

Quarterly Consultation

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CP18/14*

June 2018

How to respond

We are asking for comments on this Consultation Paper (CP) by 30 June 2018 for Chapters 2, 4, 5 and 6, and 31 July 2018 for Chapter 3.

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How to navigate this document onscreen



returns you to the contents list



takes you to helpful abbreviations

Contents

| | | |
|-------------------|--|----|
| 1 | Overview | 4 |
| 2 | Miscellaneous Insurance Distribution Directive (IDD)-related changes | 5 |
| 3 | Changes to the FEES manual | 11 |
| 4 | Changes to BCOBS 7: information about current account services | 15 |
| 5 | Registration of Northern Ireland mutual societies – amendments to DEPP and EG | 20 |
| 6 | EuSEF Regulation, EuVECA Regulation and MMF Regulation – amendments to DEPP and EG | 23 |
| | | |
| Annex 1 | List of questions | 27 |
| | | |
| Appendix 1 | Abbreviations used in this paper | 28 |
| | | |
| Appendix 2 | Miscellaneous Insurance Distribution Directive (IDD)-related changes | |
| | | |
| Appendix 3 | Changes to the FEES manual | |
| | | |
| Appendix 4 | Changes to BCOBS 7: information about current account services | |
| | | |
| Appendix 5 | Registration of Northern Ireland mutual societies – amendments to DEPP and EG | |
| | | |
| Appendix 6 | EuSEF Regulation, EuVECA Regulation and MMF Regulation – amendments to DEPP and EG | |

1 Overview

| Chapter No | Proposed changes to Handbook | Consultation closing period |
|------------|--|-----------------------------|
| 2 | Changes to disapply some Handbook rules to authorised professional firms who carry out non-mainstream regulated activities. | 1 month |
| | Changes to the appointed representatives appointment form. | |
| | Changes to the COBS rules for insurance distribution. | |
| 3 | Changes to FEES 4.2 relating to the tariff data used to calculate fees for newly authorised firms. | 2 months |
| | Changes to FEES 4.4, FEES 4 Annex 1AR and FEES 5.4 relating to the tariff data (measure of size of firms within a fee-block) we will use to calculate insurers' periodic fees and levies from 2018/19. | |
| 4 | Changes to BCOBS 7 as a result of detailed technical discussions with firms preparing to implement the requirements, which have identified that certain rules do not achieve the outcome set out in PS17/26. | 1 month |
| 5 | Changes to DEPP and EG following the transfer of the Northern Ireland mutual societies registration function to the FCA. | 1 month |
| 6 | Changes to DEPP and EG following the implementation of the MMF Regulation and amendments to EuSEF and EuVECA Regulations. | 1 month |

2 Miscellaneous Insurance Distribution Directive (IDD)-related changes

Changes to the rules for authorised professional firms

Introduction

- 2.1** Certain professional firms that are members of a designated professional body (DPB)¹ are permitted to carry out regulated activities as exempt professional firms (EPFs²) under Part XX of the Financial Services and Markets Act 2000 (FSMA).³ EPFs are not directly authorised by us. Instead they are supervised and regulated by their DPB, and are subject to its rules.
- 2.2** Some professional firms are directly authorised by us as well as being members of a DPB. These firms are classified as authorised professional firms (APFs). APFs often conduct regulated activities which would be exempt under Part XX of FSMA, if these firms had not been authorised. These regulated activities are referred to as non-mainstream regulated activities (NMRA).
- 2.3** A number of provisions within our Handbook have been disapplied or modified for APFs undertaking NMRA. The rationale for this approach is set out in the Professional Firms sourcebook (PROF) 5.1.3G(1) which states, "The FCA's policy is designed to provide so far as possible a level playing field for authorised and unauthorised members of the professions in relation to the carrying on of similar activities."
- 2.4** In May 2018, we published our final rules to implement the Insurance Distribution Directive (IDD). These included changes to the Handbook rules which apply to APFs. The DPBs are also making changes to their rules to implement the IDD. These rules will apply to all of their members, including the APFs.

Training and development for APFs

- 2.5** Our current competent employees rule⁴ applies to APFs, as do the rules in the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU) 2.3, which derive from the Insurance Mediation Directive (IMD). These rules require firms to ensure that their employees have the knowledge and ability to perform their roles. In Consultation Paper (CP) 17/7⁵ we said that we considered that this required employees to carry out some ongoing training and development.

1 A professional body designated by the Treasury under section 326 of the Act (Designation of professional bodies) for the purposes of Part 20 of the Act (Provision of Financial Services by Members of the Professions).

2 A person to whom, under section 327 of the Act, the general prohibition does not apply.

3 Section 327 of the Act (Exemption from the general prohibition) sets out the conditions which must be met for a person to be treated as an exempt professional firm and for the person's regulated activities to be treated as exempt regulated activities.

4 SYSC 5.1.1R

5 CP17/7 'Insurance Distribution Directive Implementation – Consultation Paper I' (March 2017) www.fca.org.uk/publication/consultation/cp17-07.pdf



- 2.6** The IDD requires employees of an insurance intermediary or insurance undertaking to complete a minimum of 15 hours professional training and development per year, and sets out certain minimum competence areas which must be covered by this training and development. The IDD does not require firms who distribute insurance on an ancillary basis alongside their primary business (referred to as ancillary insurance intermediaries or AIs) to complete the minimum 15 hours training. However, we chose to go beyond the minimum requirements of the IDD and apply the same standards to all authorised firms. Our rules implementing these training and development requirements are in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) 28.2.
- 2.7** Members of the DPBs are likely to be classified as AIs. Although we have chosen to apply the 15 hours requirement to AIs that are authorised⁶, we understand that the DPBs are not expecting to do so for their exempt firms; resulting in a position where the rules applying to APFs and EPFs are different.
- 2.8** As set out in paragraph 2.3, our intention is to maintain a consistent level of regulation for the regimes that apply to professional firms. For that reason we propose to remove the 15 hour professional training and development requirement set out in SYSC 28.2 (except for SYSC 28.2.1R(1)) for APFs doing NMRA. The requirements in SYSC 28.2.1R(1) will continue to apply as these implement the IDD minimum requirement that all insurance distributors must ensure their employees possess the necessary knowledge and ability to perform their roles. We propose to update the guidance in PROF 5.3 to reflect this position.
- 2.9** We have considered whether this is consistent with our approach of applying the 15 hours requirement more broadly to other AIs. We do not believe there is a direct comparison between APFs and other authorised AIs, because APFs are subject not only to FCA regulation but also to the extensive regulations of their DPB, which includes requirements for ongoing training and development.
- 2.10** The requirements of SYSC 28 will continue to apply in their entirety to the mainstream regulated activities of an APF. This means that APFs who conduct insurance activities which do not meet the definition of being NMRA (see paragraph 2.2) will need to ensure that the employees conducting those activities complete at least 15 hours of professional training and development per year.

IDD remuneration requirements for APFs

- 2.11** Article 17 of the IDD contains general conduct of business requirements for all firms distributing insurance products. These include Article 17(3) which is a requirement that a firm must not be remunerated, nor remunerate its employees, in a way that conflicts with the customer's best interests.
- 2.12** In our near-final rules we stated that the rules implementing Article 17 of the IDD in the Insurance Conduct of Business sourcebook (ICOBS) do not apply to APFs, so long as the APF is subject to equivalent rules of its DPB. The intention was that Article 17 should be implemented in the DPB's rules rather than the FCA Handbook, for APFs. However, Article 17(3) is implemented in SYSC rather than in ICOBS, meaning that it is

6 For example, motor dealers and travel agents

not disapplied as intended. In order to be consistent with our stated approach in PROF 5.1.3G(1) we propose to disapply the relevant rules in SYSC as well. This will continue to be dependent on the APF being subject to DPB rules which implement Article 17.

Q2.1: Do you agree with our proposed changes to the rules which apply to authorised professional firms undertaking non-mainstream regulated activities?

Cost benefit analysis

- 2.13** The proposed changes to the rules on employee training will prevent APFs who carry on NMRA from incurring additional costs. Although we do not consider the costs arising from the need to carry out at least 15 hours of training are likely to be high (given the existing requirement to ensure employees are competent) there will be some additional costs; not only in organising and conducting training but also in record-keeping and monitoring. There are 36 APFs at present. We do not know exactly how many of these firms only carry out NMRA so, for the purposes of this analysis, we have assumed that 50% of them do. Our previous analyses have indicated that the costs per firm of complying with the requirement for 15 hours professional training and development per year would be approximately £13,289.⁷ Therefore, if we did not make these changes we estimate that the cost to the industry would be £478,404.
- 2.14** We do not believe that these proposals will result in any costs or harms to consumers. This is because APF firms carrying out NMRA will still be subject to the requirement that they possess the necessary knowledge and ability to perform their roles, in addition to the professional membership, training and development obligations that derive from their DPB. Where the APFs are carrying out mainstream regulated activities they will be required to comply with the relevant rules in our Handbook in the same way as other authorised firms.
- 2.15** We do not believe the changes to the application of the rules on remuneration will have any costs, as APFs will be subject to equivalent DPB rules.

Impact on mutual societies

- 2.16** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. These changes will have no impact on mutual societies as they only apply to firms who are members of the designated professional bodies.

⁷ These costs relate specifically to those firms who distribute insurance products on an ancillary basis.



Changes to the appointed representative appointment form

Introduction

- 2.17** We are proposing changes to the Appointed Representative (AR) appointment form in the Supervision manual (SUP) 12 Annex 3R, in part to reflect how we have applied IDD requirements in relation to ARs. This change will apply to any firm completing the AR appointment form and so has broader relevance than just for IDD firms.

Our proposals

- 2.18** We are proposing to amend the AR appointment form to include an additional statement in the declaration for principal firms to confirm that they have complied with their regulatory obligations as principal including those under FSMA and especially under SUP 12. This is in line with what is required of firms already through our rules in SUP 12 and what is expected of firms when appointing ARs. Therefore, we do not expect that the proposed change to the AR appointment form will impose any additional obligations on firms; it simply requires firms to confirm they have complied with their obligations including those under our rules.

Q2.2: Do you agree with our proposed changes to the AR appointment form?

Cost benefit analysis

- 2.19** Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis when proposing draft rules. Section 138L(3) of FSMA provides that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance.
- 2.20** We do not plan to issue a cost benefit analysis as we do not expect that any significant additional costs to authorised firms will arise as a result of these proposed changes.

