

Quarterly Consultation No.16

March 2017



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The Financial Conduct Authority invite comments on this Consultation Paper. Comments should reach us by 3 April 2017 for Chapter 5 Q1, and 3 May 2017 for Chapters 2, 3, 4, 5 (Q2 and Q3), 6, 7 and 8 (see the Overview section for further details).

Comments may be sent by electronic submission using the form on the FCA's website at www.fca.org.uk/cp17-06-response-form or by email to cp17-06@fca.org.uk.

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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:

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Abbreviations used in this paper

the BRR Order	the Bank Recovery and Resolution Order 2016
CASS	Client Assets sourcebook
CBA	cost benefit analysis
COBS	Conduct of Business sourcebook
CONC	Consumer Credit sourcebook
CP	Consultation Paper
DEPP	Decision Procedure and Penalties manual
DTR	Disclosure Guidance and Transparency Rules sourcebook
EEA	European Economic Area
EG	the Enforcement Guide
ESMA	European Securities and Markets Authority
EU	European Union
FCA	Financial Conduct Authority
FG	Finalised Guidance
FS	Feedback Statement
FRC	Financial Reporting Council
FSMA	Financial Services and Markets Act 2000
IA	Immigration Act 2016
IPRU(INV)	Interim Prudential sourcebook for Investment Businesses
KID	key information document
KIID	key investor information document

LME	London Metal Exchange
LR	Listing Rules sourcebook
MAR	Market Abuse Regulation
MCOB	Mortgages and Home Finance: Conduct of Business sourcebook
MiFID II	Markets in Financial Instruments Directive II
MTF	multilateral trading facility
PD	Prospectus Directive 2003/71/EC
Prospectus Regulation	Regulation (EU) No [XX]/[2017] of the European Parliament and of the Council of [] 2017 on the prospectus to be published when securities are offered to the public or admitted to trading
PR	Prospectus Rules sourcebook
PRIIPs	Packaged Retail and Insurance-based Investment Products
PRIN	Principles for Businesses
RAG	Regulated Activity Group
RDC	Regulatory Decisions Committee
REC	Recognised Investment Exchange sourcebook
RIE	recognised investment exchange
RMAR	retail mediation activity return
RTS	regulatory technical standards
SUP	Supervision manual
UCITS	undertakings for the collective investment in transferable securities
UK	United Kingdom

1. Overview

Chapter No.	Proposed changes to Handbook	Consultation Closing Period
2	Changes to DEPP and EG reflecting the FCA's powers following the Bank Recovery and Resolution Order 2016.	Two months
3	Changes to the Market Conduct sourcebook (MAR) relating to ESMA's guidelines on commodity derivatives.	Two months
4	Changes to SUP and EG arising from the extended Immigration Act 2014 (as amended by the Immigration Act 2016).	Two months
5	Changes to PR 1.2.3R in anticipation of the Prospectus Regulation coming into force. Minor amendments to LR Appendix 1, PR Appendix 1 and the Glossary.	One month Two months
6	Changes to REC 3.9 and MAR 5.6, and minor amendments to REC 2.3.	Two months
7	Changes to COBS and MCOB to improve firms' communication with consumers.	Two months
8	Changes to regulatory reporting requirements.	Two 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. Changes to DEPP and EG following the Bank Recovery and Resolution Order 2016

Introduction

- 2.1** The Bank Recovery and Resolution Order 2016 (the BRR Order) partly implements the Bank Recovery and Resolution Directive 2014/59/EU. This Directive requires EEA states to have powers to manage the failure of their credit institutions, investment firms and group entities as an alternative to insolvency. Having these powers in place ensures that critical functions can still be performed.
- 2.2** The BRR Order amends FSMA (including by inserting new sections 71B to 71I) and gives us, the FCA, the following new powers:
- the power to remove directors and senior executives (sections 71B and 71C(2))
 - the power to appoint a temporary manager (section 71C(1))
 - where a temporary manager has been appointed, the power to require the directors not to exercise specified functions during the period of appointment and to consult the temporary manager, or obtain the consent of the temporary manager, before taking specified decisions or specified action (section 71C(8)), and
 - the power to require an authorised person to call a general meeting under section 55L(d) or 55M (55PB (3))
- 2.3** The BRR Order also describes the procedure and conditions we need to follow to exercise this new set of powers over the relevant firms.
- 2.4** We are now consulting on changes to the Decision Procedure and Penalties manual (DEPP) and the Enforcement Guide (EG) relating to the BRR Order.

Summary of proposals

Changes to DEPP

- 2.5** We propose changes to DEPP 2 Annex 2 to set out the decision-making procedure to be followed for decisions made under sections 71B, 71C(1), 71C(2) and (8) of FSMA. The decision maker will be the Regulatory Decisions Committee (RDC), following DEPP 3.

Changes to EG

- 2.6** We propose inserting a new provision in EG 8.7 reflecting the changes made to FSMA.

Q2.1 Do you agree with our changes to EG and DEPP?

Cost benefit analysis

- 2.7** The proposal set out in this Consultation does not impose additional obligations on firms. It is not related to rule changes or guidance on rules. Under section 138I of FSMA, when the FCA wishes to introduce any new rules it must publish a cost benefit analysis along with the proposed rules. Since the requirements under section 138I are not applicable, the FCA is not required to carry out a cost benefit analysis. In any event, the FCA does not expect that the proposal will lead to any increase in costs, or the cost increase will be of minimal significance.

Compatibility statement

- 2.8** 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, so as far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, carry out its general functions in a way that promotes effective competition in the interests of consumers.
- 2.9** The FCA's general functions include its functions in relation to the giving of general guidance. In discharging its general functions, the FCA must have regard to the regulatory principles in section 3B of FSMA.
- 2.10** We are satisfied that the proposed changes are compatible with our objectives and regulatory principles.

Equality and diversity

- 2.11** Overall, we do not consider that the proposals in this consultation adversely impact any of the groups with protected characteristics ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 2.12** 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 and guidance.
- 2.13** In the interim we welcome any input to this consultation on these matters.

3.

Changes to the Market Conduct sourcebook relating to ESMA guidelines on commodity derivatives

Introduction

- 3.1** The Market Abuse Regulation No 596/2014 (the Regulation)¹ came into effect on 3 July 2016. It aims to update and strengthen the existing EU market abuse framework in order to enhance market integrity and investor protection.
- 3.2** On 17 January 2017, the European Securities and Markets Authority (ESMA) published its official guidelines on information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives (commodity derivatives guidelines).
- 3.3** We have notified ESMA of our intention to comply with the commodity derivative guidelines. To align the Handbook, we propose some changes to the Market Conduct sourcebook (MAR).
- 3.4** We are only seeking views on our proposed changes to MAR and not the content of the commodity derivatives guidelines or our decision to comply with them.
- 3.5** We have developed the policy in this chapter in the context of the existing UK and EU regulatory framework. We will keep the policy under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework, including those as a result of any negotiations following the UK's vote to leave the EU.
- 3.6** This consultation will be of interest to participants in the commodities market and consumers who directly or indirectly deal and invest in any of the commodity related financial instruments that fall within the scope of the Regulation.
- 3.7** The text of the proposed amendments, and the statutory powers the amendment will be made under, are set out in Appendix 3 of this Consultation Paper.

Summary of proposals

Consequential amendments to the Handbook

- 3.8** ESMA was mandated under article 7(5) of the Regulation to issue the commodity derivative guidelines establishing a non-exhaustive indicative list of information which is reasonably

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0596&from=EN>

expected or required to be disclosed in accordance with legal or regulatory provisions in EU or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets. We propose to add two signposts to the commodity derivative guidelines in MAR, adjacent to the provisions which already refer to the definition of inside information in the context of commodity derivatives (MAR 1.2.19AG and MAR 1.3.24G).

Q3.1 Do you have any comments or suggestions relating to our proposed signposts to the ESMA guidelines in MAR 1.2.19AG and MAR 1.3.24G?

Q3.2 Do you have any other comments or suggestions regarding our changes to align the Handbook with the commodity derivative guidelines?

3.9 In assessing the changes necessary to the Handbook for complying with the commodity derivative guidelines, we have concluded that two guidance provisions (MAR 1.3.21G and MAR 1.3.23G) should be updated so that they mirror the definition of inside information in article 7(1)(b) of the Regulation.

3.10 We also propose to amend MAR 1.3.21G to reflect that the London Metal Exchange's (LME) stock levels are reasonably expected to be disclosed in accordance with the LME's practice and custom.

Q3.3 Do you have any comments or suggestions on our proposed amendments to MAR 1.3.21G and MAR 1.3.23G?

Equality and diversity

3.11 We have considered the equality and diversity issues that may arise from our proposals in this chapter. Overall we do not consider that our proposals raise concerns with regard to equality and diversity issues.

3.12 In the interim we welcome any input to this consultation on these matters.

4. Changes to Immigration Act compliance reporting

Introduction

- 4.1** Section 40 of the Immigration Act 2014 (IA) came into force in December 2014. Section 40 prohibits banks and building societies from opening a (new) current account for a person who does not have leave to remain in the UK and for whom the Home Office considers a current account should not be opened. In the IA this type of person is referred to as a 'disqualified person'. The Immigration Act 2014 (Bank Accounts) Regulations made under the IA require us to make arrangements to monitor and enforce compliance with this prohibition. We consulted on our role in CP14/8² and subsequently made the necessary changes to our Handbook.³
- 4.2** The IA has since been amended by the Immigration Act 2016. The amendments are due to come into force on 30 October 2017. In addition to the prohibition above, under section 40A of the amended IA and the associated regulations⁴, banks and building societies are required to carry out a quarterly 'immigration check' on certain (existing) current accounts held to check for accounts operated by or for a disqualified person. The first immigration check is required to be carried out for the quarter beginning on 1 January 2018.⁵ This does not apply to an account that is operated by or for an individual who is acting (with respect to that account) for the purposes of a trade, business or profession.⁶ The immigration check must be carried out with a specified anti-fraud organisation or data-matching authority.⁷
- 4.3** If such a current account is identified, section 40B requires banks and building societies to notify the Home Office of any accounts held that are operated by or for the disqualified person, and provide the information prescribed.⁸ For these purposes, an 'account' is defined in section 40H(2). It includes, but is not limited to, a financial product by means of which a payment may be made, and therefore includes accounts that are not current accounts. The Home Office must check if the person is a disqualified person. If so, the Home Office may apply for a freezing order under section 40C in relation to an account held with the bank or building society and operated by or for the disqualified person.
- 4.4** If the Home Office decides not to apply for a freezing order in relation to any account operated by or for the disqualified person, it must notify the bank or building society that it is under the duty in section 40G(2) to close the account as soon as is reasonably practicable. The Home

² CP14/8 'Quarterly Consultation No. 5' (June 2014).

³ See Immigration Regulations Instrument 2014 (FCA 2014/61) and feedback summary in Handbook Notice No. 17 (December 2014). The relevant reporting form was introduced into SUP 16 Annex 1AR together with guidance in SUP 16 Annex 1BG by Supervision Manual (Amendment No 20) Instrument 2014 (FCA 2014/52).

⁴ See Regulation 2 of the Immigration Act 2014 (Current Accounts)(Compliance &c) Regulations 2016.

⁵ See Regulation 2 of the Immigration Act 2014 (Current Accounts)(Compliance &c) Regulations 2016.

⁶ See Regulation 2 of the Immigration Act 2014 (Current Accounts)(Excluded Accounts and Notification Requirements) Regulations 2016.

⁷ The authority specified by the Home Office is CIFAS.

⁸ See Regulation 3 of the Immigration Act 2014 (Current Accounts)(Excluded Accounts and Notification Requirements) Regulations 2016.

Office will provide specified information to the bank or building society to enable it to comply with its obligations under section 40G.⁹ The bank or building society may also be under this obligation if the Home Office applies for a freezing order in respect of an account, but it is not made, or if an order is made, but subsequently discharged. The bank or building society is required to inform the Home Office before the end of the quarter of the action taken through a website operated by the Home Office¹⁰ (except where action is taken in the last two weeks of the quarter, where the information may be provided in the next quarter).

4.5 The Immigration Act 2014 (Bank Accounts) Regulations have been amended¹¹ to require us to make arrangements to monitor and enforce compliance with the new requirements in sections 40A, 40B and 40G, as outlined above. This chapter describes our approach to the amended IA and regulations, including reporting, monitoring and enforcement. We seek your views on our proposals.

4.6 This chapter will be of interest to banks and building societies that offer current accounts in the UK (from now on referred to as ‘firms’). This includes UK branches of European Economic Area (EEA) banks and non-EEA banks. For this purpose, ‘bank’ means any person who has a Part 4A permission under FSMA to accept deposits or an EEA firm that has permission to accept deposits as a result of exercising a passport. However, there are exemptions for:

- a person who has permission to accept deposits only for the purposes of, or in the course of, an activity other than accepting deposits
- a person who is an exempt person (as a result of section 38 of FSMA)
- a credit union, and
- a friendly society

Legislative framework

4.7 The Immigration Act 2014 (Bank Accounts) Regulations (as amended) place a duty on the FCA to monitor and enforce compliance with the requirements on firms imposed by sections 40A, 40B and 40G of the IA, in addition to the existing duty in relation to section 40.

4.8 This consultation does not seek to expand on the IA, and we do not intend to provide guidance or additional rules that expand on the legislation. We do understand that firms will have questions on the application of the legislation, so where possible we will signpost firms to sources of information.

4.9 This consultation describes the role that we will play in relation to the amendments to the IA and the information that firms will need to provide to us. The Immigration Act 2014 (Bank Accounts) Regulations will require firms to provide information to us in respect of their compliance or non-compliance with the new requirements as we may direct. If a firm is unable to comply with any relevant requirements applicable to it, it must inform us about its inability to comply as soon as reasonably practicable, including the reasons why it is unable to comply.

4.10 Firms should also keep records that relate to their compliance with the requirements for at least five years.

⁹ See Regulation 3 of the Immigration Act 2014 (Current Accounts)(Compliance &c) Regulations 2016.

¹⁰ See Regulation 4 of the Immigration Act 2014 (Current Accounts)(Compliance &c) Regulations 2016.

¹¹ The Immigration Act 2014 (Bank Accounts) Regulations 2014 (as amended by the Immigration Act 2014 (Current Accounts) (Excluded Accounts and Notification Requirements) Regulations 2016).

Summary of proposals

Reporting

- 4.11** In addition to existing reporting under section 40, we plan to require all firms that are subject to sections 40A, 40B or 40G of the IA to confirm to us each year that they have complied with their obligations in these sections by using a power of direction in the Immigration Act 2014 (Bank Accounts) Regulations. We propose to use this power to amend SUP 16.19 (Immigration Act compliance reporting) to require reporting on the new requirements.
- 4.12** We propose amending the existing question contained in the FIN-A form (annual report and accounts) in SUP 16 Annex 1AR to include confirmation of compliance with sections 40A, 40B and 40G of the IA. The form is made using our FSMA rule making powers and therefore we propose to use this power to amend the form. We also propose to amend the existing guidance on the form in SUP 16 Annex 1BG to refer to the new requirements.
- 4.13** As with the current reporting form, firms not required to provide their annual report and accounts using form FIN-A, for example, UK branches of EEA banks, must still report their compliance with the IA using form FIN-A and must do so within four months of their accounting reference date.

Q4.1 Do you agree with our proposals to require firms to tell us that they are complying with the new requirements in the IA?

Monitoring and enforcing

- 4.14** We will make arrangements to monitor and enforce the additional requirements as part of our normal regulatory functions. Firms will have to notify their normal supervisory contact as soon as reasonably practicable if they are unable to comply with the requirements in the legislation. Supervisors may ask firms to provide additional information in response to any notification or as part of their general monitoring activities.
- 4.15** Firms will need to ensure that they have adequate systems in place to meet the requirements in sections 40A, 40B and 40G of the IA.

Our approach to taking enforcement action under the regulations

- 4.16** The Immigration Act 2014 (Bank Accounts) Regulations enable us to enforce the new requirements in sections 40A, 40B and 40G of the IA. Our approach to enforcement of the IA requirements is explained in Chapter 19 of the Enforcement Guide (EG) and the decision-making procedure in relation to steps taken under the regulations as described in the Decision Procedure and Penalties manual (DEPP).
- 4.17** We propose amending EG 19.29 to include regulating compliance with the new requirements in sections 40A, 40B and 40G of the IA.

Q4.2 Do you agree with our proposed amendments to EG?

