

Consultation Paper

CP17/3*

Proposed Handbook changes to reflect the new regulatory framework for Insurance Linked Securities



January 2017

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We are asking for comments on this Consultation Paper by 14 March 2017.

You can send them to us using the form on our website at:
www.fca.org.uk/cp17-03-response-form.

Or in writing to:

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

Telephone: 020 7066 0438
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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 will be required due to changes in the UK regulatory framework, including as a result of any negotiations following the UK's vote to leave the EU.

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

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

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Abbreviations used in this paper

| | |
|---------------------------------|---|
| CASS | Client Assets sourcebook |
| CBA | cost benefit analysis |
| CF | controlled function |
| CP | Consultation Paper |
| DEPP | Decision Procedure and Penalties manual |
| DISP | Dispute Resolution: Complaints sourcebook |
| FCA | Financial Conduct Authority |
| FEES | Fees manual |
| FSCS | Financial Services Compensation Scheme |
| FSMA | Financial Services and Markets Act 2000 |
| ILS | insurance linked securities |
| ISPV | insurance special purpose vehicle |
| MiFID II | Markets in Financial Instruments Directive II |
| MISPV | multi-arrangement ISPV |
| PCC | protected cell company |
| PRA | Prudential Regulation Authority |
| PRIN | Principles for Businesses |
| RDC | Regulatory Decisions Committee |
| SYSC | Senior Management Arrangements, Systems and Controls sourcebook |
| the Treasury Regulations | draft Risk Transformation Regulations 2017 |

1. Overview

Introduction

- 1.1** Insurance Linked Securities (ILS) are financial instruments, which are sold to investors, where the value of the security is linked to an insurable loss event.
- 1.2** ILS are an alternative form of risk mitigation for insurance and reinsurance firms, offering a means for them to transfer risk to the capital markets through Insurance Special Purpose Vehicles (ISPVs). In November 2016¹, Her Majesty's Treasury (the Treasury) proposed a new regulated activity of insurance risk transformation, as part of designing a new framework to attract ILS business to the UK.
- 1.3** This Consultation Paper (CP) sets out our proposals for the changes required to the FCA Handbook to incorporate the new regulated activity of insurance risk transformation. This includes changes to the application provisions of parts of the Handbook to incorporate ILS, some additional rules we propose to create, proposals for fees for the registration of protected cell companies (PCC), and a number of consequential changes.
- 1.4** Our proposals are primarily designed to advance our market integrity objective, as well as advancing our consumer protection objective. The Treasury's proposal to restrict ILS sales to 'Qualified Investors' (defined in the Glossary of the Handbook²) significantly mitigates the risk that would have existed to our consumer protection objective if these products had been available to retail investors.

Who does this consultation affect?

- 1.5** Our proposals will affect:
 - ISPVs
 - firms that undertake (outsourced) activities on behalf of ISPVs
 - professional advisers to ISPVs
 - firms considering becoming involved in setting up ISPVs or issuing ILS
 - insurers seeking to use ISPVs as part of their risk mitigation strategy

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/571091/Insurance_Linked_Securities_final_web.pdf

² See Qualified Investor definition at <https://www.handbook.fca.org.uk/handbook/glossary/?starts-with=Q>

Is this of interest to consumers?

- 1.6** It is currently proposed that investment in ILS will be restricted to Qualified Investors³ and, therefore, they cannot be sold to retail consumers. The proposals will be of interest to those Qualified Investors who invest or may consider investing in ILS in the future. It is unlikely these proposals will be of interest to retail consumers outside of the Handbook definition of Qualified Investors, though retail consumers may have an interest where ILS are sold in breach of the proposed restrictions.

Context

- 1.7** As part of the March 2015 budget, the Treasury signalled an intention to work with the London insurance market to design a new framework which would attract ILS business to the UK. The FCA, along with the Prudential Regulation Authority (PRA), also committed to work with the Treasury to examine possible approaches to the regulation of ILS business in the UK, within the constraints of the Solvency II regime.
- 1.8** The Treasury has since issued two consultation documents (February 2016⁴ and November 2016⁵) setting out details of its proposed approach, including the draft Risk Transformation Regulations 2017 (the Treasury Regulations)⁶. It should be noted that our proposals are based on the proposals that the Treasury consulted on in their November 2016 paper, and we will review our proposals as necessary in the light of any changes that the Treasury makes as a result of its consultation.
- 1.9** We previously consulted jointly with the PRA, in November 2016, about the proposed authorisation and supervision regime for ISPVs in the UK⁷. The closing date for that consultation is 23 February 2017. We are now consulting separately on the changes required to the FCA Handbook, while the previous consultation is still open, so that we have time to consult and have new rules in place in line with the Treasury's planned timetable for the new regime.
- 1.10** ISPVs can be created for the purpose of a single contract of risk transfer. If they also concurrently take on more than one contract of risk transfer from one or more 'cedants' they are known as multi-arrangement ISPVs (MISPVs). The Treasury Regulations have proposed a new corporate structure, the PCC, to facilitate MISPV business.

Summary of our proposals

- 1.11** In this CP, we seek views on the proposed changes to the Handbook in the areas below. We propose:
- **Principles for Businesses** – to amend the application of our Principles for Businesses to include activities directly arising out of the new regulated activity of insurance risk transformation, which would include the issuing of ILS.

³ See Qualified Investor definition at <https://www.handbook.fca.org.uk/handbook/glossary/?starts-with=Q>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504046/Insurance_linked_securities_consultation.pdf

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/571091/Insurance_Linked_Securities_final_web.pdf

⁶ See Annex A and Annex B <https://www.gov.uk/government/consultations/regulations-implementing-a-new-regulatory-and-tax-framework-for-insurance-linked-securities>