Impact on mutual societies

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

Changes to the COBS rules for insurance distribution

- 2.22** In Policy Statement (PS) 18/1⁸ we indicated we would implement the derogation set out in Article 30(3) of the IDD. This would allow the sale of certain insurance-based investment products (IBIPs) without having to assess the appropriateness of the IBIP for the client, as long as certain conditions are met. One of these conditions is that

⁸ PS18/1 'Insurance Distribution Directive implementation – Feedback and near-final rules for CP17/23, CP17/32, CP17/33, CP17/39 and near-final rules for CP17/07' (January 2018) www.fca.org.uk/publication/policy/ps-18-1.pdf

the product should be 'non-complex'. The IBIP regulation⁹ provides more detail on the range of products to be considered 'non-complex' and we replicated these provisions in the Conduct of Business Sourcebook (COBS). Firms need to assess IBIPs against these criteria and should adopt a cautious approach if there is any doubt as to whether an IBIP is 'non-complex'.

- 2.23** The European Insurance and Occupational Pensions Authority (EIOPA) has issued guidelines on the assessment of complex IBIPs.¹⁰ We have notified EIOPA of our intention to comply with these guidelines. We propose to incorporate a note in COBS 10A.4 which cross-refers to these guidelines. A similar approach was taken for guidelines issued by the European Securities and Markets Authority (ESMA) under the revised Markets in Financial Instruments Directive (MiFID II). Firms should consider these guidelines when assessing whether or not a product is non-complex and can therefore be sold without carrying out an appropriateness test.

Q2.3: Do you agree with our proposed changes to COBS 10A?

Cost benefit analysis

- 2.24** The basis on which we conducted our cost-benefit analysis in CP17/33¹¹ was that we expected that firms might incur costs, in terms of reduced profits, where IBIPs currently sold on an execution-only basis were withdrawn, due to the stricter complexity criteria contained in the IDD Regulation or the associated EIOPA guidelines. However, these costs were associated with the IDD minimum requirements. Our proposed approach to permit the derogation in Article 30(3) of the IDD maximises the scope for execution-only sales, which minimises the costs for industry. In terms of benefits, we expected that retaining access to execution-only sales where possible would benefit customers seeking non-complex products. We also expected consumers to benefit from the enhanced protections of the IDD in relation to complex products, as these will be subject to a suitability assessment or an appropriateness test going forward. Since that broader cost benefit analysis covers the amendments we are proposing, we have not conducted a separate analysis here.

Impact on mutual societies

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

9 The Level 1 directive is supported by Level 2 delegated acts, which take the form of directly-applicable Regulations. These set out more detailed requirements that expand on the provisions in the Level 1 directive. The regulation related to the distribution of IBIPs is available here: http://ec.europa.eu/finance/docs/level-2-measures/idd-delegated-regulation-2017-6229_en.pdf.

10 EIOPA guidelines on IBIPs that incorporate a structure which makes it difficult for the customer to understand the risks involved, October 2017: https://eiopa.europa.eu/Publications/Reports/Final_Report_IDD_guidelines_execution_only.pdf.

11 CP17/33 'Insurance Distribution Directive Implementation – Consultation Paper 3' (September 2018) www.fca.org.uk/publication/consultation/cp17-33.pdf

Compatibility statement

- 2.26** Section 138I(2)(d) of FSMA requires us to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives and have regard to the regulatory principles in section 3B of FSMA.
- 2.27** We also need to, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, carry out our general functions in a way that promotes effective competition in the interests of consumers.
- 2.28** We are satisfied that these proposals are compatible with our general duties under section 1B of FSMA, having regard to the matters set out in 1C(2) of FSMA and the regulatory principles in section 3B.
- 2.29** These proposals are relevant to our operational objectives of securing an appropriate degree of protection for consumers, and promoting effective competition in the interests of consumers. They will ensure that our Handbook implements the changes relevant to the IDD, and help to promote consistent practice across the market. Aligning the regulatory regime for all professional firms will permit these firms to compete with each other on an equal basis.
- 2.30** Proposed changes to our AR appointment form reflect the changes relevant to the IDD and provide greater assurance that principal firms have complied with their obligations relating to the registration of ARs.
- 2.31** In preparing the proposals as set out in this consultation, we have had regard to the recommendations made by the Treasury under s.1JA FSMA about aspects of the economic policy of Her Majesty's Government in connection with our general duties. It is our opinion that making the consequential changes has no impact on the Treasury's recommendations.
- 2.32** We are satisfied that the proposed changes are compatible with our objectives and regulatory principles.

Equality and diversity

- 2.33** In developing our proposals, we have considered any potential equality and diversity implications, and take the view that they do not adversely impact any of the groups with protected characteristics, ie age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender.
- 2.34** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 2.35** In the interim we welcome any feedback to this consultation.

3 Changes to the FEES manual

Introduction

Newly authorised firms – tariff data used (FEES 4.2)

- 3.1** We are proposing changes to the tariff data to be used to calculate periodic fees for:
- firms in their first year of authorisation
 - firms in their second fee-year where the firm received permission between 1 January and 31 March in its first fee-year, and
 - all other firms in their second and subsequent years of authorisation where a full year of tariff data is not available.

Insurers' tariff data from 2018/19 (FEES 4.4, FEES 4 Annex 1AR and FEES 5.4)

- 3.2** We are proposing to change the tariff data (measure of size of firms within a fee-block) we use to calculate insurers' periodic fees and levies from 2018/19. The changes affect:
- general insurers that are not subject to the Solvency II Directive ('non-directive') and have been granted a waiver by the Prudential Regulation Authority (PRA) from reporting the regulatory data used for the purposes of calculating fees and levies, and
 - general insurers and life insurers where the data source specified in our rules is not available to us or the PRA and an alternative source for the same data is available for the purposes of calculating fees and levies.
- 3.3** The PRA published a separate Consultation Paper (CP7/18¹²) covering these changes to its insurers' tariff data fees rules.

Summary of proposals

Newly authorised firms – tariff data used (FEES 4.2)

- 3.4** A firm that becomes authorised or registered, or whose permission and/or activities is extended, during a fee-year pays periodic fees based on its projected valuation for the first 12 months of its new business that is required to be provided in the course of its application – FEES 4.2.7ER (first year). We are changing this rule to make it clear that if the projected valuation is not provided in the course of its application, its periodic fee will be based on the projected valuation provided subsequently. This will cover situations where the projected valuation was not provided in the course of the firm's application.

¹² CP7/18 'Regulated fees and levies: rates proposals 2018/19' (April 2018) www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp718.pdf?la=en&hash=01054C232B56D2A6946D48E4EBE55BEF561DFE1A



- 3.5** FEES 4.2.7GR covers the calculation of fees in the second fee-year where the firm was authorised/extended its permission between 1 January and 31 March in its first fee-year of being authorised or obtaining the extended permission. Currently, this rule only allows for such a firm's periodic fees to be calculated from the projected valuation for the first 12 months of its new business provided in the course of its application. We are changing this rule so the firm would have the option of submitting annualised tariff data based on the period starting from the date when they were authorised or obtained the extended permission up to the firm's financial year end or 31 March (whichever is sooner), of its first fee-year. These firms would have to provide that annualised tariff data by the end of April of the following fee-year. This will place such firms in the same position as firms who were authorised or obtained the extended permission earlier than 1 January in the first fee-year as set out under FEES 4.2.7HR to FEES 4.2.7KR.
- 3.6** FEES 4.2.7HR to FEES 4.2.7KR sets out the tariff data to be used to calculate periodic fees for firms in their second and subsequent years of authorisation where a full year of tariff data is not available. FEES 4.2.7HR to FEES 4.2.7JG covers how a tariff base, which is a cumulative measure like income, is annualised where a full year's data is not available. FEES 4.2.7KR covers where the measure is not cumulative (eg the number of traders for fee-block A.10) and currently requires that the firm must use the figure relating to its annual reporting date (eg 31 December for A.10) or, if trading has not commenced by then, the firm should use the projections provided at authorisation. We are changing FEES 4.2.7KR so that if trading has not commenced by the relevant valuation date it should use a figure of nil. This makes the treatment of non-cumulative tariff data the same as cumulative tariff data where trading has not commenced, as there would be no tariff data available to annualise. The term 'annual reporting date' is not defined or used elsewhere in the Fees manual so for greater clarity we have replaced it with 'valuation date' which is defined through FEES 4 Annex 1R Part 5.
- 3.7** The rules for newly authorised firms in FEES 4.2 are mirrored in FEES 7, covering the Money Advice Service¹³ levies; FEES 10, covering Pension Wise levies; FEES 7A, covering the Single Financial Guidance Body (SFGB)¹⁴ levies; and FEES 13 covering the Illegal Money Lending levy. They are also cross-referenced in FEES 5.8 covering the Financial Ombudsman Service general levy, and FEES 6.4 covering base costs for the Financial Services Compensation Scheme. If the changes proposed to FEES 4.2 in this CP are implemented then they will also be mirrored in FEES 7, FEES 10 and FEES 7A, and read across to FEES 5.8.

Q3.1: Do you agree with our proposed changes to fees rules relating to newly authorised firms? If not, why not?

Insurers' tariff data from 2018/19 (FEES 4.4, FEES 4 Annex 1AR and FEES 5.4)

- 3.8** To calculate fees for non-directive firms in the A.3 fee-block (Insurers – general) our tariff data FEES rules state that a firm's gross written premiums (GWP) for fees purposes is determined by the amount a firm has reported to the PRA under item 11 of form 11 unless a firm is a Swiss general insurer or a friendly society. However, the PRA has identified at least one firm which does not report form 11 and is neither a Swiss general insurer nor a friendly society. To ensure an appropriate fee can be calculated

¹³ The Money Advice Service is referred to in the legislation and our FEES manual as the Consumer Financial Education Body (CFEB).

¹⁴ The SFGB FEES 7A rules are new rules which are subject to consultation through CP18/10 published 9 April 2018 www.fca.org.uk/publication/consultation/cp18-10.pdf

for these firms, the PRA has consulted¹⁵ on amending PRA rules to enable GWP to be determined using the entry at sheet 1, line 1, column 1 of form 20A for firms which do not report form 11. This is the same data item used to determine GWP for Swiss general insurers.