Cost benefit analysis

- 4.18** Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. The reporting form in SUP 16 Annex 1AR was made using our FSMA rule making powers and therefore we are using a rule making power to amend it. We have, therefore, prepared the following CBA in relation to the use of that rule making power.
- 4.19** In addition, the Immigration Act 2014 (Bank Accounts) Regulations state that in discharging its functions under the regulations we must have regard to the principle that a burden or restriction should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.
- 4.20** We expect that the incremental costs to firms in meeting the additional reporting requirements will be of minimal significance and will be caught up in any costs associated with the changes to systems and procedures made as a result of the IA.
- 4.21** For the time being, it is expected that any additional supervisory and enforcement costs will be absorbed into our existing budget, therefore, there will be no additional costs to firms.

Q4.3 Do you agree with our conclusion that the costs resulting from our proposals will be of minimal significance?

Compatibility statement

- 4.22** The new responsibilities sit outside of our main responsibilities under FSMA and therefore we are not required to prepare a compatibility statement in relation to those new responsibilities.
- 4.23** However, the reporting form in SUP 16 Annex 1AR is made using our FSMA rule making powers and therefore we are using a rule making power to amend it. Section 138I(2)(d) of FSMA requires us to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives and have regard to the regulatory principles in section 3B of FSMA. We have prepared the following compatibility statement in relation to the use of that rule making power.
- 4.24** The proposal to amend the reporting form in SUP 16 Annex 1AR in this chapter is designed to advance our market integrity objectives by allowing us to receive timely information on firms. This will enable us to supervise firms more effectively and identify emerging risks. We do not anticipate that making the proposed changes will have an impact on competition. These changes are expected to impose minimal costs on firms and do not affect firms' incentives or ability to compete in the market.
- 4.25** We are satisfied that this proposal is 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. By amending the current form FIN-A as proposed we are using our resources in the most efficient and economical way, helping us to supervise firms efficiently. The additional burden on firms is minimal and therefore proportionate to the benefits.

Impact on mutual societies

- 4.26** Section 138K of FSMA requires us to provide an opinion on whether the impact of a proposed rule on mutual societies is significantly different to the impact on other authorised persons. We are satisfied that the impact of the proposed amendments on mutual societies is not significantly different to that on other authorised firms.

Equality and diversity

- 4.27** The Government has considered issues of equality and diversity prior to the introduction of the amendments to the IA. We do not believe that our arrangements to monitor or enforce compliance with the amended IA will have any additional impacts on protected groups as our proposals impose reporting requirements on firms and not on any protected groups.
- 4.28** In the interim we welcome any input to this consultation on these matters.

5.

Minor amendments to LR and PR

Introduction

- 5.1** In this chapter we are proposing minor amendments to the following parts of the Handbook:
- **Prospectus Rules sourcebook (PR)**, to accommodate two ‘early’ rule changes arising from the anticipated new Prospectus Regulation and to reflect an update to a European Securities and Markets Authority (ESMA) publication
 - **Listing Rules sourcebook (LR)**, to reflect updates to the UK Corporate Governance Code published by the Financial Reporting Council (FRC), and
 - **Glossary of definitions (Glossary)**
- 5.2** This chapter will be of interest to:
- UK and overseas issuers with UK-listed securities or considering a UK listing of their securities
 - issuers and other persons who make public offers of transferable securities or seek admission of transferable securities to regulated markets in the UK
 - firms advising issuers or on the issuance of UK-listed securities
 - firms and market participants who provide advice in relation to prospectuses
 - firms and persons who invest or deal in transferable securities through public offers or regulated markets in the UK, and
 - firms advising persons investing or dealing in listed securities or transferable securities
- 5.3** The proposed changes and the statutory powers they will be made under are set out in Appendix 5.

Summary of proposals

- 5.4** **The anticipated new Prospectus Regulation**
- In anticipation of the new, directly applicable European Union (EU) legislation on prospectuses, which is expected to come into force this year, we are proposing to make consequential changes to the Prospectus Rules sourcebook.

Background

- 5.5** On 30 November 2015, the European Commission published a legislative proposal for a Level 1 regulation on prospectuses¹² (Prospectus Regulation) to replace the Prospectus Directive¹³ (PD). On 8 December 2016, the European Commission announced that it had agreed, with the European Parliament, and the Council, on this new Prospectus Regulation. On 20 December 2016, the Council's Permanent Representatives Committee approved the agreement on behalf of the Council.¹⁴ The agreed text of the Prospectus Regulation still requires formal approval by the European Parliament and by the Council. Following approval, it would be published in the EU Official Journal and enter into force 20 days later. We anticipate that the Prospectus Regulation could come into force in May or June 2017.
- 5.6** The Prospectus Regulation will be directly applicable EU legislation and will not require UK legislation to have effect in the UK. Most aspects of the Prospectus Regulation will apply 24 months after it comes into force.
- 5.7** There are, however, two sets of measures in the Prospectus Regulation which will apply before that date: one will apply immediately on the date that the Prospectus Regulation comes into force; and the other will apply 12 months after the in-force date. These are specified in draft article 47 of the anticipated Prospectus Regulation.¹⁵ We are consulting now on the measures that will apply immediately when the Prospectus Regulation comes into force.

Immediate application

- 5.8** The measures with immediate application relate to exemptions from the obligation to publish a prospectus when securities are admitted to trading on a regulated market:
- changes to an exemption from the requirement to publish a prospectus. Currently annual increases of shares admitted to trading of less than 10% are exempt; this changes to a higher threshold of 20% and applies to securities rather than only to shares
 - a change to the exemption for shares resulting from the conversion or exchange of other securities
- 5.9** Draft article 44(1) of the Prospectus Regulation will repeal article 4(2)(a) and article 4(2)(g) of the PD with effect from the date the Prospectus Regulation comes into force. Draft articles 1(4)(a) and 1(4)(b) of the Prospectus Regulation will apply from the same date in their place.
- 5.10** The change for the new 20% threshold arises as follows:
- PR 1.2.3R(1) implemented the provision in article 4(2)(a) of the PD that an issuer does not need to publish a prospectus for an admission of shares to a regulated market if the shares represent, over a period of 12 months, less than 10% of the number of shares of the same class already admitted to trading on the same regulated market.
 - In draft article 1(4)(a) of the Prospectus Regulation, the threshold is lifted from 10% to 20% and the exemption applies not just to shares but to 'securities fungible with securities already admitted to trading on the same regulated market'.¹⁶

¹² COM(2015) 583 final

¹³ 2003/71/EC

¹⁴ Council document 15574/16 ADD1

¹⁵ Council text 15574/16 ADD1

¹⁶ The full text of draft article 1(4)(a) of the Prospectus Regulation is: '4. The obligation to publish a prospectus shall not apply to the admission to trading on a regulated market of any of the following: (a) securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20 per cent of the number of securities already admitted to trading on the same regulated market;'

5.11 The change for the new conversion exemption arises as follows:

- PR 1.2.3R(7) implemented the provision in article 4(2)(g) of the PD that an issuer does not need to publish a prospectus for an admission of shares to a regulated market for shares resulting from conversion or exchange of other transferable securities, or from the exercise of rights conferred by other transferable securities, if the shares are of the same class as the shares already admitted to trading on the same regulated market.
- In draft article 1(4)(b) of the Prospectus Regulation, the conversion exemption is limited to an increase of less than 20% of the number of shares of the same class already admitted to trading on the same regulated market over a period of 12 months. However, that 20% limit is disapplied: (1) where a prospectus was drawn up for the securities giving access to the shares; (2) where the securities giving access to the shares were issued before the Prospectus Regulation comes into force; (3) in relation to shares qualifying as Common Equity Tier 1 in the Capital Requirements Regulation¹⁷; and (4) in relation to shares qualifying as eligible own funds or eligible basic own funds in Solvency II.¹⁸

5.12 To accommodate these changes in PR, we are proposing to amend PR 1.2.3R. In accordance with section 85(6)(b) of FSMA, PR 1.2.3R provides for exemptions to the requirement in section 85(2) of FSMA to publish an approved prospectus. We are proposing to amend PR 1.2.3R (1) and (7) to remove the existing measures arising from the PD and refer instead to the new exemptions in the Prospectus Regulation. We are also proposing to reproduce the relevant new directly applicable measures in the Prospectus Regulation as a new PR 1.2.3AEU, for the convenience of the reader.

5.13 We note that the draft article 47(2) in the Council text provides for the early application of article 1(4)(a) and (b), but that it does not provide for the early application of article 1(4)(ba), which allows an exemption for securities arising from conversion or exchange of other securities, own funds or eligible liabilities by a resolution authority under the Bank Recovery and Resolution Directive.¹⁹ Accordingly, this exemption will not apply until 24 months after the Prospectus Regulation comes into force.

5.14 We also note that draft article 1(5a) in the Council text provides a restriction on the two exemptions in draft articles 1(4)(a) and (b) where these exemptions are combined. However, unlike draft articles 1(4)(a) and (b), draft article 47 does not provide for the early application of draft article 1(5a).

Q5.1 Do you agree with the proposed amendment of PR 1.2.3R(1) and (7) and the proposed insertion of PR 1.2.3AEU?

5.15 Our proposed rule changes will apply from the date on which the Prospectus Regulation comes into force, which will be 20 days after it is published in the EU Official Journal. If the final text of the relevant provisions of the Prospectus Regulation differs from the Council text²⁰ used in this QCP, we would propose to amend our final rules accordingly.

5.16 As we anticipate that the Prospectus Regulation could come into force in May or June 2017, we are reducing the consultation period for Q5.1 from the normal two months to one month.

¹⁷ 575/2013/EU

¹⁸ 2009/138/EC

¹⁹ 2014/59/EU

²⁰ 15574/16 ADD1

Application after 12 months

- 5.17** The measure which will apply 12 months after the Prospectus Regulation comes into force relates to the Prospectus Regulation: (1) not applying to offers of securities with a total consideration of less than €1 million, calculated over a period of 12 months²¹; but (2) allowing Member States to decide to exempt offers of securities from the obligation to publish a prospectus where the total consideration over a period of 12 months is not more than €8 million.²²
- 5.18** Currently in the UK, an offer of securities does not require the publication of a prospectus if the total consideration over a period of 12 months is below €5 million.²³
- 5.19** We are not consulting on this change as it relates to FSMA and is a matter for HM Treasury. The measure in the Prospectus Regulation will not apply until 12 months after the Prospectus Regulation comes into force.

ESMA Prospectus Questions and Answers**Background**

- 5.20** PR 1.1.6G sets out a list of documents which need to be considered together when determining the effect of the PD. PR 1.1.6G(5) refers in particular to the ESMA Prospectus Questions and Answers.

Updating the definition

- 5.21** Both the Glossary and PR Appendix 1 define 'ESMA Prospectus Questions and Answers' and refer to the version published by ESMA on 6 April 2016.²⁴ We are proposing to update the definition of the 'ESMA Prospectus Questions and Answers' in the Glossary and PR Appendix 1 to reflect ESMA's 26th updated version which was published on 20 December 2016.²⁵
- 5.22** If ESMA publish a further version of the 'Prospectus Questions and Answers' during the consultation period, we propose updating the relevant definition accordingly in the final rules.

Q5.2 Do you agree with the proposed amendment to the definition of 'ESMA Prospectus Questions and Answers' in the Glossary and PR Appendix 1?

UK Corporate Governance Code**Background**

- 5.23** The Financial Reporting Council (FRC) is responsible for promoting confidence in corporate governance and reporting. The UK Corporate Governance Code (the Code), which sets out the standards for listed companies of good practice for leadership, effectiveness, accountability and communication, also falls under the remit of the FRC.
- 5.24** The provisions in the Code are supported in the Handbook, where the LR requires premium listed issuers to report on the provisions of the Code on a 'comply or explain' basis and state how they have applied the principles of the Code during a reporting period. The LR and Disclosure Guidance and Transparency Rules sourcebook (DTR) also refer to a number of provisions in the

²¹ Draft article 1(2a)

²² Draft article 3(2)

²³ S.85 and paragraph 9 of Schedule 11A of FSMA

²⁴ ESMA/2016/576

²⁵ ESMA/2016/1674

Code. Accordingly, we are required to assess the impact of any revisions to the Code on the LR and the DTR.

Changes to the Code

5.25 The FRC published a new edition of the Code in April 2016 (the 2016 Code), applying to reporting periods beginning on or after 17 June 2016. The 2016 Code amended the following provisions:

- C.3.1 has been expanded to provide that the audit committee as a whole shall have competence relevant to the sector in which the company operates
- C.3.7 has been revised to remove the provision that FTSE 350 companies should put the external audit contract out to tender at least every ten years, and
- C.3.8 (description of the work of the audit committee in discharging its responsibilities) has been updated to include providing advance notice of any retendering plans in relation to the external auditor

5.26 We consider that the requirements within LR to report against the Code and the specific references within LR and DTR to Code provisions following these changes remain appropriate and up to date. We are therefore not proposing any consequential amendments to the LR and DTR to reflect the updated provisions in the 2016 Code.

Definition of the Code and transitional provisions

5.27 Both the Glossary and LR Appendix 1 define the Code and refer to the edition published by the FRC in September 2014. As a result, we are proposing to update the definition of the Code in the Glossary and LR Appendix 1 to refer to the 2016 Code.

5.28 Given the application provisions of the 2016 Code (set out above), we have proposed transitional provisions in the LR.

Q5.3 **Do you agree with the proposal to amend the definition of the UK Corporate Governance Code in the Glossary and LR Appendix 1?**

Q5.4 **Do you agree with our proposed transitional provisions in LR?**

Cost benefit analysis

5.29 When proposing new rules, we are obliged under section 138I of FSMA to publish a cost benefit analysis (CBA), unless we consider that the proposals will not give rise to any increase in costs, or the increase in costs will be of minimal significance. Taken from an analysis of both the costs and benefits that will arise from these proposals, the CBA is a statement of the differences between the baseline (current position) and the position that will arise if we implement the proposals.

5.30 These proposals are required to ensure relevant Handbook rules and definitions remain applicable and up to date. We do not foresee a significant impact on issuers as a result of these minor updates and, therefore, consider that any costs arising from the proposals will be of minimal significance. As a result, a detailed CBA has not been prepared.

- 5.31** We note that the Prospectus Regulation will be directly applicable EU legislation and that the changes which will have immediate effect will have costs and benefits to both issuers and other market users. However, we do not consider that such costs arise from amendments to the PR which we are proposing to reflect the Prospectus Regulation coming into force.

Impact on mutual societies

- 5.32** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. We are satisfied that the proposed amendments will not have a significantly different impact on mutual societies compared to other authorised persons.

Compatibility statement

- 5.33** Section 138I(2)(d) of FSMA requires us to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B of FSMA.
- 5.34** We consider that the proposals in this chapter are compatible with our strategic objective and advance our operational objectives as they ensure the Handbook continues to be clear and up to date, providing an appropriate level of information to stakeholders. In preparing the proposals set out in this chapter, we have had regard to the regulatory principles in section 3B.
- 5.35** In preparing the proposals as set out in this chapter, we have also considered the FCA's duty to promote effective competition in the interests of consumers. We do not think the proposals will have an impact in this area.

Equality and diversity

- 5.36** We have considered the equality and diversity issues that may arise from the proposals in this chapter and are satisfied that the proposals will not have an adverse impact on any of the groups with protected characteristics (including, for example, age, disability, sex, marital status, pregnancy, maternity, race, religion, belief, sexual orientation and gender reassignment).

6. Changes to REC 3.9 and MAR 5.6, and minor amendments to REC 2.3

Introduction

- 6.1** In this chapter we are seeking views on a proposal to introduce a standard template for the notification of fee structures and schemes designed to encourage or support liquidity (liquidity incentive schemes) by trading venues, and related changes to the Recognised Investment Exchange sourcebook (REC) and the Market Conduct sourcebook (MAR). We are also seeking views on a proposal to change the frequency with which we will provide a recognised investment exchange (RIE) with individual guidance on the amount of eligible financial resources that it considers sufficient in respect of operational and other risks and related changes to REC 2.3.
- 6.2** This chapter will be of interest to RIEs and operators of multilateral trading facilities (MTFs).
- 6.3** The proposed changes and the statutory powers they will be made under are set out in Appendix 6 of this Consultation Paper.