⁷ <http://www.bankofengland.co.uk/prd/Documents/publications/cp/2016/cp4216.pdf>

- **Financial Services Compensation Scheme (FSCS) disclosure requirements** – to create a rule that ISPVs must disclose to ILS investors the limitations of FSCS coverage in relation to these products.
- **Financial Ombudsman Service jurisdiction** – to create a rule in our Dispute Resolution: Complaints (DISP) sourcebook to bring offering and issuing of ILS within the scope of the financial ombudsman service compulsory jurisdiction. The financial ombudsman service proposes to mirror the changes which the FCA is making to the compulsory jurisdiction in its voluntary jurisdiction. To the extent that this CP proposes changes to the financial ombudsman service's voluntary jurisdiction, this consultation paper is issued jointly by the FCA and the financial ombudsman service and, where relevant, references to 'we' are to the FCA and the financial ombudsman service.
- **Senior Management Arrangements, Systems and Controls sourcebook (SYSC)** – to amend the Handbook so that ISPVs are subject to the requirements of SYSC 3, rather than SYSC 4-10, to bring them in line with reinsurers.
- **Controlled functions (CF)** – that CF11 (Money Laundering Reporting Officer) should not apply to ISPVs (as is currently the case for pure reinsurers), and that, as currently required in SYSC 3, CF10 (Compliance) should only apply where life insurance business is involved.
- **Consequential changes** – consequential changes to various parts of the Handbook, including the Glossary, to reflect the incorporation of the new regulated activity of insurance risk transformation in the Handbook. We are also proposing a change to the Decision Procedure and Penalties manual (DEPP) to introduce decision making procedures in relation to the FCA's new registration functions.
- **New cell notification for PCCs** – that PCCs be required to submit a new cell notification form to the FCA at the same time as they submit it to the PRA.
- **PCC registration fee** – to introduce a new registration fee of £500. This is a one-off fee that will cover all registration and related administrative activities undertaken by the FCA in relation to PCCs.

Equality and diversity considerations

- 1.12** We have considered the equality and diversity issues that may arise from the proposals in this CP.
- 1.13** Overall, we do not consider that the proposals in this CP 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.
- 1.14** 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. We welcome any input to this consultation on such matters.

Next steps

What do you need to do next?

- 1.15** We are interested in receiving views on the proposals in this CP. Please send us your comments by 14 March 2017.

How?

- 1.16** Please use the online response form on our website or write to us at the address on page 2.

What will we do?

- 1.17** We will consider your feedback and we intend to publish our rules in a Policy Statement once the Treasury Regulations have been finalised (our timetable is dependent on the publication of final regulations by the Treasury). We will monitor the development of the market, and consider on an ongoing basis whether our proposed approach to regulating this market remains appropriate and proportionate, given actual experience as the market matures.

2. Handbook amendments

Introduction

- 2.1** ILS are complex products that place the capital invested at risk of loss. We do not consider that ILS are suitable for retail investors, and the Treasury Regulations⁸ have specifically limited these products to 'Qualified Investors' (defined in the Glossary of the Handbook⁹), to ensure that they can only be legally sold to investors who have the necessary expertise, experience and knowledge. The restriction of the sales of these products to Qualified Investors addresses the main concern that we would otherwise have had regarding the risks to our consumer protection objective.
- 2.2** In the light of this restriction, the fact that this is a specialist private wholesale market, and also given this is a new market, so we do not yet have specific examples of crystallised risk, we believe a proportionate approach to regulating this market is the application of the high level aspects of our regulatory regime (i.e. our threshold conditions for firms, approved persons regime, principles for businesses, and requirements regarding apportionment of responsibilities and systems and controls that are contained in SYSC). Consequently, more detailed conduct rules are not proposed at this stage.
- 2.3** However, given that this will be a new regime in the UK, we will actively monitor the development of the market, and consider on an ongoing basis whether our approach to regulating this market remains appropriate and proportionate, given actual experience as the market matures.
- 2.4** The FCA will take on responsibility for registering PCCs and subsequent cells that may be created as well as other related activities, including liaison with Companies House. We propose to introduce a new one-off registration fee of £500 that will cover all registration and administrative activities undertaken by the FCA (there are existing ongoing fees for ISPsVs, which are detailed in paragraph 2.34 of this paper).
- 2.5** To incorporate the new regulated activity of insurance risk transformation into the Handbook, we propose to make consequential changes to various parts of the Handbook, which are detailed in Appendix 1. The proposed consequential amendments are administrative and do not reflect any change in policy.

Q1: Do you agree with our proposal to apply the high level aspects of our regulatory regime rather than create more detailed conduct rules at this stage? If not, please explain your particular concerns.

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/571091/Insurance_Linked_Securities_final_web.pdf

⁹ See Qualified Investor definition at <https://www.handbook.fca.org.uk/handbook/glossary/?starts-with=Q>

Principles for Businesses (PRIN)

- 2.6** From January 2018, the Markets in Financial Instruments Directive (MiFID) II¹⁰ requires that issuing securities will generally need to be a regulated activity, and MiFID II requirements will apply. However, in light of the exemption in Article 2(1)(a), we consider that MiFID was not intended to apply to reinsurers or ISPVs. This exemption applies to undertakings when carrying out the activities referred to in Solvency II and the definition of ISPV in article 13 Solvency II itself refers to funding through debt issuance. Therefore, our view is that MiFID II does not apply to ISPVs acting in accordance with the exemption.
- 2.7** PRIN provides a comprehensive high-level regulatory framework that sets fundamental standards which apply to authorised firms. As a general principle of effective regulation, the Principles should apply in whole or in part to every firm, unless there is a clear reason for them not to apply. The Principles can be found at PRIN 2.1.¹¹
- 2.8** The Solvency II Regulations impose a number of specific requirements on ISPVs. However, we consider that the application of the Principles is consistent with the substantive requirements of the Solvency II Regulations, in particular, noting the focus of those Regulations on prudential matters. We consider that it also properly takes account of FCA supervisory structures and does not create a materially divergent regime from that envisaged under Solvency II.
- 2.9** The Treasury has proposed a new regulated activity of insurance risk transformation. We view the issuance of the ILS as being an ancillary activity to the regulated activity of insurance risk transformation because it provides the funding that is necessary to enable the risk transformation activity to take place.
- 2.10** We consider that applying the Principles to these firms and activities is consistent with effective regulation and will be helpful in setting out our broad expectations for this new market. We believe the application of PRIN will encourage the responsible behaviour that will protect the integrity of the UK financial system, in particular the orderly operation of the insurance markets that can benefit from properly functioning ISPVs. However, we also consider that it would advance our consumer protection objective to afford the appropriate degree of protection to those investing in ILS, even though issuing ILS is not itself a regulated activity.
- 2.11** We, therefore, propose to make an amendment to PRIN so that the Principles apply to the carrying on of activities directly arising out of the regulated activity of insurance risk transformation. Whilst we consider that ILS issuance is 'ancillary' to the regulated activity of insurance risk transformation, we want to reduce the scope for uncertainty. Draft PRA rules¹² limit ISPVs to only carrying on business which arises directly out of the risk transformation activity, so having the same test in PRIN makes it clear that issuing ILS will be included.

Q2: Do you agree with our proposal to apply the Principles to the activities that directly arise out of the new regulated activity of insurance risk transformation, including the issuing of ILS? If not, please give reasons why.