- 3.9** In addition, the PRA has consulted on amending the PRA Rulebook so alternative tariff data sources (such as equivalent data items or returns) can be used in the event a firm does not provide a return or data items needed to calculate its fees (as set out in the PRA Rulebook). The need for such a rule (a new rule) has become more important now the PRA is using a range of data returns for determining fees for insurers rather than relying on a dedicated fees return. As well as ensuring the PRA can produce a reasonable fee requirement for all firms, this will limit the need to amend the PRA rules again, if further issues around reporting of specific data items are identified.
- 3.10** Our overall policy for insurers' tariff data is to mirror that used by the PRA. The regulatory data under Solvency II for 2018/19 fees purposes will not be reported by A.3 and A.4 insurers until 6 May. This will continue to be the case for future fee-years, due to Solvency II return reporting deadlines. As a result there may well be situations where an insurer has not provided a return or data items specified in the current FCA tariff data rules and we will need to use an alternative tariff data source for the purposes of calculating their fees.
- 3.11** We are therefore consulting on changing our FEES rules so that they mirror the amendments that the PRA has proposed to its existing rules and the proposed new rule relating to using alternative data sources. Our rules that are subject to change, cover the FCA periodic fees (FEES 4) and the Financial Ombudsman Service Compulsory Jurisdiction (CJ) levies (FEES 5).
- 3.12** The FCA FEES 4 periodic fees rules for insurers' tariff data are mirrored in FEES 7, covering the Money Advice Service levies; FEES 10, covering Pension Wise levies; and FEES 7A, covering the SFGB levies. If the changes proposed to FEES 4 in this CP are implemented then they will also be mirrored in FEES 7, FEES 10 and FEES 7A.

Q3.2: Do you have any comments on our proposal to mirror the amendments the PRA is making to its tariff data rules for insurers?

- 3.13** The PRA has proposed applying the new rule relating to using alternative data sources to fee-blocks in addition to the insurer fee-blocks A.3 and A.4. We will consider expanding the FCA new rule to other fee-blocks with a view to consulting on any changes in our October 2018 fees policy proposals CP.

Cost benefit analysis

- 3.14** Under section 138I of the Financial Services and Markets Act 2000 (FSMA), the FCA and the Financial Ombudsman Service are exempt from the requirement to carry out and publish a cost benefit analysis regarding proposals on fees and levy rules.

¹⁵ CP7/18 'Regulated fees and levies: rates proposals 2018/19' (April 2018) www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp718.pdf?la=en&hash=01054C232B56D2A6946D48E4EBE55BEF561DFE1A



Impact on mutual societies

- 3.15** 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 in this chapter do not impact mutual societies any differently to other authorised persons.

Compatibility statement

- 3.16** When consulting on new rules, we are required by section 138I (2)(d) of FSMA to explain why we believe making the proposed rules is compatible with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in s.3B of FSMA. We also need to explain why we believe making the proposed rules is compatible with the duty to promote effective competition in the interests of consumers.
- 3.17** The proposals in this chapter are not intended in themselves to advance our operational objectives. However, they will contribute to enabling us to fund the activities we need to undertake to meet our responsibilities under FSMA. Therefore, these proposals will indirectly advance our operational objectives.
- 3.18** The most relevant regulatory principles are considered below:

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

- The proposals on insurers' tariff data will enable us to consistently source such data from returns firms already submit for regulatory purposes. This helps us to use our resources in a more efficient and economical way by reducing the administrative burden for collecting fees and levies. We will not have to maintain systems and processes to collect and validate additional or adjusted data.

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

- Consistently sourcing tariff data for insurers from regulatory data will reduce the burden on firms. They will not have to maintain systems and processes to identify additional and/or adjusted data specifically for fees or levy purposes.
- The proposals covering tariff data to be used to calculate fees and levies for newly authorised firms take account of changes in the level of business firms undertake compared to that projected during the application process. This will enable fees and levies to be more proportionate for such firms.

- 3.19** The proposals set out in this chapter contribute to enabling us to fund the activities we need to undertake. These activities include meeting our duty to promote effective competition in the interests of consumers.

Equality and diversity

- 3.20** 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 raise any concerns.
- 3.21** In the interim we welcome any feedback to this consultation.

4 Changes to BCOBS 7: information about current account services

Introduction

- 4.1** We are proposing amendments to Chapter 7 of the Banking: Conduct of Business Sourcebook (BCOBS) as a result of detailed technical discussions with firms preparing to implement the requirements. The discussions identified that certain rules do not achieve the outcome set out in our Policy Statement (PS) 17/26.¹⁶ The changes will further our competition objective of providing personal and small business customers with clear and consistent information to enable them to compare current account services between firms.

Summary of proposals

BCOBS 7.2 – Day counts

- 4.2** Firms are required to publish metrics related to each stage of the account opening process and for the time taken to replace a debit card.
- 4.3** BCOBS 7.2.4G(2) states that (a) when counting the number of days taken, firms should count each part of a day as a whole day, and (b) that something done the day after the firm starts counting should be counted as within one day. The purpose of this guidance is to ensure consistency of calculation and to reflect customer experience by requiring firms to count the number of days taken for each stage for each customer as a whole number.
- 4.4** Firms preparing to implement the requirement have identified that the guidance also implies that same-day service and next-day service should both be counted in the metrics as completed within 1 day. We had not intended to reduce the difference between same-day and next-day service in this way in calculating the metrics, and we are proposing amended guidance to clarify that firms should count same-day service in calculating the metrics as completed in 0 days.
- 4.5** Our customer research¹⁷ suggested that same-day account opening and debit card replacement are attractive and distinguishing service features for customers. The new guidance will capture this correctly, providing more accurate information to customers and retaining the incentive for firms to make improvements to achieve same-day service.

Q4.1: Do you agree with this proposed change to BCOBS 7.2.4G(2)?

¹⁶ PS17/26 'Information about current account services' (December 2017) www.fca.org.uk/publication/policy/ps17-26.pdf

¹⁷ 'Understanding customer views on current account service indicators – Research report' (July 2017) www.fca.org.uk/publication/research/understanding-views-on-current-account-indicators.pdf



BCOBS 7.3 – Information about the speed of the account opening process

4.6 BCOBS 7.3.5R(2) (a) states that firms should publish information about the speed with which they generate a working account number when opening a current account for customers who are not already a customer of the firm.

4.7 Some firms preparing to implement the rule do not distinguish in their processes for opening a current account between customers who are new to the firm and those who already hold a non-current account product with the firm, such as a savings account. While it would be possible to build new systems to identify and exclude existing customers of the firm's other products, this would not systematically affect the percentage and average metrics for speed of current account opening (as they are processed in the same way as new customers). Requiring such systems changes imposes significant costs but would not further our competition objective.

4.8 We are proposing an addition to BCOBS 7.3.5R to allow firms to include data for existing customers in measuring the speed of firms' actions in opening a current account if the processes for opening the account do not distinguish between new and existing customers.

Q4.2: Do you agree with this proposed addition to BCOBS 7.3.5R?

BCOBS 7.5 – Availability of certain services and helplines

4.9 BCOBS 7.5.4R and BCOBS 7.5.5R set out the services and helplines for which firms have to publish availability information, and BCOBS 7.5.3R specifies four methods of availability to be reported for carrying out actions ('actions') and for accessing real-time help from a suitably qualified person ('matters'). BCOBS 7 Annex 1R Part 2 Table 2 and Table 3 specify the wording and layout required for publishing these. BCOBS 7.5.6 G(4) gives guidance on the layout of Tables 2 and 3 if contact details and opening hours differ between types of account.

4.10 Firms preparing to implement the rules have clarified how the methods 'telephone banking' and 'telephone (other than telephone banking)' relate to 'actions' and 'matters' respectively. Across the industry, customers must provide their security details in order to carry out any of the actions¹⁸, and this means actions cannot be carried out by telephone (other than telephone banking). Conversely, if a customer (or prospective customer) is accessing real-time help by telephone, firms all provide this through telephone rather than through telephone banking.

4.11 We are proposing amendments to remove the redundant columns for 'telephone banking' and 'telephone' from the respective tables in order to improve the clarity of information disclosed to customers and potential customers.

4.12 BCOBS Annex 1R Part 2 Table 3 specifies the wording and layout required for publishing the actions set out in BCOBS 7.5.4R. Firms preparing to implement the rules have identified a loss of information and potential confusion arising from combining actions with significantly different times and methods of availability into a single row. Under BCOBS 7.5.4R(a) (ascertain the balance on the account) and (b) (access a transaction history covering at least the previous 90 days) are a single combined action, as are (c) (initiate a payment transaction to a payee in the UK) and (d) (set up a standing order to a payee in the UK). We agree that as the availability of the two parts

18 Except paying in a cheque, which cannot be done by telephone or telephone banking

of these combined services can vary significantly, customers would benefit from seeing service levels relating to each individually, rather than grouped as provided for by our rules at present.

- 4.13** We are proposing amendments to display the actions in BCOBS 7.5.4 R(a) to (d) as four separate rows in order to maximise information and avoid potential confusion for customers and potential customers.
- 4.14** Some firms preparing to implement the rules have identified that they provide different contact details and opening hours to different categories of customer within one type of account. BCOBS 7.5.6G(4) confirms that that firms may annotate or produce separate copies of Tables 2 and 3 for different types of account, and this should apply also for different categories of customer, to avoid customers being presented with information which does not apply to them.
- 4.15** We agree that it would further our objective of providing personal and small business customers with clear and consistent information to clarify in the guidance in BCOBS 7.5.6G(4) that firms may annotate or produce separate copies of Tables 2 and 3 for different categories of customer.

Q4.3: Do you agree with these proposed changes to BCOBS 7.5 and BCOS 7 Annex 1R Part 2?

BCOBS 7.7 – Publication of information using API

- 4.16** Some firms are required to publish the information we require using application programming interface (API) as well as publishing it on their websites. We consider that API will be an important route through which third parties access and compare current account service information.
- 4.17** BCOBS 7.7.2R(4)(b) requires those firms which must release service quality indicators because they are subject to the Competition and Markets Authority's (CMA's) Retail Banking Market Investigation Order 2017 to use and expand the same API to meet our requirements. We intended this rule to support our statement in PS17/26 that we expect firms to work together to deliver the benefits of a single API¹⁹, as this would enable efficient access to the information by third parties.
- 4.18** In preparing to implement the requirements, firms have worked together in coordination with the Open Banking Implementation Entity to develop a standard specification API. The specification was published in May 2018 and it is publicly and freely available for any firm to use.²⁰
- 4.19** Our service information requirements (unlike those of the CMA Order) do not require central data hosting. Firms identified in working together in coordination with the Open Banking Implementation Entity that it would be more efficient and flexible for firms to deliver the information we require through putting in place individually an API using a standard specification. We agree. While this is not the same API as used for Clause 13 of the CMA Order (which involves central data hosting), it delivers the benefits of a single API. We are proposing to amend the rule to allow firms to use the standard

19 PS17/26 'Information about current account services' (December 2017) www.fca.org.uk/publication/policy/ps17-26.pdf - Q9 Our response, p20

20 Open Banking <https://openbanking.atlassian.net/wiki/spaces/DZ/pages/195068329/FCA+Service+Metrics+API+Specification+-+v1.0.0>



specification API published by Open Banking to meet our requirements for publication using an API.

