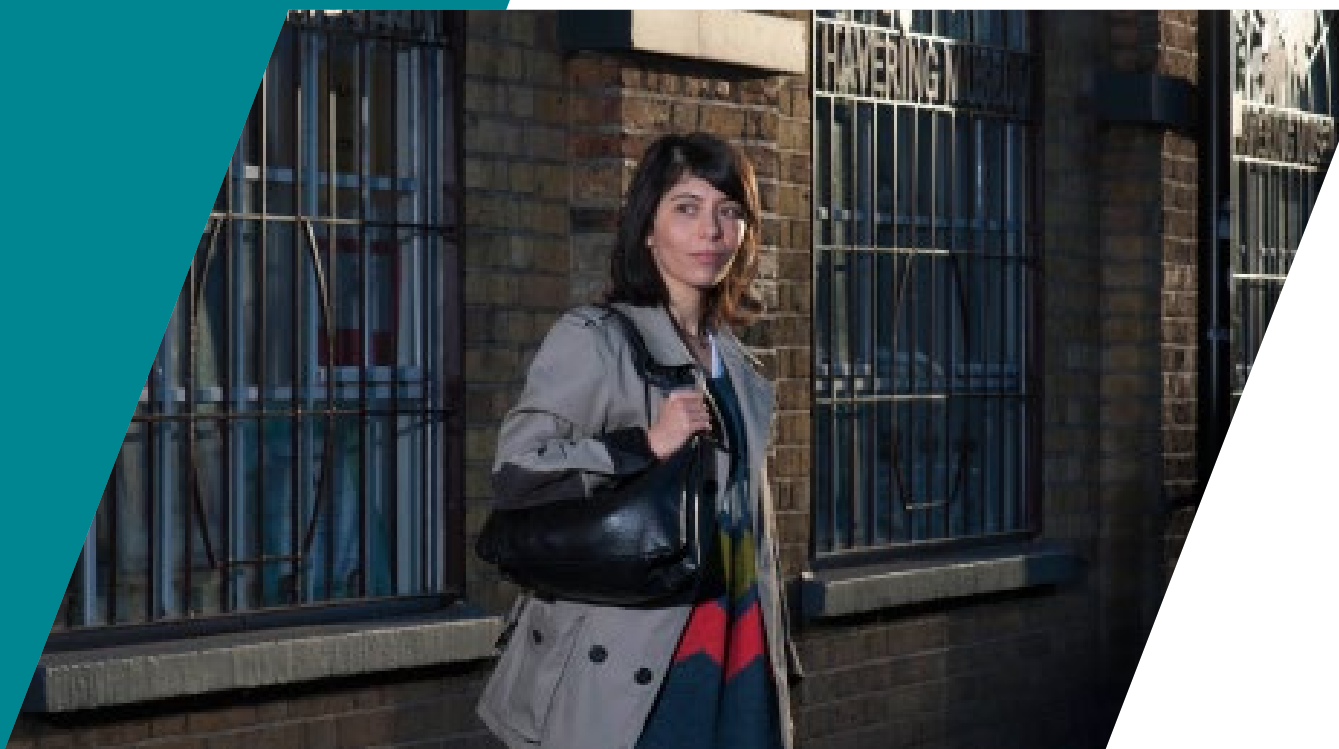


# Quarterly Consultation No.14

September 2016





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The Financial Conduct Authority invite comments on this Consultation Paper. Comments should reach us by 3 October 2016 for Chapters 2, 4 and 5, and 2 November 2016 for Chapters 3 and 6 (see the Overview section for further details).

Comments may be sent by electronic submission using the form on the FCA's website at [www.the-fca.org.uk/cp16-21-response-form](http://www.the-fca.org.uk/cp16-21-response-form) or by email to [cp16-21@fca.org.uk](mailto:cp16-21@fca.org.uk).

Alternatively, please send comments in writing to:

Chapter 2:	Muhunthan Vaithianathar, Consumer Credit Policy	Tel: 020 7066 7672
Chapter 3:	Terence Denness, Mortgage Policy	Tel: 020 7066 1768
Chapter 4:	Laura Royle, Governance & Professionalism Policy	Tel: 020 7066 2382
Chapter 5:	Anita Varga, Cross-Sectoral & Funds Policy	Tel: 020 7066 6112
Chapter 6:	Jason Pope, Retail Conduct Policy	Tel: 020 7066 2074

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

All responses should be sent to:

Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

Telephone: 020 7066 2184

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## Abbreviations used in this paper

<b>APR</b>	Annual percentage rate of charge
<b>CA</b>	Competent authority
<b>CCD</b>	Consumer Credit Directive
<b>COBS</b>	Conduct of Business Sourcebook
<b>CONC</b>	Consumer Credit sourcebook
<b>CP</b>	Consultation Paper
<b>EBA</b>	European Banking Authority
<b>EEA</b>	European Economic Area
<b>EU</b>	European Union
<b>FCA</b>	Financial Conduct Authority
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>IFPRU</b>	Prudential sourcebook for Investment Firms
<b>KFI</b>	Key facts illustration
<b>MCOB</b>	Mortgages and Home Finance: Conduct of Business sourcebook
<b>MiFID</b>	Markets in Financial Instruments Directive 2004
<b>OFT</b>	Office of Fair Trading
<b>PS</b>	Policy Statement
<b>RA</b>	Resolution authority
<b>RAPs</b>	Relevant authorised persons
<b>RD</b>	Resolution Directorate
<b>RRD</b>	Recovery and Resolution Directive

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<b>RTSs</b>	Regulatory Technical Standards
<b>SIMR</b>	Senior Insurance Managers Regime
<b>SM&amp;CR</b>	Senior Managers & Certification Regime
<b>SUP</b>	Supervision manual
<b>UK</b>	United Kingdom

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# 1.

## Overview

Chapter No.	Proposed changes to Handbook	Consultation Closing Period
2	Change to the APR assumptions for consumer credit agreements	1 month
3	Updates to the equity release rules in MCOB to facilitate the availability of lifetime mortgages where the consumer can choose to switch to interest roll-up, and to make consequential changes to SUP for the reporting of Product Sales Data	2 months
4	Changes to Short Form A	1 month
5	Changes to IFPRU 11 to increase the clarity of requirements and ensure consistency with the Recovery and Resolution Directive	1 month
6	To include deferred shares issued by mutual society insurers and friendly societies with the 'mutual society shares' definition	2 months

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





## 2. Change to APR assumptions for consumer credit

### Introduction

- 2.1** In this chapter, we propose to make an amendment to the Consumer Credit sourcebook (CONC) regarding the assumptions used to calculate the total charge for credit and the annual percentage rate of charge (APR). This amendment is necessary to ensure full transposition of relevant provisions of the Consumer Credit Directive (CCD).
- 2.2** This consultation will be of interest to consumer credit firms (in particular, lenders) and their trade bodies.
- 2.3** The text of the proposed amendment, and the statutory powers the amendment will be made under, are set out in Appendix 2 of this Consultation Paper (CP).

### Summary of proposals

- 2.4** Article 19 of the CCD, as made in 2008 (2008/48/EC)<sup>1</sup>, provides for calculation of the APR for consumer credit agreements, and Annex I of the Directive sets out a number of additional assumptions to be used where necessary. These were amended by a further Directive in 2011 (2011/90/EU).<sup>2</sup>
- 2.5** The amended provisions were implemented into UK law via the Consumer Credit (Total Charge for Credit) (Amendment) Regulations 2012 (SI 2012/1745)<sup>3</sup> and carried across into FCA rules as part of the transfer of consumer credit to the FCA from the Office of Fair Trading (OFT) (with effect from 1 April 2014).<sup>4</sup>
- 2.6** The APR assumptions are set out in CONC App 1.2.5R.<sup>5</sup>
- 2.7** Assumption (d) in CONC App 1.2.5R states:

*...where the duration of the regulated credit agreement cannot be determined at the date of calculation and where different rates of interest and charges are to be offered for limited periods during that agreement, the rate of interest and the charge shall be assumed to be at the highest level for the duration of the agreement.*

<sup>1</sup> <http://eur-lex.europa.eu/eli/dir/2008/48/oj>

<sup>2</sup> <http://eur-lex.europa.eu/eli/dir/2011/90/oj>

<sup>3</sup> [http://www.legislation.gov.uk/ukSI/2012/1745/pdfs/ukSI\\_20121745\\_en.pdf](http://www.legislation.gov.uk/ukSI/2012/1745/pdfs/ukSI_20121745_en.pdf)

<sup>4</sup> PS13/8 *FCA regime for consumer credit: carrying across some Consumer Credit Act secondary legislation into FCA rules* (August 2013)

<sup>5</sup> <https://www.handbook.fca.org.uk/handbook/CONC/App/1/?view=chapter>

- 2.8** However, assumption (i) of the CCD states:

*If different borrowing rates and charges are offered for a limited period or amount, the borrowing rate and the charges shall be deemed to be the highest rate for the whole duration of the credit agreement.*

- 2.9** We propose to amend assumption (d) to make it identical to the CCD assumption.

- 2.10** We are not proposing any transitional provisions, as we are not aware of any products currently on the UK market that would be impacted by the change. However, if such products exist, we will reconsider this.

