

# Quarterly Consultation

## No 20

### Consultation Paper

CP18/6\*

March 2018



## How to respond

We are asking for comments on this Consultation Paper (CP) by 3 April 2018 for Chapters 2 and 4, 13 April 2018 for Chapter 5 and 3 May 2018 for Chapter 3.

Comments may be sent by using the form on our website at: [www.fca.org.uk/cp18-06-response-form](http://www.fca.org.uk/cp18-06-response-form).

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If you are responding in writing to several chapters please send your comments to Gabrielle Stephenson in the Handbook Editorial Team, who will pass your responses on as appropriate

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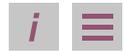
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# Contents

<b>1</b>	Overview	4
<b>2</b>	CRD IV: Changes to the Prudential sourcebook for Investment Firms (IFPRU)	5
<b>3</b>	Changes to reporting requirements in the Supervision manual	8
<b>4</b>	Changes to our address	12
<b>5</b>	Payment Services and Electronic Money: changes to our rules and guidance under the Payment Services Regulations 2017	14
<b>Annex 1</b>		
	List of questions	22
<b>Appendix 1</b>		
	Abbreviations used in this paper	23
<b>Appendix 2</b>		
	CRD IV: Changes to the Prudential sourcebook for Investment Firms (IFPRU)	
<b>Appendix 3</b>		
	Changes to reporting requirements in the Supervision manual	
<b>Appendix 4</b>		
	Changes to our address	
<b>Appendix 5A</b>		
	Payment Services and Electronic Money: changes to our rules and guidance under the Payment Services Regulations 2017	
<b>Appendix 5B</b>		
	Proposed addition to Chapter 13 of the Approach Document	
<b>Appendix 5C</b>		
	Proposed additional Chapter 18 of the Approach Document	
<b>Appendix 5D</b>		
	Proposed amendments to the Approach Document consequential to the Payment Systems and Services and Electronic Money (Miscellaneous Amendments) Regulations 2017	



# 1 Overview

Chapter	Proposed changes to Handbook	Consultation closing period
2	Change to IFPRU 3.2 to ensure consistency of application and align with existing rules in IFPRU 11.6.	One month
	Change to IFPRU 11.5 to promote clarity for firms and groups within the scope of IFPRU 11 and ensure continued compliance with the Recovery and Resolution Directive (RRD).	One month
	Proposed transitional provision for the large exposures treatment of certain public sector exposures denominated in the domestic currency of any Member State under Regulation (EU) 2017/2395.	One month
3	Changes to regulatory reporting requirements.	Two months
4	Changes to our address in the Handbook in line with our upcoming move to Stratford.	One month
5	Changes to SUP to implement the EBA Guidelines on payment services under the revised Payment Services Directive (PSD2) and to implement the requirements of Regulation 98 of the Payment Services Regulations 2017.	Six weeks
	Amendments to the FCA's Approach Document 'Payment Services and Electronic Money – Our Approach, the FCA's role under the Payment Services Regulations 2017 and the Electronic Money Regulations 2011'.	

## 2 CRD IV: Changes to the Prudential sourcebook for Investment Firms (IFPRU)

### Introduction

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#### Change to IFPRU 3.2

**2.1** We are proposing to delete two rules in Chapter 3 of the Prudential sourcebook for Investment Firms (IFPRU 3). The deletion will ensure that all rules on contractual recognition of bail-in are consistent and in one place in the FCA Handbook.

**2.2** This change, to IFPRU 3.2 – Capital, will promote clarity for firms and groups within the scope of IFPRU 3 and ensure continued compliance with the Recovery and Resolution Directive (RRD).

#### Change to IFPRU 11.5

**2.3** We are proposing to amend a piece of guidance in Chapter 11 of the Prudential sourcebook for Investment Firms (IFPRU 11).

**2.4** This change, to IFPRU 11.5 – Intra-group financial support, will promote clarity for firms and groups within the scope of IFPRU 11 and ensure continued compliance with the RRD.

#### Proposed transitional provision in IFPRU TP 9 Large Exposures Limits

**2.5** We are proposing a new transitional provision in IFPRU TP 9. The proposed rule will set out the large exposure limits for the transitional arrangements in the new paragraphs 4 to 7 in article 493 of the Capital Requirements Regulation (CRR) incorporated by Regulation (EU) 2017/2395<sup>1</sup> which was agreed by the European Parliament and the Council on 12 December 2017. This Regulation amends article 493 of the CRR.

**2.6** The proposed transitional provision will be a benefit to those firms choosing to apply it and will ensure continued compliance with the CRR.

### Summary of proposals

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#### IFPRU 3.2 – Capital

**2.7** IFPRU 3.2.8R and 3.2.9R require firms to demonstrate that their additional Tier 1 and Tier 2 capital instruments issued under the law of a third country can be written down or converted into common equity Tier 1 capital.

**2.8** We propose deleting both rules in IFPRU 3.2.8R and 3.2.9R as they were replaced by the wording in IFPRU 11.6 on Contractual recognition of bail-in, during the transposition of the RRD. The rules in IFPRU 11.6 on Contractual recognition of bail-in came into force on 1 January 2016.

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<sup>1</sup> REGULATION (EU) 2017/2395 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (12 December 2017) is available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2395&qid=1515424768231&from=en>.



- 2.9** The aim of these rules remains unchanged, but the wording in IFPRU 11.6 has been simplified and aligned with the rules in the RRD. This will ensure that all rules on contractual recognition of bail-in are consistent and in one place in the FCA Handbook.

**Q2.1: Do you agree with this proposed change to IFPRU 3.2?**

**IFPRU 11.5 – Intra-group financial support**

- 2.10** IFPRU 11.5.3G provides firms with a summary of the RRD intra-group financial conditions. The specific form of intra-group financial support recognised by the RRD is currently described as being allowed between RRD group members located in different Member States.
- 2.11** We propose amending this guidance by allowing an RRD group member to give financial support also to an RRD institution located in a third country. This would better align the guidance with the existing RRD rules and ensure consistency in their application.

**Q2.2: Do you agree with this proposed change to IFPRU 11.5?**

**Proposed transitional provision in IFPRU TP 9 Large Exposures Limits**

- 2.12** Article 1(2) of Regulation (EU) 2017/2395 incorporates new paragraphs 4 to 7 in article 493 of the CRR which provide for transitional arrangements for the exemption from large exposure limits available to exposures to certain public sector debt of Member States denominated in the domestic currencies of any Member States. The transitional period should have a duration of three years, commencing on 1 January 2018, for exposures of this type incurred on or after 12 December 2017.

The new article 493(4) states that, by way of derogation from article 395(1) of the CRR, competent authorities may allow institutions to incur any of the exposures provided for in paragraph 493(5) meeting the conditions set out in paragraph 493(6), up to the following limits:

- a.** 100 % of the institution's Tier 1 capital until 31 December 2018
  - b.** 75 % of the institution's Tier 1 capital until 31 December 2019
  - c.** 50 % of the institution's Tier 1 capital until 31 December 2020
- 2.13** The limits referred to in points (a), (b) and (c) of the new paragraph 4 of article 493 of the CRR shall apply to exposure values after taking into account the effect of the credit risk mitigation in accordance with articles 399 to 403 of the CRR.
- 2.14** The proposed transitional provision in IFPRU TP 9 will reflect the large exposure limits stated above and would make available the most favourable treatment to FCA-regulated investment firms.

**Q2.3: Do you agree with the proposed transitional provision in IFPRU TP 9?**

## Cost benefit analysis

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- 2.15** When proposing new rules, we are required under section 138I of FSMA to publish an analysis of costs and benefits, unless we believe the rules will lead to insignificant or no costs at all.
- 2.16** Our Consultation Paper (CP) 14/15<sup>2</sup> 'Recovery and Resolution Directive' already included an analysis of the incremental impact of the overall RRD package in terms of its effect on firms and markets within our remit. The proposed changes to IFPRU 3.2 and IFPRU 11.5 are part of this package, and we therefore do not consider that a further cost benefit analysis is required.
- 2.17** Similarly, CP13/6<sup>3</sup> 'CRD IV for investment firms' already included an analysis of the incremental impact of the overall CRD package in terms of its effect on firms and markets within our remit. The transitional provision in IFPRU TP 9 amends an existing CRR provision, which formed part of this package, allowing institutions to benefit from such transitional arrangement. As we cannot estimate how many firms will use the transitional provision, and considering it is a benefit for firms, we cannot reasonably estimate the benefits.

## Compatibility statement

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- 2.18** We believe that the proposed changes are in line with our objectives as the proposals ensure full transposition of Chapter III on Intra-group financial support, specifically article 19, and article 55 on Contractual recognition of bail-in of the RRD in accordance with our obligations under EU law.
- 2.19** We believe that the proposed transitional provision to our Handbook is compatible with our objectives and regulatory principles under section 3B of FSMA, as indicated in our compatibility statement in Appendix 2 to CP13/6.
- 2.20** The proposed changes in this chapter do not impact on mutual societies.

## Equality and diversity

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- 2.21** We have considered the equality and diversity issues that may arise from the proposals in this chapter.
- 2.22** Overall, we do not consider that the proposals raise any concerns. Moreover, we do not consider that the proposals adversely impact any of the groups with protected characteristics, ie age, disability, sex, pregnancy and maternity, race, religion and belief, marriage or civil partnership, sexual orientation and gender reassignment.
- 2.23** We welcome any feedback on the above assessment as part of this consultation process.

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<sup>2</sup> CP14/15 'Recovery and Resolution Directive' (August 2014) <https://www.fca.org.uk/publication/consultation/cp14-15.pdf>  
<sup>3</sup> CP13/6 'CRD IV for Investment Firms' (July 2013) <https://www.fca.org.uk/publication/consultation/cp13-06.pdf>



## 3 Changes to reporting requirements in the Supervision manual

### Introduction

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- 3.1** We collect regulatory data to inform and support our supervision of firms. Our regular data reporting requirements are set out in the FCA Handbook, mainly in the Supervision manual (SUP). We use feedback from firms and FCA colleagues to clarify and improve these requirements each quarter. This chapter sets out proposed improvements to regulatory reporting forms and supporting guidance.
- 3.2** This consultation will be of interest to:
- pension providers
  - all firms that have Appointed Representatives (ARs), and
  - insurers
- 3.3** The proposed changes to the Handbook text itself, and the statutory powers they will be made under, are set out in Appendix 3 of this Consultation Paper (CP).

### Summary of proposals

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#### Removal of the annual reporting requirement to update the FCA of changes to ARs (SUP 16.9)

- 3.4** We propose to remove the reporting requirement set out in SUP 16.9 which states that firms must send us an updated copy of the financial services register with changes to ARs marked, on an annual basis. This information on changes to the appointment of ARs should be updated as and when it happens throughout the year, as required by the notification requirements set out in SUP 12.7. The annual reporting requirement is now surplus to the FCA's supervisory needs and so we propose to delete it.
- 3.5** The notification required by SUP 12.7 should ideally be submitted online using the relevant system as stated on our website. The only exceptions are if the firm is a credit union, a firm has or intends to appoint an AR to carry on only credit-related regulated activity or if our systems are unavailable. In these circumstances a firm can submit the form in SUP 12 Annex 3R in any of the methods set out in SUP 15.7.4R to SUP 15.7.9G.
- 3.6** We also propose to update SUP 12.7 to remove reference to the ONA system as this is no longer used for firm notifications. The method for filing online at SUP 12.7.1AR has therefore been amended.

**Q3.1: Do you have any comments on our proposals to remove the SUP 16.9 reporting requirement regarding ARs and update the SUP 12.7 notification?**

### Alterations to the retirement income forms (REP015 and REP016) and associated guidance

**3.7** REP015 and REP016 are two new forms that were introduced last year through Policy Statement (PS) 17/16<sup>4</sup> to collect data on retirement income from pension providers.

**3.8** Before this reporting requirement comes into force, we propose to make changes to clarify what data we want in the forms, and the guidance on these, prior to the first reporting period. We propose that:

- we improve the application rules in SUP 16.24 to ensure the correct firms are captured by the reporting requirements
- we make small changes to wording for some questions between 17 and 31 of form REP016 to clarify that we want the number of plans to be reported and not the number of plan holders
- the guidance contained in SUP 16 Annex 43BG is improved to clarify what type of pension schemes should be reported as trust-based schemes (ie which schemes qualify as a defined contribution (DC) occupational money purchase scheme)
- the guidance contained in SUP 16 Annex 43BG is improved to clarify that schemes entering drawdown for the first time during the reporting period should not include any crystallised funds transferred into the pot in the pot size figures, to avoid double counting these funds
- the wording for some questions between 14 to 29 and 54 to 60 in REP015 are changed to clarify that the plan numbers need to be split by the total pot size not by the crystallised or uncrystallised part of the pot, and
- additional guidance is inserted into SUP 16 Annex 43BG to clarify under what circumstances firms will need to provide us with a nil return.

**3.9** These changes are set out clearly in the legal instrument accompanying this CP (see Appendix 3).

**Q3.2: Do you have any comments on our proposals to alter the reporting requirements for retirement income reporting and its accompanying guidance?**

### Cost benefit analysis

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**3.10** Section 138L(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 138L(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.

<sup>4</sup> PS17/16 'Regulatory reporting: Retirement income data, feedback on CP16/36 and final rules' (July 2017) <https://www.fca.org.uk/publications/policy-statements/regulatory-reporting-retirement-income-data>



### **Removal of annual AR reporting requirement**

- 3.11** We estimate that this change will have cost implications of only minimal significance for firms. However, this is a reduction in the burden on firms and therefore there will be some minimal savings for firms as a result.

### **Alterations to the retirement income forms (REP015 and REP016) and associated guidance**

- 3.12** We estimate that this change will have no cost implications for firms as the changes are purely to clarify what data we want reported to us. No new data is requested as a result of these changes. The increased clarity will help firms provide better quality data to us, reducing the chance that there will be a need for any changes and/or resubmissions at a later date.