Q4.4: Do you agree with this proposed change to BCOBS 7.7.2R(4)(b)?

Implementation period

- 4.20** Firms will publish information required in BCOBS 7 for the first time on 15 August 2018. The consultation period for this chapter ends on 30 June 2018. Subject to responses, we intend the amended rules to be made promptly after the consultation closes and to come into force on 15 August 2018. We consider this implementation period is sufficient because the proposed changes are minor, largely permissive, and have already been discussed with a range of affected firms.

Q4.5: Do you agree with the proposed implementation period?

Cost benefit analysis

- 4.21** When proposing new rules, we are required under section 1381 of the Financial Services and Markets Act 2000 (FSMA) to publish an analysis of costs and benefits. 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.
- 4.22** Our Consultation Paper (CP) 17/24²¹, 'Information about current account services', already included an analysis of the significant impacts of our proposals. The proposed changes to BCOBS are part of this package, and we do not believe the proposed changes will give rise to any increase in costs relative to the rules already made following that consultation in the Banking (Information about Current Account Services) Instrument 2017/78. We therefore do not consider that a further cost benefit analysis is required.

Impact on mutual societies

- 4.23** We believe the proposed changes in this chapter will have a similar impact on mutual societies as the impact on other authorised persons.

Compatibility statement

- 4.24** We believe the proposed changes are in line with our objectives of promoting effective competition and enhancing consumer protection, as the proposals amend the rules to better achieve the objectives set out in CP17/24 and PS17/26 'Information about current account services'. We are also satisfied that the proposed amendments are compatible with our regulatory principles.

21 CP17/24 'Information about current account services' (July 2017) www.fca.org.uk/publication/consultation/cp17-24.pdf

Equality and diversity

- 4.25** In developing our proposals, we have considered any potential equality and diversity implications, and take the view that they do not adversely impact any of the groups with protected characteristics, ie age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender.
- 4.26** We welcome any feedback to this consultation.

5 Registration of Northern Ireland mutual societies – amendments to DEPP and EG

Introduction

- 5.1** The Financial Services Act 2012 (Mutual Societies) Order 2018 transfers the Northern Ireland mutual society registration function to the FCA and is effective from 6 April 2018. It transfers the registration of credit unions and industrial and provident societies (now the cooperative and community benefit societies) located in Northern Ireland to us, instead of Northern Ireland's Department for the Economy.
- 5.2** Northern Ireland credit unions, cooperatives and community benefit societies (collectively called mutual societies) are already regulated by us where they carry out a regulated activity.
- 5.3** We will be the registering authority under the following and as modified by consequent legislation:
- The Credit Unions (Northern Ireland) Order 1985 (Order85), and
 - The Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (Act69).

Summary of proposals

- 5.4** Under the Order85 and the Act69, we have the same functions and powers to refuse, suspend or cancel the registration, initiate criminal proceedings, or apply for the winding-up of Northern Ireland (NI) mutual societies as we have over mutual societies located in Great Britain (GB).
- 5.5** We propose to amend the Enforcement Guide (EG) 19.2 and 19.3 to update it with references to NI mutual societies, so that it is obvious that the relevant sections of EG apply to both GB and NI mutual societies.
- 5.6** We also propose to amend the Decision Procedure and Penalties manual (DEPP) to set the following decision-making procedures.
- 5.7** In respect of NI cooperative and community benefit societies:
- when we give at least two months' notice of a proposed cancellation or suspension of a registration of a registered society the decision will be made by FCA staff under the executive procedure,
 - when we propose to cancel or suspend the registration of a registered society while relying on section 15(1)(c)(ii) of the Act69, we propose the decision-maker to be

FCA staff under the executive procedure where no representations are made to our notice of proposed cancellation or suspension, otherwise the decision will be made by the Regulatory Decisions Committee (RDC), and

- when we propose to petition for the winding up of a registered society or prosecute a registered society the decision-maker will be the RDC.

5.8 In respect of NI credit unions:

- when we give at least two months' notice of a proposed cancellation or suspension of a registration of a NI credit union the decision will be made by FCA staff under the executive procedure
- when we propose to cancel or suspend the registration of a registered society while relying on section 60(1)(c)(ii) of the Order⁸⁵, we propose the decision-maker to be FCA staff under the executive procedure where no representations are made to our notice of proposed cancellation or suspension, otherwise the decision will be made by the RDC, and
- when we propose to petition for the winding up of a registered society or prosecute a registered society the decision-maker will be the RDC.

Q5.1: Do you have any comments on our proposals to amend DEPP and EG?

Cost benefit analysis

- 5.9** This chapter of the Consultation Paper (CP) proposes applying our current policy and procedures to breaches of requirements under the Credit Unions (Northern Ireland) Order 1985 and The Co-operative and Community Benefit Societies Act (Northern Ireland) 1969.
- 5.10** Depending on the provision in question, we either have no discretion in implementation or the proposed approach will not be substantially different from the status quo.
- 5.11** Our view is that the costs of the proposals will be of minimal significance if compared with any reasonable counterfactual and that no cost benefit analysis is required. Similarly, we do not see any implication for our competition objective.

Compatibility statement

- 5.12** Section 1B of the Financial Services and Markets Act 2000 (FSMA) requires us to explain why we consider that the proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and promote effective competition in the interests of consumers.



- 5.13** We believe the proposals set out above are compatible with our duties under section 1B of FSMA. The effective and appropriate use of enforcement powers plays an important part in pursuing our statutory objectives, as it increases compliance with rules by making market participants more aware of conduct that may breach these rules, and the potential for sanctions for such conduct.
- 5.14** In preparing these proposals we have had regard to the regulatory principles set out in section 3B of FSMA. In particular, the proposals are consistent with the need to use resources in the most efficient and economic way, and the principle that the regulators should exercise their functions as transparently as possible.
- 5.15** The proposed changes will have an impact on the registration of mutual societies but this impact is not significantly different.
- 5.16** Under the Legislative and Regulatory Reform Act 2006 (LRRRA) we are subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). We have had regard to the principles in the LRRRA and the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance.

Equality and diversity

- 5.17** We have considered the equality and diversity issues that may arise from our proposals. Overall, we do not consider that the proposals adversely impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 5.18** In the interim we welcome any feedback to this consultation.

6 EuSEF Regulation, EuVECA Regulation and MMF Regulation – amendments to DEPP and EG

Introduction

- 6.1** We are proposing amendments to the Decision Procedure and Penalties manual (DEPP) and the Enforcement Guide (EG) in light of recent legislative changes in relation to investment funds, namely: social entrepreneurship funds, venture capital funds and money market funds.
- 6.2** Our changes are based on EU Regulation 2017/1991 which amends the European social entrepreneurship funds (EuSEF) Regulation and the European venture capital funds (EuVECA) Regulation. It came into force on 25 October 2017. This EU regulation was an outcome of a review by the European Commission on the usage of EuSEF and EuVECA which showed that there were some obstacles in the growth of these investment funds. The main obstacles included the limitations imposed on managers, strict product rules and varying application of regulatory fees, which are now believed to be minimised by the updated regulations.
- 6.3** Amendments were made to the Alternative Investment Fund Managers (AIFM) Regulations 2013 through the Alternative Investment Fund Managers (Amendments) Regulations 2018 Statutory Instrument (SI) which came into force on 3 March 2018. The amendments in this SI make changes to the procedure to be followed for making an application to register as a manager of EuSEF and EuVECA and for refusal and revocation of such a registration. The main difference is that previously, only small AIFMs could apply to become managers of EuSEF and EuVECA but under this new SI, any authorised AIFMs can manage and market EuSEF and EuVECA.
- 6.4** The Money Market Fund Regulation establishes a framework of requirements to improve the liquidity and stability of money market funds (MMF). Most existing MMFs operate under the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive but some operate under the Alternative Investment Fund Managers Directive (AIFMD). The MMF Regulation does not amend either directive. MMFs and, or their managers, will need to remain authorised under one or other. Instead, the MMF Regulation introduces product rules that dis-apply and replace the investment restrictions in the UCITS Directive for MMFs that are UCITS funds, and introduces product rules for those MMFs that are Alternative Investment Funds (AIFs).
- 6.5** The MMF Regulation is directly applicable law and does not require implementation by individual Member States. However, the Treasury will be amending UK legislation to give us certain powers to authorise and supervise funds under the new Regulation and allow us to charge fees for their authorisation and supervision. More information about fees can be found in our Consultation Paper (CP) 18/4²² published 24 January 2018, setting out our proposed Handbook changes and fees schedule.

Summary of proposals

The Alternative Investment Fund Managers (Amendments) Regulations 2018

6.6 We are proposing to amend EG 19.27 to ensure that this section correctly reflects the changes by adding EuSEF and EuVECA to the list of alternative investment funds so that it is clear that this section relates to these types of funds.

6.7 We are also proposing to amend DEPP to apply our decision-making procedure to these new registration and withdrawal decisions.

6.8 We are proposing to use the executive procedure for the following decisions:

- where we propose to refuse an application for registration as a qualifying social entrepreneurship fund or a qualifying venture capital fund, and
- where we decide to refuse an application for registration as a qualifying social entrepreneurship fund or a qualifying venture capital fund if no representations are made to us.

6.9 We are proposing to use the Regulatory Decisions Committee (RDC) for the following decisions:

- where we decide to refuse an application for registration as a qualifying social entrepreneurship fund or a qualifying venture capital fund if representations are made to us, and
- where we propose and decide to revoke the registration of a qualifying social entrepreneurship fund or a qualifying venture capital fund.

The Money Market Funds Regulations 2018

6.10 Where MMFs will be authorised under the AIFM Directive, we are proposing to amend EG 19.27 to ensure that this section correctly reflects the changes in the MMF SI. We are suggesting adding MMF to the list of alternative investment funds so that it is clear that this section relates to this type of fund.

6.11 We are also proposing to amend DEPP to set out a decision-making procedure.

6.12 We are proposing to use the executive procedure for the following decisions:

- where we propose to refuse an application made by a UK AIF for authorisation as a MMF, and
- where we decide to refuse an application made by a UK AIF for authorisation as a MMF if no representations are made to us.

6.13 We are proposing to use the RDC for the following decisions:

- where we decide to refuse an application made by a UK AIF for authorisation as a MMF if representations are made to us, and
- where we propose and decide to revoke the authorisation of a MMF.