**Q2.1: Do you have any comments on the proposed change?**

**Q2.2: Are you aware of any products that may be impacted by the proposal?**

### **Cost benefit analysis**

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- 2.11** This is a minor technical amendment, to ensure proper transposition of the CCD and to close a gap in the current APR assumptions. As above, we are not aware of any current products which would be impacted by this change, and so consider that it will not impose any costs or these will be of minimal significance.

**Q2.3: Do you have any comments on our analysis?**

### **Compatibility statement**

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- 2.12** The proposed amendment is compatible with our strategic objective, and advances one or more of our operational objectives, in particular consumer protection. It helps ensure that consumers receive consistent APR information to facilitate product comparisons. It is consistent with our competition duty and helps promote effective competition in the interests of consumers. We do not expect the proposal to have a significantly different impact on mutual societies.

### **Equality and diversity**

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- 2.13** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 2.14** Overall, we do not consider that the proposals in this Consultation Paper 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.

- 2.15** 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.
- 2.16** In the interim we welcome any input to this consultation on these matters.

### 3.

## Minor changes to our equity release rules

### Introduction

- 3.1** We are proposing to make some minor changes to our Mortgages and Home Finance: Conduct of Business (MCOB) rules to make it easier for providers to offer a type of lifetime mortgage that allows consumers to choose when to stop making interest payments. We also propose to update our rules on how firms should determine the length of term when illustrating equity release products.
- 3.2** This consultation will be of interest to equity release firms and their trade bodies. It may also be of interest to consumers looking for lifetime mortgages that allow them to make regular repayments while they are able to do so.

### Summary of proposals

#### Products where the consumer can switch to interest roll-up

- 3.3** There is evidence<sup>6</sup> that our responsible lending rules could have contributed to the restricted development and take-up of lifetime products that allow a customer to make regular payments but switch to interest roll-up at any point. The rules require the lender to carry out an affordability assessment because payments of interest are anticipated. However, the conversion to interest roll-up removes any risk of repossession due to defaulting on payments. The cost of putting systems in place to check affordability is constraining lender entry into this market because lifetime mortgage lenders typically only offer interest roll-up loans.
- 3.4** As an initial response to this issue we published a modification by consent.<sup>7</sup> This modification works by disapplying the requirement to carry out an affordability assessment where interest payments are anticipated or required. It is only available to firms where the specific lifetime mortgage allows the consumer to exercise, at any time, an option to convert the product to interest roll-up.
- 3.5** The modification also amends the product disclosure rules in MCOB 9.4 and the prescribed text of the key facts illustration (KFI) in MCOB 9 Annex 1. These changes clarify how we expect the KFI to give a meaningful description of features and risks both when interest payments are being made and when they are rolled up. This includes how the repayment information should appear in the KFI where payments are expected but may be rolled-up.
- 3.6** There has been strong support for the modification by consent from both firms and consumer groups. The proposals now being consulted on closely follow the approach of the modification,

<sup>6</sup> FS16/3 *Call for Inputs on competition in the mortgage sector* (May 2016)

<sup>7</sup> Modification by consent for a Hybrid Lifetime Mortgage - Direction (April 2016)

with a small number of minor changes in response to comments received on the use of rounding and the treatment of multi-part loans. We are also proposing to make minor changes to SUP 16 Annex 21 on the reporting of Product Sales Data to include further guidance on the reporting of these products, and to make the guidance consistent with what the technical standards require firms to report. Finally, we are proposing a minor change to the drafting in MCOB and the Glossary to ensure a consistent description of interest roll-up lifetime mortgages.

**Q3.1 Do you agree with our proposed approach to lifetime mortgages that allow the consumer to choose to switch to interest roll-up?**

**Estimating the term for product illustrations**

- 3.7** The open-ended nature of equity release products means that firms need to use an assumed term in disclosure materials. This assumed term is based on the use of standard mortality tables, and the MCOB cross-reference to these is out of date. We propose an update to reflect tables more recently produced. While the differences between the two sets of tables may appear small, continued delay in reflecting the availability of newer tables would lead to greater differences over time. Given that the new tables are published in a similar format to the old tables, and will be familiar to those already making use of them for regulated pensions purposes, we do not believe that it should be onerous for firms to adopt the new tables.
- 3.8** In making this change we are also proposing to give firms the option of estimating the term on a different basis where their view is that this would be more appropriate. This flexibility offers scope for the illustration to be more tailored to the circumstances of the individual borrower. Although this could mean a consumer receiving illustrations from separate firms that use a different term, the existing rules already mean firms have to give out a second illustration where the consumer wants to specify the term to be used.

**Q3.2 Do you agree with our proposal for how firms should determine the length of term when illustrating equity release products?**

**Cost benefit analysis**

- 3.9** Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA states that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance. We consider that our proposed changes will not result in an increase in costs, or that where they do this will be of minimal significance.
- 3.10** The proposed exemption from the need to carry out an affordability assessment is not expected to increase costs for firms, as we are removing a requirement that is not necessary to achieve our intended policy. Similarly, the disclosure changes are not anticipated to give rise to significant cost because they only clarify existing expectations for product disclosure that is clear, fair and not misleading. The prescribed approach has the benefit of giving firms certainty.
- 3.11** Firms will be familiar with the periodic updating of mortality tables in order to provide a more current assessment of expected mortality. This is especially true for firms who also carry out certain regulated pensions activities. The use of a new mortality table should be straightforward and not incur significant additional cost over and above the normal ongoing annual cost. The new flexibility to use other bases for estimating the product term might incur new costs for a

firm, but the approach is purely optional and any firm choosing to make use of the flexibility will presumably do so to fulfil a business need.

### **Impact on mutual societies**

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- 3.12** Section 138K of 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. We are satisfied that the proposed amendments do not impact on mutual societies more than on other authorised firms.

### **Compatibility statement**

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- 3.13** Section 1B of FSMA requires us, so far as is reasonably possible, to act in a way that is compatible with our strategic objective and advances one or more of our operational objectives. 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 section 1C(2) of FSMA and the regulatory principles in section 3B. In this case our proposals are intended to advance our operational objective of securing appropriate levels of consumer protection.
- 3.14** 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. We believe that the changes we propose will have a positive impact on competition, as they make it easier for providers to offer access to loans that better suit the needs of some borrowers.

### **Equality and diversity**

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- 3.15** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 3.16** Overall, we do not consider that the proposals in this Consultation Paper 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. The changes should have a positive impact for some older consumers as they are intended to make it easier for providers to offer access to loans that better suit their needs.
- 3.17** 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.
- 3.18** In the interim we welcome any input to this consultation on these matters.

## 4. Consequential amendments to Short Form A

### Introduction

- 4.1** The Senior Managers & Certification Regime (SM&CR) for banks, building societies, credit unions, dual-regulated investment firms, known as relevant authorised persons (RAPs) and the Senior Insurance Managers Regime (SIMR) for insurance firms<sup>8</sup> came into force on 7 March 2016.
- 4.2** As part of the new regime for RAPs, we consulted on changes to Form A (Application to perform senior management functions) in our Consultation Paper, CP14/31.<sup>9</sup> Amongst these changes, we consulted on including a new criminal records check question. These changes were implemented in July 2015 via CP15/22.<sup>10</sup>
- 4.3** Subsequently, we also made similar changes to Form A (both the Long and Short Forms) for insurance firms, as part of PS15/21 in August 2015.<sup>11</sup>
- 4.4** However, the content of Short Form A differs slightly for RAPs and insurance firms so we are proposing to make changes to Short Form A for UK RAPs and third country branches, and Short Form A for EEA branches. The amendment to the new section 5.2 which is added to both forms assumes that the changes proposed to the same forms in CP15/31 “Strengthening accountability in banking and insurance: regulatory references” have been made.

### Summary of proposals

- 4.5** We propose to make the following two changes to Short Form A. These changes do not impact the relevant rules in the Supervision manual at SUP 10C.
- UK RAPs and third country branches – we propose to include the criminal records check question (5.05.3 in Long Form A) in Section 5 (Other Matters) of Short Form A, and
  - EEA branches – we propose to include the criminal records check question (5.05.3 in Long Form A) in Section 5 (Other Matters) of Short Form A

<sup>8</sup> By insurance firms we mean all firms to whom the PRA have applied the Solvency II regime, including Insurance Special Purpose Vehicles (ISPVs), the Society of Lloyd's, managing agents and UK branches of foreign firms (FCA regulated branches of third-country firms and European Economic Area (EEA) firms). This includes non-Directive firms under Solvency II.

<sup>9</sup> CP14/31 *Strengthening accountability in banking: forms, consequential and transitional aspects* (September 2014)

<sup>10</sup> CP15/22 *Strengthening accountability in banking: Final rules (including feedback on CP14/31 and CP15/5) and consultation on extending the Certification Regime to wholesale market activities* (July 2015)

<sup>11</sup> PS15/21 *Changes to the Approved Persons Regime for Solvency II firms: Final rules (including feedback on CP14/25, CP15/5 and CP15/16), and consequentials relating to CP22/15 on strengthening accountability in banking* (August 2015)

**Q4.1: Do you agree with the proposed changes to Short Form A for UK RAPs and third country branches, and EEA RAPs?**

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**Cost benefit analysis**

- 4.6** The proposed changes to Short Form A are presentational only and do not change the underlying rules or require firms to submit additional information than was previously required. As such, we believe the overall impact is cost neutral.
- 4.7** Clause 22 of the Financial Services Bill 2012 amends the rule-making powers in the Financial Services and Markets Act 2000 (FSMA) to require the FCA to provide an opinion on whether the impact of proposed rules on mutual societies is significantly different to the impact on other authorised persons. We do not believe the impact will be different for these types of firms.