Summary of proposals

- 6.4** We are proposing minor changes to the following parts of the Handbook:
- REC 3.9: to reflect our proposal to introduce a standard template for the notification of liquidity incentive schemes (in relation to RIEs).
 - MAR 5.6: to reflect our proposal to introduce a standard template for the notification of liquidity incentive schemes (in relation to MTFs).
 - REC 2.3: to change how often we will provide a RIE with individual guidance on the amount of eligible financial resources that it considers it needs to hold in respect of operational and other risks to meet the recognition requirements.

Proposed changes to REC 3.9 and MAR 5.6

Background

- 6.5** We are seeking views on a proposal to introduce a standard template for the notification of fee structures and schemes designed by trading venues to encourage or support liquidity (liquidity incentive schemes). We are also proposing related changes to REC 3.9 and MAR 5.6.
- 6.6** Liquidity incentive schemes are common features of a competitive marketplace and help support new markets or products offered by a trading venue, as well as encourage particular kinds of market enhancing activity, such as the commitment of risk capital. Poor design and implementation of these schemes could, however, create an incentive to trade for improper

purposes, or lead to unequal treatment of market participants which is not justified by objective criteria²⁶ or give rise to competition concerns. There is also the risk that incentive schemes designed to attract order flow may negatively influence the behaviour of market participants who execute orders on behalf of clients. This could potentially conflict with participants' obligations to achieve best execution for their clients, comply with our inducements rules, and manage conflicts of interest, including when providing execution services to eligible counterparties.²⁷ It should also be noted that enhanced best execution rules under Markets in Financial Instruments Directive (MiFID) II²⁸ will strengthen transparency standards for trading venue costs and order routing incentives.

- 6.7** Under the current regulatory framework, a RIE is responsible for ensuring that business conducted on its facilities is done in an orderly manner which provides safeguards to investors. REC provides a range of criteria of which we have regard to when considering whether or not these obligations are met in relation to a proposed liquidity incentive scheme, including the proposed level of transparency and the potential to encourage trading other than for proper purposes.
- 6.8** As we noted in CP13/16²⁹, '...we expect RIEs to seek non-objection from us in relation to proposals for new or amended liquidity incentive schemes, and before providing this we will consider whether such schemes will operate on a transparent and non-discriminatory basis'. More generally, as noted in the final guidance on payment for order flow (FG12/13)³⁰, we will consider such schemes when assessing whether a trading venue meets its responsibility to have in place rules and procedures that allow for fair and orderly trading.
- 6.9** The principles set out above are consistent with the approach to the regulation of fee structures set out in article 48 of MiFID II, and further elaborated in the corresponding RTS 10.³¹ MiFID II (which applies from 3 January 2018) will require fee structures to be 'fair and non-discriminatory' and to avoid the creation of incentives '...to place, modify or cancel orders or to execute transactions in a way which contributes to disorderly trading conditions or market abuse'.
- 6.10** In FG15/6³², we provided investment firms operating an MTF with guidance on how we expect them to comply with MAR 5 in relation to their rulebooks. We said: 'as part of an MTF operator's responsibility to allow for fair and orderly trading, we consider it is good practice for an MTF to ensure that its fees and incentive schemes relating to access to and execution on the MTF should be based on objective criteria. Fees and incentive schemes should not encourage trading for improper purposes and should not distort or reduce the effectiveness of the price formation process'. The fee structures of MTFs can give rise to the same risks as those offered by RIEs.

²⁶ Objective criteria may include volume traded, services used and provision of specific services such as liquidity provided by an investment firm pursuing a market making strategy.

²⁷ www.fca.org.uk/sites/default/files/marketwatch-51.pdf

²⁸ Article 27(2) of MiFID II provides that an investment firm shall not receive any remuneration, discount or non-monetary benefit for routing client orders to a particular trading or execution venue. Also, MiFID II RTS 27 (Article 5) will require venues to provide quarterly information on costs including the total value of rebates paid as a proportion of the traded value during the quarter as well as the total value of costs excluding rebates paid as a proportion of the total traded value of the period.

²⁹ CP13/16 'Competition in the markets for services provided by a Recognised Investment Exchange: proposed amendments to REC' (November 2013)

³⁰ FG12/13 'Guidance on the practice of 'Payment for order flow' (May 2012)

³¹ Commission Delegated Regulation supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location services and fee structures – RTS 10

³² FG15/6 'Multilateral Trading Facilities (MTFs) – Dear CEO Letter and FCA Good Practice Observations on MTF Rulebooks' (April 2015)

Introduction of a standard template

- 6.11** To meet its responsibilities relating to the protection of investors and ensuring fair and orderly trading, we expect a trading venue to carry out a comprehensive assessment of incentive schemes before they are introduced on the venue. While a trading venue's fee structure is an important aspect of its commercial offering, we expect the regulatory or compliance function to conduct a thorough analysis of any potential regulatory risks that a scheme may pose.
- 6.12** We have not previously set out our expectations as to the precise information that a trading venue should submit to us in order to demonstrate that it has carried out a comprehensive analysis of a proposed scheme (or existing scheme which is intended to be renewed). We consider that a standard template will provide clarification to the trading venue of what our expectations are regarding the level of review we expect the trading venue to have conducted and this will, in turn, streamline our overall review process.
- 6.13** We propose that trading venues will be required to use this template in relation to any fee structure or scheme which is designed to encourage or support liquidity including, but not limited to, rebates, discounts, fee holidays or payments. This would also include proposals to renew an existing scheme on either the same or amended terms.
- 6.14** We propose minor amendments to reflect these changes in REC 3.9 (in relation to RIEs) and MAR 5.6 (in relation to MTFs).

Q6.1 Do you agree with the proposal to introduce a standard template for the notification of liquidly incentive schemes?

Q6.2 If so, do you agree with the proposed standard template outlined in Appendix 6?

Proposed amendments to REC 2.3

- 6.15** We are also consulting on modifications to the frequency with which we will provide a UK RIE with individual guidance on the amount of eligible financial resources that it considers would be sufficient for it to hold in respect of operational and other risks to satisfy the recognition requirements.
- 6.16** A UK RIE is currently on a 12-month prudential cycle, where we provide individual guidance. This individual guidance is based on the annual financial risk assessment undertaken and submitted by the UK RIE to us.
- 6.17** We propose to make changes to REC 2.3.10G, REC 2.3.16G and REC 2.3.20G to align the prudential supervision of a UK RIE with the prudential supervision of other FCA regulated firms. This means the prudential cycle of a UK RIE will move from 12 months to 24 months, so we will provide individual guidance on the amount of eligible financial resources that a UK RIE considers would be sufficient for it to hold in respect of operational and other risks to satisfy the recognition requirements every 24 months.
- 6.18** However, as set out in REC 2.3.15G, we will continue to expect a UK RIE to provide us with an annual financial risk assessment which details the amount of eligible financial resources it considers sufficient in respect of operational and other risks in order to satisfy the recognition requirements.

Q6.3 Do you agree with the proposed amendment to the wording in REC 2.3?

Cost benefit analysis

6.19 Section 138L(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA states that section 138L(2)(a) does not apply if we consider that there will be no increase in costs, or the increase will be of minimal significance. The CBA is an analysis of the costs and benefits that will arise from the proposal. It is a statement of the differences between the baseline (current position) and the position that will arise if we implement the proposal.

Proposed change to REC 2.3

6.20 We consider that the proposed amendments to REC 2.3 will give rise to minimal or no additional costs to RIEs, therefore, we are not providing a CBA in relation to this proposal.

Proposed change to REC 3.9 and MAR 5.6

Baseline position

6.21 Currently, in the absence of a standard template which sets out precise information that a trading venue should submit to us as part of their notifications relating to incentive schemes, the content of the notifications has been inconsistent resulting in a very time and resource intensive review process.

Rationale

6.22 This template sets out our expectations about the precise information a trading venue must submit to us in order to demonstrate it has carried out a comprehensive regulatory analysis of a new incentive scheme or a renewal of a scheme.

Benefits

6.23 Once the template has been established, we expect to move away from the current iterative review process for incentive schemes which should save time for trading venues compared with the current process, and should allow us to use our resources more efficiently in line with our statutory duty to use resources in the most efficient and economical way.

6.24 We expect that using the template will help trading venues to design incentive schemes that are based on objective criteria, are consistent with fair and orderly trading, and do not pose a threat to market integrity and investor protection.

6.25 We also expect trading venues to be able to bring their proposals to market more quickly, since the new process will reduce the amount of further information we have to request from trading venues subsequent to receipt of a notification.

Costs

6.26 We are of the view that having to use the template is not expected to introduce any additional costs for trading venues. However, where it does the costs will be minimal as the template is merely providing a more structured way of submitting information which trading venues are required to submit to us in any case.

6.27 Trading venues are already required to carry out a regulatory analysis before the implementation of incentive schemes or renewal of such schemes, and should already have in place adequate systems and controls including adequate compliance staff. Therefore, we do not envisage that our proposed introduction of this template will impose any additional compliance costs on trading venues by way of any additional regulatory analysis. Moreover, we expect the use of the template to result in reduced compliance costs for trading venues by providing certainty in the information we require. A number of trading venues have requested that we provide more certainty on our

expectations in this sphere to reduce the amount of follow-up questions in case of incomplete information submitted by trading venues as part of their original submission.

- 6.28** Due to a lack of reliable and reasonably accessible quantifiable data, we have not attempted to provide a quantitative assessment of costs and benefits. However, we expect the total benefits from implementing the template to outweigh any marginal costs arising from integrating the template in trading venues' reporting framework.

Impact on mutual societies

- 6.29** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. We are satisfied that the proposed amendments will not have a different impact on mutual societies compared to other authorised persons.

Compatibility statement

- 6.30** Section 138I(2)(d) of FSMA requires us to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B of FSMA.
- 6.31** We believe that the proposals in this chapter are compatible with our strategic and operational objectives, as they ensure the Handbook continues to be clear and up to date, providing an appropriate level of information to stakeholders.

Equality and diversity

- 6.32** We have considered the equality and diversity issues that may arise from the proposals in this chapter and are satisfied that the proposals will not have an adverse impact on any of the groups with protected characteristics (including, for example, age, disability, sex, marital status, pregnancy, maternity, race, religion, belief, sexual orientation and gender reassignment).
- 6.33** In the interim we welcome any input to this consultation on these matters.

7.

Smarter Consumer Communications: changes to COBS and MCOB

Introduction

- 7.1** Our Smarter Consumer Communications initiative seeks to enable more informed consumer engagement and decision making by improving the quality of firms' communications. For this to happen firms will need to rethink not just what is communicated, but also how it is communicated to consumers.
- 7.2** In our discussion paper (DP15/15) on Smarter Consumer Communications³³, we asked stakeholders if there were any information provision requirements in the Handbook that either prevent or inhibit firms from effectively communicating important information to consumers. We received feedback on 13 specific areas of the Handbook where stakeholders believed this was the case: these are set out in Annex 2 of our Smarter Consumer Communications feedback statement (FS16/10).³⁴
- 7.3** As explained in our feedback statement, we considered that in some areas small changes to our rules or guidance could be made independently of other FCA work in order to improve the effectiveness of firms' communications with consumers. This chapter sets out the following proposals for consultation:
- clarification of firms' ability to provide information to investors in addition to the information they must provide in standardised disclosure documents (COBS 14.2.1R)
 - clarification of the guidance in COBS 4.5.5G to discourage over-disclosure by firms and remind firms of the importance of ensuring information provided to investors is proportionate and appropriate when complying with the fair, clear and not misleading rule, and
 - removal of FCA-prescribed risk warnings on annual statements for interest-only mortgage customers (MCOB 7.5.3)
- 7.4** This chapter will be primarily of interest to firms who are subject to the rules and guidance set out in paragraph 7.3 of this chapter. It may also be of interest to consumers served by such firms and consumer bodies. Additionally, our proposal on interest-only mortgage statements may interest debt charities.
- 7.5** The text of the proposed amendments and the statutory powers they will be made under can be found in Appendix 7.

³³ DP15/5 'Smarter consumer communications' (June 2015)

³⁴ FS16/10 'Smarter Consumer Communications' (October 2016)

Summary of proposals

Providing information to investors that goes beyond that required in standardised disclosure documents

- 7.6** Firms have told us that the information in required disclosure documents may not always fully reflect what the consumer is actually getting. For example, for undertakings for the collective investment in transferable securities (UCITS) funds³⁵ the actual charges paid by the consumer to enter or exit the fund may be discounted from the maximum amount shown in the required key investor information document (KIID). Firms have also said that they would like to discuss the portfolio with the consumer at the face-to-face meeting and then leave it to the consumer to look at the various required disclosure documents. In addition, firms said that they would like to have the option to provide these documents electronically to the consumer.
- 7.7** We are, therefore, proposing new Handbook guidance on our rules to clarify that firms can provide relevant information to consumers in addition to the information they must provide in required disclosure documents. In this section we also respond to firms' concerns about how and when required disclosure documents can be communicated to consumers.

What information can be provided to consumers

- 7.8** When providing any information to consumers, firms must ensure they have due regard to consumers' information needs and communicate in a way that is clear, fair and not misleading.³⁶ Our Smarter Consumer Communications initiative recognises that consumers' information needs are changing, with one of the clearest trends being a preference among many consumers to engage with financial services providers through digital channels. In order to meet consumers' needs and expectations and to assist understanding of their options, firms may need to go beyond the provision of required disclosure documents. Such documents tend to provide structured and text-heavy standardised information and were not necessarily designed with digital communications channels in mind, particularly mobile platforms.
- 7.9** We consider that our rules do not prevent firms from providing additional useful information in different formats to the consumer at the pre-purchase or point-of-sale stages as long as the information is provided in accordance with any relevant requirements in the Handbook³⁷ and EU legislation³⁸ and the required documents continue to be provided in the prescribed format.
- 7.10** Our proposed new guidance in COBS 14.2 will clarify our view that firms are able to provide information to consumers at pre-purchase or point-of-sale stages (including, but not limited to, face-to-face discussions) which is in addition to the information in the relevant required disclosure documents (for example, information specific to the proposed transaction).
- 7.11** Firms should also note that in CP16/18³⁹ we have proposed that once the directly applicable Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation applies from 1 January 2018, the provisions in COBS 14.2 will not apply in relation to products which are PRIIPs. However, the PRIIPs Regulation also envisages that some additional information may be provided separate from the key information document (KID), which firms will be required to provide to consumers.⁴⁰

³⁵ UCITS are investment funds regulated at European Union level.

³⁶ See PRIN 2.1.1R.

³⁷ See for example COBS 4.2

³⁸ For example, Regulation (EU) No 583/2010 (The KII Regulation) for the UCITS KIID.

³⁹ CP16/18 'Markets in Financial Instruments Directive II Implementation' (July 2016)

⁴⁰ Article 8 of the PRIIPs Regulation provides that marketing communications that contain information relating to a PRIIP shall not include any statement that contradicts or diminishes the significance of information in the KID.

Q7.1 Do you agree with the proposed new guidance in COBS 14.2?

How information should be provided to the consumer

- 7.12** We do not intend to issue guidance on how disclosure documents required by our rules or EU legislation should be provided to consumers as we believe our rules or the relevant EU legislation are already clear on this point. For example, COBS 14.2.1AR(5) permits the KIID to be provided electronically, either as an attachment to an email or on a website that meets the standard website conditions.⁴¹ A similar rule in COBS 14.2.2R applies to other required disclosure documents. As part of the Smarter Consumer Communications initiative, we are carrying out a review of the use of the term ‘durable medium’ in the Handbook. Once this review has concluded we may provide further clarification on the provision of information in electronic formats.

When information should be provided to the consumer

- 7.13** Under our rules, firms must provide required disclosure documents to the consumer in a way that allows the consumer enough time to consider the relevant document(s) before committing their money⁴². As such, we see no need for further guidance on this point.

Addressing the risk of ‘over-disclosure’ when communicating with investors

- 7.14** Firms have told us that COBS 4.5.5G encourages a cautious approach to compliance with the disclosure requirements in COBS 4.2.1R and COBS 4.5.2R and a tendency towards lengthy disclosures. This potentially undermines the aims of our Smarter Consumer Communications initiative. It is well established that a lack of relevant information in a market can cause consumers to make poor choices, however there is also evidence that ‘information overload’ – providing too much information – can lead consumers to make poorer decisions by distracting them or making them under- or over-react to certain issues.⁴³

- 7.15** In order to help firms decide what information should – and, equally, should not – be included in communications with consumers, we are consulting on amending COBS 4.5.5G. We propose to amend the guidance so that it:

- continues to encourage firms to consider whether omitting any relevant information might cause the disclosure to be insufficient, unclear, unfair or misleading, and
- emphasises the need for firms to apply a proportionate approach to the disclosure requirements that a firm must comply with

- 7.16** The proposed guidance is intended to make it clearer that firms are not expected to disclose every piece of information which may possibly be relevant, if it is unlikely to assist the particular client to understand the investment product or service that is being sought, or help the client decide whether to purchase the product or service.

