		
1.		In order to comply with [PR 3.2.4R(1)] the publication of a prospectus or a base prospectus shall be made in a general or financial information newspaper having national or supra regional scope;
2.		If the [FCA] is of the opinion that the newspaper chosen for publication does not comply with the requirements set out in paragraph 1, it shall determine a newspaper whose circulation is deemed appropriate for this purpose taking into account, in particular, the geographic area, number of inhabitants and reading habits in each Member State.
Article 33 Publication of the final terms of base prospectuses		
-		The publication method for final terms related to a base prospectus does not have to be the same as the one used for the base prospectus as long as the publication method used is one of the publication methods indicated in [PR 3.2.4R].

[deleted]

...

3.3 Advertisements

...

Advertisements

...

- 3.3.3A EU Article 11 of Commission Delegated Regulation (EU) No [xxx]/2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004 provides that:

<u>Article 11</u>	
<u>Dissemination of advertisements</u>	
1.	<u>Where an advertisement relating to an offer to the public or an admission to trading on a regulated market has been disseminated, and a supplement to the prospectus is subsequently published, due to the arising or noting of a significant new factor, material mistake or inaccuracy relating to the information included in the prospectus, an amended advertisement shall be disseminated if the significant new factor, material mistake or inaccuracy relating to the information included in the prospectus renders the contents of the previously disseminated advertisement inaccurate or misleading.</u>
2.	<u>An amended advertisement shall make reference to the previous advertisement, specify that the previous advertisement has been amended due to it containing inaccurate or misleading information and specify the differences between the two versions of the advertisement.</u>
3.	<u>An amended advertisement shall be disseminated without undue delay following the publication of the supplement. With the exception of orally disseminated advertisements, an amended advertisement shall be disseminated, at a minimum, through the same means as the original advertisement.</u> <u>The obligation to amend an advertisement shall not apply after the final closing of the offer to the public or after the time when trading on a regulated market begins, whichever occurs later.</u>
4.	<u>Where no prospectus is required in accordance with Directive 2003/71/EC, any advertisement shall include a warning to that effect unless the issuer, offeror or person asking for admission to trading on a regulated market chooses to publish a prospectus which complies with Directive 2003/71/EC, Regulation (EC) No 809/2004</u>

and this Regulation.

Other information disclosed must be consistent with prospectus

...

3.3.5 EU ~~Article 34 of the PD Regulation sets out a non-exhaustive list of the types of advertisement covered by the advertising provisions:~~

Dissemination of advertisements	
Advertisements related to an offer to the public of securities or to an admission to trading on a regulated market may be disseminated to the public by interested parties, such as issuer, offeror or person asking for admission, the financial intermediaries that participate in the placing and/or underwriting of securities, notably by one of the following means of communication:	
(1)	Addressed or unaddressed printed matter;
(2)	Electronic message or advertisement received via a mobile telephone or pager;
(3)	Standard letter;
(4)	Press advertising with or without order form;
(5)	Catalogue;
(6)	Telephone with or without human intervention;
(7)	Seminars and presentations;
(8)	Radio;
(9)	Videophone;
(10)	Videotext;
(11)	Electronic mail;
(12)	Facsimile machine (fax);
(13)	Television;
(14)	Notice;
(15)	Bill;

(16)	Poster;
(17)	Brochure;
(18)	Web posting including internet banners.

[deleted]

- 3.3.6 EU ~~Article 34 of the *PD Regulation* also provides for the inclusion of a warning where no *prospectus* is required in accordance with the *PD*:~~

Article 34
Where no prospectus is required in accordance with Directive 2003/71/EC, any advertisement shall include a warning to that effect unless the issuer, the offeror or the person asking for admission to trading on a regulated market chooses to publish a prospectus which complies with Directive 2003/71/EC and this Regulation.