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**Compatibility statement**

- 4.8** 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 carry out its general functions in a way that promotes effective competition in the interests of consumers, so as far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective.
- 4.9** 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 s. 1C(2) FSMA and the regulatory principles in section 3B.

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**Equality and diversity**

- 4.10** We have considered the equality and diversity issues that may arise from the proposals in this chapter of the Consultation Paper.
- 4.11** Overall, we do not consider that the proposals in this chapter of the Consultation Paper 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.
- 4.12** 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.
- 4.13** In the interim we welcome any input to this consultation on these matters.



## 5.

# Changes to IFPRU 11 to clarify requirements arising from the RRD

### Introduction

- 5.1** This consultation presents proposals to amend the relevant sections of Chapter 11 of the Prudential sourcebook for Investment Firms (IFPRU 11) in relation to our implementation of the Recovery and Resolution Directive (RRD).
- 5.2** The proposed changes will promote clarity for firms and groups within the scope of IFPRU 11 (collectively referred to as 'RRD entities' in this chapter) and ensure continued compliance with the RRD and its related requirements contained in the relevant Regulatory Technical Standards (RTSs). Relevant RRD entities should ensure that they comply with both the RTSs and the relevant provisions in IFPRU 11.
- 5.3** The sections affected are:
- IFPRU 11.2 and IFPRU 11.3 on solo and group recovery plans, respectively
  - IFPRU 11.5 on intra-group financial support
  - IFPRU 11.6 on contractual recognition of bail-in, and
  - IFPRU 11 Annex 2R on information for resolution plans

### Summary of proposals

#### IFPRU 11.2 and 11.3 – Solo and group recovery plans

- 5.4** First, the RRD allows competent authorities (CAs) and resolution authorities (RAs) the opportunity to apply simplified obligations to RRD entities for recovery and resolution planning, rather than applying general obligations.
- 5.5** We apply simplified obligations to RRD entities that do not meet the criteria for IFPRU significance.<sup>12</sup> These RRD entities are required to submit recovery plans that are less detailed than recovery plans submitted under general obligations, and on a less frequent basis.
- 5.6** We have the power to require RRD entities to report according to simplified obligations to instead report according to general obligations, where it is thought appropriate. This power is

<sup>12</sup> See IFPRU 1.2, <https://www.handbook.fca.org.uk/handbook/IFPRU/1/2.html>

required by article 4(3) of the RRD, and sections 55L and 192C of FSMA give us the ability to exercise it.

**5.7** For example, we have the ability to use this power if necessary in implementing the European Banking Authority (EBA) Guidelines<sup>13</sup> that further determine the criteria for the application of simplified obligations, and have done so. We determined that there were a small number of RRD entities reporting on the basis of simplified obligations who should report according to general obligations. This requirement has been communicated to the relevant RRD entities identified, however we may make further use of this power in future.

**5.8** We propose including a provision in both IFPRU 11.2 and 11.3 that makes reference to this FSMA power. This will make the potential requirement for the relevant RRD entities to report according to general obligations more transparent and clear.

**5.9** Secondly, article 9 of the RRD outlines the circumstances under which an institution may take an action under its recovery plan, and also when it may refrain from taking an action. It also requires the institution to notify the CA without delay when:

- it makes a decision to take an action referred to in the recovery plan, or
- it refrains from taking such an action despite having met a relevant recovery plan indicator

**5.10** These requirements are transposed in the Handbook via IFPRU 11.2.14R, 11.2.15R, 11.3.16R and 11.3.17R. We propose making minor changes to these provisions to increase the clarity of these requirements.

#### **Proposed changes to IFPRU 11.5 – Intra-group financial support**

**5.11** Article 23 of the RRD specifies the conditions that must be met for financial support to be provided by a group entity in accordance with a group financial support agreement under the RRD. The EBA has subsequently produced RTSs<sup>14</sup> to further specify some of these conditions. We propose including a guidance provision in IFPRU 11.5 to refer to these RTSs.

**5.12** Additionally, article 25(6)(a) of the RRD requires an institution to notify the CA of a decision by its management body to provide financial support in accordance with a previously authorised group financial support agreement. Our transposition of this requirement currently requires only IFPRU 730k firms to notify us in this instance, rather than the whole of the wider population of RRD entities. We propose addressing this inconsistency with the RRD by amending IFPRU 11.5.21R to expand the scope of this requirement to all firms to which IFPRU 11 applies.

#### **Proposed changes to IFPRU 11.6 – Contractual recognition of bail-in**

**5.13** The RRD requires that RRD entities must include a term in the contract governing certain third country liabilities to state that the counterparty recognises the liability may be subject to the use of write-down and conversion powers by the relevant RA.

**5.14** The RTSs further qualify the scope of liabilities that are excluded from the requirement to include the recognition of bail-in clause.

**5.15** We propose a technical amendment to IFPRU 11.6.3R(2) to specify that the requirement for the contractual recognition of bail-in also applies to a liability that is issued or entered into before or

<sup>13</sup> <https://www.eba.europa.eu/-/eba-publishes-technical-standards-and-guidelines-on-simplified-obligations> (July 2015)

<sup>14</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.184.01.0001.01.ENG&toc=OJ.L:2016:184:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.184.01.0001.01.ENG&toc=OJ.L:2016:184:TOC)

after 1 January 2016 but is then materially amended after the date upon which the Handbook instrument related to these proposals comes into force.

- 5.16** This amendment will ensure consistency between the RTSs and the FCA Handbook, and we propose to include a guidance provision in IFPRU 11.6 to refer to these RTSs.

**Proposed changes to IFPRU 11 Annex 2R – Information for resolution plans**

- 5.17** Under the RRD, the RA is responsible for drawing up resolution plans for RRD entities. In the UK, the Resolution Directorate at the Bank of England has been designated as the RA.
- 5.18** RRD entities are required to submit resolution information to enable the RA to produce the resolution plan. In the UK, we collect baseline resolution information for FCA-solo-regulated RRD entities (those subject to IFPRU 11.4) and transmit this information to the Resolution Directorate. IFPRU 11 Annex 2R specifies the information the relevant firms must submit.
- 5.19** Some baseline information must be submitted with respect to the 'group'. As it is a defined term in the FCA Handbook, 'group' must be read as defined in the Glossary.
- 5.20** We propose amending the scope of some of the baseline information that RRD entities are required to submit where the related parent institution is incorporated outside the UK. IFPRU 11 Annex 2R currently requires such information to be submitted with respect to the whole global 'group'. However, we propose that such RRD entities would be required to submit information relating only to:
- UK subsidiaries
  - UK branches of overseas subsidiaries, and
  - material interdependencies with non-UK legal entities in the group
- 5.21** Interdependencies may arise from a number of sources, with the following being examples (but not a definitive list) of potential interdependencies that firms should consider.
- Commercial – where an entity helps cross-sell products from another entity.
  - Funding – where an entity depends on another for funding.
  - Operational – where an entity provides services, such as access to financial market infrastructures, IT, HR etc.
- 5.22** A similar requirement is contained in Table 4 of IFPRU 11 Annex 2R, so our proposed amendments will achieve greater consistency within Annex 2R.

**Q5.1 Do you agree with these proposed changes to IFPRU 11?**

**Cost benefit analysis**

- 5.23** When proposing new rules, we are required under section 138I of FSMA to publish an analysis of costs and benefits, unless we believe those rules will lead to insignificant or no costs at all.

- 5.24** The proposed amendments to IFPRU 11 are primarily technical amendments to clarify our existing policy arising from the RRD. The changes will help relevant RRD entities meet their associated obligations and better understand the requirements of IFPRU 11 and the RRD. The proposed change to IFPRU 11.5.21R is necessary to make that provision compliant with the RRD.
- 5.25** Given the nature of these proposed changes we believe that in this instance a cost-benefit analysis is not required as there will be no increase in costs for RRD entities as a result of these proposals.

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### **Compatibility statement**

- 5.26** We believe that the proposed amendments are in line with our objectives as the proposals will enable RRD entities to better meet their obligations by providing clarity in relation to their obligations under IFPRU 11.

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### **Equality and diversity**

- 5.27** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 5.28** Overall, we do not consider that the proposals in this Consultation Paper 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.
- 5.29** 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.
- 5.30** In the interim we welcome any input to this consultation on these matters.