- 6.14** For authorised unit trusts (AUTs), authorised contractual schemes (ACSs) and investment companies with variable capital (ICVCs) to be authorised as MMFs, we do not need to make any changes to EG, as these types of funds will be covered by the FSMA or Open Ended Investment Company (OEIC) regime. We only need to make amendments to DEPP to specify that a decision to give a warning notice or a decision notice refusing an application for an authorisation as MMF will be taken by the RDC only if the application is made by an authorised fund manager who is not the operator of an existing AUT, ACS or ICVC. Otherwise, the decision to give a warning notice and a decision notice will be taken by the FCA staff under the executive procedures.

Q6.1: Do you have any comments on our proposals to amend DEPP and EG?

Cost benefit analysis

- 6.15** This chapter of the CP proposes applying our current policy and procedures to breaches of requirements under these regulations. Depending on the provision in question, we either have no discretion in implementation or the proposed approach will not be substantially different from the status quo. Our view is that the costs of the proposals will be of minimal significance if compared with any reasonable counterfactual and that no cost benefit analysis is required. Similarly, we do not see any implication for our competition objective.

Compatibility statement

- 6.16** Section 1B of FSMA requires us to explain why we consider that the proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and promote effective competition in the interests of consumers.
- 6.17** We believe the proposals set out above are compatible with our duties under section 1B of FSMA. The effective and appropriate use of enforcement powers plays an important part in pursuing our statutory objectives, as it increases compliance with rules by making market participants more aware of conduct that may breach these rules, and the potential for sanctions for such conduct.
- 6.18** In preparing these proposals we have had regard to the regulatory principles set out in section 3B of FSMA. In particular, the proposals are consistent with the need to use resources in the most efficient and economic way, and the principle that the regulators should exercise their functions as transparently as possible.
- 6.19** The proposed changes will have no significant impact on mutual societies.
- 6.20** Under the Legislative and Regulatory Reform Act 2006 (LRRRA) we are subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). We have had regard to the principles in the LRRRA and the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance.

Equality and diversity

- 6.21** We have considered the equality and diversity issues that may arise from our proposals. Overall, we do not consider that the proposals adversely impact any of the groups with protected characteristics under the Equality Act 2010. But 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.
- 6.22** In the interim we welcome any feedback to this consultation.

Annex 1

List of questions

- Q2.1:** Do you agree with our proposed changes to the rules which apply to authorised professional firms undertaking non-mainstream regulated activities?
- Q2.2:** Do you agree with our proposed changes to the AR appointment form?
- Q2.3:** Do you agree with our proposed changes to COBS 10A?
- Q3.1:** Do you agree with our proposed changes to fees rules relating to newly authorised firms? If not, why not?
- Q3.2:** Do you have any comments on our proposal to mirror the amendments the PRA is making to its tariff data rules for insurers?
- Q4.1:** Do you agree with this proposed change to BCOBS 7.2.4G(2)?
- Q4.2:** Do you agree with this proposed addition to BCOBS 7.3.5R?
- Q4.3:** Do you agree with these proposed changes to BCOBS 7.5 and BCOS 7 Annex 1R Part 2?
- Q4.4:** Do you agree with this proposed change to BCOBS 7.7.2R(4)(b)?
- Q4.5:** Do you agree with the proposed implementation period?
- Q5.1:** Do you have any comments on our proposals to amend DEPP and EG?
- Q6.1:** Do you have any comments on our proposals to amend DEPP and EG?

Appendix 1

Abbreviations used in this paper

| | |
|---------------|--|
| Act69 | Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 |
| AIF | alternative investment fund |
| AIFM | alternative investment fund manager |
| AIFMD | Alternative Investment Fund Managers Directive |
| All | ancillary insurance intermediary |
| APF | authorised professional firm |
| API | application programming interface |
| AR | Appointed Representative |
| BCOBS | Banking: Conduct of Business Sourcebook |
| CMA | Competition and Markets Authority |
| COBS | Conduct of Business Sourcebook |
| CP | Consultation Paper |
| DEPP | Decision Procedure and Penalties manual |
| DPB | designated professional body |
| EG | Enforcement Guide |
| EIOPA | European Insurance and Occupational Pensions Authority |
| EPF | exempt professional firm |
| ESMA | European Securities and Markets Authority |
| EuSEF | European social entrepreneurship funds |
| EuVECA | European venture capital funds |
| FEES | Fees manual |
| FSMA | Financial Services and Markets Act 2000 |

| | |
|-----------------------|---|
| GB | Great Britain |
| GWP | gross written premium |
| IBIP | insurance-based investment product |
| ICOBs | Insurance: Conduct of Business Sourcebook |
| IDD | Insurance Distribution Directive |
| IMD | Insurance Mediation Directive |
| IPID | insurance product information document |
| LRRA | Legislative and Regulatory Reform Act 2006 |
| MiFID II | Markets in Financial Instruments Directive II |
| MIPRU | Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries |
| MMF | money market fund |
| MMF Regulation | European Money Market Funds Regulation |
| NI | Northern Ireland |
| NMRA | non-mainstream regulated activities |
| Order85 | Credit Unions (Northern Ireland) Order 1985 |
| PRA | Prudential Regulation Authority |
| PROF | Professional Firms sourcebook |
| PS | Policy Statement |
| RDC | Regulatory Decisions Committee |
| SFGB | Single Financial Guidance Body |
| SI | statutory instrument |
| SUP | Supervision manual |
| SYSC | Senior Management Arrangements, Systems and Controls sourcebook |
| the Treasury | Her Majesty's Treasury |



UCITS

Undertakings for Collective Investment in Transferable Securities

VoP

Variation of Permission

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

Miscellaneous Insurance Distribution Directive (IDD)-related changes

INSURANCE DISTRIBUTION DIRECTIVE (AMENDMENT) INSTRUMENT 2018**Powers exercised**

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

Commencement

- C. This instrument comes into force on 1 October 2018, immediately after those changes made by the Insurance Distribution Directive Instrument 2018 (FCA 2018/25) come into effect.

Amendments to the Handbook

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

| (1) | (2) |
|--|---------|
| Senior Management Arrangements, Systems and Controls sourcebook (SYSC) | Annex A |
| Conduct of Business sourcebook (COBS) | Annex B |
| Supervision manual (SUP) | Annex C |
| Professional Firms sourcebook (PROF) | Annex D |

Notes

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

European Union Legislation

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

Citation

- G. This instrument may be cited as the Insurance Distribution Directive (Amendment) Instrument 2018.

By order of the Board
[*date*]

Annex A

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

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

19F Remuneration and performance management

...

19F.2 IDD remuneration incentives

Application

19F.2.1 R This section does not apply to an *authorised professional firm* with respect
A to its *non-mainstream regulated activities* if:

- (1) the *firm's designated professional body* has made rules which implement article 17(3) of the *IDD*;
- (2) those rules have been approved by the *FCA* under section 332(5) of the *Act*; and
- (3) the *firm* is subject to the rules in the form in which they were approved.

[**Note:** article 7(2) of the *IDD*]

...

28 Insurance distribution: specific knowledge, ability and good reputation requirements

...

Application

28.1.1 R (1) This chapter applies to a firm with *Part 4A permission* to carry on *insurance distribution activities*.

(2) SYSC 28.2 (except SYSC 28.2.1R(1)) does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*.

...

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

10A Appropriateness (for non-advised services) (MiFID and insurance based investment products provisions)

...

10A.4 Assessing appropriateness: when it need not be done due to type of investment

10A.4.1 R ...

[~~Note: ESMA~~ ESMA has published guidelines...]

[**Note:** EIOPA has published guidelines under the *IDD* which specify criteria for the assessment of insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risk involved. The guidelines can be found here: [\[https://eiopa.europa.eu/Publications/Guidelines/EIOPA-17-651-IDD_guidelines_execution_only_EN.pdf\]](https://eiopa.europa.eu/Publications/Guidelines/EIOPA-17-651-IDD_guidelines_execution_only_EN.pdf).]

...

Annex C

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and strikethrough indicates deleted text.

The form (Appointed representative or tied agent form – change details) referred to in SUP 12 Annex 4R is amended as shown.

...

Appointed representative or tied agent - change details

Notification under *SUP 12.7.7R* (i.e. the form in *SUP 12 Ann 4R*)

...

Declaration and signatures

Section C

...

Declaration

By submitting this notification:

- ...
- I/we confirm that I/we have complied with all of my/our regulatory obligations as a principal, including those contained in the Financial Services and Markets Act 2000 and SUP 12.
- I am/we are aware that it is a criminal offence knowingly or recklessly to give the FCA information that is false or misleading in a material particular.
- ...

...

Annex D

Amendments to the Professional Firms sourcebook (PROF)

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

5 Non-mainstream regulated activities

...

5.3 Reference to other sourcebooks and manuals

...

Senior Management Arrangements, Systems and Controls

- 5.3.4 G ~~SYSC 6.3 (Financial crime), in relation to money laundering, does not apply to authorised professional firms when carrying on non-mainstream regulated activities.~~

The following provisions do not apply to authorised professional firms when carrying on non-mainstream regulated activities:

- (1) SYSC 6.3 (Financial crime), in relation to money laundering;
- (2) SYSC 10.1 (Application), in relation to conflicts of interest;
- (3) SYSC 10.2 (Chinese walls);
- (4) SYSC 19F.2 (IDD remuneration incentives) where the designated professional body of the firm has made rules, approved by the FCA, that implement article 17(3) of the IDD and that apply to the firm; and
- (5) SYSC 28.2 ((Knowledge and ability requirements) except SYSC 28.2.1R(1)).

...



Appendix 3

Changes to the FEES manual

FEES (MISCELLANEOUS AMENDMENTS) (No [12]) INSTRUMENT 2018

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Act:
- (1) section 137A (The FCA's general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 234 (Industry funding); and
 - (5) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.
- C. The Financial Conduct Authority approves the fixing and variation of the standard terms relating to the payment of fees by the Financial Conduct Ombudsman Service Limited.

Commencement

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

Amendments to the Handbook

- E. The Fees manual (FEES) is amended in accordance with the Annex to this instrument.

Citation

- F. This instrument may be cited as the Fees (Miscellaneous Amendments) (No [12]) Instrument 2018.

By order of the Board
[date]

Annex

Amendments to the Fees manual (FEES)

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

4 Periodic fees

...

4.2 Obligation to pay periodic fees

...

Modifications for persons becoming subject to periodic fees during the course of a fee year

4.2.7E R (1)

- (a) *A firm* (other than an *AIFM qualifier*, an *ICVC*, a *UCITS qualifier*, or an *issuer of regulated covered bonds*) which becomes authorised or registered, or whose *permission* and/or activities is extended, during the course of the *fee year* must pay a fee based on its projected valuation for the first twelve *months* of its new business.
- (b) This is the valuation provided by the *firm* in the course of its application or if not provided at that time, the valuation provided subsequently.