- 7.17** Firms need to communicate information that is appropriate and proportionate, bearing in mind the type of consumer that is likely to be receiving it, and not include additional, unnecessary information or warnings. This is consistent with our existing rules that require information about designated investments to be sufficient, clear, fair and not misleading.⁴⁴

⁴¹ This is provided that the manager delivers a paper copy of the KIID to the investor on request and free of charge and makes available an up-to-date version of the KIID to investors on its website.

⁴² See COBS 14.2.14R.

⁴³ OP13/1 ‘Applying behavioural economics at the Financial Conduct Authority’ (April 2013), p. 25.

⁴⁴ See COBS 4.2.1R and COBS 4.5.2R.

- 7.18** In our view, amending the guidance in this way will not change the substance of the information disclosure requirements found in COBS 4.2.1R and COBS 4.5.2R, but will make it easier for firms to understand how they can comply with our requirements.⁴⁵

Removing FCA-prescribed risk warnings from annual statements for interest-only mortgages

- 7.19** In response to DP15/5, firms highlighted the requirement to use FCA-prescribed risk warnings on mortgage statements for interest-only borrowers as an example of a requirement that could prevent or inhibit effective communication with consumers.⁴⁶
- 7.20** We have previously highlighted the importance of effective communication with consumers with interest-only mortgages. Our 2013 thematic review on the maturity of interest-only mortgages found that 10% of borrowers whose interest-only mortgages become due for repayment before 2043 (equivalent to 260,000 people) do not have a strategy to repay their mortgage.⁴⁷
- 7.21** Following the review, we published guidance (FG13/7⁴⁸), which stressed that effective communication should be a key part of firms' strategies to ensure the fair treatment of consumers who are at risk of being unable to repay the capital sum of their mortgages at the end of the term. We said that communications needed to be clearly-worded (for example, using plain language), meaningful and encourage consumers to respond. We also highlighted good practices such as using insights from behavioral economics when developing communications strategies, tailoring communications to the specific circumstances of the individual, and piloting and reviewing communications to improve levels of engagement.
- 7.22** Reflecting our guidance in FG13/7 and our wider Smarter Consumer Communications aims, we agree that we can facilitate better engagement between firms and their customers by no longer prescribing the language for disclosing the key risks for interest-only borrowers. We are, therefore, consulting to remove the prescribed text in MCOB 7.5.3R(1)(b)(ii), MCOB 7.5.3R(1)(c)(ii) and MCOB 7.5.4R.
- 7.23** Our proposed change gives individual firms a choice over how they communicate the required information to consumers. As a minimum, firms will need to consider whether retaining the previously prescribed wording is appropriate for their borrowers. However a firm chooses to communicate the key risks of interest-only mortgages to their customers they must be mindful of their obligations to communicate in a way that is clear, fair and not misleading.

Q7.2 Do you agree with the proposed changes to MCOB 7.5.3R and MCOB 7.5.4R?

⁴⁵ The existing guidance in COBS 4.5.5G relates to requirements in Articles 19(2) and 27(2) of the MiFID Implementing Directive. These requirements are transposed in COBS 4.5.2R(3) and COBS 4.2.1R respectively. Any changes we make to the guidance must, therefore, be consistent with the European requirements that underpin it. We believe that our proposals remain consistent with these relevant European requirements and will also reduce the risk of 'over-disclosure'.

⁴⁶ MCOB 7.5.3R and MCOB 7.5.4R

⁴⁷ <https://www.fca.org.uk/news/press-releases/fca-publishes-findings-review-interest-only-mortgages-and-reaches-agreement>

⁴⁸ FG13/7 'Dealing fairly with interest-only mortgage customers who risk being unable to pay their loan' (August 2013)

Cost benefit analysis

For the COBS changes

7.24 We do not envisage that our proposed changes will impose any additional costs on firms or consumers as we are simply clarifying our current position on what information can be provided to consumers (COBS 14.2) and the need for all information provided to consumers to be appropriate and proportionate (COBS 4.5.5.G). Firms affected by these proposed changes are already subject to our general rule on communicating appropriately with retail clients⁴⁹ as well as Principle 7 of the Principles for Businesses.

7.25 By clarifying firms' ability to provide clarifying or supplementary information, or reminding them of the need to think carefully about the risks of over- as well as under-provision of information, we will help ensure that consumers receive more engaging and meaningful information about their prospective investment. This should make it more likely that consumers make the right choice of investment for their circumstances. Consumers who feel more satisfied with their investment choice are less likely to complain or raise queries about the product they have been sold, which could lead to a lowering of costs for firms who would otherwise have to deal with these issues.

For the MCOBS changes

7.26 Firms that decide to retain the previously prescribed wording will only incur minimal costs. Firms that go further – for example, changing the wording, developing personalised wording for each customer, or entirely redesigning their annual statements to increase consumers' engagement with the information – will incur greater costs. However, we assume firms would only take such action if the additional cost is justified by the perceived benefit of increasing consumers' engagement with the risks presented by their interest-only mortgages.⁵⁰

Q7.3 Do you have any comments on our analysis of the costs and benefits of the proposed changes in this chapter?

Compatibility statement

7.27 Section 1B of the Financial Services and Markets Act 2000 (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 all of the proposals in this chapter 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.

7.28 In preparing all of the proposals set out in this chapter, we have considered the FCA's duty to promote effective competition in the interests of consumers. We believe that the changes we are proposing to the guidance in COBS will have a positive impact on competition, as effective and engaging consumer information will help consumers better understand the choices available to them and incentivise firms to supply the products and services that consumers want. We

⁴⁹ See COBS 4.5.2R.

⁵⁰ For example, as a result of consumers having greater opportunity to put place a suitable solution for the repayment of their interest-only mortgages, firms may be likely to secure improved asset values and reduce the potential for further 'impaired' loans on their books. More widely, lowering the risk of repossession should, in turn, lessen the impact on the UK housing market, which should benefit the whole industry.

consider that the proposed change to the rule in the Mortgages and Home Finance: Conduct of Business sourcebook will have a neutral impact on competition in the relevant market.

Equality and diversity

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

8.

Changes to reporting requirements in the Supervision manual

Introduction

- 8.1** We collect regulatory data to inform and support our supervision of firms. Data requirements are set out in the Handbook, mainly in the Supervision manual (SUP). We use feedback from firms to clarify and improve these requirements. This chapter explains proposed improvements to regulatory reporting returns and supporting guidance.
- 8.2** This consultation will be of interest to firms undertaking home finance activity, insurers, firms falling into the Interim Prudential sourcebook for Investment Businesses (IPRU (INV)) Chapter 5 prudential requirements, consumer credit firms and non-European Economic Area (non-EEA) sub-groups.
- 8.3** The text of the proposed amendments, and the statutory powers they will be made under, are set out in Appendix 8 of this Consultation Paper.

Summary of proposals

Updating references in SUP 16.12.4R

- 8.4** We wish to remove the reference in SUP 16.12.4R to a rule that no longer exists. We propose to delete the reference to rule SUP 16.12.18AR contained in the table for regulated activity group 5 (RAG 5).

Q8.1 Do you have any comments on our proposal to update SUP 16.12.4R?

Clarification to reporting requirement notes in SUP 16.12.11

- 8.5** The notes accompanying the reporting requirements for data items FSA034, FSA035 and FIN071 are not consistent with IPRU(INV). We therefore propose to correct the accompanying notes for these data items in SUP 16.12.11 to ensure they are consistent with the existing rules in IPRU(INV).

Q8.2 Do you have any comments on our proposals to correct the accompanying notes for the reporting requirements for data items FSA034, FSA035 and FIN071?

Correction to reporting requirements in SUP 16.12 for consumer credit firms

8.6 There are two errors in the reporting requirements for consumer credit firms that we wish to correct:

- change SUP 16.12.29B(2) as the consumer credit data items should apply to a not-for-profit debt advice body or a not-for-profit body, and
- data item CCR005 (client money and assets) so it applies to a CASS debt management firm unless subject to a requirement imposed under section 55L of FSMA stating that it must not hold client money or such a requirement to the same effect

Q8.3 Do you have any comments on our proposal to correct the reporting requirements for consumer credit firms?

Changes to guidance notes for the retail mediation activity return (RMAR)

8.7 We propose to make two changes to our guidance notes for the RMAR. We propose to:

- alter the guidance for question 17 in section G so it states that the dropdown menu offers a choice of either 'Yes' or 'No' rather than 'Y' or 'N' as currently stated

Q8.4 Do you have any comments on our proposals to alter the guidance for section G of the RMAR?

Change to guidance notes for FSA028 (non-EEA sub-groups)

8.8 Following the deletion of questions 1 and 2 from data item FSA028 we propose to update the guidance to remove reference to these questions.

Q8.5 Do you have any comments on our proposal to remove reference to questions 1 and 2 in the guidance notes for FSA028?

Changes to guidance notes for consumer credit data items CCR001 to CCR007

8.9 We propose a number of changes to the guidance notes for the data items CCR001 to CCR007 relating to consumer credit activities. These are intended to improve the clarity of the guidance, following queries from firms, and to promote greater consistency in completion of the returns.

8.10 Several of the changes and clarifications that firms should be aware of include:

- firms that report CCR001 every six months should report their income and retained profit on a cumulative basis
- firms that report CCR002 or CCR007 should include all revenue generated as a result of undertaking the regulated business
- firms that report CCR002 on an annual basis and are reporting for the first time should annualise their income for the purpose of fees reporting (Q12) to make it representative for the full year's activity
- in the case of debt purchasing, a transaction is the acquisition of a debt, and
- in the case of credit broking, a transaction is irrespective of whether a credit agreement or consumer hire agreement is entered into

8.11 We are not proposing any changes to the data items themselves, but may consider these in a subsequent consultation. We would welcome views from firms and other stakeholders on aspects of the current data items or the associated guidance that might benefit from future changes.

Q8.6 Do you have any comments on our proposals to alter the guidance for consumer credit data items?

Q8.7 Do you have any suggestions for possible future changes to the CCR001 to CR007 data items or the associated guidance?

Cost benefit analysis

8.12 Sections 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis when proposing draft rules. Section 138L(3) of FSMA provides that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increases will be of minimal significance. Having assessed the changes proposed in this chapter and having considered previous estimates of similar reporting changes, we believe this exemption applies to the items proposed in this chapter, as set out in more detail below.

Updating references in SUP 16.12.4R

8.13 This change has no cost implications for firms as it is simply correcting a reference to a rule in SUP.

Clarification to reporting requirement notes in SUP 16.12

8.14 This change has no cost implications for firms as it simply provides improved clarity to our rules.

Correction to reporting requirements in SUP 16.12 for consumer credit firms

8.15 This change relating to CCR005 has no cost implications for firms because they are currently reporting in this way and the rules are being changed to comply with the original policy intention.

8.16 Removing the exemption in SUP 16.12.29B(2) will require approximately 100 not-for-profit bodies to report consumer credit data items. Of these, approximately 80 firms will only be required to report one of these items, CCR007, which only collects a small amount of data. In practice, some of these firms are already reporting these data items to us. Based on our previous estimates for reporting costs we expect this to cost industry a total of approximately £10,000 annually (based on approximately four hours' work over the year to prepare and report the data to us). However, as some of these firms already report this information to us the costs are likely to be lower than this estimate.

8.17 In terms of benefits, collecting this information will provide us with a more complete dataset for the consumer credit market. These data provide us with an overview of the activity of the reporting firm, which facilitates our supervision and improves our understanding of the market.

Changes to guidance notes for the RMAR

8.18 No reporting requirements are being changed, therefore, we expect this change to have no cost implications for firms.

Change to guidance notes for FSA0028 (non-EEA sub-groups)

- 8.19** No reporting requirements are being changed, therefore, we expect this change to have no cost implications for firms.

Changes to guidance notes for consumer credit data items CCR001 to CCR007

- 8.20** No reporting requirements are being changed, therefore, we expect this change to have no cost implications for firms. The improved clarity may make it easier and more efficient to complete the consumer credit data items, potentially reducing firms' costs.

Q8.8 Do you have any comments about our cost assessments?

Impact on mutual societies

- 8.21** Section 138K(2) 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 changes do not impact on mutual societies more than on other authorised firms.

Compatibility statement

- 8.22** 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 also need to carry out our general functions in a way that promotes effective competition in the interests of consumers.
- 8.23** The proposed changes in this chapter will allow us to collect more accurate firm data and process it more efficiently. In turn, this will allow more effective supervision of firms and will help us to advance our consumer protection objective.
- 8.24** We do not believe that the proposed changes will have an impact on competition. The changes are expected to impose minimal costs on firms and do not affect firms' incentives or ability to compete in the market.

Equality and diversity

- 8.25** Overall, we do not believe that the proposals in this chapter adversely impact any of the groups with protected characteristics specified in legislation i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 8.26** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and, if necessary, will revisit them when we publish the final rules.
- 8.27** We welcome any input to this consultation on these matters.

Appendix 1

List of questions

- Q2.1:** Do you agree with our changes to EG and DEPP?
- Q3.1:** Do you have any comments or suggestions relating to our proposed signposts to the ESMA guidelines in MAR 1.2.19AG and MAR 1.3.24G?
- Q3.2:** Do you have any other comments or suggestions regarding our changes to align the Handbook with the commodity derivative guidelines?
- Q3.3:** Do you have any comments or suggestions on our proposed amendments to MAR 1.3.21G and MAR 1.3.23G?
- Q4.1:** Do you agree with our proposals to require firms to tell us that they are complying with the new requirements in the IA?
- Q4.2:** Do you agree with our proposed amendments to EG?
- Q4.3:** Do you agree with our conclusion that the costs resulting from our proposals will be of minimal significance?
- Q5.1:** Do you agree with the proposed amendment of PR 1.2.3R(1) and (7) and the proposed insertion of PR 1.2.3AEU?
- Q5.2:** Do you agree with the proposed amendment to the definition of 'ESMA Prospectus Questions and Answers' in the Glossary and PR Appendix 1?
- Q5.3:** Do you agree with the proposal to amend the definition of the UK Corporate Governance Code in the Glossary and LR Appendix 1?
- Q5.4:** Do you agree with our proposed transitional provisions in LR?
- Q6.1:** Do you agree with the proposal to introduce a standard template for the notification of liquidity incentive schemes?

- Q6.2:** If so, do you agree with the proposed standard template outlined in Appendix 6?
- Q6.3:** Do you agree with the proposed amendment to the wording in REC 2.3?
- Q7.1:** Do you agree with the proposed new guidance in COBS 14.2?
- Q7.2:** Do you agree with the proposed changes to MCOB 7.5.3R and MCOB 7.5.4R?
- Q7.3:** Do you have any comments on our analysis of the costs and benefits of the proposed changes in this chapter?
- Q8.1:** Do you have any comments on our proposal to update SUP 16.12.4R?
- Q8.2:** Do you have any comments on our proposals to correct the accompanying notes for the reporting requirements for data items FSA034, FSA035 and FIN071?
- Q8.3:** Do you have any comments on our proposal to correct the reporting requirements for consumer credit firms?
- Q8.4:** Do you have any comments on our proposals to alter the guidance for section G of the RMAR?
- Q8.5:** Do you have any comments on our proposals to remove reference to questions 1 and 2 in the guidance notes for FSA028?
- Q8.6:** Do you have any comments on our proposals to alter the guidance for consumer credit data items?
- Q8.7:** Do you have any suggestions for possible future changes to the CCR001 to CR007 data items or the associated guidance?
- Q8.8:** Do you have any comments about our cost assessments?

Appendix 2

Changes to DEPP and EG following the Bank Recovery and Resolution Order 2016

**ENFORCEMENT (BANK RECOVERY AND RESTITUTION ORDER 2016) INSTRUMENT
2017**

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 139A (Power of the FCA to give guidance); and
 - (2) section 395 (The FCA’s and PRA’s procedures).

Commencement

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

Amendments to the Handbook

- C. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex A to this instrument.

Material outside the Handbook

- D. The Enforcement Guide (EG) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Enforcement (Bank Recovery and Resolution Order 2016) Instrument 2017.

By order of the Board
[*date*]

Annex A

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Statutory notices and the allocation of decision making

...

2 Annex Supervisory notices

2

...