¹⁰ Directive 2014/65/EU

¹¹ See PRIN at <https://www.handbook.fca.org.uk/handbook/PRIN/2/1.html>

¹² <http://www.bankofengland.co.uk/pru/Documents/publications/cp/2016/cp4216.pdf>

Financial Ombudsman Service

- 2.12** The powers to make rules relating to the financial ombudsman service are shared between the FCA and the financial ombudsman service. So this section is issued jointly by the FCA and the financial ombudsman service and, where relevant, references to 'we' are to the FCA and the financial ombudsman service.
- 2.13** The offer of ILS is proposed to be restricted to Qualified Investors under the Treasury's Regulations, and ILS are not intended for the retail market. We understand that in practice the target market for ILS investments is likely to largely be institutional investors, who would not be able to access the financial ombudsman service for dispute resolution, as they would not be eligible complainants. However, it is important that the financial ombudsman service's position is clear for eligible complainants, should they invest in ILS. Eligible complainants could include professionals acting outside of their business capacity and retail consumers who might be (wrongly) sold ILS in breach of the qualified investor restriction.
- 2.14** To provide clarity for the industry, and investors, we propose to amend DISP to bring offering and issuing of ILS in scope of the financial ombudsman service's compulsory jurisdiction. In our view this will make clear the financial ombudsman service's remit when considering ILS complaints and also provide greater protection to consumers.
- 2.15** While we believe providing clarity is important, we do not anticipate that this will have a notable impact on industry. In practice we expect complaints taken to the financial ombudsman service regarding ILS investments will be rare (institutional investors will not be eligible and the financial ombudsman service does not make awards in excess of £150,000 – although it can recommend firms pay more than that limit but firms are not required to – whereas we expect ILS investments to be in excess of this). For ISPVs who do not deal with eligible complainants, there should be no additional costs as a result of our proposal, as they should be able to use an exemption (as per DISP 1.1.12R and FEES 5.1.4R) from paying the financial ombudsman service levy if they declare that they do not deal with eligible complainants.
- 2.16** The financial ombudsman service is also consulting on bringing the offering and issuing of ILS within the scope of the financial ombudsman service's voluntary jurisdiction, to potentially cover cases where a firm conducting ILS business might not fall within the financial ombudsman service's compulsory jurisdiction. We do not expect such cases to be common in the near future. However, this would include, for example, where a firm from outside the UK has permission to provide ILS services in the UK under Solvency II but is not authorised by the PRA. Firms would be able to voluntarily sign up to be part of the financial ombudsman service's jurisdiction.

Q3: Do you agree with our proposal to bring the offering and issuing of ILS in scope of the financial ombudsman service's jurisdiction? If not, please give reasons why.

FSCS disclosure

- 2.17** As noted above, the offer of ILS is proposed to be restricted to Qualified Investors and ILS are not intended for the retail market. On the basis of current rules applying to FSCS¹³, we would not expect compensation from the FSCS to be available to ILS investors in the event of an ISPV's default.

¹³ see COMP at <https://www.handbook.fca.org.uk/handbook/COMP/INTRO/A/?view=chapter>

- 2.18** In our view, it is important that investors are fully aware that compensation from the FSCS will not generally be available. Therefore, we propose to make a rule that ISPVs must ensure the limitations of FSCS coverage in relation to these products are clearly disclosed to investors.

Q4: Do you agree with our proposal that ISPVs should be required to make clear the limitations of FSCS in relation to ILS? If not, please give reasons why.

Systems and Controls (SYSC)

- 2.19** Currently ISPVs are subject to the rules and requirements that apply to common platform firms in SYSC 4-10, rather than those in SYSC 3 that apply to insurers and reinsurers. Our view is that it would be more appropriate for ISPVs to be subject to the same rules as reinsurers, given their similarities. This will provide greater clarity because entities taking on reinsurance risks (whether traditional reinsurers, or ISPVs) would then be subject to the same part of SYSC.
- 2.20** We do not expect that firms will be required to make significant changes as a result of being required to comply with SYSC 3 rather than SYSC 4-10. Many of the provisions are substantially the same, and in some cases they are identical. However, the changes we are proposing will make SYSC requirements applicable to ISPVs more aligned to the business they conduct. Therefore, we propose to make amendments to the Handbook so that ISPVs are subject to the requirements of SYSC 3, rather than SYSC 4-10.
- 2.21** In SYSC 3, where business is restricted to general insurance, the position has been that CF10 (Compliance) is not required. This remains our intention for ISPVs, so SYSC 3 will apply to ISPVs in the same way (currently the application in SYSC 4-10 is not clear). So CF10 will not apply to general insurance business but would be required for life insurance-related business.
- 2.22** We also propose to make clear that controlled function CF11 (Money Laundering Reporting Officer) does not apply for ISPVs. We consider that the money laundering risk for ILS business is relatively low given the target market is likely to be institutional investors. We also note that the Treasury is not proposing to apply the Money Laundering Regulations for ILS business, and so our current proposal is that it would be disproportionate to require CF11, although we will review our position based on the final position adopted by the Treasury. We will keep our position under review based on our ongoing monitoring of the market as it develops.
- 2.23** We also consider that, at this stage, the risk of these vehicles being used for money laundering and financial crime generally is mitigated by the fact that ISPVs will be subject to certain requirements in the Solvency II Regulation aimed at addressing financial crime, and the requirements in SYSC to have systems and controls that counter the risk that the firm might be used to conduct financial crime.

Q5: Do you agree with our proposal to make ISPVs subject to the requirements of SYSC 3, rather than SYSC 4-10? If not, please give reasons why.

Client Assets (CASS)

- 2.24** The client money rules (CASS 7) apply to money received from or held for, or on behalf of, a client in the course of or in connection with 'designated investment business'¹⁴. Given the ISPV's role in accepting risk from a life insurer includes the designated investment business of arranging, it could be argued that any money received by the ISPV (for the sale of the securities by the ISPV) from investors could be client money under CASS 7 because it is received 'in connection' with this business.
- 2.25** However, our understanding is that the ISPV is not expected to receive or hold money from its investors; rather a trustee firm in the structure is expected to receive and hold this money. Further, in any event, even if the ISPV does receive money from investors (en route to the trustee firm), the ISPV is expected to promptly issue securities in exchange for this money.
- 2.26** Our understanding is that the trustee firm is expected to safeguard any assets purchased with the money invested by the investors. So we do not expect that ISPVs will hold custody assets and, therefore, the custody rules (CASS 6) should not be applicable to the ISPV's own activities. However, the trustee firm may be caught by CASS 6 and 7 obligations if it is carrying out relevant activities for the ISPV (and/or investors) and if it is carrying out those activities in the UK.