[deleted]

- 3.3.7 EU Article 12 of Commission Delegated Regulation (EU) No [xxx]/2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004 provides that:

Article 12
<u>Consistency for the purposes of Article 15(4) of Directive 2003/71/EC</u>
<u>Information disclosed in an oral or written form about the offer to the public or admission to trading on a regulated market, whether for advertisement or other purposes, shall not:</u>
(a) <u>contradict the information contained in the prospectus;</u>
(b) <u>refer to information which contradicts that contained in the prospectus;</u>
(c) <u>present a materially unbalanced view of the information contained in the prospectus, including by way of omission or presentation of negative aspects of such information with less prominence than the positive aspects;</u>
(d) <u>contain alternative performance measures concerning the issuer, unless such are contained in the prospectus.</u>
<u>For the purposes of points (a)-(d), information contained in the prospectus shall consist of information included in the prospectus, if</u>

already published, or information to be included in the prospectus, if the prospectus is published at a later date.

For the purposes of point (d), alternative performance measures shall consist of performance measures which are financial measures of historical or future financial performance, financial position, or cash flows, other than financial measures defined in the applicable financial reporting framework.

App 1.1 Relevant definitions

App 1.1.1 **Note:** The following definitions relevant to the *prospectus rules* are extracted from the *Glossary*.

...		
<i>Prospectus RTS Regulations</i>	(1)	the Commission Delegated Regulation (EU) No 382/2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus; <u>and</u>
	(2)	<u>Commission Delegated Regulation (EU) No xxx/2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004.</u>
...		

Annex F

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

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

1B Introduction (Corporate governance)**1B.1 Application and purpose (Corporate governance)**

...

Purpose: Corporate governance statements

- 1B.1.4 G The purpose of the requirements in *DTR 7.2* is to implement parts of the ~~*Fourth Company Law Directive*~~ and the ~~*Seventh Company Law Directive*~~ *Accounting Directive* (including ~~those Directives that~~ Directive as applied to banking and insurance companies) which requires companies to publish a corporate governance statement.

...

Exemption

- 1B.1.6 R ...

[~~Note: Article 46a(3) of the *Fourth Company Law Directive*~~ Article 20(4) of the *Accounting Directive*]

...

4 Periodic Financial Reporting**4.1 Annual financial report**

...

Auditing of financial statements

- 4.1.7 R

...

(4) ...

- (a) on the register of third country auditors kept for the purposes of ~~regulation 34 of the *Statutory Auditors and Third Country Audit Regulations 2007 (SI 2007/3494)*~~

regulation 6 of the Statutory Auditors and Third Country Auditors Regulations 2013 (SI 2013/1672); or

...

Content of management report

4.1.8 R ...

[Note: article 4(5) of the TD]

4.1.9 R ...

[Note: article 4(5) of the TD]

...

4.1.11 R The management report required by *DTR* 4.1.8 R must also give an indication of:

...

(4) the information concerning acquisitions of own *shares* prescribed by ~~Article 22 (2) of Directive 77/91/EEC~~ article 24(2) of Directive 2012/30/EU;

...

[Note: article 4(5) of the TD]

...

4.2 Half-yearly financial reports

...

Content of interim management report

...

4.2.8 R ...

(2) ...

[Note: ~~Article 43(1)(7b) of Directive 78/660/EC~~ articles 2(3), 6(1)(j) and 17(1)(r) of the Accounting Directive]

(3) ...

[Note: ~~Article 43(1)(7b) of Directive 78/660/EC~~ articles 2(3) and 17(1)(r) of the Accounting Directive]

Auditing of the condensed set of financial statements

- 4.2.9 R (1) If the half-yearly financial report has been audited or reviewed by auditors pursuant to the ~~Auditing Practices Board~~ Financial Reporting Council guidance on Review of Interim Financial Information, the audit report or review report must be reproduced in full.
- (2) If the half-yearly financial report has not been audited or reviewed by auditors pursuant to the ~~Auditing Practices Board~~ Financial Reporting Council guidance on Review of Interim Financial Information, an *issuer* must make a statement to this effect in its report.

...

Responsibility statements

- 4.2.10 R ...
- (4) ...
- (b) for *UK issuers* not using *IFRS*, ~~pronouncements on interim reporting~~ Financial Reporting Standard 104 : Interim Financial Reporting issued by the ~~Accounting Standards Board~~ Financial Reporting Council; or

...