Section of the Act	Description	Handbook reference	Decision maker
...
63ZC(4) 63ZC(8) 63ZC(9)(b)	when the <i>FCA</i> is exercising its power to vary, on its own initiative, an approval granted to an <i>SMF manager</i>		<i>RDC</i> or <i>executive procedures</i> See <i>DEPP 2.5.8AG</i> and <i>DEPP 2.5.8BG</i>
<u>71H(2), (3), (4), (9) or (11)(a)</u>	<u>where the <i>FCA</i> is proposing or deciding to impose or vary a requirement in relation to a director or senior executive under section 71B or 71C(2) or (8) or to appoint or vary the terms of appointment of a temporary manager under section 71C(1)</u>		<u><i>RDC</i></u>
...

Annex B

Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text.

8 Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms

...

8.8 Other relevant powers

Removal of directors and senior executives and appointment of temporary managers

8.8.1 The Bank Recovery and Resolution Order 2016 amended the Act by adding sections 71B to 71I. The FCA has powers to remove directors and senior executives and to appoint temporary managers of relevant firms or parent undertakings, as defined by section 71I of the Act. Where a temporary manager has been appointed, the FCA also has powers to require the directors not to exercise specified functions during the period of appointment and to consult the temporary manager, or obtain the consent of the temporary manager, before taking specified decisions or specified action. The FCA will exercise these powers in accordance with the conditions and procedures set out in the relevant sections of the Act.

Appendix 3

Changes to the Market Conduct sourcebook relating to ESMA guidelines on commodity derivatives

**MARKET CONDUCT SOURCEBOOK (COMMODITY DERIVATIVES INSIDE
INFORMATION) INSTRUMENT 2017**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 (the “Act”).

Commencement

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

Amendments to the Handbook

- C. The Market Conduct sourcebook (MAR) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Market Conduct Sourcebook (Commodity Derivatives Inside Information) Instrument 2017.

By order of the Board
[*date*]

Annex

Amendments to the Market Conduct sourcebook (MAR)

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

1 Market Abuse

1.2 Market Abuse: general

...

Inside information: commodity derivatives

...

1.2.19A G Issuers should be aware that ESMA has issued guidelines under article 7(5) of the Market Abuse Regulation which relate to the definition of inside information in the context of commodity derivatives. The guidelines are available at <https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives>.

...

1.3 Insider dealing

...

Examples of insider dealing

...

1.3.21 G The following description is intended to assist in understanding certain behaviours which may constitute *insider dealing* under the *Market Abuse Regulation* and concerns the definition of *inside information* relating to commodity derivatives.

Before the official publication of LME stock levels, a metals trader learns (from an *insider*) that there has been a significant decrease in the level of LME aluminium stocks. This information is ~~routinely made available to users of that trading venue~~ reasonably expected to be disclosed in accordance with market practice or custom on the LME. The trader buys a substantial number of *futures* in that metal on the LME, based upon his knowledge of the significant decrease in aluminium stock levels.

...

1.3.23 G The following connected descriptions are intended to assist in understanding certain behaviours which may constitute *insider dealing* under the *Market*

Abuse Regulation and concern the differences in the definition of *inside information* for commodity derivatives and for other *financial instruments*.

- (1) A *person* deals, on a *trading venue*, in the equities of XYZ plc, a commodity producer, based on *inside information* concerning that company.
- (2) A *person* deals, in a commodity futures contract traded on a *trading venue*, based on the same information, provided that the information is ~~required to be disclosed under the rules of~~ reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the *EU* or national level, market rules, contract, practice or custom, on the relevant commodity futures market.

1.3.24 G Issuers should be aware that *ESMA* has issued guidelines under article 7(5) of the *Market Abuse Regulation* which relate to the definition of *inside information* in the context of commodity derivatives. The guidelines are available at <https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives>.

Appendix 4

Changes to Immigration Act compliance reporting

IMMIGRATION REGULATIONS (AMENDMENT) INSTRUMENT 2017

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 69 (Statement of policy) as applied by regulation 28(1) of the Immigration Act 2014 (Bank Accounts) Regulations 2014 (“the Immigration Regulations”);
 - (b) section 137A (The FCA’s general rules);
 - (c) section 137T (General supplementary powers);
 - (d) section 139A (Power of the FCA to give guidance);
 - (e) section 210 (Statements of policy) as applied by regulation 28(2) of the Immigration Regulations; and
 - (f) section 395 (The FCA’s and PRA’s procedures) as applied by regulation 29 of the Immigration Regulations; and
 - (2) the power of direction in regulation 9(1) of the Immigration Regulations.
- 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 Supervision manual (SUP) is amended in accordance with Annex A to this instrument.

Amendments to material outside the Handbook

- E. The Enforcement Guide (EG) is amended in accordance with Annex B to this instrument.

Notes

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

Citation

- G. This instrument may be cited as the Immigration Regulations (Amendment) Instrument 2017.

By order of the Board
[*date*]

Annex A

Amendments to the Supervision manual (SUP)

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

16.19 Immigration Act compliance reporting

Application

- 16.19.1 D (1) This section applies to a *firm* which is subject to any of the following provisions of the Immigration Act 2014:
- (a) the prohibition on opening a current account for a disqualified person in section 40 ~~of the Immigration Act 2014~~;
 - (b) the requirement to carry out immigration checks in relation to current accounts in section 40A;
 - (c) the requirement to notify the existence of current accounts for disqualified persons in section 40B; and
 - (d) the requirement to close an account in accordance with section 40G.

...

[**Note:** A *firm* is subject to the prohibition in section 40 and the requirements in sections 40A, 40B and 40G of the Immigration Act 2014 if it is a “bank” or “building society” for the purposes of section 42 of the Immigration Act 2014.]

Annual compliance reporting

- 16.19.2 D A *firm* must report its compliance with ~~section~~ sections 40, 40A, 40B and 40G of the Immigration Act 2014 to the *FCA* annually.

...

**16
Annex
1AR** **FIN-A Annual Report and Accounts**

...		
Immigration Act 2014		
2	Has the firm complied with the prohibition in section 40 of the Immigration Act 2014, <u>the requirements imposed by or under section 40A, 40B</u>	Yes / No / N/A

	and 40G of the Immigration Act 2014 and any requirements imposed by or under the Immigration Act 2014 (Bank Accounts) Regulations 2014?	
--	-----------------------------------------------------------------------------------------------------------------------------------------	--

**16
Annex
1BG**

Guidance notes for the completion of FIN-A

...

Data elements

These are referred to by row first, then by column, so data element 2A will be row 2 and column A.

Main Details

...	
2A	<p>Has the firm complied with the prohibition in section 40 of the Immigration Act 2014, <u>the requirements imposed by or under sections 40A, 40B and 40G of the Immigration Act 2014 and any requirements imposed by or under the Immigration Act 2014 (Financial Services Bank Accounts) Regulations 2014?</u></p> <p>Firms should indicate whether they are in compliance with their obligations under the Immigration Act as at the end of the reporting period by selecting one of 'Yes', 'No' or 'N/A'.</p> <p>Firms should only select 'N/A' if they are not subject to obligations under the Immigration Act 2014.</p>

Annex B**Amendments to the Enforcement Guide (EG)**

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

19 Non-FSMA powers

...

Immigration Act 2014 (Bank Account) Regulations 2014

- 19.29.1 The *Immigration Regulations* (as amended by the Immigration Act 2014 (Current Accounts) (Excluded Accounts and Notification Requirements) Regulations 2016) give the FCA investigation and sanctioning powers in relation to the contravention of ~~section~~ sections 40, 40A, 40B and 40G of the Immigration Act 2014 (as amended by the Immigration Act 2016) (the Immigration Act), as well as the contravention of requirements imposed by, or under, the *Immigration Regulations*.

...

Appendix 5

Minor amendments to LR and PR

**LISTING RULES AND PROSPECTUS RULES (MISCELLANEOUS
AMENDMENTS) INSTRUMENT 2017**

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 73A (Part 6 Rules);
 - (2) section 84 (Matters which may be dealt with by prospectus rules);
 - (3) section 96 (Obligations of issuers of listed securities)
 - (4) section 137A (The FCA’s general rules);
 - (5) section 137T (General supplementary powers); and
 - (6) 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*] 2017.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Listing Rules sourcebook (LR)	Annex B
Prospectus Rules sourcebook (PR)	Annex C

European Union Legislation

- E. Although European Union Legislation is reproduced in this instrument, only European Union legislation reproduced in the Official Journal of the European Union is deemed authentic.

Citation

- F. This instrument may be cited as the Listing Rules and Prospectus Rules (Miscellaneous Amendments) Instrument 2017.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

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

<i>Prospectus Regulation</i>	Regulation (EU) No []/[2017] of the European Parliament and of the Council of [] 2017 on the prospectus to be published when securities are offered to the public or admitted to trading
------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Amend the following definitions as shown.

<i>ESMA Prospectus Questions and Answers</i>	the Questions and Answers for prospectuses published by <i>ESMA</i> (ESMA/2016/576) (<u>ESMA/2016/1674</u>).
----------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------

...

<i>UK Corporate Governance Code</i>	the UK Corporate Governance Code published in September 2014 <u>April 2016</u> by the Financial Reporting Council, available at: https://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate-Governance-Code.aspx .
-------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Annex B

Amendments to the Listing Rules sourcebook (LR)

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

App 1.1 Relevant definitions

Note: The following definitions relevant to the *listing rules* are extracted from the *Glossary*.

App 1.1.1

...	
<i>UK Corporate Governance Code</i>	the UK Corporate Governance Code published in September 2014 <u>April 2016</u> by the Financial Reporting Council, available at: <u>https://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate-Governance-Code.aspx</u> .
...	

...

Amend the following as shown.

TR 13 Transitional Provisions for the UK Corporate Governance Code

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
1.	LR 9.8.6R(3)	R	<p>In the case of an annual financial report of a <i>listed company</i> or a <i>closed-ended investment fund</i> incorporated in the <i>United Kingdom</i> for an accounting period ending between 31 May 2015 and 29 September 2015: (1) <i>LR 9.8.6R(3)</i> does not apply; and (2) its annual financial report must include a statement by the <i>directors</i> that the business is a going concern, together with supporting assumptions or qualifications as necessary, prepared in accordance with the <i>Going Concern and Liquidity Risk: Guidance for Directors of UK Companies 2009</i>, published by the <i>Financial Reporting Council</i> in October 2009.</p> <p>[expired]</p>	From 23 October 2015 to 31 January 2016	23 October 2015
2.	LR 9.8.6R(5), LR 9.8.6R(6) and LR 15.6.6R(2)	R	<p>In the case of an annual financial report of a <i>listed company</i> or a <i>closed-ended investment fund</i> incorporated in the <i>United Kingdom</i> for an accounting period ending between 31 May 2015 and 29 September 2015, a reference to a <i>Main Principle, principle or provision in the UK Corporate Governance Code</i> must be read as a reference to a <i>Main Principle, principle or provision in the UK Corporate Governance Code</i> published by the <i>Financial Reporting Council</i> in September 2012.</p> <p>[expired]</p>	From 23 October 2015 to 31 January 2016	23 October 2015

3.	LR 9.8.10R	R	<p>In the case of an annual financial report of a <i>listed company</i> or a <i>closed-ended investment fund</i> incorporated in the <i>United Kingdom</i> for an accounting period ending between 31 May 2015 and 29 September 2015: (1) LR 9.8.10R does not apply; and (2) the <i>listed company</i> or <i>closed-ended investment fund</i> must ensure that the auditors review the following before the annual report is published: (a) the statement by the <i>directors</i> in the annual financial report that the business is a going concern, together with supporting assumptions or qualifications as necessary, prepared in accordance with the Going Concern and Liquidity Risk: Guidance for Directors of UK Companies 2009, published by the Financial Reporting Council in October 2009; and (b) the parts of the statement required by LR 9.8.6R(6) (Comply or explain) that relate to C.1.1, C.2.1 and C.3.1 to C.3.7 of the UK Corporate Governance Code published by the Financial Reporting Council in September 2012. [expired]</p>	From 23 October 2015 to 31 January 2016	23 October 2015
4.	<u>LR 9.8.6R(3), LR 9.8.6R(5), LR 9.8.6R(6) and LR 15.6.6R(2)</u>	R	<p>In the case of an annual financial report of a <i>listed company</i> or a <i>closed-ended investment fund</i> incorporated in the <i>United Kingdom</i> for an accounting period ending before 16 June 2017, a reference to a <u>Main Principle, principle or provision in the UK Corporate Governance Code</u> must be read as a reference to a <u>Main Principle, principle or provision in the UK Corporate Governance Code published by the Financial Reporting Council in September</u></p>	From [] 2017 to [] 2017	[] 2017

			<u>2014.</u>		
<u>5.</u>	<u>LR 9.8.10R</u>	<u>R</u>	<p><u>In the case of an annual financial report of a <i>listed company</i> or a <i>closed-ended investment fund</i> incorporated in the <i>United Kingdom</i> for an accounting period ending before 16 June 2017:</u></p> <p><u>(1) LR 9.8.10R does not apply;</u> <u>and</u> <u>(2) the <i>listed company</i> or <i>closed-ended investment fund</i> must ensure that the auditors review the following before the annual report is published:</u> <u>(a) LR 9.8.6R(3) (statements by the directors regarding going concern and longer-term viability); and</u> <u>(b) the parts of the statement required by LR 9.8.6R(6) (comply or explain) that relate to C.1.1, C.2.1 and C.2.3, and C.3.1 to C.3.8 of the UK Corporate Governance Code published by the Financial Reporting Council in September 2014.</u></p>	<u>From []</u> <u>2017 to []</u> <u>2017</u>	<u>[] 2017</u>

Annex C

Amendments to the Prospectus Rules sourcebook (PR)

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

1 Preliminary

...

1.2 Requirement for a prospectus and exemptions

...

Exempt securities – admission to trading on a regulated market

1.2.3 R In accordance with section 85(6)(b) of the *Act*, section 85(2) of the *Act* does not apply to the *admission to trading* of the following types of *transferable securities*:

(1) ~~shares representing, over a period of 12 months, less than 10 per cent of the number of shares of the same class already admitted to trading on the same regulated market~~ transferable securities referred to in article 1(4)(a) of the *Prospectus Regulation*;

...

(7) ~~shares resulting from the conversion or exchange of other transferable securities or from the exercise of the rights conferred by other transferable securities, if the shares are of the same class as the shares already admitted to trading on the same regulated market~~ shares referred to in article 1(4)(b) of the *Prospectus Regulation*;

...

1.2.3A EU Article 1(4)(a) and (b) of the *Prospectus Regulation* provide that:

Article 1

Purpose, scope and exemptions

...

4. The obligation to publish a prospectus shall not apply to the admission to trading on a regulated market of any of the following:

(a) securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20 per cent of the number of securities already admitted to trading on the same regulated market;

(b) shares resulting from the conversion or exchange of other

securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares represent, over a period of 12 months, less than 20 per cent of the number of shares of the same class already admitted to trading on the same regulated market.

The requirement that the resulting shares represent, over a period of 12 months, less than 20 per cent of the number of shares of the same class already admitted to trading on the same regulated market as referred to in point (b) shall not apply in any of the following cases:

(i) where a prospectus was drawn up in accordance with either this Regulation or Directive 2003/71/EC upon the offer to the public or admission to trading of the securities giving access to the shares;

(ii) where the securities giving access to the shares were issued before the entry into force of this Regulation;

(iii) where the shares qualify as Common Equity Tier 1 items as laid down in Article 26 of Regulation (EU) No 575/2013 of an institution as defined in Article 4(1)(3) of that regulation and result from the conversion of Additional Tier 1 instruments issued by that institution due to the occurrence of a trigger event as laid down in Article 54(1)(a) of that regulation;

(iv) where the shares qualify as eligible own funds or eligible basic own funds as defined in Section 3 of Chapter VI of Title I of Directive 2009/138/EC, and result from the conversion of other securities which was triggered for the purposes of fulfilling the obligations to comply with the Solvency Capital Requirement or Minimum Capital Requirement as defined in Sections 4 and 5 of Chapter VI of Title I of Directive 2009/138/EC or the group solvency requirement as laid down in Title III of Directive 2009/138/EC;

...

Insert the following new definition in the appropriate alphabetical position and amend the existing definition as shown.

App 1.1 Relevant definitions

App
1.1.1 **Note:** The following definitions relevant to the *prospectus rules* are extracted from the *Glossary*.