Q6: Do you agree with our understanding of how ISPVs operate in relation to money received from investors and the safeguarding of assets? If not, please explain why.

Decision Procedure and Penalties Manual (DEPP)

- 2.27** A PCC must give the FCA written notice of a proposed amendment to its instrument of incorporation. The Treasury's Regulations set out the procedure to be followed by the FCA if it proposes to refuse approval, including the issuing of a warning notice, followed by (if it decides to refuse approval) a decision notice. Ultimately, the PCC may refer the matter to the Tribunal.
- 2.28** We propose to make amendments to DEPP to reflect that decisions to refuse proposed amendments to PCCs' instruments of incorporation, as well as decisions to refuse PCC registration applications, should be made solely under executive procedures (defined in the Handbook¹⁵), and therefore, without involvement of the Regulatory Decisions Committee (RDC).
- 2.29** Whilst any decision to refuse a PCC registration will fall to the FCA on a solo basis, any such decision is likely to be closely linked to a decision on the related dual-regulated authorisation application. For a dual regulated authorisation application, should the FCA decide to refuse consent to the PRA granting a Part 4A authorisation application, that decision is taken under executive procedures (with the PRA also taking decisions to give statutory notices under executive procedures); with any representations being heard by the PRA under their executive procedures.
- 2.30** As any refusal of a PCC registration is only likely to occur if the information provided does not comply with that required in the Treasury's Regulations or the PRA/FCA refuse to authorise the PCC for non-compliance with Threshold Conditions; we believe that use of executive

¹⁴ CASS 7.10.1R(2)

¹⁵ See executive procedures definition at <https://www.handbook.fca.org.uk/handbook/glossary/?starts-with=E>

procedures, for solo FCA refusal of registration, is an efficient and proportionate use of FCA resources.

Q7: Do you agree with our proposed amendments to DEPP? If not, please explain why.

New cell notification for PCCs

- 2.31** The PRA is consulting on draft rules that propose to require firms to submit a new cell notification form to the PRA ten working days prior to the proposed effective date for establishing a new cell. The PRA will consider the notification of the new cell in consultation with the FCA; and the PRA rule envisages that either regulator may raise objections within the ten working days.
- 2.32** Therefore, it is important that firms submit the notification form to both regulators at the same time. We propose to make a rule to give effect to this. This will not impose any additional costs on firms, as no additional information is being requested over and above that already being submitted to the PRA.
- 2.33** It should be noted that the PRA's proposals are still subject to consultation. We will consider any concerns raised in the consultation that are relevant to our objectives. Our intention is to align our final policy position with the PRA's final position. This would ensure that the requirements of the regulators are consistent, particularly with regard to the length of notice required, and that the FCA's rule does not create an additional burden for firms.

Q8: Do you agree with our proposal that firms must submit a new cell notification form to the FCA at the same time as the PRA? If not, please give reasons why.

PCC registration fee

- 2.34** The FCA fees for ISPV authorisations (£2500) and ongoing periodic fees (£466 in 2016/17) are set out in the Fees manual (FEES) section of the Handbook. We will be consulting on fee rates for 2017/18 in our annual CP on fee rates, which is due for publication in spring 2017. We do not propose changes to existing fees in this CP.
- 2.35** The FCA will take on responsibility for registering PCCs and changes to registration arising from subsequent cells that may be created as well as other related activities, including liaison with Companies House. Therefore, we propose to introduce a new registration fee of £500. This will be a one-off fee that will cover all registration and related administrative activities undertaken by the FCA in relation to PCCs. We are not proposing to introduce ongoing fees for PCCs at this time.
- 2.36** As this is a new regime, and the registration of PCCs will be a new activity, there is limited information currently available about the cost to the FCA of performing this activity. The proposed charge of £500 represents our best estimate of our anticipated costs, based on similar work we do in other sectors. The FCA may update its fee structure in the light of experience gained with the ISPV regime and any proposals to amend the proposed approach in the future would be subject to separate consultation.

Q9: Do you agree with our proposal to introduce a new PCC registration fee of £500? If not, please give reasons why.

Annex 1

List of questions

- Q1:** Do you agree with our proposal to apply the high level aspects of our regulatory regime rather than create more detailed conduct rules at this stage? If not, please explain your particular concerns.
- Q2:** Do you agree with our proposal to apply the Principles to the activities that directly arise out of the new regulated activity of insurance risk transformation, including the issuing of ILS? If not, please give reasons why.
- Q3:** Do you agree with our proposal to bring the offering and issuing of ILS in scope of the financial ombudsman service's jurisdiction? If not, please give reasons why.
- Q4:** Do you agree with our proposal that ISPVs should be required to make clear the limitations of FSCS in relation to ILS? If not, please give reasons why.
- Q5:** Do you agree with our proposal to make ISPVs subject to the requirements of SYSC 3, rather than SYSC 4-10? If not, please give reasons why.
- Q6:** Do you agree with our understanding of how ISPVs operate in relation to money received from investors and the safeguarding of assets? If not, please explain why.
- Q7:** Do you agree with our proposed amendments to DEPP? If not, please explain why.
- Q8:** Do you agree with our proposal that firms must submit a new cell notification form to the FCA at the same time as the PRA? If not, please give reasons why.
- Q9:** Do you agree with our proposal to introduce a new PCC registration fee of £500? If not, please give reasons why.

Annex 2

Cost benefit analysis

1. Under the Financial Services and Markets Act 2000 (FSMA), we are required to perform a cost benefit analysis (CBA) of our proposed rules (and guidance relating to rules). In this Annex we explore the costs and benefits associated with the proposals to changes in Handbook text on which we are consulting.

Overview

2. Overall our view is that the changes to Handbook text we have proposed will be beneficial in supporting the new ILS regime and enhancing our objectives, and will not result in significant additional costs for firms. We have outlined our rationale for this conclusion below, in relation to the specific amendments proposed. As this will be a new market in the UK, and it is not clear at this stage what the size of the market will be, we have not attempted to quantify costs or benefits, as we believe it would not be practical to do so.