### **Q3.3: Do you have any comments on our cost benefit analysis?**

### **Impact on mutual societies**

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- 3.13** 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 mutual societies any differently to other authorised persons.

### **Compatibility statement**

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- 3.14** Section 1B of FSMA requires us, so far as is reasonably possible, to act in a way that is compatible with our strategic objectives and advances one or more of our operational objectives. We also need to carry out our general functions in a way that promotes effective competition in the interests of consumers.
- 3.15** The proposed changes in this chapter will allow us to collect more accurate firm data and removes an outdated reporting requirement. In turn, this will allow more effective and efficient supervision of firms which will help us to advance our consumer protection objective.
- 3.16** We do not believe that the proposed changes will have an impact on competition. The changes are expected to impose no or minimal costs on firms and do not affect firms' incentives or ability to compete in the market.

### **Equality and diversity**

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- 3.17** Overall, we do not believe that the proposals in this chapter adversely impact any of the groups with protected characteristics specified in legislation ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

- 3.18** 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.
- 3.19** We welcome any feedback to this consultation on these matters.



## 4 Changes to our address

### Introduction

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- 4.1** The FCA has two operational locations in London and Edinburgh. The London office is relocating from 25 The North Colonnade (25TNC) and 1 Canada Square (1CS), both in Canary Wharf, to 12 Endeavour Square (12ES), Stratford, over the summer of 2018. In connection with the office relocation, we will also change our registered address for the purposes of the Companies Act 2006. We propose also to amend the references to our address in the Handbook, with those amendments coming into force in June 2018.
- 4.2** The change of our address in the Handbook is an administrative matter, rather than one of substantive policy; we are therefore consulting for a period of only one month.

### Summary of proposals

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- 4.3** We propose to amend references to the London address in our Handbook at the same time as we change our registered address with Companies House. For our Handbook users, this will provide accurate information for the submissions and communications where our address is a necessary component.

**Q4.1: Do you have any comments on our proposal to update the references in our Handbook to the FCA's address, to reflect the change of registered address?**

### Cost benefit analysis

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- 4.4** Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to publish our proposed rules for consultation, accompanied by a cost benefit analysis of those proposed rules. However, section 138L of FSMA provides that we are not required to prepare a cost benefit analysis where we consider there will be no increase in costs, or any increase will be of minimal significance. We consider that the proposed amendments to the rules which contain our address will not result in any increase in costs, or that any increase would be of minimal significance.

### Impact on mutual societies

- 4.5** Section 138K(2) of FSMA requires us to state whether, in our opinion, our changes have a significantly different impact on authorised persons who are mutual societies, compared with other authorised persons. We are satisfied that the proposed changes will not have a significantly different impact on mutual societies compared with other authorised persons.

## Compatibility statement

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- 4.6** Section 1B(1) of FSMA requires us, when discharging our general functions, so far as is reasonably possible, to act in a way that is compatible with our strategic objective and advances one or more of our operational objectives. We are content that in making the proposed amendments to our Handbook we are complying with section 1B(1).

## Equality and diversity

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- 4.7** We have considered the equality and diversity issues that may arise from the proposals in this Chapter. 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.
- 4.8** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 4.9** In the interim we welcome any feedback to this consultation.



## 5 Payment Services and Electronic Money: changes to our rules and guidance under the Payment Services Regulations 2017

### Introduction

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#### Operational and security risks under PSD2

- 5.1** On 19 September 2017 we published our Policy Statement (PS) 17/19<sup>5</sup> on the Implementation of the revised Payment Services Directive (PSD2). It confirmed changes to our Handbook and Approach Document guidance to reflect PSD2 and the Payment Services Regulations 2017 (PSRs 2017).
- 5.2** On 12 December 2017, the European Banking Authority (EBA) published final Guidelines on security measures for operational and security risks of payments services under the revised Payment Services Directive (the EBA Guidelines).<sup>6</sup> The EBA Guidelines cover how payment service providers (PSPs) should establish, implement and monitor security measures designed to address operational and security risks under PSD2. On 19 December 2017, we announced that we would comply with the EBA Guidelines. As stated at the time, we are now consulting on our approach to applying these Guidelines and our expectations on PSPs' future reporting requirements. This consultation should be read in conjunction with the EBA Guidelines.
- 5.3** We attach considerable importance to ensuring that firms understand the operational and security risks that they face and that they are taking effective measures to manage them. No PSP can ignore the increasingly important role of technology in the payments sector, and the constantly evolving nature of risks of fraud and to cyber security. In addition, the introduction of account information and payment initiation services in PSD2 means that a growing number of PSPs will in future be involved in activities that concern the access to customers' payment account data held by another PSP.
- 5.4** We have already given guidance on our expectations of PSPs in our Approach Document.<sup>7</sup> However, we are now proposing to direct all PSPs to comply with the EBA Guidelines and add a new chapter to our Approach Document. This new Chapter 18 is designed to highlight areas in which we have identified the potential for particular operational and security risk concerns, including relating to the way payment accounts are accessed for the purposes of account information services (AIS) and payment initiation services (PIS) and on our expectations where PSPs make use of third parties. New reporting requirements will ensure that we receive regular reports from PSPs to allow us to monitor their approach to operational and security risks.

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5 PS17/19 'Implementation of the revised Payment Services Directive (PSD2): Approach Document and final Handbook changes' (September 2017) <https://www.fca.org.uk/publication/policy/ps17-19.pdf>

6 <http://www.eba.europa.eu/-/eba-publishes-final-guidelines-on-security-measures-under-psd2>

7 Payment Services and Electronic Money – Our Approach the FCA's role under the Payment Services Regulations 2017 and the Electronic Money Regulations 2011 (September 2017) <https://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf> - see, especially, Chapters 8 and 17 of the Approach Document.

### Consequential changes to our guidance

- 5.5** On 30 November 2017, HM Treasury laid before Parliament the Payment Systems and Services and Electronic Money (Miscellaneous Amendments) Regulations 2017 (PSSRs 2017).<sup>8</sup> These Regulations make miscellaneous amendments to various UK Regulations, including the PSRs 2017 and the Electronic Money Regulations 2011 (EMRs 2011). In the second section below, we are also consulting on proposed changes to our Approach Document, resulting from the PSSRs 2017.
- 5.6** The proposals in this chapter affect all PSPs and e-money issuers when offering payment services.

### Operational and security risks under PSD2

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- 5.7** Under PSD2, PSPs are required to establish a framework with appropriate mitigation measures and control mechanisms to manage the operational and security risks relating to the payment services they provide. PSD2 placed a mandate on the EBA to produce Guidelines and required national competent authorities to implement this requirement and introduce reporting requirements. The relevant provisions of PSD2 were implemented in the UK through Regulation 98 of the PSRs 2017.
- 5.8** We are proposing to direct that PSPs comply with the EBA Guidelines and introduce guidance for PSPs on this. We are also proposing reporting requirements as a result of Regulation 98 of the PSRs 2017. Our proposed guidance and the EBA Guidelines should be read in conjunction – neither should be read in isolation.

### Summary of proposals

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#### Amendments to our Supervision manual

- 5.9** We propose to amend the Supervision manual (SUP) to direct that PSPs comply with the EBA Guidelines to develop and maintain an operational and security risk management framework and to direct the form, content and frequency of reporting to us on operational and security risk management (see Appendix 5A).
- 5.10** Under Regulation (EU) 1093/2010,<sup>9</sup> all PSPs are already under a legal obligation to make every effort to comply with the EBA Guidelines. We are proposing to direct PSPs to comply with the EBA Guidelines. This clarifies our expectation that PSPs comply with the Guidelines and applies our powers under the PSRs 2017. Given the nature of the EBA Guidelines and the existing requirements in the PSRs 2017, however, we do not consider that this should create additional burdens for PSPs.
- 5.11** We are proposing to direct PSPs to report to us at least annually. We are proposing that PSPs report to us electronically in the form set out in Appendix 5A. As discussed in our proposals to amend Chapter 13 of the Approach Document, we are proposing that since electronic money issuers do not have access to Gabriel, they download the reporting form and send it to us by email. We would not expect them to submit a 'nil return' to us. This follows the approach we have already taken for other reporting requirements.

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<sup>8</sup> <http://www.legislation.gov.uk/uksi/2017/1173/contents/made>

<sup>9</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Banking Authority) (November 2010)  
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R1093&from=EN>



- 5.12** PSPs range from the largest credit institutions to small payment institutions. While we expect all PSPs to comply with the requirements in the PSRs 2017 to manage operational and security risks effectively, we understand that the frequency with which PSPs carry out assessments and report them to us has to reflect considerations of proportionality. Equally, we would expect PSPs to submit their reports to us when they are carried out and when they are most pertinent, rather than at a point in time when the information contained in reports might be less pertinent. As such we have sought to provide flexibility in our reporting requirements, so that PSPs can report when they carry out assessments.
- 5.13** PSPs are required to submit at least one operational and security risk report per calendar year. For PSPs that report through Gabriel, the reporting channel will allow PSPs that carry out assessments more frequently to report them to us when they complete their assessments but no more than once per quarter. PSPs are otherwise free to choose the frequency of reporting.
- 5.14** For those PSPs reporting to us through Gabriel, the functionality in the system will mean that when PSPs submit a report, they will have to confirm a nil return for any previous quarters in which they have not submitted an operational and security risk report.
- 5.15** We believe that this approach clarifies our expectations of PSPs and enables us to carry out our supervisory functions in an effective manner.

**Q5.1: Do you agree with our proposed changes to Chapter 16 of our Supervision manual? Specifically, do you agree with the proposed directions to PSPs**

- **to comply with the EBA Guidelines published 12 December 2017, and**
- **regarding the form, content and frequency of reporting?**

**If not, please explain why not and suggest an alternative approach.**

**Reporting form and Chapter 13 of the Approach Document**

- 5.16** The reporting form (see Appendix 5A) requires submission to us of two documents (risk assessment and assessment of the adequacy of the resulting mitigation measures and control mechanisms) in one attachment to comply with the obligations under Regulation 98 of the PSRs 2017. We are also proposing to provide more guidance on this reporting requirement in Chapter 13 of the Approach Document (see Appendix 5B). The reporting form requires the submission (as a single pdf document) of these assessments.
- 5.17** Based on the EBA Guidelines, and subject to Regulation 98 of the PSRs 2017, we would expect the risk assessment to include all the requirements of the EBA Guidelines, including the following:

- list of functions, processes and assets supporting payment services provided and classified by their criticality
- risk assessment of functions, processes and assets against all known threats and vulnerabilities
- description of security measures to mitigate security and operational risks identified as a result of the above risk assessment, and
- conclusions of the results of the risk assessment and summary of actions required as a result of this assessment.

**5.18** We would expect the assessment of adequacy of mitigation measures to include all the requirements of the EBA Guidelines, including:

- summary description of methodology used to assess effectiveness and adequacy of mitigating measures
- assessment of adequacy and effectiveness of mitigation measures, and
- conclusions on any deficiencies identified as a result of the assessment and proposed corrective actions.

**5.19** The reporting form also contains questions that have been designed to allow us to identify whether we need to further investigate the operational and security risk framework put in place by PSPs. These questions seek to provide us with an overview of information that has already to be collected by PSPs and/or reported to us. As such, we do not expect this to create an unreasonable burden for PSPs completing this form.

**Q5.2: Do you agree with our proposed reporting form and guidance in Chapter 13 of the Approach Document? If not, please explain why not and suggest an alternative approach.**

### **Chapter 18 of the Approach Document**

**5.20** Regulation 98(1) of the PSRs 2017 requires PSPs to establish a framework with appropriate mitigation measures and control mechanisms to manage the operational and security risks relating to the payment services they provide. The EBA Guidelines provide further detail around how PSPs should establish, implement and monitor the security measures they implement to manage the operational and security risks relating to the payment services they provide.

**5.21** We are proposing the addition of a new Chapter 18 of the Approach Document (see Appendix 5C). This highlights areas where we have identified the potential for particular operational and security risk concerns. For example, it sets out our expectation that, if relevant, PSPs will reflect in their operational and security risk assessments the risks associated with the ways in which they access customers' payment accounts. It also explains that the use of third parties in the provision of payment services (including account information services) does not alter the expectation on the PSP to demonstrate in their operational and security risk management report how they have identified and addressed certain risks. We remind PSPs that when they outsource certain activities or appoint agents they retain full responsibility and accountability for discharging all of their regulatory responsibilities.



**5.22** It is important to note that Chapter 18 does not give guidance on specific provisions, or the application, of the EBA Guidelines. It is intended to explain some of the factors that we expect PSPs to take into account and include in their assessments when complying with the EBA Guidelines. It does not replace, and must be read alongside, the EBA Guidelines.

**Q5.3: Do you agree with our proposed change to the Approach Document to add Chapter 18 on operational and security risks? If not, please explain why not and suggest an alternative approach.**

### **PSSRs 2017: Consequential changes to our Guidance**

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**5.23** We are proposing consequential amendments to our Approach Document to reflect changes made by the PSSRs 2017. The changes are:

- **Chapter 5 – Appointment of agents and use of distributors:** Amendments only reflect the fact that registered AIS providers may appoint agents.
- **Chapter 10 – Safeguarding:** Amendments reflect the fact that the proceeds of an insurance policy or guarantee held as a safeguarding method may be paid into a safeguarding account held in accordance with the segregation method.

**5.24** The changes we are proposing do nothing other than reflect, and align the Approach Document with, the amendments to the PSRs 2017 and the EMRs 2011 made by the PSSRs 2017. A track marked version of the relevant parts of our Approach Document is contained in Appendix 5D of this Consultation Paper (CP).

**Q5.4: Do you agree with the changes we are proposing to make to our Approach Document as a result of the amendments made to the PSRs 2017 and EMRs 2011 by the PSSRs 2017? If not, please explain why not and suggest an alternative approach.**

### **Cost benefit analysis**

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**5.25** The changes that are proposed in this CP are made under the PSRs 2017 and EMRs 2011. Our proposed directions regarding the obligations on PSPs and the form and manner of reporting are made under Regulations 98 and 109 of the PSRs 2017. Our proposals for issuing guidance are made under Regulations 120 of the PSRs 2017 and 60 of the EMRs 2011.