...

7 Corporate Governance**7.2 Corporate governance statements**

...

- 7.2.2 R The corporate governance statement must contain a reference to the following, where applicable:
- (1) the corporate governance code to which the *issuer* is subject; ~~and/or~~
- (2) the corporate governance code which the *issuer* may have voluntarily decided to apply; ~~and/or~~
- (3) all relevant information about the corporate governance practices applied ~~beyond~~ over and above the requirements ~~under of~~ national law.

[~~Note: Article 46a(1)(a) first paragraph of the *Fourth Company Law*~~]

Directive article 20(1)(a) first paragraph of the Accounting Directive]

- 7.2.3 R (1) An issuer which is complying with *DTR 7.2.2R(1)* or *DTR 7.2.2R(2)* must:
- ...
- (b) ~~to the extent that~~ where it departs from that corporate governance code, explain which parts of the corporate governance code it departs from and the reasons for doing so.
- (2) Where *DTR 7.2.2R(3)* applies, the issuer must make details of its corporate governance practices publicly available and state in its directors' report where they can be found.
- (3) If an issuer has decided not to ~~apply~~ refer to any provisions of a corporate governance code referred to under *DTR 7.2.2R(1)* and *DTR 7.2.2R(2)*, it must explain its reasons for that decision.

~~[Note: Article 46a(1)(a) second paragraph and Article 46a(1)(b) of the Fourth Company Law Directive article 20(1)(a) second paragraph and article 20(1)(b) of the Accounting Directive]~~

...

7.2.5 R ...

~~[Note: Article 46a(1)(e) of the Fourth Company Law Directive article 20(1)(c) of the Accounting Directive]~~

7.2.6 R ...

~~[Note: Article 46a(1)(d) of the Fourth Company Law Directive article 20(1)(d) of the Accounting Directive]~~

7.2.7 R ...

~~[Note: Article 46a(1)(f) of the Fourth Company Law Directive article 20(1)(f) of the Accounting Directive]~~

...

7.2.9 R An issuer may elect that, instead of including its corporate governance statement in its directors' report, the information required by *DTR 7.2.1R* to *DTR 7.2.7R* may be set out in:

- (1) ~~in~~ a separate report published together with and in the same manner as its annual report. ~~In the event of a separate report, the corporate governance statement must contain either the information required by *DTR 7.2.6 R* or a reference to the directors' report where that information is made available; or~~

- (2) ~~by means of a reference in its directors' report to where such a document is publicly available on the issuer's website to which reference is made in the directors' report.~~

Under (1) or (2), the corporate governance statement must contain the information required by DTR 7.2.6R or a reference to the directors' report where that information is made available.

~~[Note: Article 46a(2) first and second sentence of the Fourth Company Law Directive article 20(2) of the Accounting Directive]~~

- 7.2.10 R Subject to DTR 7.2.11R, an issuer which is required to prepare a group directors' report within the meaning of section 415(2) of the Companies Act 2006 must include in that report a description of the main features of the group's internal control and risk management systems in relation to the ~~process for preparing consolidated accounts~~ financial reporting process for the undertakings included in the consolidation, taken as a whole. In the event that the issuer presents its own annual report and its consolidated annual report as a single report, this information must be included in the corporate governance statement required by DTR 7.2.1R.

~~[Note: Article 36(2)(f) of the Seventh Company Law Directive article 29(2)(b) of the Accounting Directive]~~

- 7.2.11 R (1) An issuer that elects to include its corporate governance statement in a separate report as permitted by DTR 7.2.9R(1) must provide the information required by DTR 7.2.10R in that report.
- (2) An issuer that elects to include its corporate governance statement in a document publicly available on the issuer's website to which reference is made in the directors' report as permitted by DTR 7.2.9R(2) must provide the information required by DTR 7.2.10R in that document.