PRIN

3. Generally PRIN applies to all regulated firms and all regulated activities (subject to certain exceptions detailed in PRIN). The effect of the proposed change to the Handbook is simply to make clear that PRIN applies to the new regulated activity of insurance risk transformation, as well as the activities that directly arise out of it, including the issuing of the ILS.
4. The benefit of applying PRIN is that it is a proportionate and flexible means of effective regulation and provides clarity for the ILS industry and investors regarding our broad expectations of this market. We believe the application of PRIN will encourage the responsible behaviour that we would expect to be embedded in any regulated firms' conduct of business, as well as communicating our basic expectations around the organisational arrangements necessary to protect consumers and ensure market integrity. Furthermore, it provides us with additional means to achieve our statutory and operational objectives, and will also ensure we can take action if in future we discover serious misconduct or other failings in this market.
5. We would not expect this to result in significant additional costs for firms as PRIN would already apply to the regulated entity and the regulated activity.

The financial ombudsman service

6. We do not anticipate our proposal to bring ILS business in to the scope of the financial ombudsman service's compulsory jurisdiction will have a significant impact on firms. In practice

complaints taken to the financial ombudsman service will be rare (institutional investors will not be eligible and the financial ombudsman service does not make awards in excess of £150,000 – although it can recommend firms pay more than that limit but firms are not required to). For ISPVs not dealing with eligible complainants, there should be no additional costs as a result of our proposal, as they should be able to get an exemption from paying the financial ombudsman service levy if they declare that they do not deal with eligible complainants.

FSCS disclosure

- 7.** We propose to make a rule that ISPVs must disclose to ILS investors the limitations of FSCS coverage in relation to these products. The benefit of this is that it will help to ensure that investors are fully aware that compensation from the FSCS will not generally be available to them in the event of an ISPV's default.
- 8.** We do not consider that this requirement will create significant costs for firms because it is a new market so firms will need to produce new disclosure material in any event. The requirement simply involves drafting an appropriate disclosure and inserting it in the investor documentation or other relevant communication a firm decides to use.

SYSC

- 9.** The requirements of SYSC 3 are broadly similar to and cover broadly the same ground (some provisions are identical) as SYSC 4-10. There are certain provisions in SYSC 4-10 (e.g. SYSC 10 on conflicts) which are not replicated in SYSC 3. However, the changes we have proposed will make SYSC requirements applicable to ISPVs more aligned to the business they conduct.
- 10.** Therefore, we do not expect that a significant change in behaviour will be required by ISPVs as a result of this amendment to the Handbook, so do not consider there will be significant additional costs for firms as a result.

DEPP

- 11.** Our proposed amendments to DEPP largely relate to internal FCA processes and, as well as being an efficient and proportionate use of FCA resources, should not result in additional costs for firms.

New cell notification for PCCs

- 12.** The PRA is consulting on draft rules that propose a requirement on firms to submit the new cell notification form to the PRA ten working days prior to the proposed effective date for establishing a new cell. Therefore, the proposed FCA rule will not result in additional costs for firms, as we are not asking for any information additional to that already being submitted to the PRA.

PCC registration fees

- 13.** As this is a new regime, and the registration of PCCs will be a new activity, there is limited information currently available regarding the cost to the FCA of performing this activity. The proposed charge of £500 represents our best estimate of our anticipated costs, based on similar work we do in other sectors. The FCA may update its fee structure in the light of experience gained with the ISPV regime and any proposals to amend the proposed approach in the future would be subject to separate consultation.

Annex 3

Compatibility statement

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138(2)(d) FSMA to include an explanation of why it believes making the proposed rules is: (a) compatible with its general duty, under s1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives; and (b) its general duty under s1B(5)(a) FSMA to have regard to the regulatory principles in s3B FSMA. The FCA is also required by s138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. This Annex includes our assessment of the equality and diversity implications of these proposals.

The FCA's objectives and regulatory principles: Compatibility statement

5. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective of protecting and enhancing the integrity of the UK financial system. They are also relevant to the FCA's consumer protection objective – it should be noted that the proposal by the Treasury to restrict ILS sales to Qualified Investors significantly mitigates the risk that would have existed to our consumer protection objective if these products had been available to retail investors.
6. The proposals protect and enhance market integrity by aiming to ensure high standards of behaviour and integrity are maintained in all parts of the ISPV business, including the issue of ILS itself. The risks of poor conduct relating to the issue of ILS is itself a significant risk to the stability of the insurance markets, which our proposals intend to reduce. We have been careful to create a regime that is proportionate to the nature of the risks involved, and in designing it we have had particular regard to:
 - the soundness, stability and resilience of the financial markets
 - combatting market abuse, and
 - the orderly operation of the financial markets.

7. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because they aim to ensure that high standards of conduct are maintained in all aspects of the relevant market which we consider is fundamental to those markets functioning well. We also consider that by creating a proportionate regime we do not impose burdens on the market that make it unable to work effectively and efficiently. Proportionality also reduces barriers to access and may attract new ILS business to the UK which could help to make the markets function well by encouraging competition, while also maintaining the integrity and soundness of the UK market. For the purposes of the FCA's strategic objective, 'relevant markets' are defined by s1F FSMA.
8. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s3B FSMA.
The need to use our resources in the most efficient and economic way
9. The proposals are formulated in a way that is intended to be the most efficient and economical way of achieving their ends, by relying primarily on a high level regulatory regime.
The principle that a burden or restriction should be proportionate to the benefits
10. For the reasons given in the CBA, we consider that the burdens imposed by the proposals are minimal in their effect on firms, but are aimed at ensuring that high standards of conduct are maintained across the market, and will be proportionate to the benefits, considered in general terms, we expect will be achieved.
The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term
11. This regime should encourage firms to conduct ILS business in the UK, which may support growth in the UK economy in the medium or long term. We consider this is more likely to be sustainable where high conduct standards are maintained across the market.
The general principle that consumers should take responsibility for their decisions
12. The sale of ILS is restricted to Qualified Investors so sales to anyone who falls outside that definition, including retail consumers, are not permitted. Therefore this principle is not relevant to anybody other than those falling within the definition of Qualified Investors. We consider that Qualified Investors are able to take responsibility for their decisions.
The responsibilities of senior management
13. The proposals are consistent with this principle as senior managers will need to comply with our approved persons requirements.
The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation
14. The proposals recognise the different nature of firms in this sector, hence the proposal for a proportionately designed regulatory regime.
The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information
15. Details of the firms operating in this sector will be published on the Financial Services Register.
The principle that we should exercise our functions as transparently as possible
16. We have engaged with members of an industry working group in advance of this consultation to explore practical considerations related to the proposals set out in this CP.

Expected effect on mutual societies

17. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.