...	
<i>ESMA Prospectus Questions</i>	the Questions and Answers for prospectuses published by <i>ESMA</i> (ESMA/2016/576) (<i>ESMA/2016/1674</i>).

<i>and Answers</i>	
...	
<u><i>Prospectus Regulation</i></u>	<u>Regulation (EU) No []/[2017] of the European Parliament and of the Council of [] 2017 on the prospectus to be published when securities are offered to the public or admitted to trading.</u>
...	

Appendix 6

Changes to REC 3.9 and MAR 5.6, and minor amendments to REC 2.3

TRADING VENUES INSTRUMENT 2017

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance); and
 - (4) section 293 (Power to make notification rules in respect of recognised bodies).
- B. The rule-making powers referred to 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 Market Conduct (MAR) sourcebook is amended in accordance with Annex A, and the Recognised Investment Exchanges sourcebook (REC) is amended in accordance with Annex B of this instrument.

Citation

- E. This instrument may be cited as the Trading Venues Instrument 2017.

By order of the Board
[date 2017]

Annex A

Amendments to the Market Conduct sourcebook (MAR)

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

5 Multilateral trading facilities (MTFs)

...

5.6 Reporting requirements

5.6.1 R ...

5.6.2 R A firm operating an MTF must give the FCA a summary of:

(1) any proposal to introduce, amend or renew a scheme for rebating or waiving fees or charges levied on its members or participants (or any group or class of them), at the same time as the proposal is communicated to those members or participants; and

(2) any such change, no later than the date when it is published or notified to the members or participants.

5.6.3 R The summary referred to in MAR 5.6.2R(1) must be given in the form specified in Annex 1R.

After MAR 5.9 (Post-trade transparency requirements for shares) insert the following form as a separate Annex. All the text is new and is not underlined.

**5 Annex Form for reporting incentive scheme proposals (MAR 5.6.3R(1))
1R**

...

Annex 1 – Incentive Schemes (MAR 5.6.3R)

Notification of incentive schemes	
Name of the Trading Venue:	Date submitted (DD/MM/YYYY):
Name and Reference Number of Operator:	
Incentive scheme name:	
Period of the scheme (DD/MM/YYYY – DD/MM/YYYY):	
<p>Is the scheme new, or a renewal of an existing scheme?</p> <p>If this is a renewal of an existing scheme, please complete the supplementary <i>Incentive scheme renewals</i> section, at page [3] of this form.</p>	
List the financial instruments to which the incentive scheme relates.	
<p>Purpose:</p> <p>Explain the rationale behind the incentive scheme proposal and the benefits the scheme is intended to generate. Please provide details of how you propose to measure whether the scheme has been effective in delivering these benefits.</p>	
<p>Scheme summary:</p> <p>Please provide a summary of the key terms of the scheme. The following items are not an exhaustive list of relevant items, but should at a minimum be addressed in the summary:</p> <ul style="list-style-type: none"> • Describe which members may be eligible for the scheme. If the scheme is open to a restricted number of members, please explain how members will be selected in the event of over-subscription. • Explain the expected obligations of the participants. If participants will be invited to bid obligations, please describe how bids will be 	

<p>assessed and any benchmark that will be used for such assessment.</p> <ul style="list-style-type: none"> • Provide details of the incentive being offered. If the incentive varies according to performance, please provide worked examples of how incentives will be calculated. • Describe the way in which participants will receive the incentive (for example, as a discount applied to trading fee invoices). • Indicate the duration of the scheme. (The FCA generally expects the duration of an incentive scheme to be for a period of one year or less. Any incentive scheme for a period longer than one year will have to be reviewed and renewed on an annual basis at a minimum.) 	
<p>Scheme regulatory analysis: <i>The regulatory analysis should address the following aspects, in order to demonstrate the level of risk the scheme will pose to market integrity. If additional information is required to support the analysis below, please append this.</i></p>	
<p>Transparency of the scheme:</p> <ul style="list-style-type: none"> (i) Please explain how the terms of the incentive scheme will be made available to potential applicants. (ii) Please provide a copy of any proposed communications with applicants. (iii) If the scheme requires potential participants to subscribe or bid, how much notice will potential applicants be given prior to the scheme's launch? 	
<p>Fair and orderly trading: Please explain the assessment the trading venue has made of:</p> <ul style="list-style-type: none"> (i) the risk of orders being placed or modified, or transactions being executed, for purposes other than those intended by the scheme; (ii) any risk that the scheme could distort the price formation process; (iii) the relationship between the scheme's benefit and the costs which it is intended to alleviate; (iv) any risks that could arise if the scheme 	

<p>enables participants to use the benefits of the scheme, in trading any other instrument other than the instrument to which the scheme relates (e.g. fee credits that could be used in trading other instruments);</p> <p>(v) any risks that could arise in the event that a scheme participant is eligible to simultaneously take part in any other incentive arrangement offered by the trading venue; and</p> <p>(vi) whether the same benefits will be available to the venue's users which are carrying out equivalent activities on its markets and performing to a comparable standard.</p> <p>Please confirm whether or not, in certain circumstances, a scheme participant could receive rebates in relation to transactions covered by the scheme which exceed the fees due to the trading venue from the participant for such transactions (taking into account, where applicable, any other fee rebates or 'holidays' to which the participant is entitled).</p> <p>Please also confirm that the scheme does not amount to a 'cliff edge' where, upon reaching a certain threshold, a discounted rate is applied not only to those trades which are incremental to the threshold, but to all trades which have gone before it in a particular fee period.</p>	
<p>Market monitoring and surveillance arrangements:</p> <p>Please confirm that there are sufficient market monitoring and surveillance arrangements in place to prevent abuse of the incentive scheme structure that could encourage disorderly and improper trading to occur.</p>	
<p>Incentive scheme renewals:</p> <p><i>In the case of a renewal of an existing scheme currently in force, please complete the following section below. If additional information to support the answers below is required (e.g. graphs, breakdown of statistics etc) which you have assessed internally as necessary to ensure the scheme continues to meet your regulatory requirements, please append these.</i></p>	
<p>Name the participants for most recent period of scheme.</p>	
<p>Have the terms of the scheme been changed? If so,</p>	

please detail how and why.	
How will the trading venue communicate the renewal of this scheme to all existing and new participants?	
Please provide the following information relating to the scheme for the most recent period: <ul style="list-style-type: none"> • Amounts paid out/rebated to each individual participant; • Total amount paid out/rebated in the scheme. 	
Have there been any instances of improper or disorderly trading over the last period of operation of the scheme? Are there any other additional issues about this scheme that have been flagged through your market surveillance monitoring?	
Compliance sign off <i>Senior manager to sign off on this submission on behalf of the operator of the trading venue, to verify the factual accuracy of the information submitted, and that the proposed scheme is in compliance with relevant requirements.</i>	
Name:	Signature:
Date (DD/MM/YYYY):	

Amend the following as shown.

Sch 2 Notification requirements

...

Sch 2.2G Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...
<u>MAR 5.6.2R(1)</u>	<u>Proposal to change fee incentive scheme</u>	<u>Summary of proposal in the form set out in Annex 1</u>	<u>Proposal communicated to members</u>	<u>Without delay</u>

<u>MAR 5.6.2R(2)</u>	<u>Change to fee incentive scheme</u>	<u>Summary of change</u>	<u>Change published or notified to members</u>	<u>Without delay</u>
----------------------	---------------------------------------	--------------------------	------------------------------------------------	----------------------

Annex B

Amendments to the Recognised Investment Exchanges sourcebook (REC)

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

2.3 Financial resources

...

2.3.10 Operational and other risks: individual guidance

- G The *FCA* would expect to provide a *UK recognised body* with individual guidance, issued with a frequency determined in accordance with the usual prudential cycle for such bodies, communicated from time to time, on the amount of eligible financial resources which it considers would be sufficient for the *UK recognised body* to hold in respect of operational and other risks ~~in order~~ to satisfy the *recognition requirements*. In formulating its individual *guidance*, the *FCA* will ordinarily apply the approach described in *REC* 2.3.9G for *UK RIEs*.

...

- 2.3.16 G The *FCA* would normally expect to use the most recent financial risk assessment prepared by the *UK RIE* in the course of preparing individual guidance, issued in accordance with the usual prudential cycle for such bodies, on the amount of financial resources that it considers is sufficient for a *UK RIE* to hold ~~in order~~ to satisfy the *recognition requirements*. The financial risk assessment would provide the basis for calculating the amount of eligible financial resources that should be held by the *UK RIE* under the risk-based approach.

...

- 2.3.20 G The *FCA* would expect to consider the relevant annual financial risk assessment, any proposal with respect to an operational risk buffer and, if applicable, the consolidated balance sheet, in formulating, in accordance with the usual prudential cycle for *UK RIEs*, its *guidance* on the amount of eligible financial resources it considers to be sufficient for the *UK RIE* to hold ~~in order to meet~~ for the *recognition requirements*. In formulating its *guidance*, the *FCA* would, where relevant, consider whether or not the financial risk assessment makes adequate provision for the following risks:

...

...

3.9 Fees and incentive schemes

...

- 3.9.2 R A *UK recognised body* must give the *FCA* a summary of:
- (1) any proposal to change the fees or charges levied on its *members* (or any group or class of them), at the same time as the proposal is communicated to those *members*; and
 - (2) any such change, no later than the date when it is published or notified to those *members*.
- 3.9.3 R If the proposed change is to introduce, amend or renew a scheme for rebating or waiving fees or charges, the summary referred to in REC 3.9.2R(1) must be given in the form specified in REC Annex 1R.

After REC 3.26 (Proposals to make regulatory provision) insert the following form as a separate Annex. All the text is new and is not underlined.

3 Annex Form for notifying incentive scheme proposals (REC 3.9.3R(1))
1R

Annex 1 – Incentive Schemes (REC 3.9.3R)

Notification of incentive schemes		
Name of the Trading Venue:		Date submitted (DD/MM/YYYY):
Name and Reference Number of Operator:		
Incentive scheme name:		
Period of the scheme (DD/MM/YYYY – DD/MM/YYYY):		
<p>Is the scheme new, or a renewal of an existing scheme?</p> <p>If this is a renewal of an existing scheme, please complete the supplementary <i>Incentive scheme renewals</i> section, at page [3] of this form.</p>		
List the financial instruments to which the incentive scheme relates.		
<p>Purpose:</p> <p>Explain the rationale behind the incentive scheme proposal and the benefits the scheme is intended to generate. Please provide details of how you propose to measure whether the scheme has been effective in delivering these benefits.</p>		
<p>Scheme summary:</p> <p>Please provide a summary of the key terms of the scheme. The following items are not an exhaustive list of relevant items, but should at a minimum be addressed in the summary:</p> <ul style="list-style-type: none"> • Describe which members may be eligible for the scheme. If the scheme is open to a restricted number of members, please explain how members will be selected in the event of over-subscription. • Explain the expected obligations of the participants. If participants will be invited to bid obligations, please describe how bids will be assessed and any benchmark that will be used for 		

<p>such assessment.</p> <ul style="list-style-type: none"> • Provide details of the incentive being offered. If the incentive varies according to performance, please provide worked examples of how incentives will be calculated. • Describe the way in which participants will receive the incentive (for example, as a discount applied to trading fee invoices). • Indicate the duration of the scheme. (The FCA generally expects the duration of an incentive scheme to be for a period of one year or less. Any incentive scheme for a period longer than one year will have to be reviewed and renewed on an annual basis at a minimum.) 	
<p>Scheme regulatory analysis: <i>The regulatory analysis should address the following aspects, in order to demonstrate the level of risk the scheme will pose to market integrity. If additional information is required to support the analysis below, please append this.</i></p>	
<p>Transparency of the scheme:</p> <ul style="list-style-type: none"> (i) Please explain how the terms of the incentive scheme will be made available to potential applicants. (ii) Please provide a copy of any proposed communications with applicants. (iii) If the scheme requires potential participants to subscribe or bid, how much notice will potential applicants be given prior to the scheme's launch? 	
<p>Fair and orderly trading: Please explain the assessment the trading venue has made of:</p> <ul style="list-style-type: none"> (i) the risk of orders being placed or modified, or transactions being executed, for purposes other than those intended by the scheme; (ii) any risk that the scheme could distort the price formation process; (iii) the relationship between the scheme's benefit and the costs which it is intended to alleviate; (iv) any risks that could arise if the scheme enables participants to use the benefits of the 	

<p>scheme, in trading any other instrument other than the instrument to which the scheme relates (e.g. fee credits that could be used in trading other instruments);</p> <p>(v) any risks that could arise in the event that a scheme participant is eligible to simultaneously take part in any other incentive arrangement offered by the trading venue; and</p> <p>(vi) whether the same benefits will be available to the venue's users which are carrying out equivalent activities on its markets and performing to a comparable standard.</p> <p>Please confirm whether or not, in certain circumstances, a scheme participant could receive rebates in relation to transactions covered by the scheme which exceed the fees due to the trading venue from the participant for such transactions (taking into account, where applicable, any other fee rebates or 'holidays' to which the participant is entitled).</p> <p>Please also confirm that the scheme does not amount to a 'cliff edge' where, upon reaching a certain threshold, a discounted rate is applied not only to those trades which are incremental to the threshold, but to all trades which have gone before it in a particular fee period.</p>	
<p>Market monitoring and surveillance arrangements:</p> <p>Please confirm that there are sufficient market monitoring and surveillance arrangements in place to prevent abuse of the incentive scheme structure that could encourage disorderly and improper trading to occur.</p>	
<p>Incentive scheme renewals:</p> <p><i>In the case of a renewal of an existing scheme currently in force, please complete the following section below. If additional information to support the answers below is required (e.g. graphs, breakdown of statistics etc) which you have assessed internally as necessary to ensure the scheme continues to meet your regulatory requirements, please append these.</i></p>	
<p>Name the participants for most recent period of scheme.</p>	
<p>Have the terms of the scheme been changed? If so, please detail how and why.</p>	

How will the trading venue communicate the renewal of this scheme to all existing and new participants?	
<p>Please provide the following information relating to the scheme for the most recent period:</p> <ul style="list-style-type: none"> • Amounts paid out/rebated to each individual participant; • Total amount paid out/rebated in the scheme. 	
<p>Have there been any instances of improper or disorderly trading over the last period of operation of the scheme? Are there any other additional issues about this scheme that have been flagged through your market surveillance monitoring?</p>	
<p>Compliance sign off</p> <p><i>Key Individual to sign off on this submission on behalf of the operator of the trading venue, to verify the factual accuracy of the information submitted, and that the proposed scheme is in compliance with relevant requirements.</i></p>	
Name:	Signature:
Date (DD/MM/YYYY):	

Appendix 7

Smarter Consumer Communications: changes to COBS and MCOB

CONDUCT OF BUSINESS (DISCLOSURE 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 Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (General rule-making power);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

- D. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex A to this instrument.
- E. The Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Conduct of Business (Disclosure Amendment) Instrument 2017.

By order of the Board
[*date*]

Annex A

Amendments to the Conduct of Business sourcebook (COBS)

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

4 Communicating with clients, including financial promotions

...

4.5 Communicating with retail clients

...

- 4.5.5 G When communicating information, a *firm* should consider whether omission of any relevant fact will result in information being insufficient, unclear, unfair or misleading. When considering whether a fact should be included in the communication or omitted from it, a *firm* should bear in the mind the guidance in COBS 4.2.2G to provide information which is appropriate and proportionate.

...

14 Providing product information to clients

...

14.2 Providing product information to clients

...

Providing additional information to the client

- 14.2.18 G (1) A *firm* that provides the product information required by this section is not precluded from providing additional information to the *client* (for example, in order to assist the *client's* understanding of the proposed transaction).
- (2) When providing additional information to the *client* a *firm* should have regard to the *fair, clear and not misleading rule*, the *client's best interests rule* and *Principles 6 and 7*.
- (3) In particular, when a *firm* provides additional information it should:
- (a) ensure that the additional information does not disguise, diminish or obscure important information contained in the product information required by this section;
- (b) consider whether any other *rules* or requirements in any directly applicable EU regulations apply to the

communication of that additional information. For example, for marketing communications relating to a UCITS scheme or EEA UCITS scheme see COBS 4.13.2R.

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.

7 Disclosure at start of contract and after sale

...

7.5 Mortgages: statements

...