Appendix 8B

SAAD instrument

**DISCLOSURE RULES AND TRANSPARENCY RULES SOURCEBOOK
(STATUTORY AUDIT AMENDING DIRECTIVE) INSTRUMENT 2016**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under the following sections of the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 73A (Part 6 Rules);
 - (2) section 89O (Corporate governance rules);
 - (3) section 101 (Part 6 rules: general provisions);
 - (4) section 137A (General rule-making power);
 - (5) section 137T (General supplementary powers); and
 - (6) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [date] 2016.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex B

Notes

- E. In Annex B to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Disclosure Rules and Transparency Rules Sourcebook (Statutory Audit Amending Directive) Instrument 2016.

By order of the Board of the Financial Conduct Authority
[date]

Annex A

Amendments to the Glossary of definitions

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

<i>Audit Regulation</i>	Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.
-------------------------	--

Annex B

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

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

1B Introduction (Corporate governance)

1B.1 Application and purpose (Corporate governance)

...

Exemptions

1B.1.3 R *DTR 7.1* does not apply to:

(1) any *issuer* which is a *subsidiary undertaking* of a *parent undertaking* where the *parent undertaking* is subject to:

(a) *DTR 7.1*, or to requirements implementing ~~Article 41~~ article 39 of the *Audit Directive* in any other *EEA State*; and

(b) articles 11(1), 11(2) and 16(5) of the *Audit Regulation*;

[~~Note: Article 41.6(a)~~ article 39(3)(a) of the *Audit Directive*]

(2) ...

[~~Note: Article 41.6(e)~~ article 39(3)(c) of the *Audit Directive*]

(3) a *credit institution* whose *shares* are not *admitted to trading* and which has, in a continuous or repeated manner, issued only *debt securities* which are *admitted to trading* provided that:

(a) ...

(b) the *credit institution* has not been subject to a requirement to publish a prospectus in accordance with section 85 of the *Act*; and

[~~Note: Article 41.6(d)~~ article 39(3)(d) of the *Audit Directive*]

(4) any *issuer* which is a *UCITS* or an *AIF*.

[~~Note: article 39(3)(b)~~ article 39(3)(b) of the *Audit Directive*]

...

7 Corporate Governance

7.1 Audit committees

Audit committees and their functions

7.1.1 R An *issuer* must have a body ~~which is~~ or bodies responsible for performing the functions set out in *DTR* 7.1.3R. ~~At least one member of that body must be independent and at least one member must have competence in accounting and/or auditing.~~

- 7.1.1A R
- (1) A majority of the members of the relevant body must be independent.
 - (2) At least one member of the relevant body must have competence in accounting or auditing, or both.
 - (3) The members of the relevant body as a whole must have competence relevant to the sector in which the *issuer* is operating.

[Note: article 39(1) of the *Audit Directive*]

7.1.2 G The requirements for independence and competence in accounting and/or auditing may be satisfied by the same ~~member~~ members or by different members of the relevant body.

7.1.2A R The chairman of the relevant body must be:

- (1) independent; and
- (2) appointed by the members of the relevant body or by the administrative or supervisory body of the *issuer*.

[Note: article 39(1) of the *Audit Directive*]

- 7.1.3 R An *issuer* must ensure that, as a minimum, the relevant body must:
- (1) monitor the financial reporting process and submit recommendations or proposals to ensure its integrity;
 - (2) monitor the effectiveness of the *issuer's* internal quality control; internal audit where applicable; and risk management systems and, where applicable, its internal audit, regarding the financial reporting of the *issuer*, without breaching its independence;
 - (3) monitor the statutory audit of the annual and consolidated ~~accounts~~ financial statements, in particular, its performance, taking into account any findings and conclusions by the competent authority under article 26(6) of the *Audit Regulation*;
 - (4) review and monitor the independence of the *statutory auditor*, ~~and in particular the provision of additional services to the *issuer* in~~

accordance with articles 22, 22a, 22b, 24a and 24b of the *Audit Directive* and article 6 of the *Audit Regulation*, and in particular the appropriateness of the provision of non-audit services to the *issuer* in accordance with article 5 of the *Audit Regulation*;

- (5) inform the administrative or supervisory body of the *issuer* of the outcome of the statutory audit and explain how the statutory audit contributed to the integrity of financial reporting and what the role of the relevant body was in that process;
- (6) except when article 16(8) of the *Audit Regulation* is applied, be responsible for the procedure for the selection of *statutory auditor(s)* and recommend the *statutory auditor(s)* to be appointed in accordance with article 16 of the *Audit Regulation*.