Compatibility with the duty to promote effective competition in the interests of consumers

18. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers.
19. The new regime, while primarily focused on advancing the FCA's market integrity objective, is also intended to promote effective competition (ultimately likely to be in the interests of consumers) by encouraging new participants to enter the market. Our approach seeks to ensure barriers to entry are not created that might deter the ILS market from developing. The proposed approach should minimise the risk of any barriers to entry being created. The proposed registration fees of £500 are cost-based and not significant.

Equality and diversity

20. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.
21. The outcome of the assessment in this case is stated in paragraphs 1.13 – 1.15 of the CP.

Appendix 1

Draft Handbook text

RISK TRANSFORMATION REGULATIONS 2017 (CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2017

Powers exercised by the Financial Ombudsman Service

- A. The Financial Ombudsman Service Limited makes this instrument amending the rules, guidance and standard terms for Voluntary Jurisdiction participants as set out in Annex H 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 8 (Guidance) of Schedule 17;
 - (3) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (4) paragraph 22 (Consultation) of Schedule 17.
- B. The making (and amendment) of the rules and standard terms for Voluntary Jurisdiction participants in Annex H 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 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
 - (5) section 226 (Compulsory jurisdiction).
- 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 rules and standard terms for Voluntary Jurisdiction participants made (and amended) by the Financial Ombudsman Service Limited in Annex H to this instrument.

Commencement

- F. This instrument comes into force on [date] 2017.

Amendments to the Handbook

- G. The modules of the FCA Handbook 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 |

| | |
|--|---------|
| Principles for Businesses (PRIN) | Annex B |
| Senior Management Arrangements, Systems and Controls sourcebook (SYSC) | Annex C |
| Fees manual (FEES) | Annex D |
| Conduct of Business sourcebook (COBS) | Annex E |
| Supervision manual (SUP) | Annex F |
| Decision Procedure and Penalties manual (DEPP) | Annex G |
| Dispute Resolution: Complaints sourcebook (DISP) | Annex H |

Citation

- H. This instrument may be cited as the Risk Transformation Regulations 2017 (Consequential Amendments) Instrument 2017.

By order of the Board of the Financial Ombudsman Service Limited
[date] 2017

By order of the Board of the Financial Conduct Authority
[date] 2017

Annex A

Amendments to the Glossary of definitions

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

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

| | |
|--|--|
| <i>cell</i> | a cell of a <i>protected cell company</i> . |
| <i>insurance risk transformation</i> | the <i>regulated activity</i> specified in article 13A of the <i>Regulated Activities Order</i> (Transformer vehicles: insurance risk transformation) which is, in summary, the assumption by an <i>undertaking</i> ('A') of a risk from an <i>undertaking</i> ('B') where B assumes a risk under a <i>contract of insurance</i> ('the underlying risk') and the assumption of risk by A has the legal or economic effect of transferring some or all of the underlying risk to A. |
| <i>protected cell company</i> | a company formed as a protected cell company under the <i>Risk Transformation Regulations</i> . |
| <i>Risk Transformation Regulations</i> | the Risk Transformation Regulations 2017 (SI 2017/[XXXX]) |

Amend the following definitions as shown.

| | |
|---------------|---|
| <i>client</i> | ... |
| | (B) in the <i>FCA Handbook</i> : |
| | (1) (except in <i>PROF</i> , in relation to a <i>credit-related regulated activity</i> and , in relation to a <i>home finance transaction</i> <u>and in relation to <i>insurance risk transformation</i> and activities directly arising from <i>insurance risk transformation</i></u>) has the meaning given in <i>COBS</i> 3.2, that is (in summary and without prejudice to the detailed effect of <i>COBS</i> 3.2) a <i>person</i> to whom a <i>firm</i> provides, intends to provide or has provided a service in the course of carrying on a <i>regulated activity</i> , or in the case of <i>MiFID</i> or equivalent <i>third country business</i> , an <i>ancillary service</i> : |
| | ... |

...

(9) (in relation to insurance risk transformation and activities directly arising from insurance risk transformation) has the meaning given in COBS 3.2 as modified by COBS 18.6A.3R(2).

insurer a firm with permission to effect or carry out contracts of insurance ~~(other than an ISPV).~~

regulated activity ...

(B) in the *FCA Handbook* (in accordance with section 22 of the Act (Regulated activities) the activities specified in Part II of the *Regulated Activities Order* (Specified Activities) which are, in summary:

...

(ca) insurance risk transformation (article 13A)

...

UK ISPV an ISPV with a Part 4A permission to ~~effect or carry out contracts of insurance~~ carry on the activity of insurance risk transformation.

Delete the following definition. The text is not shown struck through.

EEA ISPV an ISPV (including a *UK ISPV*) whose head office is in any *EEA State* and which has received authorisation pursuant to article 46 of the *Reinsurance Directive* from its *Home State Regulator*.

Annex B

Amendments to the Principles for Businesses sourcebook (PRIN)

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

1 Introduction

...

1.2 Clients and the Principles

...

Approach to client categorisation

1.2.2 G *Principles 6, 8 and 9 and parts of Principle 7, as qualified by PRIN 3.4.1R, apply only in relation to customers (that is, clients which are not eligible counterparties). The approach that a firm (other than for credit-related regulated activities in relation to which client categorisation does not apply) needs to take regarding categorisation of clients into customers and eligible counterparties will depend on whether the firm is carrying on designated investment business, insurance risk transformation and activities directly arising from insurance risk transformation or other activities, as described in PRIN 1.2.3G.*

1.2.3 G (1) *In relation to the carrying on of designated investment business, insurance risk transformation and activities directly arising from insurance risk transformation, a firm's categorisation of a client under the COBS client categorisation chapter (COBS 3) will be applicable for the purposes of Principles 6, 7, 8 and 9.*

(1AA) In relation to the carrying on of insurance risk transformation and activities directly arising from insurance risk transformation, the meaning of client is modified by COBS 18.6A.3R and the COBS client categorisation chapter (COBS 3) applies accordingly, as modified.

...

(3) *In relation to carrying on activities other than designated investment business, insurance risk transformation and activities directly arising from insurance risk transformation (for example, general insurance business or accepting deposits) the firm may choose to comply with Principles 6, 7, 8 and 9 as if all its clients were customers. Alternatively, it may choose to distinguish between eligible counterparties and customers in complying with those Principles. If it chooses to make such a distinction, it must comply with PRIN 1 Annex 1 in determining whether that client is an eligible counterparty (see PRIN 3.4.2R). In doing so, the*

requirements in SYSC will apply, including the requirement to make and retain adequate records.

...

3 Rules about application

...