...

Calculating the fee in the firm's first year of authorisation

| | | | |
|--------|---|-----|--|
| 4.2.7F | R | (1) | Identify the tariff rate or rates which will be relevant to the <i>firm</i> as a result of its new or extended <i>permission</i> ; and then |
| | | (2) | apply the formula $(A+B+C) \times D$, where: |
| | | | A = the amount arrived at by applying the tariff rates to the <i>firm's</i> projected valuation for its first year <u>the first twelve months</u> of <u>its</u> new business, as provided by it in the course of its application <u>accordance with FEES 4.2.7ER</u> ; |
| | | | ... |

Calculating fees in the second fee-year where the firm received permission between 1 January and 31 March in its first fee year

- 4.2.7G R When a *firm* receives permission between 1 January and 31 March, its fee for the following *fee year* starting 1 April will be calculated from ~~the~~

~~projected valuation for the first twelve months of its new business that it provided;~~

- (a) the projected valuation for the first twelve months of its new business that it provided in the course of its application in accordance with FEES 4.2.7ER; or
- (b) an annualised figure based on actual data provided by 30 April in the fee year following obtaining its new or extended permission.

If the annualised tariff base figure provided under (b) is a cumulative measure like income, covering the full year, it must apply the formula $(A \div B) \times 12$, where:

A = the total income from the date the new or extended permission was obtained up to the firm's financial year end or 31 March (whichever is sooner) of its first fee year, calculated according to the relevant rules; and

B = the number of months in the period referred to in A.

Where the measure is not cumulative (e.g. the number of traders for fee-block A10), the firm must use the figure as at the firm's financial year end or 31 March (whichever is sooner) of its first fee year, calculated in accordance with the relevant rules. If trading has not commenced by the applicable date the figure is nil.

Calculating all other fees in the second and subsequent years of authorisation where a full year of tariff data is not available

...

- 4.2.7K R Where the measure is not cumulative (e.g. the number of traders for fee-block A10), the firm must use the figure relating to ~~its annual reporting date~~ the valuation date specified in FEES 4 Annex 1R Part 5 (e.g. 31 December for A10) ~~or, if that is not available, the projected figure used when it was authorised.~~ Table A sets out the reporting requirements for the key fee-blocks when full actual data is not available:

Table A: calculating tariff data for second and subsequent years of authorisation when full trading figures are not available

| Fee-block | Tariff base | Calculation where trading data are not available |
|-----------------------|-------------------------------------|---|
| A1. Deposit acceptors | Average MELS for October - December | Use data available at 31 December or, if trading has not commenced by 31 December, use the projection submitted as |

| | | |
|--|--|---|
| | | part of the application process <u>nil</u> . |
| ... | | |
| A3. Insurers - general | Gross written premium for fees purposes (GWP) for the financial year ended in the calendar year ending 31 December and best estimate liabilities for fees purposes (BEL) valued at the end of the financial year | GWP – apply the formula $(A \div B) \times 12$ to arrive at an annualised figure. BEL – use data at valuation date or, if trading has not commenced by then, use projections provided at <u>authorisation nil</u> . |
| A4. Insurers - life | Gross written premium for fees purposes (GWP) for the financial year ended in the calendar year ending 31 December and best estimate liabilities for fees purposes (BEL) valued at the end of the financial year | |
| ... | | |
| A7. Portfolio managers | Funds under management valued at 31 December | Use data as at 31 December or, if trading has not commenced by 31 December, use the projection submitted as part of the application process <u>nil</u> . |
| ... | | |
| A10. Firms dealing as principal | Number of traders as at 31 December | Use data as at 31 December or, if trading has not commenced by 31 December, use the projection submitted as part of the application process <u>nil</u> . |
| ... | | |
| A21. Firms holding client money or assets, | The highest amount of client money and the | The highest amount of client money and/or |

| | | |
|---------|--|--|
| or both | highest amount of <i>custody assets</i> held over the 12 months ending 31 December | <i>custody assets</i> over the period between the date of <i>authorisation</i> and 31 December or, if trading has not started, use the projection submitted as part of the application process <u>nil</u> . |
|---------|--|--|

...

4.4 Information on which fees are calculated

...

4.4.2A R If a *firm* is a UK Solvency II firm, an *incoming EEA firm* or an *incoming Treaty firm* in activity group A.3 or A.4 and the *PRA* or the *FCA* has either:

- (1) not received the necessary tariff data on a timely basis in line with Part 3 and 5 of *FEES* 4 Annex 1AR; or
- (2) deemed the tariff data received to be incomplete or insufficiently reliable, by reference to a specific *firm* or across all or part of the activity group,

the *FCA* may use tariff data from the previous reporting period for the periodic fees calculation.

4.4.2B R For *firms* in activity group A.3 and A.4, if the data source specified in the applicable tariff base in Part 3 of *FEES* 4 Annex 1AR is not available to the *PRA* or *FCA* for any reason and the same data is available to the *PRA* or *FCA* from an alternative source, the *FCA* may use that alternative source to calculate the tariff rates under *FEES* 4 Annex 2AR.

...

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

...

Part 3

This table indicates the tariff base for each fee-block set out in Part 1.

The tariff base in this Part is the means by which the *FCA* measures the amount of business conducted by a *firm* for the purposes of calculating the annual periodic fees payable to the *FCA* by that *firm*.

| Activity group | Tariff base |
|----------------|-------------|
| ... | |

| | |
|-----|---|
| A.3 | <p>GROSS WRITTEN PREMIUM FOR FEES PURPOSES AND BEST ESTIMATE LIABILITIES FOR FEES PURPOSES</p> <p>Gross written premium for fees purposes means:</p> <p>...</p> <p>(3) for <i>non-directive firms</i>, a <i>firm's</i> gross premium written as reported to the <i>PRA</i> under item 11 of form 11, or where this is not reported because the <i>firm</i> is a <i>Swiss general insurer</i> <u>or holds a relevant waiver given by the <i>PRA</i> under the <i>PRA Rulebook</i></u>, the entry at sheet 1, line 1, column 1, of form 20A, or where the <i>firm</i> is a <i>friendly society</i>, the income and expenditure account entry for gross premium written or contributions as income receivable, as appropriate under the Friendly Societies (Accounts and Related Provisions) Regulation 1994 (SI 1994/1983).</p> <p>...</p> |
|-----|---|

...

5 Financial Ombudsman Service Funding

...

5.4 Information requirement

...

- 5.4.1-A R (1) In the case of *firms* in *industry blocks* 2 and 4 the requirements under *FEES* 5.4.1R apply in relation to the tariff bases(s) and tariff data in *FEES* 5 Annex 1R.
- (2) If a *firm* is a UK Solvency II firm, an *incoming EEA firm* or an *incoming Treaty firm* in *industry blocks* 2 and 4 in *FEES* 5 Annex 1R, the *FCA* may use tariff data from the previous reporting period for the periodic fees calculation if the *PRA* or the *FCA* has either:
- (a) not received the necessary tariff data in a timely basis in line with Part 3 and 5 of *FEES* 4 Annex 1AR; or
 - (b) deemed the tariff data received to be incomplete or insufficiently reliable, by reference to a specific *firm* or across all or part of the *industry block*.

...

- 5.4.1B R For *firms* in *industry blocks* 2 and 4, if the data source specified in the applicable tariff base in Part 3 of *FEES* 4 Annex 1AR is not available to the *PRA* or *FCA* for any reason and the same data is available to the *PRA* or

FCA from an alternative source, the *FCA* may use that alternative source to calculate the tariff rates under *FEES* 5 Annex 1R.

...

Appendix 4

Changes to BCOBS 7: information about current account services

**BANKING (INFORMATION ABOUT CURRENT ACCOUNT SERVICES)
(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 (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 15 August 2018, immediately after those changes made by the Banking (Information About Current Account Services) Instrument 2017 (FCA 2017/78) come into effect.

Amendments to the Handbook

- D. The Banking: Conduct of Business sourcebook (BCOBS) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Banking (Information about Current Account Services) (Amendment) Instrument 2018.

By order of the Board
[date]

Annex

Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

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

7 Information about current account services

...

7.2 What information is to be published and how is it to be measured?

Publication of information about personal current accounts and business current accounts

...

- 7.2.4 G (1) *BCOBS 7.2.3R(2)* specifies that, when a *firm* issues a debit card, personal identification number, item of information or any other thing to a *person*, it is to be treated for the purposes of *BCOBS 7.3* to *7.6* as having been issued to a *banking customer* only when the *banking customer* would ordinarily be expected to have received it. For example, if a debit card is sent to a *customer* by first class post, it will be treated under *BCOBS 7.2.3R(2)* as issued on the *day* after the *day* on which it was posted (or, if posted on a Saturday, as issued on the Monday); and if sent by second class post, as issued on the third *day* after the *day* on which it was posted (or, if posted on a Thursday, as issued on the Monday).
- (2) When counting the number of *days* taken:
- (a) *firms* should count each part of a *day* after the *day* from which the *firm* starts counting as a whole *day*; ~~and~~
- (aa) something done on the same *day* as the *day* from which the *firm* starts counting should be counted as done within zero *days*; and
- (b) something done on the *day* following the *day* from which the *firm* starts counting should be counted as done within one *day*.
- (3) Where *BCOBS 7.3* to *7.5* require a percentage or an average to be published, the percentage is to be expressed as an integer and the average is to be expressed as a whole number of *days*, with a fractional part of a figure which is 0.5 or over being rounded up and a fractional part of less than 0.5 being rounded down.

7.3 Account opening information

...

Information about the speed of the account opening process

7.3.5 R ...

- (8) When calculating the information required by this rule to be published a firm may include data relating to a banking customer who is already a customer of the firm if the firm does not distinguish between such a banking customer and a banking customer who is not already a customer of the firm when completing each of the actions listed in BCOBS 7.3.5R(2).

...

7.5 Availability of certain services and helplines

7.5.1 R (1) A firm must publish information about the *days* on which and the times at which a *banking customer* may, by each of the methods specified in *BCOBS 7.5.3R(2) to (4)*, carry out each of the actions specified in *BCOBS 7.5.4R*.

(2) The *firm* must publish the information:

- (a) in the format specified in Table 3 of *BCOBS 7 Annex 1R*; and
- (b) on the same webpage as, and immediately below, the information published under *BCOBS 7.5.2R*.