**5.26** We are not required to publish a cost benefit analysis in relation to the exercise of our powers under the PSRs 2017. However, Regulation 106(3)(b) of the PSRs 2017 and Regulation 47(2)(c) of the EMRs 2011 require us to have regard to the principle that a burden or restriction imposed on any person should be proportionate to the benefits. In assessing the proportionality of our proposals, we have considered whether they impose costs on PSPs beyond those that are inherent in the obligations under PSRs 2017.

**5.27** The EBA undertook a cost benefit analysis/impact assessment regarding the implications to PSPs in adopting the requirements of the EBA Guidelines. We have taken this into account in this CBA and do not propose to repeat the analysis. It should also be noted that under Regulation (EU) 1093/2010, all PSPs are already under a legal obligation to make every effort to comply with the EBA Guidelines.

### **Operational and security risks under PSD2**

**5.28** The changes we are proposing to make to our reporting requirements and the associated guidance are the result of requirements contained in the PSRs 2017, which implement PSD2. As such we have very limited discretion (only regarding the form and frequency of reporting) in making these changes. Our proposal will not add any additional obligations beyond those required in the PSRs 2017 and the EBA Guidelines. The additional guidance we are proposing to add to our Approach Document results from EBA Guidelines, developed in accordance with a requirement contained in PSD2, a maximum harmonising directive. Our proposed guidance reflects a reasonable interpretation of the requirements of PSD2, the PSRs 2017 and the relevant EBA Guidelines. We do not believe the proposed guidance or reporting requirement adds any material cost to firms beyond that inherent in meeting the requirements of the PSRs 2017 and the EBA Guidelines.

**5.29** We acknowledge that firms may encounter some familiarisation costs related to the new guidance. Although we cannot estimate the additional costs of what we are proposing (against the requirements of the PSRs 2017 and the EBA Guidelines), we have sought to keep our proposed guidance, directions and report as short as possible.

**5.30** Please also see below regarding our consideration of the costs associated with the development of our reporting tool.

### **Changes to our guidance resulting from the PSSRs 2017**

**5.31** The amendments to the PSRs 2017 and EMRs 2011 have been implemented by HM Treasury. As such we are mirroring the changes made by HM Treasury and do not have discretion in the implementation of the new provisions. The changes that we have made to our guidance do not add any additional obligations to those contained in the PSRs 2017 and EMRs 2011 as amended by the PSSRs 2017.

**5.32** We do not believe that the impact of these changes is reasonably quantifiable; it is our view that any impact would, on balance, be positive, as the changes clarify areas of uncertainty in the PSRs 2017.

### **Impact on mutual societies**

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**5.33** The PSRs 2017 and EMRs 2011 do not require us to carry out an assessment of the impact on mutual societies. The proposals do not apply to credit unions.



## Compatibility statement

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**5.34** The changes we are proposing give effect to the requirements put in place by PSD2, the PSRs 2017, the EMRs 2011 (as amended by the PSRs 2017 and the PSSRs 2017) and the EBA Guidelines and so contribute to fulfilling their aims. These correspond closely to our operational objectives of ensuring an appropriate level of consumer protection, promoting effective competition in the interests of consumers and ensuring market integrity. The rules and guidance we are proposing are compatible with our strategic objective of ensuring that the relevant markets function well. We are therefore satisfied that the proposed changes are compatible with our objectives and regulatory principles.

**5.35** When determining general policy, and principles under the PSRs 2017 and EMRs 2011, we are required to have regard to the principles set out in Regulation 106(3) of the PSRs 2017 and Regulation 47(2) of the EMRs 2011, respectively. We are of the view that our proposals meet the principles set out in these Regulations.

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

**5.36** In developing these proposals we have had regard to the burden on the FCA. We have designed the reporting process in a way that ensures that we discharge our regulatory duties under the PSRs 2017 in the most efficient and effective way.

**5.37** We have taken into account our technical solution (Gabriel) development costs (the reporting form and reporting portal) and consider that the information and insight gained from the reports we would receive merit the costs to us of developing the reporting solution. Additionally, the reports will enable us to supervise PSPs in accordance with the risk we think their services might entail. This will allow us to make better use of FCA resources.

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

**5.38** We believe that any burdens or restrictions in the proposals we are making are proportionate to the benefits they create. We do not believe our proposals add any material cost to firms.

### **The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term**

**5.39** The proposals form a part of PSD2 implementation in the UK. PSD2 seeks to improve competition in payment services, and improve access for payment services businesses. Our proposals give effect to some of the provisions of PSD2. We do not believe that the specific proposals will have a negative impact on economic growth.

### **The general principle that consumers should take responsibility for their decisions**

**5.40** Our guidance is consistent with this principle as it covers the need for payment service providers to have suitable relationship management programmes in place to communicate effectively with consumers.

### **The responsibilities of those who manage the affairs of persons subject to requirements imposed by or under these Regulations**

**5.41** We do not believe that our proposals affect the responsibilities of those managing the affairs of others.

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

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

**The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring persons to publish information**

- 5.43** We have the power to publish information relating to investigations into businesses authorised under the Financial Services and Markets Act 2000 (FSMA), the PSRs 2017 and the EMRs 2011, and individuals. We do not currently consider the information that we would gather as a result of proposals in this CP would be appropriate to publish.

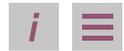
**The principle that we should exercise our functions as transparently as possible**

- 5.44** We believe that by consulting on our proposals we are acting in accordance with this principle. We are also choosing to set out guidance in our Approach Document to help PSPs understand the requirements we are introducing.

**Equality and diversity**

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- 5.45** We have considered the equality and diversity issues that may arise from the proposals in this chapter.
- 5.46** We do not consider that the proposals adversely impact any of the groups with protected characteristics (ie age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).
- 5.47** We welcome any feedback on this view as a part of our consultation.



# Annex 1

## List of questions

- Q2.1:** Do you agree with this proposed change to IFPRU 3.2?
- Q2.2:** Do you agree with this proposed change to IFPRU 11.5?
- Q2.3:** Do you agree with the proposed transitional provision in IFPRU TP 9?
- Q3.1:** Do you have any comments on our proposals to remove the SUP 16.9 reporting requirement regarding ARs and update the SUP 12.7 notification?
- Q3.2:** Do you have any comments on our proposals to alter the reporting requirements for retirement income reporting and its accompanying guidance?
- Q3.3:** Do you have any comments on our cost benefit analysis?
- Q4.1:** Do you have any comments on our proposal to update the references in our Handbook to the FCA's address, to reflect the change of registered address?
- Q5.1:** Do you agree with our proposed changes to Chapter 16 of our Supervision manual? Specifically, do you agree with the proposed directions to PSPs
- to comply with the EBA Guidelines published 12 December 2017, and
  - regarding the form, content and frequency of reporting?
- If not, please explain why not and suggest an alternative approach.
- Q5.2:** Do you agree with our proposed reporting form and guidance in Chapter 13 of the Approach Document? If not, please explain why not and suggest an alternative approach.
- Q5.3:** Do you agree with our proposed change to the Approach Document to add Chapter 18 on operational and security risks? If not, please explain why not and suggest an alternative approach.
- Q5.4:** Do you agree with the changes we are proposing to make to our Approach Document as a result of the amendments made to the PSRs 2017 and EMRs 2011 by the PSSRs 2017? If not, please explain why not and suggest an alternative approach.

## Appendix 1

### Abbreviations used in this paper

<b>AIS</b>	account information services
<b>AR</b>	Appointed Representative
<b>CBA</b>	cost benefit analysis
<b>CP</b>	Consultation Paper
<b>CRD</b>	Capital Requirements Directive (No 2013/36/EU)
<b>CRR</b>	Capital Requirements Regulation ((EU) No 575/2013)
<b>EBA</b>	European Banking Authority
<b>EMRs 2011</b>	Electronic Money Regulations 2011
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>IFPRU</b>	Prudential sourcebook for Investment Firms
<b>PS</b>	Policy Statement
<b>PIS</b>	payment initiation services
<b>PSD2</b>	Revised Payment Services Directive
<b>PSPs</b>	payment service providers
<b>PSRs 2017</b>	Payment Services Regulations 2017
<b>PSSRs 2017</b>	Payment Systems and Services and Electronic Money (Miscellaneous Amendments) Regulations 2017
<b>RRD</b>	Recovery and Resolution Directive (2014/59/EU)
<b>Regulation (EU) 2017/2395</b>	Amending Regulation (EU) No 575/2013 as regards transitional arrangements for mitigating the impact of the introduction of IFRS 9 on own funds and for the large exposures treatment of certain public sector exposures denominated in the domestic currency of any Member State
<b>SUP</b>	Supervision manual



We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. 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 in the future.

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

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

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## Appendix 2

# CRD IV: Changes to the Prudential sourcebook for Investment Firms (IFPRU)

**CAPITAL REQUIREMENTS DIRECTIVE IV AND BANK RECOVERY AND  
RESOLUTION DIRECTIVE (AMENDMENT) INSTRUMENT 2018**

**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 (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

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

**Amendments to the Handbook**

- D. The Prudential sourcebook for Investment Firms (IFPRU) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Capital Requirements Directive IV and Bank Recovery and Resolution Directive (Amendment) Instrument 2018.

By order of the Board  
*[date]* 2018

## Annex

Amendments to the Prudential sourcebook for Investment Firms  
(IFPRU)

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

### 3 Own funds

...

#### 3.2 Capital

...

~~Own funds instruments issued under third country law~~

3.2.8 R ~~A firm must demonstrate to the FCA that any additional tier 1 instrument or tier 2 instrument issued by it that is governed by the law of a third country is by its terms capable, as part of a resolution of the firm, of being written down or converted into a common equity tier 1 instrument of the firm to the same extent as an equivalent own funds instrument issued under the law of the UK. [deleted]~~

3.2.9 R ~~A firm must include, in the materials it provides to the FCA under IFPRU 3.2.8 R, a properly reasoned legal opinion from an individual appropriately qualified in the relevant third country. [deleted]~~

...

### 11 Recovery and resolution

...

#### 11.5 Intra-group financial support

...

Summary of RRD intra-group financial support conditions

11.5.3 G (1) *RRD* recognises a specific form of intra-group financial support. This allows an *RRD group member* in one *EEA State* or a third country to give financial support to an *RRD institution* in its *group* in another *EEA State* or third country, when that institution has infringed or is likely to infringe an *RRD early intervention condition*.

(2) To give this specific form of financial support an *RRD group member*

must use an *RRD group financial support agreement* and satisfy the applicable conditions.

...

After IFPRU TP 8 Countercyclical capital buffer: transitional, insert the following new transitional provision. The text is not underlined.

**IFPRU TP 9 Large exposures limits**

	Application	
9.1	R	<i>IFPRU TP 9 applies to an IFPRU investment firm, unless it is an exempt IFPRU commodities firm.</i>
	Purpose	
9.2	G	<i>IFPRU TP 9 contains the rules that exercise the discretion afforded to the FCA as competent authority under article 493(4) to (7) of the EU CRR. The applicable limits in IFPRU TP 9 apply for the duration of the transitional.</i>
	Duration of transitional	
9.3	R	<i>IFPRU TP 9 applies until 31 December 2020.</i>
	Large exposures limits	
9.4	R	For the purposes of article 493(4) of the <i>EU CRR</i> , a <i>firm</i> may incur any of the exposures provided for in article 493(5) of the <i>EU CRR</i> meeting the conditions set out in article 493(6) of the <i>EU CRR</i> , up to the following limits:
	(1)	100% of the <i>firm's common equity tier 1 capital and additional tier 1 capital</i> until 31 December 2018;
	(2)	75% of the <i>firm's common equity tier 1 capital and additional tier 1 capital</i> until 31 December 2019;
	(3)	50% of the <i>firm's common equity tier 1 capital and additional tier 1 capital</i> until 31 December 2020.



# Appendix 3

## Changes to reporting requirements in the Supervision manual

**SUPERVISION MANUAL (REPORTING No [X])  
INSTRUMENT 2018**

**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 provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. (1) Part 1 of this instrument comes into force on 25 May 2018.  
(2) Part 2 of this instrument comes into force on 30 September 2018, immediately after the changes made by the Retirement Income Data (Regulatory Return) Instrument 2017 (FCA 2017/48) which also come into force on that date.

**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 Supervision Manual (Reporting No [X]) Instrument 2018.

By order of the Board  
[date] 2018

## Annex

## Amendments to the Supervision manual (SUP)

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

## Part 1: Comes into force on 25 May 2018

## 12 Appointed representatives

...

## 12.7 Notification requirements

...

12.7.1A R (1) A firm other than:

- (a) a *credit union*; or
- (b) a *firm* which intends to appoint, or has appointed, an *appointed representative* to carry on only *credit-related regulated activity*;

must submit the form in SUP 12 Annex 3 via online submission at the FCA's website at <http://www.fca.org.uk> using the FCA's ONA system or any of the methods set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

...

Notification of changes in information given to the FCA

12.7.7 R ...

- (2) Where there is a change in any of the information provided to the *FCA* under SUP 12.7.1R or SUP 12.7.7R(1A), a *firm* must complete and submit to the *FCA* the form in SUP 12 Annex 4R (Appointed representative ~~notification form~~ or tied agent – change details) within ten *business days* of that change being made or, if later, as soon as the *firm* becomes aware of the change. The Appointed representative ~~notification form~~ or tied agent – change details form must state that the information has changed.

...

## 15 Notifications to the FCA

...

## 15.7 Form and method of notification

...

Method of notification

15.7.4 R Unless stated in the *notification rule*, or on the relevant form (if specified), a written notification required from a *firm* under any *notification rule* must be:

(1) ...

(2) delivered to the *FCA* by one of the methods in *SUP 15.7.5AR* ~~or *SUP 15.7.5BR* as applicable.~~

...