Annual statement: content

7.5.3 R The statement required by *MCOB 7.5.1R* must contain the following:

(1) except in the case of *mortgage credit cards*, information on the type of *regulated mortgage contract*, including:

(a) a clear statement of whether the *regulated mortgage contract* is an *interest-only mortgage*, or *repayment mortgage*, or a combination of both; and

(b) a prominent reminder, where all of the *regulated mortgage contract* is an *interest-only mortgage*, that:

(i) the *customer's* payments to the *firm* do not include any costs of the *repayment strategy* (if that is the case); and

(ii) the *customer* should have in place arrangements to pay off the capital, and should check the performance of any *investments* they might have in place for this purpose;

~~using the following text: ‘This is an interest only mortgage. Your mortgage payments [include the costs of a savings plan/an investment that you] [do not include the costs of any savings plan or other investment you may] have arranged to build up a lump sum to repay the amount you borrowed. It is important to check regularly that your savings plan or other investment is on track to repay this mortgage at the end of the term.’~~

(c) a prominent reminder, where only part of the *regulated mortgage contract* is an *interest-only mortgage*, that:

(i) the *customer's* payments to the *firm* do not include any costs of the *repayment strategy* (if that is the case); and

- (ii) the *customer* should have in place arrangements to pay off the amount of the loan that is on an *interest-only* basis, and should check the performance of any *investments* they might have in place for this purpose;

~~using the following text: 'This mortgage includes [insert amount] borrowed on interest only terms. Your mortgage payments [include the costs of a savings plan/an investment that you] [do not include the costs of any savings plan or other investment you may] have arranged to build up a lump sum to repay this amount. It is important to check regularly that your savings plan or other investment is on track to repay the interest only part of your mortgage at the end of the term.'~~

...

...

- 7.5.4 R ~~Where payments are not being made for a *repayment strategy* (for example, for a *bridging loan*) the text in *MCOB 7.5.3 R(1)(b)(ii)* or *MCOB 7.5.3 R(1)(c)(ii)* is replaced with the following: "As all or part of your mortgage is an interest-only mortgage, it assumes that you pay back the total amount borrowed on an interest-only basis as a lump sum at the end of the mortgage term."~~ [deleted]

Appendix 8

Changes to reporting requirements in the Supervision manual

**SUPERVISION MANUAL (REPORTING No [x])
INSTRUMENT 2017**

Powers exercised

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

Commencement

- C. This instrument comes into force on 30 June 2017.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Supervision Manual (Reporting No [x]) Instrument 2017.

By order of the Board
[date]

Annex A

Amendments to the Supervision manual (SUP)

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

16 Reporting requirements

...

16.12 Integrated Regulatory Reporting

...

16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable <i>data items</i>	reporting frequency/period	due date
...				
RAG 5	<ul style="list-style-type: none"> <i>home finance administration or home finance providing activity</i> 	SUP 16.12.18AR, SUP 16.12.18BR and SUP 16.12.18CR	SUP 16.12.18AR, SUP 16.12.18BR and SUP 16.12.18CR	SUP 16.12.18AR, SUP 16.12.18BR and SUP 16.12.18CR
...				

...

Regulated Activity Group 2.2

16.12.9 R

...

	<i>Member's adviser</i>	the <u>The Society</u> (note 1)
--	-------------------------	--------------------------------------------

Description of <i>data item</i> and <i>data item</i>	Frequency	Submission deadline	Description of <i>data item</i>	Frequency	Submission deadline
...					
Note 13	<p>Only applicable to <i>firms</i> subject to <i>IPRU(INV)</i> 5. FSA034 must be completed by a <i>firm</i> not subject to the exemption in <i>IPRU(INV)</i> 5.4.2R, <u>unless it is a <i>firm</i> whose permitted business includes <i>establishing, operating or winding up a personal pension scheme</i> in which case FIN071 must be completed.</u></p> <p>FSA035 must be completed by a <i>firm</i> subject to the exemption in <i>IPRU(INV)</i> 5.4.2R.</p>				
...					

...

- 16.12.9A G A *Member's adviser* that is also an *IFPRU investment firm* will ~~also~~ fall under one of the higher number *RAGs* that apply to *IFPRU investment firms*. That means that it will have to report a ~~number of~~ *data items* in addition to the ~~ones~~ those that it has to supply under *RAG 2.2*.

...

Regulated Activity Group 3

...

- 16.12.11 R The applicable *data items* referred to in *SUP* 16.12.4R are set out according to *firm* type in the table below:

Description of <i>data item</i>	<i>Firms' prudential category and applicable data items</i> (note 1)	
	<i>IFPRU investment firms</i> and <i>BIPRU firms</i>	<i>Firms</i> other than <i>BIPRU firms</i> or <i>IFPRU investment firms</i>
...	...	
Note 14	<p>FSA034 must be completed by a <i>firm</i> not subject to the exemption in <i>IPRU(INV)</i> 5.4.2R, <u>unless it is a <i>firm</i> whose permitted business includes <i>establishing, operating or winding up a personal pension scheme</i> in which case FIN071 must be completed.</u></p> <p>FSA035 must be completed by a <i>firm</i> subject to the exemption in <i>IPRU(INV)</i> 5.4.2R, unless it calculates its own funds requirement in accordance with <i>IPRU(INV)</i> 5.4.10R,</p>	

	in which case FIN071 must be completed.
...	

...

Regulated Activity Group 4

...

- 16.12.15 R The applicable *data items* referred to in SUP 16.12.4R are set out according to firm type of ~~firm~~ ~~are set out~~ in the table below:

Description of data item	Firms' prudential category and applicable <i>data items</i> (note 1)	
	<i>IFPRU investment firms and BIPRU firms</i>	<i>Firms other than BIRPU firms or IFPRU investment firms</i>
...		
Note 14	<p>FSA034 must be completed by a <i>firm</i> not subject to the exemption in <i>IPRU(INV)</i> 5.4.2R, <u>unless it is a <i>firm</i> whose permitted business includes <i>establishing, operating or winding up a personal pension scheme</i> in which case FIN071 must be completed.</u></p> <p>FSA035 must be completed by a <i>firm</i> subject to the exemption in <i>IPRU(INV)</i> 5.4.2R, unless it calculates its own funds requirement in accordance with <i>IPRU(INV)</i> 5.4.10R, in which case FIN071 must be completed.</p>	

...

Regulated Activity Group 5

...

- 16.12.18 R [deleted]

...

Regulated Activity Group 6

...

- 16.12.19 R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

A

Description	Firms' prudential category and applicable <i>data items</i> (note 1)
-------------	----------------------------------------------------------------------

of data item	<i>IPRU(INV)</i> Chapter 3	<i>IPRU(INV)</i> Chapter 5	<i>IPRU(INV)</i> Chapter 9	<i>IPRU(INV)</i> Chapter 13
...	...			
Note 4	<p>FSA034 must be completed by a <i>firm</i> not subject to the exemption in <i>IPRU(INV)</i> 5.4.2R, unless it is a <i>firm</i> whose <u>permitted business includes <i>establishing, operating or winding up a personal pension scheme</i> in which case FIN071 must be completed.</u></p> <p>FSA035 must be completed by a <i>firm</i> subject to the exemption in <i>IPRU(INV)</i> 5.4.2R, unless (1) it calculates its own funds requirement in accordance with <i>IPRU(INV)</i> 5.4.10R, in which case FIN071 must be completed or (2) the <i>firm</i> is the depository of a <i>UCITS</i> scheme in which case, FIN072 must be completed.</p>			
...	...			

...

Regulated Activity Group 8

...

- 16.12.25 R The applicable *data items* referred to in *SUP* 16.12.4R are set out according to type of *firm* in the table below:

A

Description of data item	<i>Firms' prudential category and applicable data item (note 1)</i>	
	<i>IFPRU investment firms and BIPRU firms</i>	<i>Firms other than BIRPU firms or IFPRU investment firms</i>
...	...	
Note 14	<p>FSA034 must be completed by a <i>firm</i> not subject to the exemption in <i>IPRU(INV)</i> 5.4.2R, unless it is a <i>firm</i> whose <u>permitted business includes <i>establishing, operating or winding up a personal pension scheme</i> in which case FIN071 must be completed.</u></p> <p>FSA035 must be completed by a <i>firm</i> subject to the exemption in <i>IPRU(INV)</i> 5.4.2R, unless it calculates its own funds requirement in accordance with <i>IPRU(INV)</i> 5.4.10R, in which case FIN071 must be completed.</p>	
...	...	

...

Regulated Activity Group 12

16.12.29B R SUP 16.12.29CR does not apply:

...

(2) ~~to a credit firm that is a not for profit body, unless it is a not for profit debt advice body~~[deleted];

...

16.12.29C R The applicable *data items*, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. ...

...	
Note 7	This <i>data item</i> applies to a CASS debt management firm <u>unless subject to a requirement imposed under section 55L of the Act stating that it must not hold client money or such a requirement to the same effect.</u>

...

...

16 Annex 25G Guidance notes for data items in SUP 16 Annex 24R

...

FSA028 – Non-EEA sub-groups

...

Data elements

These are referred to by row first, then by column, so So data element 2B will be the element number 2 in 26C refers to question 26, column B C in the regulatory return (the amount of the exposure that is exempt).

...

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

~~This annex consists of one or more forms. Forms are to be found through the following address: SUP 16 Annex 38B~~

The Notes for Completion of the Data Items relating to Consumer Credit activities at SUP 16 Annex 38BG are deleted in their entirety and replaced with the following. All the text is new and is not underlined.

Introduction

1. These notes relate to the consumer credit returns in *SUP 16 Annex 38AR* (Data items relating to consumer credit activities). They aim to assist *firms* in completing and submitting the *data items* relevant to *credit-related regulated activities*.
2. The purpose of these *data items* is to provide a framework for the collection of information by the *FCA* as a basis for its supervisory and other activities. They also have the purposes set out in *SUP 16.12.2G*, including to help the *FCA* to monitor *firms'* financial soundness.
3. The data should not give a misleading impression of the *firm*. A *data item* is likely to give a misleading impression if a *firm* omits a material item, includes an immaterial item or presents items in a manner which is misleading.

Scope

4. Subject to *SUP 16.12.29BR*, *firms* undertaking *credit-related regulated activities* are required to complete the *data items* applicable to the activities they undertake as set out in *SUP 16.12.29CR*.

Defined terms

5. Where terms are italicised, they have the meaning shown in the *Glossary* of definitions in the *FCA Handbook*. Where we use an alternative word or phrase we expect *firms* to apply an ordinary meaning to that word or phrase.
6. The *credit-related regulated activities* are:
 - (a) *entering into a regulated credit agreement as lender;*
 - (b) *exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement;*
 - (c) *entering into a regulated consumer hire agreement as owner;*
 - (d) *exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement;*
 - (e) *credit broking;*

- (f) *debt adjusting;*
- (g) *debt counselling;*
- (h) *debt collecting;*
- (i) *debt administration;*
- (j) *providing credit information services;*
- (k) *providing credit references;*
- (l) *operating an electronic system in relation to lending; and*
- (m) *advising on regulated credit agreements for the acquisition of land.*

7. A *firm* does not need to complete these returns if the only *credit-related regulated activity* it carries on is *advising on regulated credit agreements for the acquisition of land*. Data should be excluded from the returns to the extent that they relate to *credit agreements* secured by a *legal or equitable mortgage on land*.

Currency

8. Unless otherwise stated, *firms* should report in the currency of their annual audited accounts, where this is sterling, euro, US dollars, Canadian dollars, Swedish kroner, Swiss francs or yen. Where annual audited accounts are reported in a currency outside those specified above, the values should be converted into an equivalent within the list using an appropriate rate of exchange at the reporting date or, where appropriate, the rate of exchange fixed under the terms of any relevant currency hedging transaction.

Data elements

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

General reporting guidelines

10. The *data items* in SUP 16 Annex 38AR (Data Items relating to Consumer Credit activities) should reflect the standard accounting practices followed in the preparation of a *firm's annual report and accounts*, unless otherwise stated.
11. The information reported in the returns should cover the reporting period specified, unless otherwise stated.
12. Unless otherwise stated, figures should be reported in single units.

CCR001 – Consumer credit data: Financial data

13. This *data item* provides the *FCA* with a snapshot of the assets and liabilities of a *firm* and data on the *firm's* income and profit. It gives us an idea of the *firm's* ongoing financial viability and whether this poses any potential risks to *consumers*.
14. *Firms* that report CCR001 on a six-monthly basis should report their income and profit data on a cumulative basis. The return for the first reporting period should include income and profit for the first six months from the *firm's accounting reference date*. The return for the second six-month period should include income and profit for the entire 12 months.

Guide for the completion of individual fields

Balance sheet items		
1A	Total shareholder funds/Partnership capital/Sole trader capital	Incorporated <i>firms</i> : add the value of all types of shares, reserves, retained earnings and verified current year profit. <i>Partnerships</i> and <i>sole traders</i> : add the value of all capital accounts, retained earnings and verified current year profit. <i>Limited liability partnerships</i> (LLPs): add the value of all cash and capital accounts.
2A	Intangible assets/Investments in subsidiaries/Investment in own shares	Add the value of intangible assets/goodwill, investments in own shares, investments in subsidiaries, material current year losses and, if applicable, excess LLP member's drawings.
3A	Subordinated debt and subordinated loans	Add the value of any subordinated loans and other subordinated debt.
Current assets		
4A	Cash	This is money physically held by the <i>firm</i> and money deposited with <i>banks</i> or <i>building societies</i> .
5A	Debtors/Other	Add the value of all types of debtors, stocks, investments (other than those included in 2A) and loans.
Current liabilities		
6A	Creditors	Add the value of all types of creditors.

7A	Largest exposures (including inter-company): amount	Identify the amount of each of the two largest exposures (including those between the <i>firm</i> and a related entity). These exposures can either be amounts owed to the <i>firm</i> by debtors, or amounts owed by the <i>firm</i> to creditors.
	Largest exposures (including inter-company): counterparty name	Identify in each case the name of the counterparty from or to whom the amount is owed.
	Largest exposures (including inter-company): type of exposure	Identify whether the amount is owed to the <i>firm</i> (debtor) or owed by the <i>firm</i> (creditor).
Income statement (including regulated business revenue)		
8A	Total income	<i>Firms</i> should report income from all activities, both regulated and non-regulated, on a cumulative basis.
9A	Retained profit	This figure does not relate to the accumulated retained profit figure that appears on the <i>firm's</i> balance sheet, but to the retained profit or loss figure for the period shown on the <i>firm's</i> income statement or profit and loss (P&L) account. This should be reported on a cumulative basis.

CCR002 – Consumer credit data: Volumes

15. This *data item* provides the *FCA* with an overall picture of the size of the consumer credit market and how revenue is generated. On an individual *firm* level, it allows us to look at the relationship between *customer* numbers, transaction numbers and revenue.
16. In this *data item*, *firms* should complete each row applicable to an activity they have permission to undertake. In the case of lending, they should complete each row applicable to their *consumer credit lending* business
17. Data should be provided only in respect of *credit-related regulated activities*.

Column A: Fee mechanism

18. In this column, *firms* should identify the predominant source of revenue for each relevant activity by selecting the appropriate option from the drop-down list.
19. For the purposes of answering this question, an “upfront fee” is a single fee incurred once at the time of the transaction occurring. There are no further fees associated with the transaction. For example, a one-off *credit broking* fee.

20. An “ongoing fee” is where the fee is split into multiple payments across the lifetime of the product or service. For example, a percentage charge taken from monthly payments under a *debt management plan*.
21. Where a *firm* only uses upfront fees or only uses ongoing fees, the *firm* should select “upfront only” or “ongoing only”. “Mainly upfront” and “mainly ongoing” should be used when more than two-thirds of the relevant revenue from that activity is achieved using that method.
22. With respect to lending activities, “interest only” should be selected if revenue is generated solely from charging interest. “Mainly interest” should be selected if interest accounts for more than two-thirds of the revenue generated. For example, a *lender* may charge an upfront fee plus interest.
23. “Combination” should be used when no single revenue source (upfront fees, ongoing fees and interest) accounts for more than two-thirds of the relevant revenue from that activity.

Column B: Revenue

24. In this column, *firms* should enter the amount of revenue generated during the reporting period by each activity undertaken.
25. A *firm* should include all revenue generated as a result of the activity, and which would not have otherwise have been generated, even if it does not directly relate to the *credit-related regulated activity* (provided that it does not relate to another *regulated activity*, for example payment protection insurance).
26. Revenue should be reported gross, before any deductions. In the case of lending, it does not include repayment of capital under a *credit agreement*.