## 6. Mutuals' deferred shares

### Introduction

- 6.1** The Mutuals' Deferred Shares Act (2015)<sup>15</sup> gives most mutual insurers the option of raising regulatory capital in the form of deferred shares. These shares enable firms to raise money either to meet minimum capital requirements or to fund future expansion. In this chapter, we refer to mutual insurer deferred shares as 'the shares'.
- 6.2** The Government recently published draft Regulations for consultation, setting the structure of the shares.<sup>16</sup> It should be possible for firms to issue these shares from January 2017.
- 6.3** One of the intentions behind the Act is to allow existing members to help finance the organisation. Smaller societies may not be able to raise institutional funds so retail participation is important.
- 6.4** Under the draft Regulations, key aspects of the shares will include:
- mutual society shares will be perpetual instruments
  - income payments will be discretionary and, to avoid causing problems for with-profits holders, the money that may be distributed as income will be limited to the firm's accumulated, realised profits (where not previously used for distribution or capitalisation) less its accumulated, realised losses (where not previously written off in a reduction or reorganisation of capital)
  - investors will not have the usual rights of holders of company shares, such as voting in proportion to shareholding, and
  - societies will be able to choose whether to issue ordinary or preference shares and, if they issue preference shares, to comply with Solvency II, the shares must include provision for a write-down mechanism that imposes losses on the shareholders in the event of the mutual breaching the relevant regulatory triggers on capital adequacy
- 6.5** We are concerned that, to many ordinary retail investors,<sup>17</sup> deferred shares will be relatively unusual, complex and risky. They are also likely to be relatively illiquid and pose a risk of inappropriate distribution to non-sophisticated investors. We are therefore consulting on additional requirements for firms that wish to promote the shares to ordinary retail clients.

<sup>15</sup> <http://www.legislation.gov.uk/ukpga/2015/13/contents/enacted/data.htm>

<sup>16</sup> HM Treasury, *Mutual deferred shares: consultation on technical policy details* (August 2016)

<sup>17</sup> Ordinary retail investors are retail clients who do not meet the requirements to be categorised as sophisticated or high net worth.

## Summary of proposals

- 6.6** Credit institution mutual societies are already able to raise funds by issuing deferred shares.<sup>18</sup> In 2015, we introduced additional requirements for firms wishing to promote the shares to ordinary retail clients. These rules help ensure that consumers who decide to invest in mutual society shares have at least a basic awareness of the risks involved and only invest money they can afford to lose.
- 6.7** In this Consultation Paper (CP), we propose to apply the same requirements to deferred shares issued by insurer mutual societies and friendly societies, as defined in the Mutuals Deferred Shares Act 2015, by amending the Handbook definition of 'mutual society shares' to include the new shares. In turn, this will extend application of the COBS 22.2 requirements relating to the retail distribution of mutual society shares to deferred shares issued by those mutual insurers and friendly societies permitted to do so by the legislation.
- 6.8** As part of this consultation, we also propose to make a change to the COBS 22.2.3R(2) net assets calculation to clarify the treatment of the investor's primary residence and any liability under a mortgage used to buy that property. The proposed wording will clarify that the net assets calculation disregards not only the value of the investor's primary residence but also any liability under a mortgage used to buy that property, except for the amount of any such debt above the current value of the property. The effect of this proposal is such that, where individuals are in negative equity on their primary residence, the value of this negative equity is relevant to the calculation of their net assets.
- 6.9** The proposed rules permit distribution of mutual society shares to professional and eligible counterparty clients without restriction. They will also permit distribution to retail investors classed as certified sophisticated investors,<sup>19</sup> self-certified sophisticated investors,<sup>20</sup> and certified high net worth investors.<sup>21</sup> For other clients (i.e. ordinary retail clients), the rules permit distribution where the firm provides specific risk warnings, including the warning that investing more than 10% of the client's net investable assets in this type of instrument is unlikely to be in their best interests. To demonstrate that these risk warnings have been read and understood, the rules require that firms must obtain written confirmation from clients, including an undertaking to limit their investment in mutual society shares to no more than 10% of their net investable assets.<sup>22</sup> Firms are not expected to take responsibility for assessing whether or not clients make good on the commitment not to invest more than 10% of their net investable assets: the approach relies on self-certification by the client.
- 6.10** The appropriateness test is also applied to non-advised sales as a further safeguard. Firms carrying on non-advised sales of mutual society shares outside of MiFID scope need to satisfy themselves that the retail investor is likely to have the requisite experience and knowledge to understand the risks involved for investment in mutual society shares. This requirement

<sup>18</sup> CP14/23 *Restrictions on the retail distribution of regulatory capital instruments* (October 2014) and PS15/14 *Restrictions on the retail distribution of regulatory capital instruments* (June 2015)

<sup>19</sup> These are retail clients with extensive investment experience and knowledge, who are better able to understand the risks of complex and unusual investments. A firm must ensure the certification requirements are met before treating a retail client as a sophisticated customer (see COBS 4.12).

<sup>20</sup> To self-certify as sophisticated, a client must, among other factors, meet at least one of four criteria relating to specific investment experience (see COBS 4.12).

<sup>21</sup> Among the criteria to be certified as high net worth, such clients must have an annual income of more than £100,000 or net investable assets of more than £250,000. Net investable assets exclude the value of the client's home, pension funds and any benefits under insurance policies. Any debt the client owes should be subtracted from the value of assets held by the investor.

<sup>22</sup> There is no requirement for an ink signature: the client confirmation exercise may be completed online. We expect firms to provide retail clients with the risk warnings and investor statement in separate and distinct documents which the client can focus on. A signature acknowledging that a client has read a document that includes the required risk warnings as part of a broader set of provisions is unlikely to demonstrate compliance with the proposed rules.

applies where that same transaction would be subject to the appropriateness test if it was MiFID or equivalent third country business. Where a firm carrying on MiFID or equivalent third country business would not need to apply the appropriateness test, firms carrying on non-MiFID business do not need to conduct it either.<sup>23</sup>

- 6.11** Firms must keep a record demonstrating compliance with the requirements, applying to the distribution of these shares, on the sale of mutual society shares to retail investors. Such record-keeping responsibility could be delegated by the person allocated the compliance oversight function in each firm, provided they have reviewed and approved the process for certification of compliance no more than 12 months before the date of the deal.
- 6.12** Our intention is for rule changes following this consultation to be implemented by the time the shares may be issued.

**Q6.1: Do you have any comments on the proposal to apply existing rules in relation to credit institution mutual society deferred shares (in COBS 22.2) so they apply in relation to deferred shares issued by mutual insurers and friendly societies?**

### Cost benefit analysis

- 6.13** The following estimates of the costs and benefits of our proposals take account of the HM Treasury impact assessment for the Mutuals' Deferred Shares Regulations and previous analysis of the costs and benefits in the consultation on requirements for the retail distribution of credit institution mutual society deferred shares (CP14/23).
- 6.14** In line with the HM Treasury impact assessment, we estimate that up to 10 societies may issue deferred shares in the next few years. It is estimated that issue sizes will be between £70m and £100m. We expect distribution to be via self-placement (where societies sell the shares to their own members) and via third-party intermediaries specialising in advisory or portfolio management services. As in our previous cost benefit analysis, we estimate a range of between 40 and 75 third party distributors. If there are 10 issuers in the next 5 years, this means that between 50 and 85 firms would be affected by our proposals. Where third-party intermediaries already distribute credit institution mutual society deferred shares, they will already have processes in place to comply with our rules for those shares. Our analysis of costs is therefore likely to overestimate the total cost to the industry.
- 6.15** We do not expect the proposed change to COBS 22.2.3R(2) to lead to material costs for firms to implement. As a result of the proposed change, however, negative equity on a retail investor's principal primary residence will be taken into account in calculating net assets. For investors with negative equity, the net assets calculation will result in a smaller investment amount. We expect relatively few retail investors to be affected and do not expect the proposal to lead to a significant reduction in funding for firms or significant reduction in the amount invested by retail investors. There are likely to be benefits arising to retail investors as a result of this proposal, as investors consider the impact of negative equity when deciding on investment

<sup>23</sup> Even listed mutual society shares may be complex instruments under MiFID criteria: the instruments may be illiquid as the market develops. The instruments may also lack publicly available and adequately comprehensive information that the average retail client can readily understand and use to make an informed judgement about whether to invest. Unlisted mutual society shares are generally complex instruments. Therefore, we would generally expect many, if not all, non-advised and MiFID-scope retail sales to be subject to the appropriateness test.

exposure, but, since relatively few investors are likely to be in this position, we do not expect the benefits to be significant.

### **Direct costs**

**6.16** We expect the main compliance costs on firms to be for developing and operating distribution processes and in training staff.

- **Training**

- There will be training costs for firms that wish to promote the shares to retail investors. In line with our previous cost benefit analysis, we estimate a training cost of around £100,000 for a large firm and around £15,000 for a medium firm. We assume that issuers will be classed as large firms and third party distributors as medium firms. On this basis, we estimate a one-off industry-wide cost of between £1.6m and £2.1m.
- After that, we would expect ongoing training costs to fall within existing business as usual training budgets to demonstrate ongoing competence.

- **Client classification**

- The one-off cost to firms of introducing systems to categorise clients is expected to be £12,500 per firm. With our earlier assumption of between 50 and 85 firms, this leads to a total industry-wide cost of between £625,000 and £1m.
- We estimate the ongoing cost to firms of categorising each customer to be between £24 and £31 per customer. For our analysis we estimate there will be between 11,000 and 55,000 exercises each year to categorise clients as high net worth or sophisticated. This would lead to industry-wide costs of between £265,000 and £1.7m. The process to be followed for retail investors who commit not to invest more than 10% of their net investable assets in mutual society shares relies on self-certification and is, therefore, more mechanistic. We expect only minimal costs for these clients.

- **Appropriateness test, risk warning and client commitment**

- We estimate one-off costs of setting up systems to be £45,000 per firm. This would result in a total industry-wide one-off cost of between £2.25m and £3.8m.
- Using the same assumptions as in CP14/23, we estimate between 33,000 and 165,000 clients are treated as ordinary retail clients each year for the purpose of these rules. With a cost per client of £40, this would result in an industry-wide annual cost of between £1.3m and £6.6m.