## Part 2: Comes into force on 30 September 2018

Amend the following as shown.

### 16 Reporting requirements

#### 16.1 Application

...

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16, SUP 16.17 and SUP 16.22)

...

(1) Section (s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
SUP 16.24	<del>An insurer which has effected or carried out a pension annuity or a drawdown pension within the relevant reporting period set out in SUP 16.24.3(2)R.</del> <u>A firm with permission to effect or carry out contracts of insurance in relation to life and annuity contracts of insurance to the extent that the firm and its business falls within the scope of SUP 16.24.1R.</u>	Entire Section

...

#### 16.24 Retirement income data reporting

Application

16.24.1 R This section applies to:

- (1) (a) ...
- (b) ~~an insurer which has effected or carried out a pension annuity or a drawdown pension within the relevant reporting period as set out in SUP 16.24.3(2)R.~~ a firm with permission to effect or carry out contracts of insurance in relation to life and annuity contracts of insurance.

...

**16**            **Forms REP015 and REP016**  
**Annex**  
**43AR**

REP015 - Retirement income flow data

NIL RETURN

1 Do you wish to declare a nil return? 

A
---

GROUP REPORTING

2 Does the data reported in this return cover information relating to more than one entity? (NB: You should always answer 'No' if your firm is not part of a group) 

--

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

--

NOTIFICATION

Part 1 - Activity during the reporting period

		A
4	How many plans were transferred away to another provider by plan holders aged 55 and over who had not yet accessed their benefits?	
5	How many plans were transferred away to another provider by plan holders aged 55 and over who had already accessed their benefits (by crystallising some or all of their assets or taking an uncrystallised funds pension lump sum (UFPLS))?	
6	How many defined benefit (DB) to defined contribution (DC) transfers have you completed?	
7	What was the total value withdrawn via Pension Commencement Lump Sum (PCLS) for all plans? (£)	
8	What was the total number of plans that were fully encashed via small pot lump sums, UFPLS or drawdown?	
9	What was the total amount withdrawn this period from the fully encashed plans reported in question 8? (£)	

Part 2 - Breakdown of activity by plan holders accessing their pension plans during the reporting period

Value of assets under administration in plans accessed during the reporting period

10	What was the total value of assets under administration (AUA) for plans that entered drawdown? Value should be after any PCLS but before any income withdrawn (£)		
11	For annuity providers only, what was the total value of AUA for plans that were used to purchase annuities? Value should be after any PCLS but before annuity purchase (£)		If 0, leave questions 14 - 29 blank
12	What was the total value of AUA for plans that were accessed for the first time by taking a partial UFPLS? Value should be before any partial UFPLS withdrawals (£)		If 0, leave questions 30 - 53 blank
13	What was the total value withdrawn from plans that were accessed for the first time and fully encashed via small pot lump sums, UFPLS or drawdown? Value should be gross i.e. include both tax free and taxable portions (£)		If 0, leave questions 54 - 60 blank
			If 0, leave questions 61 - 68 blank

Plan holders that entered drawdown during the reporting period but did not fully exhaust their plan

		A	B	C	D	E	F
		Less than £10,000	£10,000 - £29,999	£30,000 - £49,999	£50,000 - £99,999	£100,000 - £249,999	£250,000 and above
14	What was the total number of plans that entered drawdown during the reporting period by crystallised pot size?						
Number of plans by plan holder age band and crystallised pot size:							
15	Under 55						
16	55 - 64						
17	65 - 74						
18	75 - 84						
19	85+						

Number of plans that entered drawdown by distribution channel and crystallised pot size:

20	Existing plan holders						
21	New plan holders via single firm third party arrangement						
22	New plan holders via multi firm third party arrangements (e.g. panel arrangements)						
23	New plan holders (i.e. transfers in not from third party arrangements)						

Number of plans that entered drawdown by use of advice and crystallised pot size:

24	Number that were advised						
25	Number that were not advised but took up pensions guidance (e.g. Pension Wise)						

Number of plans that entered drawdown by packaged product options and crystallised pot size:

26	Capital guarantee for part or all of assets (e.g. fixed term annuities)						
27	Income guarantee for part or all of assets (e.g. variable annuities, retirement accounts)						
28	Both capital and income guarantee for part or all of assets (e.g. variable annuities, retirement accounts)						

29 What was the total number of plans that entered drawdown where only a PCLS was taken by crystallised pot size? 

--

		Less than £10,000	£10,000 - £29,999	£30,000 - £49,999	£50,000 - £99,999	£100,000 - £249,999	£250,000 and above
30	What was the total number of pension annuities purchased during the reporting period by pot size?						
	Number of pension annuities by plan holder age band and pot size:						
31	Under 55						
32	55 - 64						
33	65 - 74						
34	75 - 84						
35	85+						
	Number of pension annuities purchased by distribution channel and pot size:						
36	Existing plan holders						
37	New plan holders via single firm third party arrangement						
38	New plan holders via multi firm third party arrangements (e.g. panel arrangements)						
39	New plan holders (i.e. transfers in not from third party arrangements)						
	Number of pension annuities by use of advice and pot size:						
40	Number that were advised						
41	Number that were not advised but took up <i>pensions guidance</i> (e.g. Pension Wise)						
	Number of pension annuities by product types/options and pot size:						
42	Enhanced annuities						
43	Annuities with guarantee periods of 10 years or less						
44	Annuities with more than 10 year guarantee periods						
45	Unit linked investment annuities						
46	With profits linked investment annuities						
47	Value protection annuities						
48	Deferred annuities						
49	Single life annuities (Male, Female & Unis)						
50	Joint life annuities						
51	Level only annuities						
52	Escalating annuities						
53	Flexible annuities (e.g. post April 15 changing shape, cash out etc.)						

**Plan holders who accessed their plan for the first time by taking a partial UFPLS payment**

		A	B	C	D	E	F
		Less than £10,000	£10,000 - £29,999	£30,000 - £49,999	£50,000 - £99,999	£100,000 - £249,999	£250,000 and above
54	What was the total number of plans where plan holders accessed their plan for the first time by taking partial UFPLS payments during the reporting period by <u>uncrystallised</u> pot size?						
	Number of plans by plan holder age band and <u>uncrystallised</u> pot size:						
55	55 - 64						
56	65 - 74						
57	75 - 84						
58	85+						
	Number of plans <u>where plan holders accessed their plan for the first time by taking partial UFPLS payments</u> by use of advice and <u>uncrystallised</u> pot size:						
59	Number that were advised						
60	Number that were not advised but took up <i>pensions guidance</i> (e.g. Pension Wise)						

**Full encashments made by plan holders who accessed their plans for the first time**

		A	B	C	D	E	F
		Less than £10,000	£10,000 - £29,999	£30,000 - £49,999	£50,000 - £99,999	£100,000 - £249,999	£250,000 and above
61	What was the total number of full encashments by plan holders who accessed their plan for first time (via small pot lump sums, UFPLS or Drawdown) by pot size?						
	Number of full encashments by plan holder age band and pot size:						
62	Under 55						
63	55 - 64						
64	65 - 74						
65	75 - 84						
66	85+						
	Of which, number of full encashments by use of advice and pot size:						
67	Number that were advised						
68	Number that were not advised but took up <i>pensions guidance</i> (e.g. Pension Wise)						

69 Please provide any comments about the answers provided in this return (up to a limit of 2000 characters).

REP016 - Retirement income stock and withdrawals flow data

NIL RETURN

1 Do you wish to declare a nil return? 

A
---

GROUP REPORTING

2 Does the data reported in this return cover information relating to more than one entity? (NB: You should always answer 'No' if your firm is not part of a group) 

--

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

--

NOTIFICATION

Part 1 - Retirement income stock data

Uncrystallised stock data

	A	B
	Contract	Trust
4 How many defined contribution (DC) pension plans do you have in accumulation where the plan holder is aged 55 or over and has not accessed their pension?		
5 How many DC pension plans do you have with only uncrystallised assets where the plan holder is aged 55 or over and has at any time taken a lump sum payment via uncrystallised funds pension lump sum (UFPLS) ?		
6 How many DC pension plans do you have in accumulation where the plan holder is aged under 55 years old?		
7 How many DC pension plans do you have which are still solely in accumulation (uncrystallised) and have a guaranteed income benefit such as a guaranteed annuity rate (GAR), deferred annuity option, or guaranteed minimum pension (GMP)?		
8 What is your total value of uncrystallised assets under administration (AUA) in DC pension plans? (£)		

Partially crystallised stock data

9 How many DC pension plan holders do you have over 55 years old that have partly crystallised their pension plan (e.g. phased or drip feed drawdown)? 

--	--

Crystallised stock data

10 How many drawdown (capped and flexi) plans do you have where 100% of the funds are crystallised?		
11 How many drawdown plans do you have where a PCLS has been paid but no income has ever been taken?		
12 What is the total value of crystallised assets under administration (AUA) in DC pension plans? (£)		

Payments from annuities, drawdown and UFPLS

13 In total how many annuities do you currently have in payment?		
14 What was the total income paid on all your annuities in payment during the reporting period? (£)		
15 What is the total number of plans where the plan holder made regular withdrawals by drawdown or UFPLS?		If lower than 750, leave questions 17 - 31 blank
16 What is the total number of plans where the plan holder made ad hoc partial withdrawals by drawdown or UFPLS?		If 0, leave questions 32 and 33 blank

Part 2 - Withdrawals flow data

REGULAR WITHDRAWALS - Plan holders that have a regular UFPLS or drawdown payment set up - by age band

Questions 17 - 31 should only be completed by firms that reported 750 plans or more in question 15

	A	B	C	D	E
	Under 55	55-64	65-74	75-84	85+
17 Total value of regular withdrawals during the reporting period? (£)					
Number of plan-holders where the plan holder(s) made <del>making</del> regular partial withdrawals, by annual rate of withdrawal and age band:					
18 Less than 2% withdrawal in the reporting period					
19 Between 2% - 3.99% withdrawal in the reporting period					
20 Between 4% - 5.99% withdrawal in the reporting period					
21 Between 6% - 7.99% withdrawal in the reporting period					
22 Greater than or equal to 8% withdrawal in the reporting period					
Number of plan-holders where the plan holder(s) made <del>making</del> regular partial withdrawals, by use of advice and age band:					
23 Of the number of plans where the plan holder made less than 4% withdrawals in the reporting period, how many were advised sales?					
24 Of the number of plans where the plan holder made greater than or equal to 4% withdrawals in the reporting period, how many were advised sales?					

**REGULAR WITHDRAWALS - Plan holders that have a regular UFPLS or drawdown payment set up - by pot size**

		A	B	C	D	E	F
		Less than £10,000	£10,000 - £29,999	£30,000 - £49,999	£50,000 - £99,999	£100,000 - £249,999	£250,000 and above
	Number of plan-holders where the plan holder(s) made making-regular partial withdrawals, by annual rate of withdrawal and pot size:						
25	Less than 2% withdrawal in the reporting period						
26	Between 2% - 3.99% withdrawal in the reporting period						
27	Between 4% - 5.99% withdrawal in the reporting period						
28	Between 6% - 7.99% withdrawal in the reporting period						
29	Greater than or equal to 8% withdrawal in the reporting period						
	Number of plan-holders where the plan holder(s) made making-regular partial withdrawals, by use of advice and pot size:						
30	Of the number of plans where the plan holders were making less than 4% withdrawals in the reporting period, how many were advised sales?						
31	Of the number of plans where the plan holders were making greater than or equal to 4% withdrawals in the reporting period, how many were advised sales?						

**AD-HOC WITHDRAWALS - Plan holders that do not have a regular payment set up but some UFPLS or drawdown payments were made**

Questions 32 and 33 should only be completed by firms that reported 1 or more plans in question 16

		A	B	C	D	E	F
		Less than £10,000	£10,000 - £29,999	£30,000 - £49,999	£50,000 - £99,999	£100,000 - £249,999	£250,000 and above
32	Total value of ad hoc partial withdrawals during the reporting period? (£)						
33	Total number of plans where the plan holder made ad hoc partial withdrawals during the reporting period?						
34	Please provide any comments about the answers provided in this return (up to a limit of 2000 characters).						

## 16 Guidance notes for completion of the Retirement income flow data return Annex ('REP015') and the Retirement income stock and withdrawals flow data 43BG return ('REP016')

...

**Key abbreviations**

...

6. ...

**Nil Returns**

A firm which is within the scope of SUP 16.24.1R because it has one of the relevant permissions but has no relevant data to report must (as set out in SUP 16.24.3R(3)) submit a nil return. In particular, a firm with permission to effect or carry out contracts of insurance in relation to life and annuity contracts of insurance which has not effected or carried out a pension annuity or a drawdown pension within the relevant reporting period should submit a nil return, unless the firm has relevant data to report because of activity undertaken under either of the permissions set out in SUP 16.24.1R(1)(a).

...

## NOTES FOR COMPLETION OF THE RETIREMENT INCOME FLOW DATA RETURN ('REP015') AND THE RETIREMENT INCOME STOCK AND WITHDRAWALS FLOW DATA RETURN ('REP016')

**Section A Notes for completion of REP015**

...

**Value of assets under administration in plans accessed during the reporting period (questions 10 to 13)**

Questions 10 to 13 must be completed by all *firms*.

Please note that the reporting requirements vary between questions:

- For questions 10 and 11, *firms* should include data relating to all plan holders who enter drawdown or purchase an annuity for the first time, regardless of whether the plan has previously been accessed in other ways.
- For questions 12 and 13, *firms should* should only include data relating to plan holders who have not accessed their plans prior to this reporting period.

If already crystallised assets are transferred into a plan previously only containing uncrystallised assets, it is at that point that the plan is considered to have entered drawdown for reporting purposes. However, the transfer in should not be included in the total value of AUA for question 10, unless it was first crystallised in the same reporting period. This is to avoid double counting - the transfer in should already have been captured at the point at which it first became crystallised in the pension plan from which it was transferred.

The figures should be reported in pounds sterling and single units.

...