[Note: article 39(6) of the *Audit Directive*]

7.1.4 R ~~An *issuer* must base any proposal to appoint a *statutory auditor* on a recommendation made by the relevant body. [deleted]~~

~~[Note: Article 41.3 of the *Audit Directive*]~~

7.1.5 R ...

~~[Note: ~~Article 41.5~~ article 39(4) (part) of the *Audit Directive*]~~

...

After DTR 8 insert the following new Appendix. The text is not underlined.

Appendix 1 Audit Committees for certain issuers

App 1.1

App 1.1.1 As set out in *DTR* TP [28], an *issuer* with a financial year beginning before [17] June 2016 and to which *DTR* 7.1 applied before [17] June 2016 must comply with the requirements set out in this appendix in relation to their audit committee.

App 1.1.2 To assist *issuers*, this appendix adopts the text of *DTR* 7.1 before it was amended by the Disclosure Rules and Transparency Rules Sourcebook (Statutory Audit Amending Directive) Instrument 2016 in order to cover *issuers* with a financial year beginning before [17] June 2016.

App 1.1.3	7.1	Audit committees	
		Audit committees and their functions	
	7.1.1	R	An <i>issuer</i> must have a body which is responsible for performing the functions set out in <i>DTR</i> 7.1.3R. At least one member of that body must be independent and at least one member must have competence in accounting and/or auditing.

7.1.2	G	The requirements for independence and competence in accounting and/or auditing may be satisfied by the same member or by different members of the relevant body.	
7.1.3	R	An <i>issuer</i> must ensure that, as a minimum, the relevant body must:	
		(1)	monitor the financial reporting process;
		(2)	monitor the effectiveness of the <i>issuer's</i> internal control, internal audit where applicable, and risk management systems;
		(3)	monitor the statutory audit of the annual and consolidated accounts;
		(4)	review and monitor the independence of the <i>statutory auditor</i> , and in particular the provision of additional services to the <i>issuer</i> .
7.1.4	R	An <i>issuer</i> must base any proposal to appoint a <i>statutory auditor</i> on a recommendation made by the relevant body.	
		[Note: Article 41.3 of the <i>Audit Directive</i>]	
7.1.5	R	The <i>issuer</i> must make a statement available to the public disclosing which body carries out the functions required by <i>DTR 7.1.3R</i> and how it is composed.	
		[Note: Article 41.5 (part) of the <i>Audit Directive</i>]	
7.1.6	G	An <i>issuer</i> may include the statement required by <i>DTR 7.1.5R</i> in any statement it is required to make under <i>DTR 7.2</i> (Corporate governance statements).	
7.1.7	G	In the <i>FCA's</i> view, compliance with provisions A.1.2, C.3.1, C.3.2, C.3.3 and C.3.8 of the <i>UK Corporate Governance Code</i> will result in compliance with <i>DTR 7.1.1R</i> to <i>DTR 7.1.5R</i> .	

TP 1 Disclosure and transparency rules

Transitional Provisions

(1)	(2) Material to which the Transitional provision applies	(3)	(4) Transitional provision	(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...					

[28]	<u>DTR 7.1</u>	<u>R</u>	<p>(1) <u>DTR 7.1 does not apply to an issuer with a financial year beginning before [17] June 2016.</u></p> <p>(2) <u>An issuer with a financial year beginning before [17] June 2016 and to which DTR 7.1 applied before [17] June 2016 must instead comply with the requirements set out in DTR App 1 for that financial year and must comply with DTR 7.1 as of the beginning of its next financial year.</u></p>	<u>From [] 2016</u>	<u>[] 2016</u>
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Appendix 8C

Current prospectus forms

FORM A

Application for the approval of a prospectus in accordance with Part VI of the Financial Services and Markets Act 2000 (FSMA) as amended

To: **Financial Conduct Authority**

Date:

_____ [insert name of issuer, offeror, or person seeking admission to trading on a regulated market] (the 'applicant') hereby applies for the draft prospectus¹/registration document/securities note and summary² attached hereto to be approved by the FCA.