- **Compliance confirmation**

- The one-off cost to firms to develop the compliance confirmation process is expected to be between £1,000 and £2,000 per firm. Based on the earlier estimate of the number of firms in the market, this leads to an estimated one-off cost of between £50,000 and £170,000 for the industry as a whole.
- We estimate annual costs of between £600 and £1,000 per firm for the compliance manager to review the process, or between £30,000 and £85,000 for the industry as a whole. Based on the earlier assumption of between 11,000 and 55,000 client categorisation exercises per annum and assuming a cost per hour of £18 for compliance staff, and two hours per confirmation exercise, we estimate total industry-wide costs of



between £400,000 and £2m for undertaking the confirmation exercise each year. These costs are likely to be lower in practice as we do not expect all firms to distribute shares every year.

- **Record keeping**

- As firms are already obliged to keep records and will have processes in place for them, we estimate that there will only be minimal one-off costs for changing record keeping.
- We estimate an additional ongoing record-keeping cost of £2 per client and, as before, we estimate a total of between 11,000 and 55,000 high net worth and sophisticated clients per annum, and between 33,000 and 165,000 ordinary retail investors. We therefore estimate an incremental cost for record keeping of between £100,000 and £500,000 per annum.

**6.17** In total, therefore, we expect one-off industry-wide costs of between £4.5m and £7m and ongoing annual industry-wide costs of between £2m and £11m.

#### **Indirect costs**

**6.18** The main indirect costs expected are as follows.

- Where firms choose to classify investors before distributing the investment – rather than apply the other requirements for all sales – this will, where the client ultimately decides not to make an investment and unless a fee is charged, be a cost on the firm that is not offset by remuneration from the ultimate sale.
- We recognise that some issuers may face a higher cost of capital when following the requirements.
- Some ordinary retail investors may also reduce investment as a result of these proposals. We do not expect many customers to be affected by this. Any retail investor will be able to buy shares if they wish, subject to the safeguards provided by the prescribed risk warnings, an undertaking to invest no more than 10% of the individual's net assets, and the appropriateness test.
- Were this to reduce the number of investors, there may be a reduction in liquidity for the shares. We do not regard this as a significant risk, however.

#### **Benefits**

**6.19** To anticipate the benefits, we estimate issuance sizes of £70m and £100m. We also estimate that retail investors account for around 75% of all investment. Assuming that 75% of these investors are ordinary retail investors, we can assume that, for an issuance size of £70m, around £40m is held by ordinary retail investors. For an issuance size of £100m, we can assume that around £56m is held by ordinary investors.

**6.20** Part of the benefit of our proposals comes from the concentration limit, as ordinary retail investors are warned that investment of more than 10% of their net assets is unlikely to be in their interests. Further, for non-advised sales which are not MiFID or equivalent third country business, the investor is asked to not invest more than 10% of their net assets in mutual society shares. Should the issuer suffer financial difficulty and share prices fall, consumers will not be subject to losses that could have a serious impact on their financial circumstances, a particular risk for investors who are neither sophisticated nor wealthy. To calculate the benefit, we consider what might happen if there were no regulatory intervention and the proportion

invested per customer was between 25% and 50% of the customer's net assets. If the share price fell substantially by, for example, 50%, our proposals would provide a benefit of:

- between £3m and £8m for an issuance size of £70m, and
- between £4.2m and £11.2m for an issuance size of £100m

**6.21** To calculate the market-wide benefit, we consider what would happen if this risk materialised in 1/3 (three issues) or 1/2 of the market (five issues). The market-wide benefit would be between £9m and £56m.

**6.22** We also expect there to be benefits for the retail clients to whom firms may distribute mutual society shares under our proposals. As well as a financial benefit, these clients may gain a non-monetary benefit from being able to support the society's aims through the investment.

### Impact on mutual societies

**6.23** While we are concerned about the risks that deferred shares present to ordinary retail investors, we recognise that mutuality stops mutual societies from raising capital through issuing other shares. In turn, this can limit their ability to raise capital. The proposed restrictions aim to provide balance between these competing needs. Under our proposals, firms may raise capital from their members, including ordinary retail investors, subject to compliance with additional safeguards.

**Q6.2: Do you have any comments on the cost benefit analysis for our proposals regarding mutuals' deferred shares?**

### Compatibility statement

**6.24** The proposals in this consultation are designed to advance our objective of securing an appropriate degree of consumer protection by restricting the distribution of certain investments to consumers for whom they are unlikely to be suitable. We also believe our approach will promote effective competition in the interests of consumers by improving investor awareness of the potential risks involved and reducing information asymmetries. To apply effective competitive pressure, consumers need to assess quality and value adequately.

**6.25** 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.

### Equality and diversity

**6.26** We consider that the investments on which we are consulting may carry particular risks for some people with protected characteristics under the Equalities Act 2010. The elderly and those with learning difficulties or mental capacity limitations may be disproportionately vulnerable to the

risk of inappropriate distribution. To mitigate this risk, we are proposing an approach that seeks to protect retail investors from the risk of mistakenly entering into inappropriate transactions.

# Appendix 1

## List of questions

- Q2.1:** Do you have any comments on the proposed change?
- Q2.2:** Are you aware of any products that may be impacted by the proposal?
- Q2.3:** Do you have any comments on our analysis?
- Q3.1:** Do you agree with our proposed approach to lifetime mortgages that allow the consumer to choose to switch to interest roll-up?
- Q3.2:** Do you agree with our proposal for how firms should determine the length of term when illustrating equity release products?
- Q4.1:** Do you agree with the proposed changes to Short Form A for UK RAPs and third country branches, and EEA RAPs?
- Q5.1:** Do you agree with these proposed changes to IFPRU 11?
- Q6.1:** Do you have any comments on the proposal to apply existing rules in relation to credit institution mutual society deferred shares (in COBS 22.2) so they apply in relation to deferred shares issued by mutual insurers and friendly societies?
- Q6.2:** Do you have any comments on the cost benefit analysis for our proposals regarding mutuals' deferred shares?

## **Appendix 2**

# **Change to APR assumptions for consumer credit**

**CONSUMER CREDIT (TOTAL CHARGE FOR CREDIT) INSTRUMENT 2016**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 137A (The FCA’s general rules); and
    - (b) section 137T (General supplementary powers); and
  - (2) article 60M of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544),
- B. The rule-making powers 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 Consumer Credit sourcebook (CONC) is amended in accordance with the Annex to this instrument.

**Citation**

- F. This instrument may be cited as the Consumer Credit (Total Charge for Credit) Instrument 2016.

By order of the Board  
[*date*]

## Annex

## Amendments to the Consumer Credit sourcebook (CONC)

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

**App 1      Total charge for credit rules, and certain exemptions**

...

**1.2          Total charge for credit rules for other agreements**

...

Assumptions for calculation

1.2.5      R      For the purposes of calculating the *total charge for credit* and the *annual percentage rate of charge*:

...

(d)      ~~where the duration of the regulated credit agreement cannot be determined at the date of calculation and~~ where different rates of interest and charges are to be offered for limited periods or amounts during ~~that agreement~~ the regulated credit agreement, the rate of interest and the charge shall be assumed to be at the highest level for the duration of the agreement;

(e)      ...

## **Appendix 3**

# **Minor changes to our equity release rules**



## CONDUCT OF BUSINESS (LIFETIME MORTGAGES) INSTRUMENT 2016

### Powers exercised

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

### Commencement

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

### Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex B
Supervision manual (SUP)	Annex C

### Citation

- E. This instrument may be cited as the Conduct of Business (Lifetime Mortgages) Instrument 2016.

By order of the Board  
*[date]*

## Annex A

### Amendments to the Glossary of definitions

Delete the following definition.

<i>roll-up of interest mortgage</i>	a <i>regulated mortgage contract</i> where no payment of interest on the amount borrowed (other than interest charged when all or part of the amount borrowed is repaid voluntarily by the <i>customer</i> ), is due or capable of becoming due while the <i>customer</i> continues to occupy the mortgaged property as his main residence and fulfil his obligations under the <i>regulated mortgage contract</i> .
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## Annex B

## 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.

## 9 Equity release: product disclosure

...

### 9.4 Content of illustrations

...

9.4.4 R A *firm* must include in the *illustration* all prescribed section headings, except that:

- (1) in section 8 of the *lifetime mortgage illustration* (What you owe and when):
  - (a) Section 8(A) (details of mortgage payments) is only required where the *customer* ~~is required to make payments to the mortgage lender~~ in respect of the capital or all or part of the interest charged on the *lifetime mortgage* terms of the *lifetime mortgage* require the *customer* to make regular payments to the *mortgage lender*, in respect of all or part of the interest or part of the capital due under those terms, either over the duration of the *lifetime mortgage* or until a specified date, or contemplate that the *customer* will make such payments unless he or she later chooses to stop doing so. This will include those cases where the interest payment is deducted from the income provided by a linked *investment* product (such as an annuity) such that the *customer* receives the net income;
  - (b) Section 8(B) (projection of roll-up of interest) is only required where all or part of the interest on the *lifetime mortgage* is or may be rolled-up;

...

...