7.5.2 R (1) A firm must publish information indicating whether or not it is possible, twenty four hours a *day* and every *day* of the year, for a *banking customer* and, in relation to *BCOBS 7.5.5R(j)* and (k), a potential *banking customer* to discuss with the *firm*:

- (a) each of the actions specified in *BCOBS 7.5.4R*; and
- (b) each of the matters specified in *BCOBS 7.5.5R*.

(2) A *firm* may publish information indicating that it is so possible only if it is possible to discuss those actions and those matters, by one or more of the methods specified in *BCOBS 7.5.3R(1), (3) and (4)*, with a member of staff of the *firm* who has been trained to discuss the relevant action or matter.

(3) If it is so possible, the *firm* must publish:

- (a) by which of those methods it is possible; and
- (b) the contact details for the *firm* for each method.

(4) If it is not so possible by all of the methods specified in *BCOBS 7.5.3R(1), (3) and (4)*, the *firm* must publish information about the *days* on which and the times at which a *banking customer* and, in relation to *BCOBS 7.5.5R(j)* and (k), a potential *banking customer* may, by each of

the methods specified in *BCOBS 7.5.3R(1), (3) and (4)*, discuss with the *firm*:

- (a) each of the actions specified in *BCOBS 7.5.4R*; and
 - (b) each of the matters specified in *BCOBS 7.5.5R*.
- (5) In the information published under (4), the *firm* may only indicate *days* on which and times at which the *banking customer* or potential *banking customer* may discuss the action or matter with a member of staff of the *firm* who has been trained to discuss the relevant action or matter.
- (6) The *firm* must publish the information required by this *rule*:
- (a) in the format specified in Table 2 of *BCOBS 7 Annex 1R*, using the descriptions in the right hand column in each of *BCOBS 7.5.4R* and *BCOBS 7.5.5R* to refer to the actions and the matters; and
 - (b) on the same webpage as, and immediately below, the statement published in accordance with *BCOBS 7.7.2R(2)*.

7.5.3 R The methods are:

- (1) telephone (other than telephone banking);
- (2) telephone banking;
- (3) internet banking; and
- (4) mobile banking.

7.5.4 R The actions are:

| | Action | Description |
|-----|--|---|
| (a) | ascertain the balance on the account | checking the balance and transactions |
| (b) | access a transaction history covering at least the previous 90 <i>days</i> | <u>accessing a transaction history</u> |
| (c) | initiate a payment transaction to a payee in the <i>United Kingdom</i> | sending money within the UK, including setting up a standing order |
| (d) | set up a standing order to a payee in the <i>United Kingdom</i> | <u>setting up a standing order</u> |
| (e) | initiate a payment in a currency other than a currency of the <i>United Kingdom</i> to a payee | sending money outside the UK |

| | | |
|-----|-----------------------------------|---------------------|
| | outside the <i>United Kingdom</i> | |
| (f) | make a deposit by cheque | paying in a cheque |
| (g) | cancel a cheque | cancelling a cheque |

...

7.5.6 G ...

- (4) In Tables 2 and 3, if contact details or opening hours differ between types of account or between categories of *customer*, *firms* should either annotate the Table accordingly, or produce different copies of the Table for different types of account or categories of *customer*. And in Table 2, if the contact details for a particular matter ~~differs~~ differ from ~~that~~ those given at the top of the relevant column for a particular method, *firms* should include the correct contact details for the relevant matter in the relevant row of that column.

...

...

7.7 Publication of information about current accounts

...

How must information be published?

7.7.2 R ...

- (4) A *firm* to which (3) applies must:
- (a) ensure that the application programming interface it uses for the purposes of (3) is itself made publicly available free of charge; and
 - (b) if it is a *firm* which is subject to article 13 (release of service quality indicators) of the Retail Banking Market Investigation Order 2017⁷, use the Open Banking FCA Service Metrics API Specification v.1.0.0, or a substantially similar API, to make information and statements available for the purposes of (3).
 - (i) ~~use the same application programming interface to make information and statements available for the purposes of (3) as it uses for the purposes of that article; and~~
 - (ii) ~~expand that interface as necessary for the purposes of this rule.~~

...

7 Publication of information in a specified format

Annex

1R

...

Part 2 Information about current account services

BCOBS 7 requires *firms* to publish the following tables in the following order, on one webpage, and preceded by the statement “The Financial Conduct Authority requires us to publish the following information about our [personal/business] current accounts:”.

Table 2: availability of help and support in relation to certain services published under *BCOBS 7.5.2R*

| How and when you can contact us to ask about the following things: | | | | | |
|--|--------------------------------------|------------------|-------------------------------------|-------------------------|-----------------------|
| | <i>24 hour help?</i> | <i>Telephone</i> | <i>Telephone banking</i> | <i>Internet banking</i> | <i>Mobile banking</i> |
| <i>contact details</i> | | | | | |
| checking the balance and transactions | [✓/yes OR X/no] | | | | |
| <u>accessing a transaction history</u> | [✓/yes OR <u>X/no</u>] | | | | |
| sending money within the UK, including setting up a standing order | [✓/yes OR X/no] | | | | |
| <u>setting up a standing order</u> | [✓/yes OR <u>X/no</u>] | | | | |
| Note: this is a list of common queries. It does not represent the full list of queries you can raise in relation to your account [or queries you can raise in one of our branches]. | | | | | |

Table 3: availability of certain services published under *BCOBS* 7.5.1R

| How and when you can use your bank account to do the following things: | | | | |
|--|------------------|--------------------------|-------------------------|-----------------------|
| | <i>Telephone</i> | <i>Telephone banking</i> | <i>Internet banking</i> | <i>Mobile banking</i> |
| checking the balance and transactions | | | | |
| <u>accessing a transaction history</u> | | | | |
| sending money within the UK, including setting up a standing order | | | | |
| <u>setting up a standing order</u> | | | | |
| sending money outside the UK | | | | |
| paying in a cheque | | | | |
| cancelling a cheque | | | | |
| ... | | | | |
| Note: this is a list of common actions. It does not represent the full list of actions you can take in relation to your account [or actions you can take in one of our branches]. | | | | |

...

Appendix 5

Registration of Northern Ireland mutual societies – amendments to DEPP and EG

ENFORCEMENT (FINANCIAL SERVICES ACT 2012 (MUTUAL SOCIETIES) ORDER 2018) INSTRUMENT 2018

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers:
- (1) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000; and
 - (2) section 6 (Guidance) of the Financial Services Act 2012 (Mutual Societies) Order 2018.

Commencement

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

Amendments to the Handbook

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

Amendments to material outside the Handbook

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

Citation

- E. This instrument may be cited as the Enforcement (Financial Services Act 2012 (Mutual Societies) Order 2018) Instrument 2018.

By order of the Board
[*date*]

Annex A

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2 Statutory notices and the allocation of decision making

...

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

...

| <u>Co-operative and Community Benefit Societies Act (Northern Ireland) 1969</u> | <u>Description</u> | <u>Handbook reference</u> | <u>Decision maker</u> |
|---|--|---------------------------|--|
| <u>Sections 15 and 16</u> | where the <i>FCA</i> gives at least two <i>months</i> ' notice of the proposed cancellation or suspension of the registration of a <i>registered society</i> | | <i>Executive procedures</i> |
| <u>Sections 15 and 16</u> | where the <i>FCA</i> is proposing to cancel or suspend the registration of a <i>registered society</i> relying on section 15 (1)(c)(ii) | | <i>Executive procedures where no representations are made in response to a notice of proposed cancellation, otherwise by the RDC</i> |
| <u>Section 65</u> | where the <i>FCA</i> is proposing to petition for the winding up of a <i>registered society</i> | | <i>RDC</i> |

| | | | |
|-------------------|--|--|------------------------------------|
| <u>Section 75</u> | where the <i>FCA</i> is proposing to prosecute a <i>registered society</i> | | <u>Executive procedures or RDC</u> |
|-------------------|--|--|------------------------------------|

| Section of the Credit Unions Act 1979 | Description | Handbook reference | Decision maker |
|--|---|---------------------------|-----------------------|
| 20 | where the <i>FCA</i> is proposing to cancel or suspend the registration of a <i>credit union</i> or to petition for the winding up of a <i>credit union</i> | | <i>RDC</i> |

| Articles of the Credit Unions (Northern Ireland) Order 1985 | Description | Handbook reference | Decision maker |
|--|--|---------------------------|--|
| <u>Articles 60 and 61</u> | where the <i>FCA</i> gives at least two <i>months'</i> notice of the proposed cancellation or suspension of the registration of a <i>Northern Ireland credit union</i> | | <u>Executive procedures</u> |
| <u>Articles 60(1) and 61(1) and 63</u> | where the <i>FCA</i> is proposing to consent to the Registrar of Credit Unions for Northern Ireland cancelling or suspending cancel or suspend the registration of a <i>Northern Ireland credit union</i> relying on section 60(1)(c)(ii), or petitioning for the winding up of a <i>Northern Ireland credit union</i> | | <u>Executive procedures where no representations are made in response to a notice of proposed cancellation, otherwise by the RDC</u> |
| <u>Article 63</u> | where the <i>FCA</i> is proposing to petition for | | <i>RDC</i> |

| | | | |
|-------------------|--|--|--|
| | <u>the winding up of a Northern Ireland credit union</u> | | |
| <u>Article 76</u> | <u>where the FCA is proposing to prosecute a Northern Ireland credit union</u> | | <u>Executive procedures or RDC</u> |

...

Annex B

Amendments to the Enforcement Guide (EG)

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

19 Non-FSMA powers

...

19.2 **Friendly Societies Act 1974 (FSA74), Friendly Societies Act 1992 (FSA92), Co-operative and Community Benefit Societies Act 2014 (CCBSA14) and Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (CCBSA(NI)69)**

19.2.1 The *FCA* has certain functions in relation to what are described as “registrant-only” mutual societies including *registered societies* or *registered friendly societies*. These societies are not regulated or supervised under the *Act*. Instead, they are subject to the provisions of FSA74, FSA92, ~~and CCBSA14,~~ and CCBSA(NI)69 which require them to register with the *FCA* and fulfil certain other obligations, such as the requirement to submit annual returns.

19.2.1A The Financial Services Act 2012 (Mutual Societies) Order 2018 is effective from 6 April 2018 and transfers the Northern Ireland registration function to the *FCA*. The *FCA* will be therefore registering Northern Ireland’s industrial and provident or co-operative and *community benefit societies* respectively under the CCBSA(NI)69 as modified by the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 and the Financial Services Act 2012 (Mutual Societies) Order 2018.

...