**Plan holders that entered drawdown during the reporting period but did not fully exhaust their plan (questions 14 – 29)**

...

Q14: What was the total number of plans that entered drawdown during the reporting period by <del>erystallised</del> pot size?	...
Q15 – Q19: Number of plans by plan holder age band and <del>erystallised</del> pot size	...
...	...
Q20 – Q23: Number of plans <u>that entered</u>	...

<u>drawdown</u> by distribution channel and <del>crystallised</del> pot size:	
Q24: Number of plans <u>that entered drawdown</u> by use of advice and <del>crystallised</del> pot size: number that were advised	...
Q25: Number of plans <u>that entered drawdown</u> by use of advice and <del>crystallised</del> pot size: number that were not advised but took up <i>pensions guidance</i> (e.g. Pension Wise)	...
Q26 – Q28: Number of plans <u>that entered drawdown</u> by packaged product options and <del>crystallised</del> pot size	...
Q29: What was the total number of plans <u>that entered drawdown</u> where only a PCLS was taken by <del>crystallised</del> pot size?	Of the plans reported as entering drawdown in question 14, report the number of ‘zero income’ plans where <del>funds were crystallised and</del> PCLS <u>was</u> taken, but no taxable drawdown income has been taken.

...

**Plan holders who accessed their plan for the first time by taking a partial UFPLS payment (questions 54 to 60)**

...

...	...
Q54: What was the total number of plans where plan holders accessed their plan for the first time by taking partial UFPLS payments during the reporting period by <del>uncrystallised</del> pot size?	The guidance to question 12 provides more information about which plans should be reported for this question.  Plans should be reported <u>by age band and under the pot size band that reflects the total amount of AUA in the plan prior to the first UFPLS withdrawal.</u>
...	...

Q59: Number of plans <u>where plan holders accessed their plan for the first time by taking partial UFPLS payments by use of advice and uncrystallised pot size: number that were advised</u>	...
---	-----

...

## Section B Notes for completion of REP016

...

### Part 1 – Retirement income stock data (questions 4 to 16)

...

- *Firms* should report all personal and stakeholder pensions as contract-based schemes; ~~including SIPPs written under trust~~. For example, this should include *personal pension schemes, stakeholder pension schemes, SIPPs (including those written under trust), group personal pension schemes, group stakeholder pension schemes and group SIPPs.*
- Only defined contribution (DC) occupational ~~money purchase schemes~~ *money purchase schemes* should be reported as trust-based schemes. For example, this should include *single employer trusts, master trusts, small self-administered schemes (SSAS) and executive pension plans.*

For unitised with-profits business, *firms* should report the policy fund value. ...

...



## Appendix 4

# Changes to our address

**FINANCIAL CONDUCT AUTHORITY (CHANGE OF ADDRESS) INSTRUMENT  
2018**

**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 55U (Applications under Part 4A), as applied by paragraph 5(4) of Schedule 4 (Treaty rights);
    - (b) section 137A (The FCA’s general rules); and
    - (c) section 139A (Power of the FCA to give guidance); and
  - (2) the powers of direction, guidance and related provisions in or under the following provisions of the Data Reporting Services Regulations 2017 (SI 2017/699):
    - (a) regulation 7 (Application for authorisation);
    - (b) regulation 8 (Application for verification of compliance);
    - (c) regulation 11 (Cancellation of authorisation);
    - (d) regulation 12 (Variation of authorisation); and
    - (e) regulation 21(1) (Reporting requirements).
- 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 modules of the 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)
General Provisions (GEN)	Annex A
Market Conduct sourcebook (MAR)	Annex B
Supervision manual (SUP)	Annex C
Credit Unions sourcebook (CREDS)	Annex D
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex E
Listing Rules sourcebook (LR)	Annex F
Disclosure Guidance and Transparency Rules sourcebook (DTR)	Annex G

**Amendments to material outside the Handbook**

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

**Notes**

- F. In Annexes F and G 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 Financial Conduct Authority (Change of Address) Instrument 2018.

By order of the Board  
[*date*]

## Annex A

## Amendments to the General Provisions (GEN)

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

## 1 FCA approval and emergencies

...

### 1.3 Emergency

...

#### 1.3.2 R ...

- (4) A notification under (3) must be given to or addressed and delivered in accordance with *SUP* 15.7 (Form and method of notification) (whether or not the *person* is a *firm*). If the *person* is not a *firm*, the notification must be given to or addressed for the attention of Contact Centre, The Financial Conduct Authority, ~~25 The North Colonnade~~ 12 Endeavour Square, ~~Canary Wharf~~, London, ~~E14 5HS~~ E20 1JN (tel: 0300 500 0597).

...

## 2 Interpreting the Handbook

...

## 2 Annex Designated investment exchanges

### 1G

Introduction	
...	
<b>Applications to be added to the list of designated investment exchanges</b>	
6.	An application to be added to the list should be in writing and delivered to the <i>FCA</i> by:
(1)	post to: The Financial Conduct Authority <del>25 The North Colonnade</del> <u>12 Endeavour Square</u> <del>Canary Wharf</del> London <del>E14 5HS</del> <u>E20 1JN</u> ; or

	(2)	leaving the application at that address.
...		

## Annex B

### Amendments to the Market Conduct sourcebook (MAR)

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

#### 9 Data reporting service

...

#### 9.2 Authorisation and verification

...

Provision of the forms in MAR 9 Annexes 1D, 2D, 3D and 4D to the FCA

9.2.6 D A *person* must provide MAR 9 Annexes 1D, 2D, 3D and 4D together with supporting documentation to the *FCA* by:

(1) emailing MiFiDII.Applications@fca.org.uk; or

(2) posting to the *FCA* addressed to:

The Financial Conduct Authority

FAO The Authorisations Support Team

~~25 The North Colonnade~~ 12 Endeavour Square

~~Canary Wharf~~

London

~~E14 5HS~~ E20 1JN.

#### 9.3 Notification and information

...

Notification to the FCA by an APA or a CTP of compliance with connectivity requirements

9.3.4 D As soon as possible and within 2 weeks of being authorised as an APA or a CTP, an APA or a CTP seeking a connection to the *FCA's market data processor system* must:

...

(2) email it to MDP.onboarding@fca.org.uk or post an original signed copy to the *FCA* addressed to:

The Financial Conduct Authority  
FAO The Markets Reporting Team  
~~25 The North Colonnade~~ 12 Endeavour Square  
~~Canary Wharf~~  
London  
~~E14 5HS~~ E20 1JN.

...

9.3.12 D A data reporting services provider must promptly provide the forms in MAR 9 Annexes 5D, 6D, 7D, 8D and 9D and supporting documentation to the FCA:

- (1) at MRT@fca.org.uk; or
- (2) by posting it to the FCA, addressed to:  
The Financial Conduct Authority  
The Markets Reporting Team  
~~25 The North Colonnade~~ 12 Endeavour Square  
~~Canary Wharf~~  
London  
~~E14 5HS~~ E20 1JN.

## Annex C

## Amendments to the Supervision manual (SUP)

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

**6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements**

...

**6.4 Applications for cancellation of permission**

...

**6.4.6 G ...**

(2) To contact the Cancellations Team:

- (a) write to: Cancellations Team, The Financial Conduct Authority, ~~25 The North Colonnade~~ 12 Endeavour Square, Canary Wharf, London, ~~E14 5HS~~ E20 1JN; or

...

...

...

**10A FCA Approved Persons**

...

**10A.12 Procedures relating to FCA approved persons**

...

10A.12.6 G Copies of Forms A, B, C, D and E may be obtained from the *FCA* website. *Credit unions* can obtain copies from the *FCA*'s Contact Centre. To contact the *FCA*'s Contact Centre for *approved persons* enquiries:

...

(4) write to:

Customer Contact Centre

The Financial Conduct Authority

~~25 The North Colonnade~~ 12 Endeavour Square

~~Canary Wharf~~  
~~LONDON London~~  
~~E14 5HS E20 1JN.~~

...

**10A Form E: Internal transfer of an approved person**  
**Annex**  
**8D**

...

**SECTION 6 – DECLARATIONS AND SIGNATURES**

This section contains declarations which must be signed by both an appropriate individual for the *firm* or applicant submitting the application and the *candidate*.

...

PLEASE RETURN THE COMPLETED FORM TO:

Financial Conduct Authority <del>25 The North Colonnade</del> <u>12 Endeavour Square</u> <del>Canary Wharf</del> London, <del>E14 5HS</del> <u>E20 1JN</u> United Kingdom	Prudential Regulation Authority ...
---	--

...

**10C FCA senior management regime for approved persons in relevant authorised persons**

...

**10C.15 Forms and other documents and how to submit them to the FCA**

...

10C.15.6 G To contact the ~~FCA's~~ FCA's Customer Contact Centre for *approved persons* enquiries:

...

(4) write to:

Customer Contact Centre  
 The Financial Conduct Authority  
~~25 The North Colonnade~~ 12 Endeavour Square

~~Canary Wharf~~

~~LONDON E14 5HS~~ London, E20 1JN.

...

## **12 Appointed representatives**

...

### **12.7 Notification requirements**

...

12.7.5 G To contact the *FCA's* Contact Centre with *appointed representatives* enquiries:

...

- (2) write to: Customer Contact Centre, The Financial Conduct Authority, ~~25 The North Colonnade~~ 12 Endeavour Square, Canary Wharf, London, ~~E14 5HS~~ E20 1JN; or

...

...

## **13A Qualifying for authorisation under the Act**

...

### **13A.3 Qualifications for authorisation under the Act**

...

13A.3.7 D ...

- (2) The written notice may be delivered by:

(a) *post* to either of the following addresses, as appropriate:

- (i) the address for notices to the *FCA*: The Financial Conduct Authority, ~~25 The North Colonnade~~ 12 Endeavour Square, ~~Canary Wharf,~~ London, ~~E14 5HS~~ E20 1JN; or
- (ii) the address for notices to the *PRA*: ...

...

...

## **13A Annex EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom**

## 3R

Under paragraph 15A(1) of Part II of Schedule 3 to the *Act*, an *EEA UCITS management company* intending to exercise an *EEA right* to provide *collective portfolio management services* for a *UCITS scheme* must, before it undertakes that activity, obtain the *FCA's* approval to manage that *UCITS scheme*. *Firms* should use the application form below for this purpose. *Firms* may cross refer to other sources where the information has already been provided to the *FCA*.

**Application by an EEA UCITS management company to manage one or more UCITS schemes established in the United Kingdom (paragraph 15A(1) of Part II of Schedule 3 to the Financial Services and Markets Act 2000).**

...

When completed send this form to:

Investment Funds Team

The Financial Conduct Authority

~~25 the North Colonnade~~ 12 Endeavour Square

~~London. E14 5HS~~

E20 1JN.

Or electronically to: [recognisedcis@fca.org.uk](mailto:recognisedcis@fca.org.uk)

...

**14 Incoming EEA firms changing details, and cancelling qualification for authorisation**

...

**14.4 Notices of proposed changes: form and delivery**

...

- 14.4.1A G The address for *FCA* notices is: The Passport Notifications Unit, The Financial Conduct Authority, ~~25 The North Colonnade~~ 12 Endeavour Square, Canary Wharf, London, E14 5HS E20 1JN.

...

**15 Notifications to the FCA**

...

**15.7 Form and method of notification**

...

- 15.7.6A G The current published address of the *FCA* for postal submission or hand

delivery of notifications is:

(1) The Financial Conduct Authority

~~25 The North Colonnade~~ 12 Endeavour Square

~~Canary Wharf~~

London, ~~E14 5HS~~ E20 1JN

if the *firm*'s usual supervisory contact at the *FCA* is based in London,  
or

...

...

## 16 Reporting requirements

...

### 16.3 General provisions on reporting

...

#### 16.3.10 G ...

(2) The published address of the *FCA* for hand delivery of reports is:

(a) Central Reporting

The Financial Conduct Authority

~~25 The North Colonnade~~ 12 Endeavour Square

~~Canary Wharf~~

London, ~~E14 5HS~~ E20 1JN

if the *firm*'s usual supervisory contact at the *FCA* is based in  
London, or:

...

...

## 17A Transaction reporting and supply of reference data

...

### 17A.2 Connectivity with FCA systems

...

17A.2.2 R To ensure the security of the *FCA*'s systems, a *firm* or operator of a *trading venue* in *SUP* 17A.2.1R must:

...

- (2) send it by email ~~it~~ to [MDP.onboarding@fca.org.uk](mailto:MDP.onboarding@fca.org.uk) or post an original signed copy to the *FCA* addressed to:

The Financial Conduct Authority

FAO The Markets Reporting Team

~~25 The North Colonnade~~ 12 Endeavour Square

~~Canary Wharf~~

London, ~~E14 5HS~~ E20 1JN.

...

**Annex D****Amendments to the Credit Unions sourcebook (CREDS)**

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

**8 Supervision**

...

**8.2 Reporting requirements**

...

8.2.6A R The methods referred to in *CREDS* 8.2.6R(2)(b) are:

...

- (2) by post to Mutuals Team, Financial Conduct Authority, ~~25 The North Colonnade~~ 12 Endeavour Square, Canary Wharf, London, E14 5HS E20 1JN.

...

## Annex E

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

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

#### 3 Notification rules for UK recognised bodies

...

##### 3.2 Form and method of notification

...

3.2.4 R The address for a written notification to the *FCA* is:

The Financial Conduct Authority

~~25 The North Colonnade~~ 12 Endeavour Square

~~Canary Wharf~~

London, ~~E14 5HS~~ E20 1JN

...

#### 6 Overseas Investment Exchanges

...

##### 6.2 Applications

...

6.2.3 G Applicants for *authorised person* status should refer to the *FCA* website “Authorisation”: [www.fca.org.uk/firms/authorisation](http://www.fca.org.uk/firms/authorisation). Applications for recognition as an *overseas recognised body* should be addressed to:

The Financial Conduct Authority (Infrastructure and Trading Firms Department)

~~25 The North Colonnade~~ 12 Endeavour Square

~~Canary Wharf~~

London, ~~E14 5HS~~ E20 1JN

...