9.4.10 R (1) In estimating the term of a *lifetime mortgage* or an open-ended *instalment reversion plan*, a firm must:

- (a) use ~~the following mortality table: PMA92(C=2010) and PFA92(C=2010) for males and females respectively,~~ derivable from the Continuous Mortality Investigation Report

~~17, published by the Institute of Actuaries and the Faculty of Actuaries in 1999~~ an estimate of the life expectancy of the customer that is reasonable and based on evidence; and

- (b) for the purposes of the *illustration*, where the ~~table does not result in a~~ estimate of life expectancy expressed in is not a whole number of years, the term should be rounded up to the next whole year (for example, if the ~~result~~ life expectancy is between fifteen and sixteen years, an estimated term of sixteen years should be used in the *illustration*).

- (2) Where the term estimated using the ~~mortality table~~ approach set out in (1) is less than fifteen years, the *firm* should use a term of fifteen years in preparing the *illustration*.

9.4.10A E Use of the most recent appropriate mortality tables in the Continuous Mortality Investigation published by the Institute and Faculty of Actuaries may be relied on as tending to establish compliance with MCOB 9.4.10R(1)(a).

...

9.4.25 G Examples of types of statement that would satisfy MCOB 9.4.24R(2) are as follows (more than one may apply to particular types of *lifetime mortgage*):

- (1) For a ~~roll-up of interest mortgage~~ an interest roll-up mortgage: "...  
...

...

Section 8 of a lifetime mortgage illustration: ““What you will owe and when” (A) ““Details of mortgage payments””

9.4.36 G The section headed “What you will owe and when” (A) ““Details of mortgage payments”” will apply only where the ~~customer is required to make payments to the mortgage lender during the life of the lifetime mortgage in respect of all or part of the interest, or part of the capital, charged on the lifetime mortgage~~ terms of the lifetime mortgage require the customer to make regular payments to the mortgage lender, in respect of all or part of the interest or part of the capital due under those terms, either over the duration of the lifetime mortgage or until a specified date, or contemplate that the customer will make such payments unless he or she later chooses to stop doing so. This will include those cases where the interest payment is deducted from the income provided by a linked *investment* product (such as an annuity) such that the *customer* receives the net income.

...

Section 8 of a lifetime mortgage illustration: “What you will owe and when” (B) “Projection of roll-up of interest”

- 9.4.49 G Section 8 headed “What you will owe and when” (B) “Projection of roll-up of interest” applies only where all or part of the interest due over the life of the *lifetime mortgage* is or may be added to the loan and paid to the *mortgage lender* on repayment of the loan. The projection should be based on the term of the *lifetime mortgage* estimated in accordance with *MCOB* 9.4.10R (and if required, *MCOB* 9.4.12R).

...

- 9.4.132 R ...

Certain lifetime mortgages

- 9.4.132 R *MCOB* 9.4.132DR applies if the terms of a *lifetime mortgage* contract:  
A

- (1) (a) require the *customer* to make regular payments to the *mortgage lender*; or
- (b) contemplate that the *customer* will make regular payments to the *mortgage lender*

in respect of all or part of the interest, or part of the capital, due under those terms, either over the duration of the *lifetime mortgage* or until a specified date; and

- (2) permit the *customer* to stop making the payments referred to in (1) at any time of his or her choosing (which may be a time before the specified date, if there is one); and
- (3) provide that, if the *customer* does stop making the payments referred to in (1), no payment in respect of interest or capital due under those terms is payable to the *mortgage lender* until the *lifetime mortgage* comes to an end.

- 9.4.132B G The type of *lifetime mortgage* described in *MCOB* 9.4.132AR starts out with the *customer* making regular payments as they would with a regular (non-lifetime) *interest-only mortgage* or *repayment mortgage*, but converts into an *interest roll-up mortgage* if and when the *customer* chooses to stop making payments.

- 9.4.132C G If only part of the loan under the *lifetime mortgage* is of the type described in *MCOB* 9.4.132AR (for example, if part of the loan is on an interest roll-up basis from the outset, and part is convertible from interest-paying to interest roll-up), the modifications set out in *MCOB* 9.4.132R apply only to that part of the loan that is of the type described in *MCOB* 9.4.132AR.

- 9.4.132 R *MCOB* 9.4 applies to the *lifetime mortgage illustration* with the following modifications:  
D

- (1) Section 7 of the *illustration* (“Risks – important things you must

consider”) must also include information about any fees that may be charged, and other adverse consequences (such as a change in interest rate) that may occur, as a result of the *customer* choosing to convert the mortgage to interest roll-up.

- (2) In Section 8 of the *illustration* (“What you will owe and when”), the section headed (A) “Details of mortgage payments” should be completed on the assumption that the required or anticipated payments are made until the date on which the *lifetime mortgage* converts automatically to an *interest roll-up mortgage* or, if there is no such date, throughout the life of the *lifetime mortgage* as calculated according to MCOB 9.4.10R.
- (3) The text accompanying the *illustration* in Section 8(A) must explain the basis on which it was prepared.
- (4) The following text must be shown in a box immediately under the heading to the table in Section 8(A) of the *illustration* (“What you will owe and when: Details of mortgage payments”) as referred to in MCOB 9.4.36G: “This shows the amounts you will pay if you keep up mortgage payments [throughout the estimated life of the *lifetime mortgage*][until [the date of automatic conversion to interest roll-up], when [Part [the number of the part] of] the mortgage will convert to an *interest roll-up mortgage*.] Under the terms of this mortgage, you can choose at any time to stop making payments and instead have future interest payments rolled up into the balance of the loan. The *illustration* in Section 8(B) shows an example of how choosing to stop making payments could affect the amount required to repay in full the *lifetime mortgage* at the end of its term.”
- (5) Section 8(B) of the *illustration* (“What you will owe and when” (B) “Projection of roll-up of interest”), referred to in MCOB 9.4.49G, must be based on the assumption that the interest due is added to the loan from an assumed date of conversion to an *interest roll-up mortgage* until the end of its term.
- (6) For the purpose of MCOB 9.4.132DR(5), the assumed date of conversion must be:
  - (a) if the *customer* has estimated the date at which they will decide to convert the mortgage to an interest roll-up basis, that date; or
  - (b) in the absence of such an estimate, the earlier of:
    - (i) the date (if any) on which the *lifetime mortgage* converts automatically to an *interest roll-up mortgage*, or
    - (ii) the date at which one-third of the assumed term for the *lifetime mortgage* (calculated as set out in MCOB

9.4.10R) has passed.

- (7) If the *customer* must pay an additional fee for converting the loan to an interest roll-up basis at a time of their choosing, that fee must be included in the column headed “Fees charged during the year” for the year of conversion assumed for the purposes of Section 8(B) of the *illustration*.
- (8) Immediately under the heading of the table required by *MCOB* 9.4.51R, instead of the text set out in *MCOB* 9.4.50R, the following text must appear:
- “This shows how the amount(s) paid to you and the interest and any fees that we charge mount up over [insert number of years estimated in accordance with *MCOB* 9.4.10R or *MCOB* 9.4.12R] years. It has been calculated based on the assumption that [Part [the number of the part] of] the mortgage converts to an interest roll-up basis after [insert number of years used for purposes of the illustration, as determined under *MCOB* 9.4.132CR(6)]. The amounts are calculated using the current interest rate(s) of [insert interest rate(s)]. After the point of conversion, interest is added to the amount you owe [insert frequency of roll-up of interest - e.g. monthly]. Remember that you may choose to convert [Part [the number of the part] of the mortgage] to interest roll-up earlier, and that the mortgage could run for a longer time than [insert number of years estimated in accordance with *MCOB* 9.4.10R or *MCOB* 9.4.12R] years. If you decide to convert earlier, or if the mortgage runs longer, than assumed for the purposes of this illustration, the amount you owe at the end of the term will be more than the amount shown in the illustration as being owed at the end of the term.”
- (9) In Section 15 of the *illustration* (“Overall cost of this mortgage”), the calculation of the total amount paid and the *APR* must be based on the assumption that the anticipated payments are made until the date on which the *lifetime mortgage* converts automatically to an *interest-roll-up mortgage* or, if there is no such date, throughout the life of the *lifetime mortgage* as calculated according to *MCOB* 9.4.10R. An explanation of the assumption used should be included with the illustration, in addition to the text prescribed by *MCOB* 9.4.111R.

...

## 9.8 Disclosure after sale: lifetime mortgages

...

Further advances

- 9.8.5 R The illustration provided in accordance with *MCOB* 7.6.7R must:

...

- (3) include an additional section headed: ‘Total borrowing’ and numbered ‘9’ after section 8, (with subsequent sections of the *illustration* renumbered accordingly) including the following text:

...

- (b) a clear statement explaining the total amount that the *customer* will owe if he takes out the additional borrowing; and,

...

- (ii) where the *lifetime mortgage* is ~~a roll-up of interest mortgage~~ an interest roll-up mortgage, the effect on the amount the *customer* would owe at the end of the estimated term and details of the estimated term that has been used (see *MCOB* 9.8.6G for guidance on the estimated term).

...

**9 Annex 1R The illustration: table of contents, prescribed text and prescribed section headings and subheadings (R):-**

...

8.	What you will owe and when
(A) details of mortgage payments – this section is only required where the <i>customer</i> is required <u>or anticipated</u> to make payments to the <i>mortgage lender</i> in respect of all or part of the interest payable – See <i>MCOB</i> 9.4.36G	...
See <i>MCOB</i> 9.3.37R – <i>MCOB</i> 9.4.46R <u>and, where appropriate, <i>MCOB</i> 9.4.132DR.</u>	
...	