Confirmation:

We acknowledge our obligations under FSMA as amended, the Prospectus Directive Regulation and the Prospectus Rules and the legal implications of approval of a prospectus/registration document/securities note and summary under those provisions. Accordingly we confirm, in relation to the application for approval of the attached prospectus/registration document/securities note and summary that:

(a) the United Kingdom is our Home Member State under the Prospectus Directive;

(b) all information required to be included in a prospectus/registration document/securities note and summary has been included therein, or if the final version has not yet been submitted, will be included therein prior to submission; and

(c) all the documents and information required to be provided with the application have been or will be supplied in accordance with the Prospectus Rules and all other requirements of the FCA in respect of this application have been or will be complied with.

Signed

Director or Secretary or other duly authorised officer for and on behalf of

Name of Applicant

Attachments:

- Draft prospectus/registration document/securities note and summary
- The documents referred to in PR 3.1.1
- The applicable fee

¹ References to prospectus in this form include a base prospectus and a supplementary prospectus

² Please delete as appropriate

PROSPECTUS PUBLICATION FORM

As set out in *PR 3.2.7G*, the FCA will publish on its website, a list of prospectuses approved over the previous 12 months. This list will specify **how** the prospectuses have been made available and **where they can be obtained**– including a hyperlink to the prospectus published on the issuer's or its financial intermediaries' websites and, if applicable, the website of the regulated market on which admission is sought.

Under the Prospectus Directive, a variety of publication options are available to issuers/offerors or persons requesting admission to trading on a regulated market.¹ These options are set out in *PR3.2.4R*. Therefore when completing this form, a number of boxes may not apply and you may leave them blank. However, a person publishing a prospectus in accordance with *PR3.2.4R(1)* or (2) must also publish their prospectus electronically in accordance with *PR3.2.4R (3)*.

The information you give us on this form will appear on our website shortly after your prospectus is approved.

Approved prospectus details

Publication/ approval date	Name(s) of issuer/offeror and/or person requesting admission to trading	Prospectus title	Admission date / offer date

Option 1 - Publication by being made available at office of the issuer and financial intermediaries

The prospectus is to be made available in a printed form, free of charge, at the registered office of the issuer **and** at the offices of the financial intermediaries (*PR 3.2.4R(2)*):

	Issuer	and	Intermediary*
Name:			Name:
Address:			Address:

*Where more than one, please complete for each financial intermediary.

Please note that where this option is chosen, you must also complete Option 6 (PR3.2.4AR).

Option 2 - Publication on website of the issuer or financial Intermediaries

The issuer must make its prospectus available in an electronic form on its website or, if applicable, on that of its financial intermediaries placing or selling the transferable securities, including paying agents (*PR 3.2.4R(3)* and *PR3.2.4A*). A paper copy of the prospectus can be obtained by calling the following telephone numbers (*PR 3.2.6R*):

¹ The requirements to publish a prospectus under *PR3.2.2R – PR3.2.6R* are in addition to, and distinct from, the obligation to file a prospectus with the FCA (via the national storage mechanism) under *PR3.2.1R* and *PR3.2.1AR*.

	Issuer		Intermediary**
Website address*:		Website address*:	
Tel no:		Tel no:	

* Please provide a website address that takes an investor to a webpage from which they can access the document itself, rather than the generic website home page of the issuer or financial intermediary.

** Where more than one, please complete for each financial intermediary.

Option 3 - Publication by being made available at office of a regulated market

If applicable, the prospectus is to be made available in a printed form, free of charge, at the offices of the following regulated market where admission to trading is sought (PR 3.2.4R(2)):

Market:	
Address:	

Please note that where this option is chosen, you must also complete Option 6 (PR3.2.4AR).