Column C: Total customers

27. In this column, *firms* should enter the total number of individual *customers* who have taken up a credit-related product during the reporting period or have engaged the *firm's* services during the period.
28. If the same *customer* has taken out three products of the same type, this counts as one towards the “total customers” figure.
29. In the case of jointly-owned products, each *individual* should be recorded as a customer for the purposes of this column. For example, a *credit agreement* entered into jointly by two *individuals* should be recorded as two customers.

Column D: Total transactions

30. In this column, *firms* should enter the total number of transactions during the reporting period. A transaction is where a *customer* has taken up a credit-related product or engaged the *firm's* services during the period.
31. If the same *customer* has taken out three products of the same type, this counts as

three towards the “total transactions” figure. For example, if a *customer* has entered into three separate *credit agreements* for *high-cost short-term credit* during the reporting period, this counts as one customer but three transactions.

32. Jointly-owned products should be recorded as a single transaction. For example, an agreement entered into jointly by two *individuals* should be recorded as one transaction.
33. In the case of debt purchasing, a transaction is acquisition of a debt during the reporting period.
34. In the case of pawnbroking, each separate item held as *security* should be counted for these purposes as a single transaction.
35. In the case of *credit broking*, a transaction is irrespective of whether a *credit agreement* or *consumer hire agreement* is entered into.
36. In the case of debt management activity, a transaction is not limited to entry into a *debt management plan* (see paragraph 42 below).
37. A *credit repair firm* does not need to complete this field (unless it is engaged in another *credit-related regulated activity*).

Rows 1 to 8 and 13 to 14: Lending

38. The rows under the heading “Lending” relate to the different types of lending that are covered by *consumer credit lending*. For each type of lending that a *firm* undertakes, the row relating to that activity should be completed in full. If a product could fall into more than one row, or has elements falling into more than one row, it should be included in the first applicable row reading down the list.
30. *Firms* undertaking logbook lending should report data relating to this activity in the row labelled “Bill of sale loan agreements.”

Row 9: Credit broking

40. This row should be completed in full by all *firms* carrying on the activity of *credit broking* as defined in article 36A of the *Regulated Activities Order*.

Row 10: Debt management activity

41. This row should be completed in full by a *debt management firm*.
42. A *debt management firm* is a *firm* which carries on the activity of *debt counselling* or *debt adjusting* with a view to an *individual* entering into a particular *debt solution*. This is not limited to *firms* which enter into *debt management plans*.

Row 11: All other credit-related regulated activity

43. *Firms* should include in this row data relating to all other *credit-related regulated activities* (see paragraph 6) not covered in rows 1 to 10 and 13 to 14. This includes *consumer hiring* (including the purchasing of debts under *regulated consumer hire*

agreements which should appear here rather than against “debt purchasing” under Lending which is limited to debts under *regulated credit agreements*). It also includes *debt counselling* or *debt adjusting* which is not with a view to an *individual* entering into a particular *debt solution* (see paragraph 42).

44. The row should be completed in full and include the total of all other *credit-related regulated activities* that a *firm* undertakes.

Row 12: Total annual income as defined in FEES 4 Annex 11BR for the purpose of FCA fees reporting

45. This figure should be calculated with reference to *FEES 4 Annex 11BR* and the *guidance* in *FEES 4 Annex 11BR*. It should be reported as an annual figure and in single units rather than in thousands (see paragraph 13).
46. If you report CCR002 on an annual basis, and this is your first return and you are reporting for a period of less than 12 months, you should annualise this figure (i.e. make it representative for a full year’s activity). See *FEES 4.2.7BR (5) (c) and (d)*.
47. If you report CCR002 on a six-monthly basis, you should report your credit-related annual income as **zero** in the CCR002 return that aligns with the first six-month period after your *accounting reference date*. You should then report the full figure for your credit-related annual income in the CCR002 return that aligns to the second six-month period after your *accounting reference date*.
48. For example, a *firm* that reports CCR002 on a six-monthly frequency with an *accounting reference date* of 31 March has an annual consumer credit income (for the purposes of *FCA* fees reporting) of £1,000. For the reporting period from 1 April to 30 September it should report £0 in question 12. For the reporting period from 1 October to 31 March it should report £1,000 in question 12.

CCR003 – Consumer credit data: Lenders

49. The purpose of this *data item* is to give the *FCA* an understanding of the number and value of *credit agreements* entered into during the reporting period or outstanding at the end of the period, the *APRs* charged on those agreements and the extent of arrears on the agreements.
50. In this *data item*, *firms* should complete each row applicable to the *consumer credit lending* that the *firm* undertakes. All applicable rows should be completed in full unless otherwise specified. Data should be provided only in respect of *regulated credit agreements*.
51. *Firms* undertaking logbook lending should report data relating to this activity in the row labelled “Bill of sale loan agreements.”
52. Where we ask for figures reported in thousands, the response should be rounded to the nearest thousand. For example, if the value of agreements outstanding for a certain activity was £1,400, this should be reported as ‘1’. If the value was £1,500, this should be reported as ‘2’ (rounding up rather than down). If the value was less

than £500 for the period, this should be rounded down to zero (i.e. reported as '0').

Column A: Total value (000s)

53. In this column, *firms* should enter the total value (in thousands) outstanding on *credit agreements* at the end of the reporting period.
54. This comprises amounts that have fallen due but remain unpaid (including any default sum or other fee or charge) and also amounts payable under the agreement that have not yet fallen due, such as future repayments of capital.

Column B: Total number of loans

55. In this column, *firms* should enter the total number of *credit agreements* on which sums are outstanding at the end of the reporting period.
56. In the case of pawnbroking, a single *credit agreement* under which the *firm* has taken two or more articles in *pawn* should be counted as one loan.

Column C: Total number of loans in arrears

57. In this column, *firms* should enter the number of *credit agreements* that had overdue repayments at the end of the reporting period.
58. An overdue repayment is an amount that has fallen due but remains unpaid.
59. In the case of pawnbroking, an agreement is in arrears if an article taken in *pawn* under the agreement has become realisable by the *firm* during the reporting period or the property in any such article has passed to the *firm* during the reporting period.

Column D: Total value of arrears (000s)

60. In this column, *firms* should enter the total value (in thousands) of overdue repayments at the end of the reporting period.

Column E: Value of new advances in period (000s)

61. In this column, *firms* should enter the total value (in thousands) of new advances during the reporting period.
62. In the case of debt purchasing, a *firm* should report the value of *credit agreements* acquired during the period.

Column F: Average annual percentage rate of charge (total loan book)

63. In this column, *firms* should calculate the average (mean) *APR* of all the *credit agreements* outstanding at the end of the reporting period.
64. The *APR* should be calculated in accordance with *CONC* App 1.2 and reported as a percentage with no decimal places.
65. Worked example:

A *firm* has the following loans:

- 4 loans of £1,000 with 300% *APR*
- 3 loans of £500 with 400% *APR*
- 2 loans of £200 with 500% *APR*
- 1 loan of £100 with 750% *APR*

The average *APR* is calculated as follows:

$$((4 \times 300) + (3 \times 400) + (2 \times 500) + (1 \times 750)) / 10$$

66. This column can be left blank in the case of Overdrafts.

Column G: Highest annual percentage rate of charge (in period)

67. In this column, *firms* should enter the highest *APR* of *credit agreements* entered into during the reporting period.

68. The *APR* should be calculated in accordance with *CONC* App 1.2 and reported as a percentage with no decimal places.

69. This column can be left blank in the case of Overdrafts.

CCR004 – Consumer credit data: Debt management firms

70. This *data item* is intended to reflect the underlying prudential requirements contained in *CONC* 10 and allows monitoring against the requirements set out there.

71. A *debt management firm* is a *firm* which carries on the activity of *debt counselling* or *debt adjusting* with a view to an *individual* entering into a particular *debt solution*. This is not limited to *firms* which enter into *debt management plans*.

72. This *data item* must be completed in sterling and single units.

Guide for the completion of individual fields

1A	Total value of relevant debts under management outstanding	<p><i>Firms</i> should enter the total value of all the <i>relevant debts under management</i> that are used to calculate the <i>firm's</i> current prudential resources requirement. This should be the figure calculated at the latest <i>accounting reference date</i>, or, if there has been a change in the value of all the <i>relevant debts under management</i> of more than 15%, the re-calculated figure.</p> <p>See <i>CONC</i> 10.2.5R to <i>CONC</i> 10.2.10G and <i>CONC</i> 10.2.13R to <i>CONC</i> 10.2.14R.</p>
2A	Total prudential resources requirement	<p><i>Firms</i> should enter whichever figure is higher out of:</p> <p>(a) £5000; and</p>

		<p>(b) the variable prudential resources requirement calculated based on the value of <i>relevant debts under management</i> outstanding entered in element 1A.</p> <p>See <i>CONC 10.2.5R</i>, <i>CONC 10.2.8R</i> and <i>CONC 10.2.11G</i> to <i>10.2.12G</i>.</p> <p>NB: It is not permissible to answer '0' for this question, even if '0' was entered against 1A, as the minimum prudential resources requirement in <i>CONC 10</i> is £5,000.</p>
3A	Total prudential resources	<i>Firms</i> should enter their total prudential resources, calculated in accordance with <i>CONC 10</i> .
4A	Number of debt management plans that end before the end of the term originally agreed	<i>Firms</i> should identify the number of <i>debt management plans</i> that ended earlier than stated in the original contract during the reporting period.

CCR005 – Consumer credit data: Client money and assets

73. The purpose of this *data item* is so that the *FCA* has an understanding of how much *client money* and assets is being held by *CASS debt management firms* in relation to debt management activity.
74. *Firms* that meet the definitions of *CASS debt management firm*, unless subject to a requirement imposed under section 55L of the *Act* stating that it must not hold *client money* or such a *requirement* to the same effect, should complete this *data item*.

Guide for the completion of individual fields

1A	What was the highest balance of client money held during the reporting period?	A <i>CASS debt management firm</i> should enter the highest total amount of <i>client money</i> that was held in respect of debt management activity at a single point in time during the reporting period.
2A	What was the highest number of clients for whom client money was held during the reporting period?	A <i>CASS debt management firm</i> should enter the highest number of <i>clients</i> for whom <i>client money</i> was held in respect of debt management activity at a single point in time during the reporting period.
3A	How much client money (if any) did you hold in excess of five days following receipt?	If a <i>CASS large debt management firm</i> , at any point during the reporting period, held <i>client money</i> for an individual <i>client</i> , relating to a single transaction, in excess of five days of receipt of cleared funds, it should report the aggregate balance of this <i>client money</i> (i.e. the sum of all the amounts that were held

		<p>longer than five days).</p> <p>A <i>CASS large debt management firm</i> should report '0' if it did not hold <i>client money</i> in excess of five days at any point during the reporting period.</p> <p>In accordance with <i>CASS 11</i>, a <i>CASS large debt management firm</i> must pay any <i>client money</i> it receives to creditors as soon as reasonably practicable, save in the circumstances set out in <i>CASS 11</i>. In the <i>FCA's</i> view the payment to creditors should normally be within five <i>business days</i> of the receipt of cleared funds.</p>
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CCR006 – Consumer credit data: Debt collection

75. The purpose of this *data item* is to give the *FCA* an understanding of the activities of *firms* undertaking debt collection (on behalf of *lenders* or *owners*), and the size of the market, and to identify potential areas where there is risk of consumer detriment.
76. *Firms* should complete this *data item* if they have permission for *debt collecting* (article 39F of the *Regulated Activities Order*).
77. In addition, *firms* that have permission under article 36H of the *Regulated Activities Order* to *operate an electronic system in relation to lending* (peer-to-peer platforms) are required to submit CCR006 because the scope of that permitted activity allows *firms* to take steps to procure the payment of a debt due under an *article 36H agreement*.
- 1A Have you undertaken any debt collection business during the reporting period?
78. This question only applies to peer-to-peer platforms, and should be answered with respect to steps taken to procure the payment of a debt due under an article 36H agreement. If a peer-to-peer platform answers “no” and the firm does not have permission for *debt collecting* then the firm does not have to complete the remainder of this *data item*.

Stage of debt placement

79. The *firm* should complete each column in respect of which it has debts under collection. All debts at sixth stage or higher should be aggregated and reported in column F.
80. Debt placement is the placement of an overdue account, passed out for debt collection either through an internal collection strategy (also known as in-house) or outsourced to a specialist third party debt collection agency. Each time the debt is passed to an agency for collection, the stage of debt placement increases.

81. If the debt ceases to be overdue, but subsequently becomes overdue again and is passed out for collection, it starts again as stage one.

Guide for the completion of individual fields

2	Total value of debts being pursued for collection	The <i>firm</i> should report the total value of all the debts that are being actively pursued for collection at the end of the reporting period.
3	Total value of debts under collection	The <i>firm</i> should report the total value of all the debts that it has on its books to collect at the end of the reporting period.
4	Total number of debts being pursued for collection	The <i>firm</i> should report the number of individual debts that are being actively pursued for collection at the end of the reporting period.
5	Total number of debts under collection	The <i>firm</i> should report the number of individual debts that it has on its books to collect at the end of the reporting period.
6	Number of debts under collection with missed repayments	The <i>firm</i> should identify the number of debts under collection on its books that have missed repayments.
7	Total income per placement (000s)	The <i>firm</i> should indicate the amount of income (in thousands) that has been attributed to debts collected under each stage of placement.

CCR007 – Consumer credit data: Key data for credit firms with limited permission

82. The purpose of this *data item* is so that the *FCA* can collect a small, proportionate amount of data from the large population of *firms* with *limited permission* undertaking *credit-related regulated activities*, to enable monitoring of the market with a risk-based approach.

Guide for the completion of individual fields

1A	Revenue from credit-related regulated activities	<p>A <i>firm</i> should report the total amount of income (before expenses) received by the <i>firm</i> for its credit-related business activities during the reporting period.</p> <p>Example 1: A <i>firm</i> sells a product for £1,000 after referring the <i>customer</i> for financing. The <i>firm</i> receives £50</p>
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		<p>commission for the <i>credit broking</i> referral, as well as the £1,000 for the product sale.</p> <p>For data field 1A, the <i>firm</i> would report its credit-related income as £50. The income from activities unrelated to credit should not be included here.</p> <p>Example 2:</p> <p>A <i>firm</i> sells a product for £1,000. The <i>customer</i> pays £500 cash and the <i>firm</i> refers the <i>customer</i> for financing for the remaining balance. The <i>firm</i> receives £50 commission for the referral.</p> <p>For data field 1A, the <i>firm</i> would report its credit-related income as £50. The amount of finance referred should not be reported here.</p>
2A	Total revenue (including from activities other than credit-related regulated activities)	<p>A <i>firm</i> should report all income (before expenses) received for all its business, both regulated and unregulated.</p> <p>For example, if a <i>firm</i> has sold a product for £1,000 and received £50 commission for referring the <i>customer</i> for credit, for data field 2A, the <i>firm</i> should report the total amount of money received, £1,050.</p>
3A	Number of transactions involving credit-related regulated activities in reporting period	<p>A <i>firm</i> should report the total number of credit-related transactions which occurred during the reporting period.</p> <p>A transaction is where a <i>customer</i> took out a credit-related product during the reporting period or engaged the <i>firm's</i> services during the period.</p> <p>In the case of <i>credit broking</i>, a transaction is irrespective of whether a <i>credit agreement</i> or <i>consumer hire agreement</i> is entered into.</p>
4A	Number of complaints relating to credit-related activities received in period	<p>A <i>firm</i> should report the total number of complaints received during the reporting period in relation to <i>credit-related regulated activities</i>. Any complaints about the <i>firm's</i> non-credit-related business should not be included here.</p>
5A	Credit-related regulated activity which generated the highest amount of turnover in reporting period	<p>Selecting from the following options, a <i>firm</i> should identify which <i>credit-related regulated activity</i> generated the highest amount of turnover during the reporting period:</p> <ul style="list-style-type: none"> • lending; • consumer hire; • not-for-profit debt counselling;

		<ul style="list-style-type: none"> • secondary credit broking; or • other.
6A	Total annual income as defined in FEES 4 Annex 11BR for the purposes of FCA fees reporting	<p><i>Firms</i> should refer to <i>FEES 4 Annex 11BR</i> to calculate this figure.</p> <p><i>Firms</i> which receive grants or funding for their activities should only include this information here when it relates specifically to <i>credit-related regulated activity</i>.</p> <p>If this is your first return and you are reporting for a period of less than 12 months, you should annualise this figure (i.e. make it representative for a full year's activity). See <i>FEES 4.2.7B (5)(c)</i> and <i>FEES 4.2.7B(5)(d)</i>.</p>