8.	What you will owe and when
(B) projection of roll-up of interest – this section is only required where the <i>customer</i> is not required to make payments to the <i>mortgage lender</i> in respect of all or part of the interest payable – see <i>MCOB</i> 9.4.49G	
See <del><i>MCOB</i> 6.4.50R</del> Insert the prescribed text from <i>MCOB</i> 9.4.50R or <i>MCOB</i> 9.4.132DR(8) as applicable.	
“This shows how the amount(s) paid to you and the interest and any fees that we charge mount up over [insert number of years] years. It has been calculated using	



the current interest rate of [insert interest rate]. Interest is added to the amount you owe [insert frequency of roll-up of interest — e.g. monthly] Remember that the mortgage could run for a longer or shorter time than [insert number of years] years, and if it runs for longer the amount you owe will carry on increasing.”

...

## 11 Responsible lending, and responsible financing of home purchase plans

...

### 11.6 Responsible lending and financing

...

#### Interest roll-up mortgages

11.6.57 R The requirements in *MCOB* 11.6.2R (and any *Handbook* provisions applicable only to that *rule*) do not apply in relation to an *interest roll-up mortgage*, or to the type of *lifetime mortgage* described in *MCOB* 9.4.132AR.

11.6.57 A G The type of *lifetime mortgage* described in *MCOB* 9.4.132AR is one under which the *customer* makes payments to start with, but which can be converted to an *interest roll-up mortgage* at any time of the *customer's* choosing.

...

**Annex C**

**Amendments to the Supervision manual (SUP)**

In this Annex, underlining indicates new text.

The form at SUP 16 Annex 21R (Reporting Fields) is amended as shown.

16 Annex 21R		REPORTING FIELDS		
	R	This is the annex referred to in SUP 16.11.7R.		
		...		
		2	SPECIFIC REPORTING FIELDS	
		...		
		(c)	Mortgages	
		The following data reporting fields must be completed, where applicable for all relevant <i>regulated mortgage contracts</i> except any <i>second charge regulated mortgage contract</i> that is entered into before 1 April 2017 and any <i>regulated mortgage contract</i> which is a <i>legacy CCA mortgage contract</i> :		
		...		
		Data reporting field	Code (where applicable)	Notes
		Sales Data (report for all <i>regulated mortgage contracts</i> )		
		...		
		Type of mortgage	L = <i>lifetime mortgage</i>  SA = <i>shared appreciation mortgage</i>  SO = <i>shared ownership mortgage</i>  BM = <i>business loan</i>  BL = <i>bridging loan</i>  GM = <i>guarantor mortgage</i>  HN = <i>loan to a high net worth</i>	Use code to indicate mortgage type. Report all relevant codes.  Report ‘NA’ to denote ‘not applicable’ where codes do not apply.  Report a ‘guarantor mortgage’ where the income of a guarantor has been included in the affordability assessment.  Report a ‘low start mortgage’ where payments are made on an interest-only basis for a set period at the start of the mortgage, but payments contractually revert to a repayment basis after this set period.  Report ‘VN’ for contract variations that result in a new <i>regulated mortgage contract</i> , where no

			<i>mortgage customer</i>  BR = buy-to-let mortgage (regulated)  LO = low start mortgage  SB = self-build mortgage  SE = secured overdraft  SC = <i>second charge regulated mortgage contract</i>  VN = contract variation with no affordability assessment  NA = not applicable	affordability assessment has been undertaken in accordance with <i>MCOB</i> 11.6.  <u>Report 'L' if the mortgage is a lifetime mortgage of the type described in <i>MCOB</i> 9.4.132AR.</u>
		...		
		Method of repayment	C = capital and interest  I = interest-only  M = mix of 'capital and interest' and 'interest-only'	Use code to indicate method of mortgage repayment.  Only 1 code should be entered.  Report low start mortgages (i.e. mortgages where payments are made on an interest-only basis for a set period at the start of the mortgage, but payments contractually revert to a repayment basis after this set period) as interest-only.  <u>For a lifetime mortgage of the type described in <i>MCOB</i> 9.4.132AR, if the initial repayments are on a capital and interest basis report 'M'; in all other circumstances report 'I'.</u>
		Repayment strategy for	E = endowment	Report where any part of the mortgage has been advanced on an

		interest-only and mixed mortgages	<p>P = pension</p> <p>S = savings or investments (other than endowments and pensions)</p> <p>M = sale of mortgaged property</p> <p>B = sale of other property (e.g. buy-to-let or second home)</p> <p>A = sale of other asset</p> <p>C = occasional payments from income</p> <p>R = repaid by capital and interest (for low start mortgages)</p> <p>F = refinancing (for <i>bridging loans</i>)</p> <p>L = <i>lifetime mortgage</i></p> <p>O = other repayment strategy</p>	<p>interest-only basis.</p> <p>Where there is more than one repayment strategy, report all.</p> <p><u>For a <i>lifetime mortgage</i> of the type described in MCOB 9.4.132AR, report both 'L' and 'C'.</u></p>
		...		
		Is this an <i>interest roll-up mortgage</i> ?	<p>Y = <u>yes</u> <u>Yes</u></p> <p>N = <del>no</del> <u>No</u></p>	<p>Report 'Y <u>Yes</u>' where all or part of the loan is on an interest roll-up basis.</p> <p><u>Also report 'Yes' if the mortgage is of the type described in MCOB 9.4.132AR.</u></p>
		...		

	<p>Is there an <i>early</i> <i>repayment</i> <i>charge</i>?</p> <p><del>Y</del>—yes <u>Yes</u> <del>N</del>—no <u>No</u></p>	<p>Report '<del>Y</del>' '<u>Yes</u>' where there is an <i>early repayment charge</i>.</p>
	...	

## Appendix 4

# Consequential amendments to Short Form A

**SUPERVISION MANUAL (AMENDMENT NO [22]) INSTRUMENT 2016**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers in section 60 (Applications for approval) in the Financial Services and Markets Act 2000 (“the Act”).

**Commencement**

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

**Amendments to the Handbook**

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

**Citation**

- D. This instrument may be cited as the Supervision Manual (Amendment No [22]) Instrument 2016.

By order of the Board  
[*date*]



## **Annex**

### **Amendments to the Supervision manual (SUP)**

In this Annex, underlining indicates new text.

The forms ‘Short Form A (UK Relevant Authorised Persons and Third Country Relevant Authorised Persons only)’ and ‘Short Form A (EEA Relevant Authorised Persons only)’ at SUP 10C Annex 2D (Form A: Application to perform senior management functions) are amended as shown.

[*Editor’s note:* The amendment to the new section 5.2 which is added to both forms on the following pages assumes that the changes proposed in CP15/31 *Strengthening accountability in banking and insurance: regulatory references* (October 2015) have been made.]

#### **10C Annex 2D Form A: Application to perform senior management functions**



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



Application number  
(for FCA/PRA use only)

The *FCA* and *PRA* have produced notes which will assist both the applicant and the candidate in answering the questions in this form. Please read these notes, which are available on both *FCA* and *PRA* websites at:

<https://www.handbook.fca.org.uk/handbook/SUP/10C/Annex2D.html>

<http://www.bankofengland.co.uk/PRA>

Both the applicant and the candidate will be treated by the *FCA* and *PRA* as having taken these notes into consideration when completing this form.

## Short Form A – UK Relevant Authorised Persons and Third Country Relevant Authorised Persons only

### Application to perform senior management functions

*FCA Handbook* Reference: SUP 10C Annex 2D

*PRA Rulebook* Reference: Senior Managers Regime - Applications and Notifications

7 March 2016

...

### Fitness and Propriety

### Section 5

...

#### 5.2

Has the *firm* undertaken a criminal records check in accordance with the requirements of the *FCA* or *PRA*?

Please note that a *firm* is required to request the fullest information that it is lawfully able to obtain about the *candidate* under Part V of the Police Act 1997 (Certificates of criminal records, etc) and related subordinated legislation of the *UK* or any part of the *UK* before making the application. (SUP 10C.10.16R and *PRA* Rulebook: Fitness and Propriety).

If yes, please enter date the check was undertaken.

Date (dd/mm/yy):

Note: if date is more than 3 months prior to current date or 3 months prior to date of application submission or the check has not been undertaken, please provide details why in section 6.

YES ☐ NO ☐



Application number  
(for FCA use only)

The FCA has produced notes which will assist both the applicant and the candidate in answering the questions in this form. Please read these notes, which are available on the FCA website at:

<https://www.handbook.fca.org.uk/handbook/SUP/10C/Annex2D.html>

Both the applicant and the candidate will be treated by the FCA as having taken these notes into consideration when completing this form.

## Short Form A – EEA Relevant Authorised Persons Only

### Application to perform senior management functions

FCA Handbook Reference: SUP 10C Annex 2D

7 March 2016

...

## Fitness and Propriety

## Section 5

...

### 5.2

Has the *firm* undertaken a criminal records check in accordance with the requirements of the FCA?

Please note that a *firm* is required to request the fullest information that it is lawfully able to obtain about the *candidate* under Part V of the Police Act 1997 (Certificates of criminal records, etc) and related subordinated legislation of the UK or any part of the UK before making the application. (SUP 10C.10.16R).