Option 4 - Publication on the website of a regulated market

If applicable, the prospectus is to be made available in an electronic form on the website of the regulated market where admission to trading is sought (PR 3.2.4R(4)):

Website address*:	
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* Please provide a website address that takes an investor to a webpage from which they can access the document itself, rather than the generic website home page of the market.

Option 5 - Publication in a newspaper

The prospectus is to be made available in printed form in the following newspaper edition (PR 2.4R(1)):

Newspaper*	
Edition (dd/mm/yy)	

* Where more than one, please complete for each newspaper.

Please note that where this option is chosen, you must also complete Option 6 (PR3.2.4AR).

Option 6 – Additional website publication where Options 1, 3 or 5 chosen

	Issuer		Intermediary**
Website address*:		Website address*:	
Tel no:		Tel no:	

* Please provide a website address that takes an investor to a webpage from which they can access the document itself, rather than the generic website home page of the issuer or financial intermediary.

** Where more than one, please complete for each financial intermediary.

ISSUER CONTACT DETAILS

New Applicants: Please complete all sections below so that we can set up our records correctly. This information will be used if we need to contact you in the future.

Other Issuers: If the information shown below has changed since your last listing application please complete the relevant sections.

Full name of Issuer

Registered Office
Address:
 Postcode

Telephone Number Fax Number

Website (if applicable)

Main Contact (usually Company Secretary)

Name

Position

Address:
(if different to above)
 Postcode

Telephone Number Fax Number

Email (if applicable)

Preferred Contact Method:

Other Information

Sponsor/Broker (main contact for the issuer)

Persons authorised to release information on behalf of the company

Accounting Reference Date First year end date

Appendix 9

Technical amendments to GEN

GENERAL PROVISIONS (AMENDMENT) INSTRUMENT 2015

Powers exercised

- A. The Financial Conduct 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 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers); and
 - (c) section 139A (Power of the FCA to give guidance); 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 listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*] 2015.

Amendments to the Handbook

- D. The General Provisions (GEN) are amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the General Provisions (Amendment) Instrument 2015.

By order of the Board of the Financial Conduct Authority
[*date* 2015]

Annex

Amendments to the General Provisions (GEN)

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

2.2 Interpreting the Handbook

...

Cross-references in the Handbook

...

- 2.2.13A R Unless a contrary intention appears, to the extent that a provision made by the ~~appropriate regulator~~ FCA ('the referring provision') contains a cross-reference to another provision that is not made by ~~that regulator~~ the FCA including a provision formerly made by the PRA which the PRA has now deleted ('the referred provision'), the referred provision as amended from time to time (excepting deletion in its entirety) is to be ~~taken to have~~ treated as having been made by the ~~appropriate regulator~~ FCA to the extent necessary to make the referring provision function with the full effect indicated by the reference.

...

Application of provisions made by both the FCA and the PRA

- 2.2.23 R (1) This *rule* applies to *Handbook* provisions made by both the *FCA* and the *PRA*, and to *Handbook* provisions made by the *FCA* and formerly also made by the *PRA*. It may affect their application by the *FCA* to *PRA-authorised persons* and *PRA approved persons*, ~~and may affect their application by the *PRA* to any *authorised person* or *approved person*.~~

...

...

- 2.2.25 G Examples of rules being interpreted as cut back by *GEN* 2.2.23R include the following:

...

- (3) *COMP* 5.2.1R sets out types of *protected claims* to be covered by the *FSCS*. The powers of the *FCA* ~~and the *PRA*~~ to make this type of *rule* are set out in the order made under section 213(1A) of the *Act*. The *rule* must be read as applying only to the extent of those powers. For example, ~~the *PRA* has no power to make *COMP* 5.2.1R(3) creating *protected claims* in connection with *protected investment business*,~~

~~and~~ the *FCA* has no power to make *COMP* 5.2.1R(1) as creating *protected claims* for a *protected deposit*. As such, those provisions are to be interpreted as not applied by the ~~*PRA*~~ and *FCA*, respectively.

Financial Conduct Authority



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