3.2 What?

3.2.1A R *PRIN* applies with respect to the carrying on of:

- (1) *regulated activities*;
- (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); ~~and~~
- (3) *ancillary activities* in relation to *designated investment business*, *home finance activity*, *credit-related regulated activity*, *insurance mediation activity* and *accepting deposits*; and
- (4) activities directly arising from insurance risk transformation.

...

3.4 General

Clients and the Principles

...

3.4.3 G (1) *COBS 3* (Client categorisation) applies to a *firm* intending to conduct, or conducting, *designated investment business* (other than giving *basic advice*), ~~and~~ *ancillary activities* relating to *designated investment business* and to a firm intending to carry on, or carrying on, insurance risk transformation and activities directly arising from insurance risk transformation. Any *client* categorisation established in relation to such business will be applicable for the purposes of *Principles 6, 7, 8 and 9.*

Annex C

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

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

1 Application and purpose

...

1.1A Application

...

- 1.1A.1 G The application of this sourcebook is summarised at a high level in the following table. The detailed application is set out in SYSC 1 Annex 1 and in the text of each chapter.

| Type of firm | Applicable chapters |
|--------------------------------|-----------------------------------|
| <i>Insurer, <u>UK ISPV</u></i> | Chapters 2, 3, 12 to 18, 21, 22 |
| <i>Managing agent</i> | Chapters 2, 3, 11, 12, 18, 21, 22 |
| <i>Society</i> | Chapters 2, 3, 12, 18, 21, 22 |
| Every other <i>firm</i> | Chapters 4 to 12, 18, 19D, 21, 22 |

Firms that SYSC 19D applies to should also refer to the Remuneration part of the ~~PRA Rulebook~~ Rulebook.

...

1 Annex Detailed application of SYSC

1

| Part 1 | Application of SYSC 2 and SYSC 3 to an insurer, <u>a UK ISPV</u> , a managing agent and the Society | |
|--------|---|--|
| | Who? | |
| 1.1 | R | SYSC 2 and SYSC 3 only apply to an <i>insurer</i> , <u>a UK ISPV</u> , a <i>managing agent</i> and the <i>Society</i> except that: |
| | | ... |
| ... | | |
| | What? | |

| | | | |
|---------------|---|--|--|
| 1.3 | R | SYSC 2 and SYSC 3 apply with respect to the carrying on of: | |
| | | ... | |
| | | (2) | activities that constitute <i>dealing in investments as principal</i> , disregarding the exclusion in article 15 of the <i>Regulated Activities Order</i> (Absence of holding out etc); and |
| | | (3) | <i>ancillary activities</i> in relation to <i>designated investment business</i> , <i>home finance activity</i> and <i>insurance mediation activity</i> ; <u>and</u> |
| | | (4) | <u>activities directly arising from <i>insurance risk transformation</i></u> ; |
| | | except that SYSC 3.2.6AR to SYSC 3.2.6JG do not apply as described in SYSC 1 Annex 1.1.4R. | |
| 1.4 | R | SYSC 3.2.6AR to SYSC 3.2.6JG do not apply: | |
| | | ... | |
| | | (2) | in relation to the following <i>regulated activities</i> : |
| | | (a) | <i>general insurance business</i> ; |
| | | (aa) | <u><i>insurance risk transformation</i></u> ; |
| | | ... | |
| | | (3) | to a <i>pure reinsurer</i> . |
| ... | | | |
| Part 2 | | Application of the common platform requirements (SYSC 4 to 10) | |
| | | Who? | |
| 2.1 | R | The <i>common platform requirements</i> apply to a <i>firm</i> apart from an <i>insurer</i> , a <u>UK ISPV</u> , a <i>managing agent</i> and the <i>Society</i> unless provided otherwise in a <i>specific rule</i> . | |
| ... | | | |
| Part 3 | | Tables summarising the application of the common platform requirements to different types of firm | |
| ... | | | |
| 3.3 | G | For all other <i>firms</i> apart from <i>insurers</i> , <u>UK ISPVs</u> , <i>managing agents</i> , the <i>Society</i> and <i>full-scope UK AIFMs</i> of <i>unauthorised AIFs</i> , they apply in accordance with Column B in the table below. For these <i>firms</i> , where a <i>rule</i> is shown modified in Column B as 'Guidance', it should be read as <i>guidance</i> | |

| | | | | |
|---------------------|--|--|--|---|
| | (as if "should" appeared in that rule instead of "must") and should be applied in a proportionate manner, taking into account the nature, scale and complexity of the firm's <u>firm's</u> business. | | | |
| Provision SYSC 4 | COLUMN A Application to a common platform firm other than a UCITS investment firm | COLUMN A+ Application to a UCITS management company | COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF | COLUMN B Applicaion to all other firms apart from insurers, <u>UK ISPVs</u> , managing agents, the Society, and full-scope UK AIFMS of unauthorised AIFs |

...

3 Systems and Controls

...

3.2 Areas covered by systems and controls

...

The compliance function

...

3.2.8 R (1) *A firm which carries on designated investment business with or for retail clients or professional clients and a UK ISPV which carries on insurance risk transformation with respect to long-term insurance contracts* must allocate to a director or senior manager the function of:

...

...

...

12 Group risk systems and controls requirements

12.1 Application

12.1 R Subject to SYSC 12.1.2R to SYSC 12.1.4R, this section applies to each of the following which is a member of a group:

(1)

...

(ca) a UK ISPV;

...

...

...

14 Risk management and associated systems and controls for insurers

14.1 Application

...

14.1.2AA R This section applies to a UK ISPV.

...

Annex D

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text.

3 Application, Notification and Vetting Fees

...

3.2 Obligation to pay fees

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

| Part 1: Application, notification and vetting fees | | |
|---|---------------------|--|
| (1) Fee payer | (2) Fee payable (£) | Due date |
| ... | ... | ... |
| <u>(zv) an applicant for registration under regulation 13 of the Risk Transformation Regulations as a protected cell company.</u> | 500 | <u>On or before the date the application is made</u> |
| ... | | |

...

4 Periodic fees

...

**4 Annex FCA activity groups, tariff bases and valuation dates
1AR**

| Part 1 | |
|--|--|
| This table shows how the <i>FCA</i> links the <i>regulated activities</i> for which a <i>firm</i> has <i>permission</i> to activity groups (fee-blocks). A <i>firm</i> can use the table to identify which fee-blocks it falls into based on its <i>permission</i> . | |
| Activity group | Fee payer falls in the activity group if |
| ... | ... |

| | |
|---|--|
| <p>A.3 Insurers – general and UK ISPVs</p> | <p>its <i>permission</i> includes one or more of the following:</p> <ul style="list-style-type: none">- <i>effecting contracts of insurance</i>;- <i>carrying out contracts of insurance</i>; <p>in respect of <i>specified investments</i> that are:</p> <ul style="list-style-type: none">- <i>general insurance contracts</i>; or- <i>long-term insurance contracts other than life policies</i> <p><u>OR</u></p> <p>it has <i>permission to carry on insurance risk transformation</i>.</p> |
| <p>...</p> | |

...