If yes, please enter date the check was undertaken.

Date (dd/mm/yy):

*Note: if date is more than 3 months prior to current date or 3 months prior to date of application submission or the check has not been undertaken, please provide details why in section 6.*

YES ☐ NO ☐

## **Appendix 5**

# **Changes to IFPRU 11 to clarify amendments arising from the RRD**

**RECOVERY AND RESOLUTION DIRECTIVE (AMENDMENT) INSTRUMENT  
2017**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
  - (2) section 137T (General supplementary powers);
  - (3) section 139A (Power of the FCA to give guidance); and
  - (4) section 192J (Rules requiring provision of information by parent undertakings).
- 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 Prudential sourcebook for Investment Firms (IFPRU) is amended in accordance with the Annex to this instrument.

**Notes**

- E. 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**

- F. This instrument may be cited as the Recovery and Resolution Directive (Amendment) Instrument 2017.

By order of the Board  
[*date*]

## Annex

## Amendments to the Prudential sourcebook for Investment Firms (IFPRU)

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

## 11 Recovery and resolution

...

### 11.2 Individual recovery plans

...

Recovery plan for a non-significant IFPRU firm

...

- 11.2.8 G A *firm* should include additional information from *IFPRU* 11 Annex 1R (Recovery plans for significant IFPRU firms and group recovery plans for groups that include significant IFPRU firms) in its *recovery plan* where this information is material to its business.

[Note: article 5(5) of *RRD*]

- 11.2.8A G The *FCA* may require a *firm* to include the additional information referred to in in *IFPRU* 11.2.8G in its *recovery plan* using its power under section 55L of the *Act*.

[Note: article 4(3) of *RRD*]

...

Recovery plan indicators

...

- 11.2.14 R ~~Where the relevant indicator has not been met, a *firm* must decide whether or not it is appropriate to take action under its *recovery plan*~~ A *firm* must notify the *FCA* without delay of a decision to take an action referred to in its *recovery plan*, whether the relevant indicator has or has not been met.

- 11.2.15 R A *firm* must notify the *FCA* without delay of a decision not to take an action referred to in its *recovery plan* ~~or of a decision not to take action~~ where the relevant indicator has been met.

[Note: article 9(1) of *RRD*]

...

### 11.3 Group recovery plans

...

Group recovery plan for a group that includes an IFPRU 730k firm that is not a significant IFPRU firm

...

- 11.3.10 G A *firm* or *qualifying parent undertaking* should include additional information from *IFPRU* 11 Annex 1R (Recovery plans for significant IFPRU firms and group recovery plans for groups that include significant IFPRU firms) in its *group recovery plan* where this information is material to the business of the *group*.

[**Note:** article 5(5) of *RRD*]

- 11.3.10 G The *FCA* may require a *firm* or *qualifying parent undertaking* to include the additional information referred to in *IFPRU* 11.3.10G in its *group recovery plan* by using its power under:

A

- (1) section 55L of the *Act* to require a *firm*; or
- (2) section 192C of the *Act* to direct a *qualifying parent undertaking*.

[**Note:** article 4(3) of *RRD*]

...

Group recovery plan indicators

...

- 11.3.16 R ~~Where the relevant indicator has not been met, a *firm* or *qualifying parent undertaking* must decide whether or not it is appropriate to take action under the *group recovery plan*~~ A *firm* or *qualifying parent undertaking* must notify the *FCA* without delay of a decision to take an action referred to in its *recovery plan*, whether the relevant indicator has or has not been met.
- 11.3.17 R A *firm* or *qualifying parent undertaking* must notify the *FCA* without delay of a decision not to take an action referred to in the *group recovery plan* ~~or of a decision not to take action where the relevant indicator has been met.~~

[**Note:** article 9(1) of *RRD*]

...

## 11.5 Intra-group financial support

...

Decision to give and receive group financial support using an *RRD* group financial support agreement

11.5.16 R *A firm or qualifying parent undertaking* intending to give financial support must ensure that:

- (1) its management body takes the decision to give *group* financial support using an *RRD group financial support agreement*; and
- (2) it is a reasoned decision that sets out:
  - (a) the objective of the proposed support; and
  - (b) how the support complies with the conditions for giving *group* financial support using an *RRD group financial support agreement* in *IFRPU* 11.5.14R.

11.5.16 G A firm or qualifying parent undertaking proposing to give financial support using an *RRD group financial support agreement* should also refer to articles 33 to 36 of Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing *RRD*:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1075&from=EN>.

...

11.5.21 R ~~An *IFPRU* 730k firm~~ A firm or qualifying parent undertaking must ensure it sends the decision of its *management body* to give financial support to:

- (1) its *competent authority*;
- (2) where different, its *consolidating supervisor*;
- (3) where different, the *competent authority* of the *group* member receiving the support; and
- (4) the *EBA*.

[**Note:** article 25(6) of *RRD*]

...

## 11.6 Contractual recognition of ~~bail-in~~ bail in

...

Contractual recognition of ~~bail-in~~ bail in

- 11.6.3 R
- (1) ...
  - (2) The contractual recognition of a bail-in requirement in (1) applies to a liability that is:
    - (a) ...



- (b) issued or entered into after 1 January 2016;
- (ba) issued or entered into before 1 January 2016 but materially amended after [date upon which this instrument comes into force];
- (c) ...

11.6.3A    G    A firm or qualifying parent undertaking proposing to provide contractual recognition of bail in should also refer to article 43 of Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing RRD:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1075&from=EN>.

...

## **11            Information for resolution plans**

### **Annex 2R**

#### **Part A: Corporate structure and material legal entity information**

(1) Where an RRD institution's parent organisation is a UK incorporated entity, a firm or qualifying parent undertaking should provide the information in Part A for all material legal entities and branches that form part of the group, both domestic and international, that provide the economic functions identified in Part B below.

(2) Where an RRD institution's parent organisation is incorporated outside the United Kingdom, a firm or qualifying parent undertaking should only provide the information required in Part A for:

- UK subsidiaries (and any associated overseas branches);
- UK branches of any overseas subsidiaries; and
- material interdependencies with non-UK persons in the group.

...

## Appendix 6

### Mutuals' deferred shares

**PRODUCT INTERVENTION (MUTUALS' DEFERRED SHARES)  
INSTRUMENT 2016**

**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 (General rule-making power);
  - (2) section 137D (Product intervention rules);
  - (3) section 137R (Financial promotion rules);
  - (4) section 137T (General supplementary powers); and
  - (5) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

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

**Amendments to the Handbook**

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

**Citation**

- F. This instrument may be cited as the Product Intervention (Mutuals' Deferred Shares) Instrument 2016.

By order of the Board  
*[date]*

## Annex A

## Amendments to the Glossary of definitions

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

*mutual*

an *insurer* which:

- (a) ~~if it is a body corporate~~ which has no *share* capital (apart from as permitted by the Mutuals' Deferred Shares Act 2015) ~~(except, but is not a wholly owned subsidiary with no share capital but which is limited by guarantee)~~ ; or
- (b) is a *registered friendly society* or *incorporated friendly society*; or
- (c) is a society registered or deemed to be registered under ~~the Industrial and Provident Societies Act 1965, or the Industrial and Provident Societies (Northern Ireland) Act 1969~~ or the Co-operative and Community Benefit Societies Act 2014.

*mutual society  
share*

a *share* ~~which~~:

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

in each case of the Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012; or

- (2) issued in accordance with the Mutuals' Deferred Shares Regulations 2016.

[*Editor's Note:* The text in this Annex takes account of the changes implemented by 2016/30 *Conduct of Business (Pensions Supplementary Rules) Instrument 2016* (April 2016) and coming into force on 10 October 2016]

## Annex B

### Amendments to the Conduct of Business sourcebook (COBS)

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

## 22 Restrictions on the distribution of certain regulatory capital instruments

...

### 22.2 Requirements on the retail distribution of mutual society shares

...

Further requirements for non-advised, non-MiFID sales

#### 22.2.3 R (1) ...

- (2) The *firm* must give the *retail client* the following statement on paper or another *durable medium* and obtain confirmation in writing from the *retail client* that he or she has signed it, in good time before the *retail client* has committed to *buy the mutual society share*:

“I make this statement in connection with my proposed investment in mutual society shares. I have been made aware that investing more than 10% of my net assets in mutual society shares is unlikely to be in my best interests. I declare that the proposed investment would not result in more than 10% of my net assets being invested in mutual society shares. Net assets for these purposes mean my financial assets after deduction of any debts I have~~;~~. My debts for these purposes do not include the outstanding balance of any mortgage I have on my home, unless this amount is more than the current value of my home, in which case my debts include the amount above the current value. My financial assets for these purposes ~~and~~ do not include:

- (a) the property which is my primary residence, ~~any amount owed under a mortgage relating to the purchase of that property~~, or any money raised through a loan secured on that property;
- (b) any rights of mine under a qualifying contract of insurance (for example, a life assurance or critical illness policy); ~~or~~
- (c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are) or may be

entitled; or

- (d) any withdrawals from my pension savings (except where the withdrawals are used directly for income in retirement).

I accept that the investment to which this statement relates will expose me to a significant risk of losing all the money invested.

Signature:

Date: ”

(3) ...

**Financial Conduct Authority**