## Annex F

## Amendments to the Listing Rules sourcebook (LR)

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

**1 Preliminary: All securities**

...

**1.2 Modifying rules and consulting the FCA**

...

- 1.2.6 G Where a *listing rule* refers to consultation with the *FCA*, submissions should be made in writing other than in circumstances of exceptional urgency or in the case of a submission from a *sponsor* in relation to the provision of a *sponsor service*.

Address for correspondence

**Note:** The *FCA*'s address for correspondence is:

The Financial Conduct Authority
<del>25 The North Colonnade</del> <u>12 Endeavour Square</u>
<del>Canary Wharf</del>
London, <del>E14 5HS</del> <u>E20 1JN</u>
Tel: 020 7066 8333
<a href="http://www.fca.org.uk/markets/ukla">www.fca.org.uk/markets/ukla</a>

...

## Annex G

## Amendments to the Disclosure Guidance and Transparency Rules sourcebook (DTR)

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

## 1 Introduction

...

### 1.2 Modifying rules and consulting the FCA

...

- 1.2.5 G Where a *disclosure requirements* and the *disclosure guidance* refers to consultation with the *FCA*, submissions should be made in writing other than in circumstances of exceptional urgency.

#### Address for correspondence

**Note:** The *FCA*'s address for correspondence in relation to the *disclosure requirements* and the *disclosure guidance* is:

Primary Market Monitoring
Enforcement and Markets Oversight Division
The Financial Conduct Authority
<del>25 The North Colonnade</del> <u>12 Endeavour Square</u>
<del>Canary Wharf</del>
London, <del>E14 5HS</del> <u>E20 1JN</u>

...

## 1A Introduction (Transparency rules)

...

### 1A.2 Modifying rules and consulting the FCA

...

- 1A.2.5 G Where a *transparency rule* refers to consultation with the *FCA*, submissions should be made in writing other than in circumstances of exceptional urgency.

#### Address for correspondence

**Note:** The *FCA*'s address for correspondence in relation to the *transparency rules* is:

Primary Market Monitoring
Enforcement and Markets Oversight Division
The Financial Conduct Authority
<del>25 The North Colonnade</del> <u>12 Endeavour Square</u>
<del>Canary Wharf</del>
London, <del>E14 5HS</del> <u>E20 1JN</u>

...

## 1C Introduction (Primary information providers)

...

### 1C.2 Modifying rules and consulting the FCA

...

- 1C.2.5 R Where a requirement in *DTR* 8 refers to consultation with the *FCA*, submissions must be made in writing other than in circumstances of exceptional urgency.

#### Address for correspondence

**Note:** The *FCA*'s address for correspondence in relation to *DTR* 8 is:

Primary Market Monitoring
Markets Division
The Financial Conduct Authority
<del>25 The North Colonnade</del> <u>12 Endeavour Square</u>
<del>Canary Wharf</del>
London
<del>E14 5HS</del> <u>E20 1JN</u>
Fax: 0207 066 8349.

...

## 6 Continuing obligations and access to information

...

### 6.3 Dissemination of information

...

6.3.3B R ...

(2) ...

#### Address for correspondence

**Note:** The *FCA*'s address for correspondence in relation to *DTR* 6.3 is:

Primary Market Monitoring

Markets Division

The Financial Conduct Authority

~~25 The North Colonnade~~ 12 Endeavour Square

~~Canary Wharf~~

London

~~E14 5HS~~ E20 1JN

Fax: 020 7066 8349

...

## 8 Primary Information Providers

...

### 8.4 Continuing obligations

...

8.4.38 R ...

(2) Notifications to the *FCA* must be sent to the following address:

Sponsor Supervision

Enforcement and Market Oversight Division

The Financial Conduct Authority

~~25 The North Colonnade~~ 12 Endeavour Square

~~Canary Wharf~~

London

~~E14 5HS~~ E20 1JN

Fax: 020 7066 8349

...

## Annex H

### Amendments to the Enforcement Guide (EG)

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

#### **13 Insolvency**

...

#### **13.12 Insolvency regime and relevant sections of the Act**

...

13.12.2 Unless paragraph 13.13.1 applies, the information and documents identified in 13.12.2 should be sent to the Financial Conduct Authority, ~~25 The North Colonnade~~ 12 Endeavour Square, Canary Wharf, London, E14 5HS E20 1JN marked 'insolvency information'. ...

...



# Appendix 5A

## Payment Services and Electronic Money: changes to our rules and guidance under the Payment Services Regulations 2017

## PAYMENT SERVICES INSTRUMENT 2018

### Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Payment Services Regulations 2017 (SI 2017/52) (“the Regulations”):
- (1) regulation 98 (Management of operational and security risk);
  - (2) regulation 109(Reporting requirements); and
  - (3) regulation 120 (Guidance).

### Commencement

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

### Amendments to the Handbook

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

### Citation

- D. This instrument may be cited as the Payment Services Instrument 2018.

By order of the Board  
*[date]*

## Annex

## Amendments to the Supervision manual (SUP)

Insert the following new text after SUP 16.13.8G. The text is not underlined.

## Operational and Security Risk assessments

- 16.13.9 G Regulation 98(1) of the *Payment Services Regulations* provides that each *payment service provider* must establish a framework with appropriate mitigation measures and control mechanisms to manage the operational and security risks relating to the *payment services* it provides.
- 16.13.10 G Regulation 98(2) of the *Payment Services Regulations* provides that each *payment service provider* must provide to the *FCA* an updated and comprehensive assessment:
- (1) of the operational and security risks relating to the *payment services* it provides; and
  - (2) on the adequacy of the mitigation measures and control mechanisms implemented in response to those risks.
- The purpose of this section is to direct the form and manner of the assessment and the information that the assessment must contain.
- 16.13.11 G The *EBA* issued Guidelines on 12 December 2017 on the security measures for operational and security risks of payment services under the *Payment Services Directive*. The Guidelines specify requirements for the establishment, implementation and monitoring of the security measures that *payment service providers* must take to manage operational and security risks relating to the *payment services* they provide.
- 16.13.12 D *Payment service providers* must comply with the *EBA's* Guidelines on security measures for operational and security risks of payment services as issued on 12 December 2017 where they are addressed to *payment service providers*.
- 16.13.13 D The assessments required by regulation 98(2) of the *Payment Services Regulations* must be submitted to the *FCA*:
- (1) at least once every calendar year;
  - (2) in writing, in the form specified in *SUP 16 Annex 27G*, and attaching the documents described in that form; and
  - (3) by electronic means made available by the *FCA*.

- 16.13.14 G *Payment service providers* should submit the form and the assessments to the *FCA* in accordance with *SUP* 16.13.13D(2) as soon as practicable after the assessments have been completed.
- 16.13.15 G *Payment service providers* may provide operational and security risk assessments to the *FCA* on a more frequent basis than once every calendar year if they so wish. *Payment service providers* should not, however, submit such assessments more frequently than once every quarter.
- 16.13.16 G Subject to the requirements in *SUP* 16.13.13D, *payment service providers* should submit a nil return for each quarter in which they do not make a submission to the *FCA*. *Payment service providers* may submit nil returns at the same time as making the submission in accordance with *SUP* 16.13.13D.
- 16.13.17 G *Payment service providers* should note that article 16(3) of Regulation (EU) No. 1093/2010 also requires them to make every effort to comply with the *EBA*'s Guidelines on security measures for operational and security risks of payment services.

After *SUP* 16 Annex 27F (Notes on completing REP017 Payments Fraud Report) insert the following new Annexes as *SUP* 16 Annex 27G and *SUP* 16 Annex 27H. The text is not underlined.

**16 Annex 27G D REP018 Operational and Security Risk reporting form**

This form can be found at the following address: [link]

REP018 Operational and Security Risk

A

- 1 Are you submitting an operational and security risk report this quarter?  
*If you answer 'No', Questions 2 to 11 do not need to be completed.*
- 2 Date Assessment of the operational and security risks was performed
- 3 Date Assessment of the adequacy of the mitigation measures and control mechanisms to mitigate Operational and Security risks was performed
- 4 Were any deficiencies identified in the assessment of adequacy of mitigation measures?
- 5 Summarise the deficiencies identified in question 4 (up to 400 characters - full details should be included in the attached report)
- 6 Number of major operational or security incident notifications submitted to the FCA during the reporting period covered.
- 7 Number of unplanned incidents with an adverse impact on confidentiality, integrity, and availability of payment-related services, which did not qualify for notification to the FCA as a major incident, in the reporting period and were therefore not counted in question 6.
- 8 Date of last audit of security measures
- 9 Summary of issues identified in last audit of security measures (up to 400 characters - full details should be included in the attached report)
- 10 Action taken to mitigate any issues identified in question 9 (up to 400 characters - full details should be included in the attached report)
- 11 Number of security related customer complaints to senior management during in the reporting period.

**16**  
**Annex**  
**27H G**

**Notes on completing REP018 Operational and Security Risk form**

**Operational and security risk form**

These notes contain *guidance* for *payment service providers* that are required to complete the operational and security risk form in accordance with Regulation 98(2) of the *Payment Services Regulations* and SUP 16.13.13D. The *guidance* relates to the assessments that must be attached to the form in accordance with SUP 16.13.13D(2).

The *payment service provider* must attach to the form the latest:

- assessment of the operational and security risks related to the *payment services* the firm provides; and
- assessment of the adequacy of the mitigation measures and control mechanisms implemented in response to those risks.

The operational and security risk assessment should include all the requirements contained in the *EBA Guidelines* for operational and security risks of payment services as issued at 12 December 2017. These include:

- a list of business functions, processes and information assets supporting payment services provided and classified by their criticality;
- a risk assessment of functions, processes and assets against all known threats and vulnerabilities;
- a description of security measures to mitigate security and operational risks identified as a result of the above assessment; and
- conclusions of the results of the risk assessment and summary of actions required as a result of this assessment.

The assessment of the adequacy of mitigation measures and control mechanisms should include all the requirements contained in the *EBA Guidelines* for operational and security risks of payment services as issued at 12 December 2017. These include:

- a summary description of methodology used to assess effectiveness and adequacy of mitigation measures and control mechanisms;
- an assessment of the adequacy and effectiveness of mitigation measures and control mechanisms; and
- conclusions on any deficiencies identified as a result of the assessment and proposed corrective actions.



# Appendix 5B

## Proposed addition to Chapter 13 of the Approach Document

# Appendix 5B:

## Proposed addition to Chapter 13 of the Approach Document

### Reports required – Operational and Security Risk Report (REP018) – PSD2

**Required to submit:** All PSPs (credit institutions, PIs, EMIs when offering payment services, and RAISPs)

**Frequency:** At least annual (minimum of one report per calendar year). You can submit one report per calendar quarter, up to four reports in a calendar year. If you choose not to submit a report in a particular quarter you should access the form and answer “No” to question 1. Where a PSP submits less than four reports per year, a “nil return” for the quarters during which a PSP is not reporting can be submitted at the same time as the completed report is submitted.

**Method of submission:** Gabriel, except EMIs (please see “Process”, below)

**Handbook references:** SUP 16.13.9 to 16.13.17

### Content and purpose

This notification is required under Regulation 98 of the PSRs 2017. Each payment service provider must provide us with an updated and comprehensive assessment of the operational and security risks relating to the payment services it provides and on the adequacy of the mitigation measures and control mechanisms implemented in response to those risks.

Requiring PSPs to submit this report helps us discharge our supervisory functions effectively. This report will strengthen our understanding of the operational and security risks encountered by PSPs in the payment services they offer and whether PSPs have appropriate systems and controls in place to address operational and security risks.

The operational and security risk report should include the results of the latest assessment of the operational and security risks related to the payment services provided by the PSP and an assessment of the adequacy of the mitigation measures and control mechanisms implemented in response to those risks. REP018 contains further detail of what the risk assessment and assessment of adequacy of mitigation measures should include at a minimum.

### Process

Operational and Security Risk Report (REP018) – PSD2 is available at SUP 16 Annex 27G.

All PSPs except EMIs should follow the instructions on the Gabriel online system to submit their returns electronically. Gabriel can also be used to view a tailored schedule of your reporting requirements (however it is the firm's responsibility to ensure they are compliant with their reporting requirements, the schedule is for indicative purposes only). EMIs should download the REP018 Operational and Security Risk Report available [here](#), complete it electronically in Excel, and send it to us by email to [regulatory.reports@fca.org.uk](mailto:regulatory.reports@fca.org.uk). We would not expect EMIs to submit a "nil return" to us.



# Appendix 5C

## Proposed additional Chapter 18 of the Approach Document

# Appendix 5C:

## Proposed additional chapter 18 of the Approach Document

### 18. Operational and security risks

#### Introduction

- 18.1 All PSPs are required by Regulation 98 of the PSRs 2017 to establish a framework with appropriate mitigation measures and control mechanisms to manage the operational and security risks relating to the payment services they provide. As part of that framework they must establish and maintain effective incident management procedures, including for the detection and classification of major operational and security incidents.
- 18.2 All PSPs must provide the FCA, on at least an annual basis, with an updated and comprehensive assessment of the operational and security risks relating to the payment services they provide. This must include an assessment of the adequacy of the mitigation measures and control mechanisms implemented in response to those risks. **Chapter 13 – Reporting and notifications** contains more information.
- 18.3 In accordance with SUP16.13.12, PSPs are directed to comply with the European Banking Authority Guidelines on security measures for operational and security risks of payment services under PSD2 (the EBA Guidelines), as issued on 12 December 2017.<sup>1</sup>
- 18.4 This chapter does not give guidance on specific provisions, or the application, of the EBA Guidelines. Rather, it explains some of the factors that we expect PSPs to take into account when developing, reviewing or maintaining their operational and security risk management framework. This guidance must be read alongside the EBA Guidelines.
- 18.5 This chapter is relevant to all PSPs. FSMA authorised firms should also comply with relevant provisions of the Senior Management Arrangements, Systems and Controls (SYSC) module of the FCA Handbook.
- 18.6 A PSP's approach to operational and security risk management should be proportionate to its size and the nature, scope, complexity and riskiness of its operating model and the

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<sup>1</sup> European Banking Authority Guidelines on the security measures for operational and security risks of payment services under Directive (EU) 2015/2366 (PSD2) (12 December 2017) <http://www.eba.europa.eu/-/eba-publishes-final-guidelines-on-security-measures-under-psd2>

payment services it offers. The FCA will supervise PSPs in accordance with its general approach to supervision.