19.2.6 The decision whether to initiate criminal and other proceedings under these Acts will be taken in accordance with the procedure described in EG 12.1.7. Under ~~section 9 CCBSA14,~~ these Acts, a society may appeal certain decisions of the *FCA* relating to the refusal, cancellation or suspension of a society’s registration to the High Court or, in Scotland, the Court of Session. ~~Refusals to register a branch or to register the amendment of a society’s rules and cancellations or suspensions of a society’s listing under the FSA74 are also appealable in certain circumstance to the High Court or the Court in Sessions.~~ Distinguishing features of the procedure for giving statutory notices under the FSA92, including available rights of reference to the *Tribunal*, are set out in *DEPP* 2.5.18G.

19.2.7 Further information about the *FCA*’s powers under ~~FSA74 and CCBSA14~~ these Acts can be found on the *FCA*’s website.¹⁶

¹⁶ <http://www.fca.org.uk/firms/being-regulated/enforcement/how-we-enforce-the-law/courts/friendly-societies>

19.3 **Credit Unions Act 1979 (CUA79) and Credit Unions (Northern Ireland) Order 1985 (CU(NI)O85)**

19.3.1 The ~~Credit Unions Act CUA79~~ and CU(NI)O85 ~~enables~~ enable certain societies in Great Britain and Northern Ireland to be registered under IPSA65 CCBSA14 and the CU(NI)O85 respectively, and ~~makes~~ CUA79 and CU(NI)O85 also make provisions in respect of these societies. ~~It~~ They ~~gives~~ give the *FCA* certain powers in addition to the powers that it has under the *Act* in respect of those credit unions which are *authorised persons*. The *FCA*'s powers under ~~the Credit Unions Act CUA79, CCBSA14 and CU(NI)O85~~ include the power to:

- (1) require the production of books, accounts and other documents in the exercise of certain functions (~~section 17~~);
- (2) appoint an investigator or to call a special meeting of the credit union (~~section 18~~);
- (3) cancel the registration of the credit union (~~section 20~~); and
- (4) petition the High Court to wind up the credit union in particular circumstances (~~section 20~~).

19.3.1A The Financial Services Act 2012 (Mutual Societies) Order 2018 is effective from 6 April 2018 and transfers the Northern Ireland registration function to the *FCA*. The *FCA* will be therefore registering Northern Ireland's credit unions under the CU(NI)O85 as modified by the Credit Unions and Co-operative and Community benefit Societies Act (Northern Ireland) 2016 and the Financial Services Act 2012 (Mutual Societies) Order 2018.

19.3.2 The *FCA* will use these powers in a manner consistent with its approach to using the same powers under the *Act*. Where the *FCA* decides ~~or~~ to cancel or suspend a credit union's registration ~~under section 20(1) of the Credit Unions Act~~, the credit union may appeal that decision to the High Court or, in Scotland, the Court of Session.

19.3.3 The ~~Credit Unions Act CUA79~~ under the CCBSA14 and CU(NI)O85 also extends to credit unions some criminal offences ~~under IPSA65~~. The *FCA* will act in accordance with *EG 12* when prosecuting these offences.

...

Appendix 6

EuSEF Regulation, EuVECA Regulation and MMF Regulation – amendments to DEPP and EG

ENFORCEMENT (SOCIAL ENTREPRENEURSHIP FUNDS, VENTURE CAPITAL FUNDS AND MONEY MARKET FUNDS) INSTRUMENT 2018

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of: the following powers and related provisions in :
- (1) the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 139A (Power of the FCA to give guidance);
 - (b) section 395 (The Authority’s procedures); and
 - (2) the Alternative Investment Fund Managers Regulations 2013:
 - (a) section 70 (Warning notices, Decision Notices and Supervisory Notices).

Commencement

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

Amendments to the Handbook

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

Amendments to material outside the Handbook

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

Citation

- E. This instrument may be cited as the Enforcement (Social Entrepreneurship Funds, Venture Capital Funds and Money Market Funds) Instrument 2018.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

In this Annex underlining indicates new text.

Amend the following definitions as shown.

| | |
|----------------------------|---|
| <i>authorisation order</i> | <p>an order made by the <i>FCA</i>:</p> <ul style="list-style-type: none"> (a) in relation to an <i>AUT</i> under section 243 of the <i>Act</i> (Authorisation orders); (b) in relation to an <i>ICVC</i> under regulation 14 of the <i>OEIC Regulations</i> (Authorisation); (c) in relation to an <i>ACS</i> under section 261D of the <i>Act</i> (Authorisation orders); <p>as a result of which the <i>AUT</i> or <i>ACS</i> becomes authorised or the body becomes incorporated as an <i>ICVC</i> under regulation 3 of the <i>OEIC Regulations</i> (Open-ended investment company); <u>or an <i>AUT</i>, <i>ACS</i> or <i>ICVC</i> becomes declared a money market fund.</u></p> |
| <i>EuVECA regulation</i> | <p>Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds <u>as amended by Regulation (EU) No 2017/1991 of the European Parliament and the Council of 25 October 2017 amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds.</u></p> |
| <i>EuSEF regulation</i> | <p>Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds <u>as amended by Regulation (EU) No 2017/1991 of the European Parliament and the Council of 25 October 2017 amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds.</u></p> |

Annex B

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Statutory notices and the allocation of decision making

...

2.5 Provision for certain categories of decision

...

2.5.15G A decision to give a *warning notice* or *decision notice* refusing an application for an *authorisation order* declaring a scheme to be an *AUT*, *ACS* or *ICVC* or an *AUT*, *ACS* or *ICVC* to be a money market fund will be taken by the *RDC* only if the application is by an *authorised fund manager* who is not the operator of an existing *AUT*, *ACS* or *ICVC*. Otherwise, the decision to give the *warning notice* or *decision notice* will be taken by *FCA* staff under *executive procedures*.

...

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

...

| Section of the Act | Description | Handbook reference | Decision maker |
|--------------------|--|--------------------|--|
| ... | ... | | ... |
| 245(1)/(2) | when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> declaring a <i>unit trust scheme</i> to be an <i>AUT</i> <u>or an <i>AUT</i> to be a money market fund</u> | <i>COLL 2</i> | <i>RDC</i> or <i>executive procedures</i> See <i>DEPP</i> 2.5.15G |
| ... | ... | | ... |
| 261G(1)/(2) | when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> | <i>COLL 2</i> | <i>RDC</i> or <i>executive procedures</i> See <i>DEPP</i> |

| | | | |
|-----|---|--|---------|
| | declaring a <i>scheme</i> to be an <i>ACS</i> or an <i>ACS</i> to be a <u>money market fund</u> | | 2.5.15G |
| ... | ... | | ... |

...

| OEIC Regulations reference | Description | Handbook reference | Decision maker |
|----------------------------|---|--------------------|--|
| Regulation 16(1)/(2) | when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> in respect of a proposed <i>ICVC</i> or an <i>ICVC</i> to be a <u>money market fund</u> | <i>COLL 2</i> | <i>RDC</i> or <i>executive procedures</i> See <i>DEPP</i> 2.5.15G |
| ... | ... | | ... |

...

| Alternative Investment Fund Managers Regulations 2013 | Description | Handbook reference | Decision maker |
|---|---|--------------------|--|
| ... | ... | | ... |
| Regulation 13(2)(a), <u>article 14b of the EuVECA regulation</u> and <u>article 15b of the EuSEF regulation</u> | where the <i>FCA</i> decides to refuse an application for entry on the register of <i>small registered UK AIFMs</i> | | <i>Executive procedures</i> where no representations are made in response to a <i>warning notice</i> otherwise by the <i>RDC</i> |
| ... | ... | | ... |
| Regulation 23C(2)(a) | where the <i>FCA</i> decides to revoke the authorisation of a <i>UK ELTIF</i> | | <i>RDC</i> |

| | | | |
|-----------------------------|---|--|--|
| <u>Regulation 23E(1)</u> | <u>where the FCA proposes to refuse an application for registration as a <i>qualifying social entrepreneurship fund</i> or a <i>qualifying venture capital fund</i></u> | | <u>Executive procedures</u> |
| <u>Regulation 23E(2)(a)</u> | <u>where the FCA decides to refuse an application for registration as a <i>qualifying social entrepreneurship fund</i> or a <i>qualifying venture capital fund</i></u> | | <u>Executive procedures where no representations are made in response to a warning notice otherwise by the RDC</u> |
| <u>Regulation 23F(1)</u> | <u>where the FCA proposes to revoke the registration of a <i>qualifying social entrepreneurship fund</i> or a <i>qualifying venture capital fund</i></u> | | <u>RDC</u> |
| <u>Regulation 23F(2)(a)</u> | <u>where the FCA decides to revoke the registration of a <i>qualifying social entrepreneurship fund</i> or a <i>qualifying venture capital fund</i></u> | | <u>RDC</u> |
| <u>Regulation 23H(1)</u> | <u>where the FCA proposes to refuse an application for authorisation as a <i>money market fund</i></u> | | <u>Executive procedures</u> |
| <u>Regulation 23H(2)(a)</u> | <u>where the FCA decides to refuse an application for authorisation as a <i>money market fund</i></u> | | <u>Executive procedures where no representations are made in response to a warning notice otherwise</u> |

| | | | |
|-----------------------------|--|--|-----------------------------|
| | | | <u>by the</u> <u>RDC</u> |
| <u>Regulation 23I(1)</u> | <u>where the FCA proposes to revoke the authorisation of a money market fund</u> | | <u>RDC</u> |
| <u>Regulation 23I(2)(a)</u> | <u>where the FCA decides to revoke the authorisation of a money market fund</u> | | <u>RDC</u> |
| ... | | | |

Annex C

Amendments to the Enforcement Guide (EG)

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

19 Non-FSMA powers

...

19.27 Alternative Investment Fund Managers Regulations 2013

- 19.27.1 The *AIFMD UK regulation* transposes *AIFMD* and makes the necessary changes to *UK* legislation in relation to the *EuSEF regulation*, the *EuVECA regulation*, ~~and the *ELTIF regulation*~~ and the *Money Market Funds regulation*. It provides new and updated powers in relation to both existing and new managers of *AIFs*, whether authorised or registered.

...

Information gathering and investigation powers

...

- 19.27.4 The new powers under the *AIFMD UK regulation* include powers of direction and the power to revoke the registration of *small registered UK AIFMs*, (including a *EuSEF manager* or a *EuVECA manager* and, in some circumstances, EEA managers of a *qualifying social entrepreneurship fund* or a *qualifying venture capital fund*), the registration of *qualifying social entrepreneurship funds* or *qualifying venture capital funds* or the authorisation of a money market fund, ~~respectively~~.

...