Annex E

Amendments to the Conduct of Business sourcebook (COBS)

Insert the following new section after COBS 18.6 (Lloyd's). The text is all new and is not underlined.

18.6A Insurance Special Purpose Vehicles (ISPVs)

Application

18.6A.1 R This section applies to *UK ISPVs*.

COBS rules that apply to insurance risk transformation and activities directly arising from insurance risk transformation

18.6A.2 R *COBS 3* applies (subject to *COBS 18.6A.3R*) when a *firm* is carrying on *insurance risk transformation* and/or activities directly arising from *insurance risk transformation*.

Definitions and modifications

18.6A.3 R When a *firm* is carrying on *insurance risk transformation* and/or activities directly arising from *insurance risk transformation*:

- (1) The general definition of *client* in *COBS 3.2.1R* is modified as set out in *COBS 18.6A.3R(2)* below.
- (2) Any reference to the term *client* is to be taken to include a *person*:
 - (a) to whom the *firm* provides, intends to provide or has provided a service in the course of carrying on activities directly arising from *insurance risk transformation* (including the offer of *investments* issued by the *firm*); or
 - (b) who is holding or held an *investment* issued by the *firm*.

18.6A.4 G For the avoidance of doubt, the remainder of *COBS 3.2* applies where relevant.

Communications with clients

18.6A.5 R Before an *investment* issued by an *ISPV* is sold to a *client* (that is not an *eligible counterparty*), the *ISPV* must ensure that the *client* is informed that compensation will not be available from the *FSCS* if the *ISPV* cannot meet its liabilities.

18.6A.6 R A statement that compensation will not be available from the *FSCS* must be included in any brochure or other written communication by which an *ISPV*

offers investments to *clients*.

- 18.6A.7 G For the avoidance of doubt, *COBS* 18.6A.5R and *COBS* 18.6A.6R do not exhaust or restrict the scope of *Principle 7*.

Annex F

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text, unless otherwise stated.

15 Notifications to the FCA

15.1 Application

Who?

This chapter applies to every *firm* except that:

- (1) only *SUP* 15.10 applies to an *ICVC* or a *UCITS qualifier*; ~~and~~
- (2) *SUP* 15.3.22D to *SUP* 15.3.25D apply only to the *Society* ; and
- (3) *SUP* 15.14 applies only to *ISPVs* which are *protected cell companies*.

...

Insert the following new section after *SUP* 15.13 (Notification by CBTL firms). The text is all new and is not underlined.

15.14 Notification by protected cell companies

Notifications of a proposal to register a new cell

- 15.14.1 R
- (1) An *ISPV* which is a *protected cell company* must notify the *FCA* of a proposal to register any new *cell*.
 - (2) The notice referred to in (1) must:
 - (a) be made in writing using the same “*MISPV* new cell notification form” that the *firm* is required to submit to the *PRA*¹ by the *PRA* (*PRA* Rulebook: Insurance Special Purpose Vehicles, [4.6(1)]);
 - (b) include the information required by the *PRA* (*PRA* Rulebook: Insurance Special Purpose Vehicles, [4.6]); and
 - (c) be made at least ten working days before the proposal takes effect.

¹ See draft form at Annex 5 of *PRA* CP42/16 ‘Authorisation and supervision of special purpose vehicles’ (November 2016) www.bankofengland.co.uk/pradocuments/publications/cp2016/cp2416.pdf .

- 15.14.2 R An *ISPV* which is a *protected cell company* must notify the *FCA* in writing without delay of any proposed change to any of the information provided to the *FCA* in accordance with *SUP* 15.14.1R.
- 15.14.3 R An *ISPV* which is a *protected cell company* must not put into effect the proposal notified to the *FCA* in accordance with *SUP* 15.14.1R (or, if relevant, *SUP* 15.14.2R) until the earlier of either:
- (1) the *FCA* confirms in writing that it has no objection; or
 - (2) ten working days have expired since the notification was provided to the *FCA* in accordance with *SUP* 15.14.1R (or, if relevant, *SUP* 15.14.2R), provided neither the *FCA* or the *PRA* have raised any objections during that period.

Annex G

Amendments to Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Statutory notices and the allocation of decision making

...

2 Annex 1 Warning notices and decision notices under the Act and certain other enactments

...

| The Small and Medium Sized Business (Finance Platforms) Regulations 2015 | Description | Handbook reference | Decision maker |
|---|--------------------|---------------------------|-----------------------|
| ... | ... | | ... |

| <u>The Risk Transformation Regulations 2017</u> | <u>Description</u> | <u>Handbook reference</u> | <u>Decision maker</u> |
|--|---|----------------------------------|------------------------------------|
| <u>Regulation 19</u> | when the <i>FCA</i> is <u>proposing or deciding to refuse an application to register a <i>protected cell company</i></u> | <u>Not applicable</u> | <u><i>Executive procedures</i></u> |
| <u>Regulation 25</u> | when the <i>FCA</i> is <u>proposing or deciding to refuse approval of a proposed amendment to a <i>protected cell company's</i> instrument of incorporation</u> | <u>Not applicable</u> | <u><i>Executive procedures</i></u> |

Annex H

Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text.

2 Jurisdiction of the Financial Ombudsman Service

...

2.3 To what activities does the Compulsory Jurisdiction apply?

Activities by firms

- 2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

...

(7) offering and/or issuing of investments by ISPVs;

or any ancillary activities, including advice, carried on by the *firm* in connection with them.

...

2.5 To which activities does the Voluntary Jurisdiction apply?

- 2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

...

(2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

...

(c) activities which (at ~~1 October 2016~~ [date] 2017) would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1G*);

...

...

...

2.7 Is the complainant eligible?

...

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*:

...

(16) the complainant is a *client* (where the *respondent* is an *ISPV*).

...

2 Annex 1G Regulated Activities for the Voluntary Jurisdiction at ~~1 October 2016~~ [date] 2017

...

The activities which were covered by the *Compulsory Jurisdiction* (~~at 1 October 2016~~ [date] 2017) were:

(1) for *firms*:

...

(i) offering and/or issuing of *investments* by *ISPVs*;

...



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