## Agents

- 18.7 As part of the process of identifying operational and security risks, PSPs should consider how the use of agents introduces operational or security risks. Wherever a PSP has asked another party to carry out a payment service on its behalf we would expect the PSP to have considered where any operational and security risk might lie when complying with its obligations under the Guidelines. For example, in establishing its risk management framework and establishing and implementing preventive security measures (as set out in Guidelines 2 and 4 of the EBA Guidelines).
- 18.8 In these circumstances it is the responsibility of the PSP to ensure that all identified risks including those arising from or related to agents are mitigated. Regulated firms retain full responsibility and accountability for discharging all of their regulatory responsibilities, even when certain activities are carried out by third parties. We would remind PSPs of their obligations under Regulations 6, 34 and 37 of the PSRs 2017 and under other relevant EBA Guidelines (eg the EBA Guidelines on Authorisation and Registration under PSD2).

## Outsourcing

- 18.9 **Chapter 4 – Changes in circumstances of authorisation or registration** provides more information about requirements when PSPs intend to enter into outsourcing contracts if they will be relying on a third party to provide an operational function relating to the provision of payment services or electronic money services (“outsourcing”).<sup>2</sup>
- 18.10 Where a PSP outsources functions relevant to the payment services it offers, the PSP’s operational and security risk framework should set out mitigation measures or controls that account for any operational and security risks that have been identified from the outsourcing of those functions. Such risks may arise from the relationship between a PSP and the party offering outsourced services or they may relate to how the PSP monitors risks relating to these activities. The PSP should demonstrate that it has monitored and sought assurance on the compliance of outsourcers with security objectives, measures and performance targets.
- 18.11 Where relevant, PSPs must also consider requirements under FSMA, the FCA Handbook (especially SYSC 8) and other regimes. Any PSP wishing to outsource activities to the ‘cloud’ or other third-party IT services should consider the FCA’s Guidance.<sup>3</sup>

<sup>2</sup> See specifically 4.54 to 4.58 of Chapter 4 – Changes in circumstances of authorisation or registration.

<sup>3</sup> Finalised Guidance FG 16/5 ‘Guidance for firms outsourcing to the ‘cloud’ and other third-party IT services’ (July 2016) Available at <https://www.fca.org.uk/publication/finalised-guidance/fg16-5.pdf>

- 18.12 Although outsourced service providers may not fall within the FCA's regulatory perimeter, all PSPs should bear in mind that they retain full responsibility and accountability for discharging all of their regulatory responsibilities. They must comply with the obligations set out in Regulation 25 of the PSRs 2017. This includes where an AIS or PIS provider makes use of other businesses in order to access and/or consolidate payment account information.
- 18.13 Firms cannot delegate their regulatory responsibility or their responsibility to their payment service users to another party. A relevant act or omission by another party to which a PSP has outsourced activities will be considered an act or omission by the PSP. Any outsourcing will be a relevant consideration in the context of risk assessments, required under Guideline 3 of the EBA Guidelines.

### **Risk assessments**

- 18.14 Guideline 3 of the EBA Guidelines sets out the requirements on PSPs when undertaking risk assessments. PSPs should take into account all factors that could affect the risk assessments they carry out. For example, we would expect an AIS or PIS provider to assess and identify risks related to the method that is used to access payment accounts, and demonstrate how it mitigates any identified risks. Consequently, where an AIS or PIS provider does not access payment accounts through dedicated interfaces, for example, by accessing payment accounts directly itself or by using a third party, we would expect the risk assessment to demonstrate how the provider mitigates any identified risks related to its method of access.
- 18.15 PSPs are reminded that they must comply with all relevant data protection law, SYSC<sup>4</sup> and other systems and control requirements. More information is available in **chapter 17 – Payment initiation and account information services and confirmation of availability of funds.**<sup>5</sup>
- 18.16 PSPs should review our joint statement with HM Treasury on third party access provisions in PSD2.<sup>6</sup> We are also aware of industry initiatives to develop standards on access to accounts before the RTS on SCA and CSC come into force. PSPs may wish to take account of best practice standards, where relevant.

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<sup>4</sup> <https://www.handbook.fca.org.uk/handbook/SYSC/>

<sup>5</sup> See specifically from 17.51 to 17.59.

<sup>6</sup> See our joint statement with HMT 'Expectations for the third party access provisions in Payment Services Directive II' (July 2017) available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/630135/Expectations\\_for\\_the\\_third\\_party\\_access\\_provisions\\_in PSDII.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630135/Expectations_for_the_third_party_access_provisions_in PSDII.pdf)



# Appendix 5D

## Proposed amendments to the Approach Document consequential to the Payment Systems and Services and Electronic Money (Miscellaneous Amendments) Regulations 2017

# **Appendix 5D: Proposed amendments to the Approach Document consequential to the Payment Systems and Services and Electronic Money (Miscellaneous Amendments) Regulations 2017**

## **5. Appointment of agents and use of distributors**

- 5.1 This chapter describes the application process for payment institutions (PIs), ~~and~~ e-money institutions (EMIs) and Registered Account Information Service Providers (RAISPs) to register their agents with us. It also covers the appointment of distributors by EMIs. Other chapters in this Approach Document are also relevant to the appointment of agents and distributors. These include **Chapter 4 – Changes in circumstances of authorisation and registration** and **Chapter 6 – Passporting**, especially paragraphs 4.6 to 4.11 and 6.7 to 6.10, 6.14 to 6.18 and 6.24 to 6.47.

### **Introduction**

#### **PIs and EMIs**

- 5.2 All PIs and EMIs may provide payment services through agents, as long as they register them with us first. An agent is any person who acts on behalf of a PI or EMI (i.e. a principal) in the provision of payment services (see the definition of agent in regulation 2 of the Payment Services Regulations 2017 (PSRs 2017) and regulation 2 of the Electronic Money Regulations 2011 (EMRs) as applicable).
- 5.3 Regulation 34 of the PSRs 2017 and regulation 33 of the EMRs set out the requirements for the use of agents. In addition, regulation 36(2) of the PSRs 2017 and regulation 36(2) of the EMRs confirm that PIs and EMIs are responsible for anything done or omitted by an agent. PIs and EMIs are responsible for their agents' acts or

omissions to the same extent as if they had expressly permitted the act or omission. We expect PIs and EMIs to have appropriate systems and controls in place to oversee their agents' activities effectively.

- 5.4 An authorised PI or authorised EMI wanting to use a passport to provide payment services into another European Economic Area (EEA) State may use an agent to provide those services, subject to additional notification requirements (see **Chapter 6 - Passporting**). This is not relevant to small PIs or small EMIs, as they are not permitted to passport into other EEA States.
- 5.5 Regulation 33 of the EMRs states that an EMI may distribute or redeem e-money through an agent or a distributor, but may not issue e-money through an agent or distributor.
- 5.6 Unlike agents, distributors cannot provide payment services and there is no requirement to register distributors, so it is important to understand the difference between the two. In our view, a person who simply loads or redeems e-money on behalf of an EMI would, in principle, be considered to be a distributor.
- 5.7 As with agents, an EMI is responsible for anything done or omitted by a distributor. An authorised EMI may engage a distributor in the exercise of its passporting rights, subject to regulation 28 of the EMRs.

#### **Registered account information service providers (RAISPs)**

- 5.8 RAISPs are ~~not~~ also subject to the requirements relating to agents in regulations 34 ~~or~~ and 36(2) of the PSRs 2017. A RAISP wanting to use an agent to provide payment services in another EEA State must provide details of their EEA agents as part of their passporting notification, and these agents will be added to the Financial Services Register.

#### **Applying to register an agent**

- 5.9 PIs, EMIs and RAISPs who want to register an agent must do so through Connect. ~~The "Add PSD Agent" form can be found on our website. The same form is used for agents of authorised and small PIs.~~
- 5.10 ~~EMIs who want to register an agent must do so through Connect. The "Add E money Agent" form can be found on our website.~~ The same Connect form is used for agents of authorised and small PIs, EMIs and RAISPs.
- 5.11 The following information is required for the registration of an agent in accordance with regulation 34 of the PSRs 2017 or regulation 34 of the EMRs:
- the name and address of the agent
  - where relevant, a description of the internal control mechanisms that will be used by the agent to comply with the provisions of Directive (EU) 2015/849 (4AMLDD) (or, in the United Kingdom, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs))

- the identity of the directors and persons responsible for the management of the agent and, if the agent is not a payment service provider (PSP), and evidence that they are fit and proper persons
- the payment services for which the agent is appointed
- the unique identification code or number of the agent, if any
- any other information which we reasonably require

### **Name and address details**

- 5.12 We require details of the ~~PI or EMI~~ PI, EMI or RAISP and its agent so that we can identify both parties and meet our supervisory and registration requirements.

### **AML internal control mechanisms**

- 5.13 The ~~PI or EMI~~ PI, EMI or RAISP should demonstrate that it has and maintains appropriate and risk-sensitive policies and procedures for countering the risk that it, or its agents, may be used to further financial crime.
- 5.14 We require a description of the internal control mechanisms that will be used to comply with the MLRs and other pieces of financial crime legislation. Where agents are based in another EEA State, authorised PIs or EMIs must ensure the anti-money laundering systems and controls comply with applicable local legislation and regulation that implements 4AMLD and that such requirements are followed by their agents as required.
- 5.15 The description of internal control mechanisms only needs to be supplied once if a ~~PI or EMI~~ PI, EMI or RAISP applies the same controls to all its agents and it has not changed from previous appointments. If the ~~PI or EMI~~ PI, EMI or RAISP has previously supplied this information they should indicate this on the agent application form. The ~~PI or EMI~~ PI, EMI or RAISP must provide an updated version of its internal control mechanisms without undue delay if there are significant changes to the details communicated at the initial notification stage.
- 5.16 PIs and EMIs should take reasonable measures to satisfy themselves that the agent's anti-money laundering internal controls and mechanisms remain appropriate throughout the agency relationship.

### **Directors and persons responsible for the management of the agent**

- 5.17 We must be provided with details of the director(s) and person(s) responsible for the management of the agent. For incorporated agents these are the board members, or for unincorporated agents the partners or sole trader, together with any other person that has day-to-day responsibility for the management of the agent.
- 5.18 To verify identity, we require the name and national insurance number for UK residents (or taxation insurance number for non-UK residents) and date and place of birth for each person.
- 5.19 Where the agent is not itself a PSP (e.g. a PI or EMI) we also need evidence that the relevant individuals are fit and proper persons. We ask ~~EMIs and PIs~~ PIs, EMIs and RAISPs to provide information about the individuals (including any adverse

information) and certify that they have been assessed as fit and proper persons. ~~EMIs and PIs~~ PIs, EMIs and RAISPs should carry out their own fitness and propriety checks on their agents, on the basis of a ‘due and diligent’ enquiry before making the application. The assessment should be proportionate to the nature, complexity and scale of risk in the distribution, redemption, payment services or other activities being carried out by the agent.

5.20 We expect ~~PIs, and~~ EMIs and RAISPs to consider the following factors when making enquiries about the fitness and propriety of the directors and persons responsible for the management of an agent:

- honesty, integrity and reputation
- competence and capability

5.21 For more information on the types of enquiries we expect ~~PIs, and~~ EMIs and RAISPs to make when gathering information about these factors, please see the information on the fit and proper assessment in **Chapter 3 – Authorisation and registration**, especially in 3.67.

5.22 We will use the enquiries made by the ~~PI or EMI~~ PI, EMI or RAISP to help our assessment of the fitness and propriety of the directors and persons responsible for the management of an agent.

#### **Payment services for which agent is appointed**

5.23 For agents of ~~both~~ PIs, and EMIs and RAISPs we require details of the payment services which the agent has been appointed to provide.

#### **Unique identification code or number**

5.24 We will, where applicable, require details of the unique identification code or number of the agent. For UK agents, this is the Firm Reference Number (where it is already on the Financial Services Register) as well as its Companies House registration number or, for unincorporated agents, the national insurance number(s) of those involved in the management of the agent. If the UK agent has a Legal Entity Identifier<sup>1</sup> (LEI) this must also be provided. For EEA agents an LEI or another identification number, as specified in Annex 1 of the European Banking Authority’s (EBA) Regulatory Technical Standards on the framework for cooperation and exchange of information between competent authorities for passport notifications under PSD2 should be provided.<sup>2</sup> Also see **Chapter 6 – Passporting** on passporting activities.

#### **Additional information and changes to information supplied**

5.25 At any time after receiving an application and before determining it, we may require the applicant to provide us with further information as we consider reasonably necessary to

<sup>1</sup> An LEI is a unique identifier for persons that are legal entities or structures including companies, charities and trusts. Further information on LEIs, including answers to frequently asked questions, can be found on the Legal Entity Identifier Regulatory Oversight Committee and Global Legal Entity Identifier Foundation websites.

<sup>2</sup> These draft RTS are available here: <https://www.eba.europa.eu/-/eba-publishes-final-draft-technical-standards-on-cooperation-and-exchange-of-information-for-passporting-under-psd2>. These RTS will take effect as a Commission Delegated Regulation once published in the EU’s Official Journal. We will update this Approach Document as necessary after the RTS come into force.

determine their application (regulation 34(5) of the PSRs 2017 and regulation 34(5) of the EMRs). This can include documents to support the fitness and propriety checks carried out on agents.

- 5.26 Once an application has been submitted, before it has been determined and on an ongoing basis, applicants must without undue delay tell us about significant changes in circumstances relating to the fitness and propriety of an agent's management or of anything relating to money laundering or terrorist financing.

### **Decision making**

- 5.27 We are required to make a decision on registering an agent within two months of receiving a complete application where the agent is engaged in relation to the provision of payment services or e-money issuance in the UK.
- 5.28 With services provided through an EEA agent using passporting rights, our decision will take into account information given to us by the host state competent authority (See **Chapter 6 - Passporting**). We are required to make a decision on EEA agent registration within three months of receiving a complete application.
- 5.29 An application to appoint an agent may be combined with an application for authorisation or registration - in which case it will be determined in accordance with the timetable for that application.

### **Approval**

- 5.30 We update the Financial Services Register when we approve an agent application, usually within one business day. We also communicate the application result to the ~~PI or EMI~~ PI, EMI or RAISP. If, after two months (or, for an agent in another EEA State, three months (see **Chapter 6 - Passporting**)) the agent does not appear on the Register, the ~~PI or EMI~~ PI, EMI or RAISP should contact the [Customer Contact Centre](#). ~~PIs, and EMIs and RAISPs~~ cannot provide payment services through an agent until the agent is included on the Register.
- 5.31 Under regulation 34(14) of the PSRs 2017 and regulation 34(12A) of the EMRs, ~~PIs, and EMIs and RAISPs~~ PIs, and EMIs and RAISPs must notify us of the date when they start to provide payment services in another EEA State through a registered EEA agent. ~~PIs, and EMIs and RAISPs~~ PIs, and EMIs and RAISPs should notify us using Connect. We must notify such date to the relevant host state competent authority.

### **Refusal**

- 5.32 The PSRs 2017 and the EMRs only allow us to refuse to include the agent in the register where:
- a. we have not received all the information required in the application (see **Making an application** above) or we are not satisfied that the information is correct
  - b. we are not satisfied that the directors and persons responsible for the management of the agent are fit and proper persons
  - c. we have reasonable grounds to suspect that, in connection with the provision of services through the agent

- money laundering or terrorist financing within the meaning of the Money Laundering Directive (or MLRs in the UK) is taking place, has taken place or has been attempted
- the provision of services through the agent could increase the risk of money laundering or terrorist financing

5.33 Where the application relates to the provision of payment services in exercise of passport rights through an EEA agent, we will take into account any information received from the host state competent authority and notify the host state competent authority of our decision, providing reasons if we do not agree with their assessment.

5.34 **Chapter 14 – Enforcement** provides more information on what we will do if we propose to refuse to include an agent on the Financial Services Register.

### **Cancellation of agents**

5.35 To cancel an agent registration the principal must submit a *Remove PSD agent* or *Remove EMD agent* application through Connect. We will update the Financial Services Register to show that the agent is no longer registered to act for the principal once we have finished processing the notification.

5.36 If an agent is being used to perform payment services in another EEA State, the principal may also need to amend the details of the passport, and must submit a *Change in passport details* application through Connect (see **Chapter 6 - Passporting**). Please note that if a ~~PI or EMI~~ PI, EMI or RAISP removes its last EEA agent within one EEA State and does not have a branch in that State, the relevant PSD2 or 2EMD establishment passport must be cancelled.

### **Changes to agent details**

5.37 The principal must submit an *Amend PSD agent* or *Amend EMD agent* application through Connect to amend the details of an agent.

5.38 We will assess the impact of the change against the agent registration requirements. If the change is approved we will update the Financial Services Register as soon as possible. If we need more information we will contact the PSP, and if the change is not approved we will follow the refusal process set out above.

### **Notifying HMRC**

5.39 The ~~PI or EMI~~ PI, EMI or RAISP should make sure that Her Majesty's Revenue and Customs' (HMRC's) Money Service Business Register is up to date and that any agent submissions made to us have been included in the list of premises notified to HMRC.

# 10. Safeguarding

[... excerpt...]

## **How must funds be safeguarded?**

10.29 There are two ways in which an institution may safeguard relevant funds:

- A. the segregation method
- B. the insurance or comparable guarantee method

An institution may safeguard certain relevant funds using the segregation method and the remaining relevant funds using the insurance or comparable guarantee method. If an institution chooses to use both methods of safeguarding, it should be clear from the institution's records which funds are safeguarded using each method.

10.30 We expect institutions to notify us if they intend to change which method(s) they use to safeguard funds in line with their obligation to notify a change in circumstances under regulation 17 of the EMRs or regulation 32 of the PSRs 2017.

### **A. The segregation method**

10.31 The first method requires the institution to segregate the relevant funds (i.e. to keep them separate from all other funds it holds) and, if the funds are still held at the end of the business day following the day on which they were received, to deposit the funds in a separate account with an authorised credit institution or the Bank of England (references in this chapter to safeguarding with an authorised credit institutions include safeguarding with the Bank of England, unless the context requires otherwise), or to invest the relevant funds in such secure, liquid assets as we may approve and place those assets in a separate account with an authorised custodian.

### **Requirement to segregate**

10.32 Institutions must segregate (i.e. keep relevant funds separate from other funds that they hold) as soon as those funds are received. It would not be sufficient to segregate funds in the institution's books or records; if held electronically, the funds must be held in a separate account at a third party account provider, such as a credit institution. Funds held in banknotes and coins must be physically segregated.

10.33 There may be instances where, for customer convenience, the institution receives funds from customers that include both relevant funds and fees owed to the institution. This,

however, increases risk to relevant funds. We expect institutions to segregate the relevant funds by moving them into a segregated account as frequently as practicable throughout the day. In the same way, where a customer incurs fees and the institution has a valid right to deduct the fees from the relevant funds it holds for that customer, any fees so deducted should be removed from the segregated account as frequently as practicable. In no circumstances should such funds be kept commingled overnight.

- 10.34 Where relevant funds are held on an institution's behalf by agents or distributors, the institution remains responsible for ensuring that the agent or distributor segregates the funds.

**Requirement to deposit relevant funds in a separate account with an authorised credit institution or invest them in secure, liquid assets**

- 10.35 If relevant funds continue to be held at the end of the business day following the day that the institution (or its agent or distributor) received them, the institution must:

- deposit the relevant funds in a separate account that it holds with an authorised credit institution or the Bank of England; or
- invest the relevant funds in secure, liquid assets approved by us and place those assets in a separate account with an authorised custodian.

- 10.36 An authorised credit institution includes UK banks and building societies authorised by us to accept deposits (including UK branches of third country credit institutions) and EEA firms authorised as credit institutions by their home state competent authorities.

- 10.37 Authorised custodians include firms authorised by us to safeguard and administer investments and EEA firms authorised as investment firms under MiFID II and which hold investments under the standards in Article 16 of MiFID II.

- 10.38 The safeguarding account in which the relevant funds or equivalent assets are held must be named in a way that shows it is a safeguarding account (rather than an account used to hold money belonging to the institution). If it is not possible for a particular EEA authorised credit institution to make the necessary designation evident in the name of the account, we expect the institution to provide evidence (e.g. a letter from the relevant credit institution) confirming the appropriate designation. The account must be in the name of the institution and not an agent or distributor.

- 10.39 The safeguarding account must not be used to hold any other funds or assets (except in accordance with the provisions referred to in paragraph 10.42). Where an institution chooses to safeguard some relevant funds using the segregation method and other relevant funds using the insurance or comparable guarantee method, the same account may be used both to hold properly segregated funds and to receive and hold the proceeds of the relevant insurance policy or comparable guarantee, but must not be used to hold any other funds. For EMIs or credit unions that are safeguarding funds received for both e-money and unrelated payment services, the funds should not be held in the same safeguarding account. This will primarily be relevant where an EMI provides payment services that are independent from its e-money products. The requirement to separately

safeguard funds will not apply where an EMI simply transfers funds from e-money accounts, such as where a customer uses their e-money to pay a utility bill.

- 10.40 No one other than the institution may have any interest in or right over the relevant funds or assets in the safeguarding account, except as provided by regulation 21 of the EMRs and regulation 23 of the PSRs 2017. The institution should have an acknowledgement or otherwise be able to demonstrate that the authorised credit institution or authorised custodian has no rights (e.g. a right of set off) or interest (e.g. a charge) over funds or assets in that account.
- 10.41 In our view, one effect of this is that institutions cannot share safeguarding accounts. For example, a corporate group containing several institutions cannot pool its respective relevant funds or assets in a single account. Each institution must therefore have its own safeguarding account.
- 10.42 Regulation 23(9) of the PSRs 2017 and regulation 21(4A) of the EMRs make provisions that are relevant to the safeguarding of relevant funds by an authorised PI or EMI that is a participant in a system that is designated for the purposes of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999. It is possible for such participants to safeguard relevant funds, in accordance with these provisions, in an account with the Bank of England that the authorised PI or EMI holds for the purposes of completing settlement in the designated system.
- 10.43 The EMRs and PSRs 2017 do not prevent institutions from holding more than one safeguarding account.
- 10.44 The EMRs and PSRs 2017 also do not prohibit the same account being used to segregate funds up to the end of the business day following receipt, and to continue to safeguard the funds from that point onwards, as long as the account meets the additional requirements of the safeguarding account.
- 10.45 We expect that almost all institutions will, at some point, hold funds after the end of the business day following receipt. Even if an institution only holds funds in this way on an exceptional basis, those institutions will still need to hold a safeguarding account. If an institution believes that, due to its business model, it does not need to have a safeguarding account in place, the institution should ensure that it has appropriate evidence to prove that it will never hold relevant funds after the end of the business day following receipt.

**Secure, liquid assets the FCA may approve**

- 10.46 Where an institution chooses to invest relevant funds into assets, regulations 23(5)(b) of the PSRs 2017 and 21(6)(b) of the EMRs require that any such assets are approved by us as being secure and liquid. We use a common approach for the PSRs 2017 and the EMRs in identifying suitable assets. We have approved the assets referred to below as liquid. On this basis, these assets are both secure and liquid, and institutions can invest in them and place them in a separate account with an authorised custodian in order to comply with the safeguarding requirement, if they are:

- items that fall into one of the categories set out in Article 114 of the Capital Requirements Regulation (EU 575/2013) for which the specific risk capital charge is no higher than 0%; or
- units in an undertaking for collective investment in transferable securities (UCITS), which invests solely in the assets mentioned previously.

10.47 An institution may request that we approve other assets. We will make our decision on a case by case basis, with the institution being required to demonstrate how the consumer protection objectives of safeguarding will be met by investing in the assets in question.

10.48 We may, in exceptional cases, determine that an asset that would otherwise be described as secure and liquid is not in fact such an asset, provided that:

- such a determination is based on an evaluation of the risks associated with the asset, including any risk arising from the security, maturity or value of the asset; and
- there is adequate justification for the determination.

#### **B. The insurance or guarantee method**

10.49 The second safeguarding method is to arrange for the relevant funds to be covered by an insurance policy with an authorised insurer, or a comparable guarantee given by an authorised insurer or an authorised credit institution. The policy or comparable guarantee will need to cover either all relevant funds (not just funds held by an institution at the end of the business day following the day that they were received) or certain relevant funds (with the remaining relevant funds protected by the segregation method, as above).

10.50 It is important that the insurance policy or comparable guarantee meets the requirements of the EMRs/PSRs 2017. In particular, a suitable guarantee would not be a 'guarantee' in the way that this is often construed under English law (i.e. where the guarantor assumes a secondary liability to see that the institution pays a specified debt or performs an obligation and becomes liable if the institution defaults). The guarantor must assume a primary liability to pay a sum equal to the amount of relevant funds upon the occurrence of an insolvency event (as defined in regulation 24 of the EMRs and regulation 23 of the PSRs 2017). As such, we do not think it is appropriate or desirable to use a term such as "surety" to describe the type of obligation assumed under the arrangements.

10.51 There must be no other condition or restriction on the prompt paying out of the funds, accepting that some form of certification as to the occurrence of an insolvency event is a practical necessity. Where relevant funds are safeguarded by insurance or comparable guarantee, it is important that the arrangements will achieve, at the earliest possible time after the PI is subject to an insolvency event, the same sum standing to the credit of the designated account as would be the case if the PI had segregated the funds all along.

- 10.52 ~~The proceeds of the insurance policy or comparable guarantee must be payable into a separate account held by the institution. The proceeds of the insurance policy or comparable guarantee must be payable into a separate safeguarding account held by the institution. If the institution is using the insurance or comparable guarantee method to safeguard all relevant funds, the account must be used only for holding such proceeds. If an institution has decided to use a combination of the two safeguarding methods, the account may also be used for holding funds segregated in accordance with the segregation model.~~ The account must be named in a way that shows that it is a safeguarding account rather than an account used to hold money belonging to the institution. ~~The account must not be used for holding any other funds.~~ No-one other than the institution may have an interest in or right over the proceeds of the policy or guarantee (except as provided for by regulation 24 of the EMRs and regulation 23 of the PSRs 2017).
- 10.53 The arrangements must ensure that the proceeds of the insurance policy or comparable guarantee fall outside of the institution's insolvent estate, so as to be protected from creditors other than payment service users or e-money holders. In our view, one way of achieving this is for the insurance policy or comparable guarantee to be written in trust for the benefit of the payment service users or e-money holders from the outset and to also declare a trust of the designated account.
- 10.54 If EMIs or credit unions use this method for relevant funds received in exchange for e-money and relevant funds received for unrelated payment services, they must ensure that the insurance policy(ies) or comparable guarantee(s) cover both sets of funds and provide for them to be paid into separate accounts.
- 10.55 An "authorised insurer" means a person authorised for the purposes of FSMA to effect and carry out a contract of general insurance as principal or otherwise authorised in accordance with Article 14 of Directive 2009/138/EC (Solvency II)<sup>3</sup> to carry out non-life insurance activities as referred to in Article 2(2) of that Directive, other than a person in the same group as the authorised institution.
- 10.56 Neither the authorised credit institution nor the authorised insurer can be part of the corporate group to which the institution belongs.

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<sup>3</sup> of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance

