

Quarterly Consultation

No 24

Consultation Paper
CP19/19*

June 2019

How to respond

We are asking for comments on this Consultation Paper (CP) by **7 August 2019 for all Chapters**.

You can send them to us using the form on our website at:
www.fca.org.uk/cp19-19-response-form

Or in writing to:

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If you are responding in writing to several chapters please send your comments to Jainisha Kanzaria in the Handbook Department, who will pass your responses on as appropriate.

All responses should be sent to:
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1 Overview

Chapter No	Proposed changes to Handbook	Consultation Closing Period
2	Modifications to General Provision (GEN) and fees and levy rate rules (FEES) for 2019/20 in relation to Gibraltar-based firms	Two months
3	To introduce new notification procedures for changes to the management body	Two months
4	To amend Handbook form SUP10C Annex 10D: <i>Statement of Responsibilities</i> .	Two months
5	To update Handbook form SUP 8 Annex 2 Application form for a waiver or modification of rules	Two months

2 Gibraltar-based firms – fees and levies

Introduction

- 2.1** This chapter sets out our proposals for the fees and levies that should be paid for 2019/20 by Gibraltar-based firms,¹ should the UK leave the European Union (EU) without an agreement and a transitional period by 31 October 2019 ('hard Brexit'). We said in our 2019/20 regulatory fees and levies Consultation Paper (CP) 19/16 (April 2019)² that we would consult on the rules to give effect to those proposals in our June 2019 QCP.
- 2.2** The overall post-Brexit position for Gibraltar-based firms is set out in our Statement on the treatment of Gibraltar in our Handbook after Brexit.³ In summary:
- On the day the UK leaves the EU, we intend to maintain the then-applying regulatory position on Gibraltar within our Handbook. This position is in line with the Government's commitment that Gibraltar financial services firms should, until December 2020, have the same market access in the UK as they do now.
 - For Gibraltar-based firms able to exercise passport rights, the Government's commitment means they will continue to be able to exercise such rights on exit day. As a result, they will not enter the Temporary Permissions Regime (TPR) or Supervised Run-Off (SRO) for firms or funds wishing to operate in the UK from the EEA.
- 2.3** On fees and levies specifically, CP19/16 stated our policy intention that in 2019/20 Gibraltar-based firms should pay periodic fees on the same basis as they do now. At a high level, this means that Gibraltar-based firms with a UK branch will pay periodic fees and receive certain discounts, and Gibraltar-based cross-border services firms will not pay periodic fees. This is broadly the same approach we have taken to firms from European Economic Area (EEA) states who enter TPR or SRO. In the next section we set out how we will do this.
- 2.4** We are consulting jointly with the Financial Ombudsman Service on the proposals that relate to the Financial Ombudsman Service.

Summary of proposals

- 2.5** We published the Exiting the European Union: Gibraltar (General Rules) Instrument 2019 (FCA 2019/34)⁴ ('Gibraltar firms instrument') in Handbook Notice 64 (March 2019).⁵

1 'Gibraltar-based firm' has the same meaning as in the the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 – a firm which has its head office in Gibraltar.

2 www.fca.org.uk/publication/consultation/cp19-16.pdf

3 www.fca.org.uk/news/statements/statement-treatment-gibraltar-our-handbook-after-brexit

4 www.handbook.fca.org.uk/instrument/2019/FCA_2019_34.pdf

5 www.fca.org.uk/publication/handbook/handbook-notice-64.pdf

- 2.6** The Gibraltar firms instrument inserts a new section to the General Provisions (GEN), GEN 2.3R ('General saving of the Handbook for Gibraltar'). GEN 2.3.1R(1) states: "The FCA Handbook shall, after exit day, be construed, unless the contrary intention appears, as conferring rights and imposing obligations in relation to or in connection with Gibraltar corresponding to those that existed immediately before exit day."
- 2.7** The effect of GEN 2.3 is to freeze fees and levy rules as they applied immediately before the date the UK left the EU. This would ensure that, in line with our policy intent, Gibraltar-based firms with a UK branch, would continue to receive discounts on their periodic fees, and services firms would pay no periodic fees.
- 2.8** However, GEN 2.3 would also freeze the rates within the fees and levy rules for Gibraltar-based firms at the 2018/19 level. This is not what we intended, as it could mean that Gibraltar-based firms do not pay the right fees in future. So, we have proposed new guidance in GEN 2.3 to ensure that Gibraltar-based firms pay fees and levy rates that apply generally in 2019/20, as set out in the following sections of the Fees Manual (FEES). No changes are proposed to FEES 6, relating to the Financial Services Compensation Scheme, because there are no levy rates in FEES 6 that apply to Gibraltar-based firms.

FCA fees

- FEES 4A Annex 1R – TP persons periodic fees for the period from 1 April 2019 to 31 March 2020

Financial Ombudsman Service fees

- FEES 5 Annex 1R Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2019/20
- FEES 5 Annex 2R Annual Levy Payable in Relation to the Voluntary Jurisdiction for 2019/20
- FEES 5 Annex 3R Case Fees Payable for 2019/20

Money and Pensions Service⁶ fees

- FEES 7C Annex 1R – TPR SFGB money advice levy for the period from 1 April 2019 to 31 March 2020
- FEES 7C Annex 2R – TPR SFGB debt advice levy for the period from 1 April 2019 to 31 March 2020
- FEES 7C Annex 3R – TPR SFGB pensions guidance levy for the period 1 April 2019 to 31 March 2020

Devolved Authorities Debt Advice Levy

- 2.9** FEES 7D Annex 1R – TPR DA levy for the period 1 April 2019 to 31 March 2020

Illegal Money Lending Levy

- FEES 13 A – TPR illegal money lending (IML) levy for 2019/20

Q2.1 Do you have any comments on the proposed

⁶ In the FCA Handbook, the Money and Pensions Service is referred to as the 'Single Financial Guidance Body'.

modifications to the general provision and fees and levy rules in relation to Gibraltar based firms for 2019/20?

Cost benefit analysis

- 2.10** Under section 138I of FSMA, the FCA is exempt from the requirement to carry out and publish a cost benefit analysis regarding proposals for rules regarding FCA fees, and levies for the Financial Ombudsman Service, the Money and Pensions Service, the Devolved Authorities and the illegal money lending levy.

Impact on mutual societies

- 2.11** We do not expect the proposals in this chapter to have a significantly different impact on mutual societies. As discussed in Annex 2 of CP19/16 (April 2019), the impact of the fees and levy rates proposed for 2019/20 for the FCA, the Financial Ombudsman Service, the Money and Pensions Service levies, the Devolved Authorities' debt advice levy and the illegal money lending levy on authorised firms that are mutual societies is not significantly different from their impact on other authorised firms.

Compatibility statement

- 2.12** In Annex 2 of CP19/16 (April 2019), we included a Compatibility Statement on the fees and levy rates proposals for 2019/20 for the FCA, the Financial Ombudsman Service, the Money and Pensions Service levies, the Devolved Authorities' debt advice levy and the illegal money lending levy. We believe that the proposals in this Chapter do not alter that Compatibility Statement.

Equality and diversity

- 2.13** We do not think that the proposals in this chapter adversely impact any of the groups with protected characteristics under the Equality Act 2010, ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment. We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the meantime, we welcome your comments on any equality and diversity considerations you believe may arise.

3 New notification procedures for changes to the management body

Introduction

- 3.1** Following the extension of the Senior Managers and Certification Regime (SM&CR) to firms regulated by the FCA and not the PRA (solo-regulated firms) in December 2019, the way these firms report information about their management body to us will change. This is because these firms will only need FCA approval for individuals seeking to carry on a Senior Management Function (SMF).⁷
- 3.2** Separate to this, the *Market in Financial Instruments Directive* (MiFID) and the *Capital Requirements Directive* (CRD) will continue to require anyone joining the management body of a firm to submit certain information to the regulator. This applies even to individuals not performing an SMF such as a standard non-executive Director (NED).
- 3.3** This chapter proposes changes to our existing MiFID supplementary forms to provide an easy way for firms to provide us with the required information and to help ensure that solo-regulated firms subject to MiFID and CRD remain compliant with their requirements following commencement of the SM&CR.
- 3.4** MiFID firms that are regulated by us and the Prudential Regulation Authority (PRA) (dual-regulated firms) and currently submit form M can continue to use the existing form.
- 3.5** This chapter also proposes to introduce new guidance notes to both FCA-only and shared MiFID supplementary forms to ensure firms are aware of their obligations to provide sufficient information to comply with MiFID disclosure requirements on how an appointment affects the collective suitability of the management body.
- 3.6** These obligations will continue to apply following Brexit since we will need to continue either to meet EU requirements during a transition period or, if no agreement is reached, to apply the same standards as set out in UK onshored legislation.
- 3.7** This chapter will be of interest to solo and dual regulated firms as well as optional exemption firms that are subject to MiFID, CRD or equivalent requirements (MiFID firms).

⁷ www.handbook.fca.org.uk/handbook/glossary/G4552s.html

Summary of proposals

Proposed amendments to supplementary MiFID forms

- 3.8** The issue of competent authorities being required to receive certain information on all members of the management body at MiFID firms previously arose when the SM&CR was introduced for dual-regulated banking firms in March 2016 and insurers in December 2018. The approach taken then by the PRA was to introduce a new notification form (Form M). This is a streamlined version of the application form to perform SMF roles (Form A) and ensures sufficient information is received on non-SMF Directors to meet MiFID requirements.
- 3.9** For solo-regulated firms, we propose to amend the two supplementary MiFID forms that we already use for Approved Persons and SMF managers requiring our approval.⁸ These are:
- SUP 10A Annex 10 – MiFID Article 4 APER Information Form,⁹ and
 - SUP 10C Annex 11 – MiFID members of the management body and key function holders – Article 4 Information Form (SMR)¹⁰
- 3.10** These changes will allow both firms and us to remain compliant with MiFID requirements following the extension of the SM&CR, as firms will still be able to notify us of changes in their management bodies with respect to Directors¹¹ and non-executive Directors who are not Senior Managers. These notifications would be made through our Connect system.
- 3.11** Following the extension of the SM&CR to solo-regulated firms, the *Statements of Principle and Code of Practice for Approved Persons* (APER) will be replaced by conduct rules in our Handbook. As a result, we will be renaming the current 'MiFID Article 4 APER Information Form' to 'Notification Procedures for Changes to the Management Bodies for non-SMF Directors'. This form will be moved to Chapter 15 of the Supervision sourcebook (*Notifications to the FCA*).
- 3.12** The proposed changes are set out in Appendix 2 of this chapter.

Q3.1 Do you have any comments on the proposed amendments to SUP10A Annex 10 and SUP10C Annex 11? If so, please elaborate.

New guidance notes to make clear firms' obligations to notify us

- 3.13** Firms are expected to understand their obligations under MiFID and the Suitability Guidelines. This includes a firm's obligation to notify us when it reassesses the collective suitability of its management body following authorisation, both for new appointments and re-appointments.¹²

⁸ ESMA Annex III template (SUP 10A.14.4A); Supplementary information form (SUP 10A.14.4bD)

⁹ www.handbook.fca.org.uk/handbook/SUP/10A/Annex10.html

¹⁰ www.handbook.fca.org.uk/handbook/SUP/10C/Annex11D.html

¹¹ www.handbook.fca.org.uk/handbook/SUP/10A/6.html#DES122

¹² www.esma.europa.eu/document/joint-esma-and-eba-guidelines-assessment-suitability-members-management-body-and-key-0

- 3.14** To make sure firms are aware of the need to notify us of any change in the suitability of their management body, we propose to add a guidance section to 'MIFID members of the management body and key function holders – Article 4 Information Form (SMR)' and to the 'Notification Procedures for Changes to the Management Bodies for non-SMF Directors' form which:
- i. allows firms to provide information on collective suitability, and
 - ii. reminds firms to tell us about other changes affecting collective suitability and of the optional template provided by the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) for recording their assessment
- 3.15** These changes would afford firms the maximum flexibility when deciding how to provide this information.

Q3.2: Do you agree with our proposal of allowing firms to provide information on collective suitability at the same time as notifying the FCA of changes to their management body? If not, please elaborate.

Cost benefit analysis

- 3.16** FSMA requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, involving an analysis of the costs, together with an analysis of the benefits that would arise if the proposed rules are made and an estimate of those costs and benefits.

Costs For Firms

Proposed amendments to supplementary MiFID forms

- 3.17** As we are proposing to amend 'MiFID Article 4 APER Information Form' to help ensure that solo-regulated and optional exemption firms subject to MiFID and CRD remain compliant with these regulations following commencement of the extension of SM&CR, we performed a quantitative cost benefit analysis to give firms an assessment of the costs that would be incurred from these changes. These are outlined in Table 1 below.
- 3.18** We estimated that the total ongoing cost for firms will be £170,000 as set out in table 1 below. This estimate is based on the average number of non-Executive and Executive Director¹³ appointee notifications that we have received from MiFID firms in 2017 and 2018 who are not expected to carry out SMFs. We further estimated that it will take around three hours for a firm's staff to complete and submit the 'Notification Procedures for Changes to the Management Bodies for non-SMF Directors' form. A firm's staff will have to locate information stored in different locations, review or amend the data when necessary, log in and enter it into our system.
- 3.19** Based on the reasoning that it will take around three hours to complete this notification form, we have estimated that the cost per form would be £88.00 as set out in Table 1 below.

¹³ Executive Directors who will be considered as non-SMF Directors after the commencement of the SM&CR to solo-regulated firms.

3.20 We believe the proposed changes may reduce familiarisation costs and costs incurred from the building of new data systems for firms since all the information would be requested and submitted in the same way as that mandated prior to the extension of the SM&CR, by using one of our data systems, *Connect*.

3.21 These changes will also reduce staff costs for firms as the 'Notification Procedures for Changes to the Management Bodies for non-SMF Directors' form will require less staff time to complete than the 'APER- Statements of Principle and Code of Practice for Approved Persons' form. This is because the latter will be a notification form, whereas the former is currently submitted as part of application form A or E. Therefore, we believe there will be no one-off familiarisation costs for firms.

For the FCA

3.22 We will incur costs from making amendments to our Connect system to facilitate submission of consistent information in the required format. We estimated that the total one-off cost that the FCA will incur from making these amendments will be £74,000 as set out in Table 1 below.

3.23 With the changes proposed, we would be able to apply automated checks and data management systems in the same way as for other Connect forms. In most cases, this would allow applications to be screened automatically against existing databases and Intelligence systems. Only if these checks gave rise to concerns would a notification be routed to a case officer. This will give rise to some ongoing review costs. We did not perform a quantitative analysis of these costs as these are expected to be minimal.

3.24 The costs incurred from the proposed changes are expected to be lower than the costs spent from manually reviewing information and ad hoc emails, as well as following up on firms for information.

Table 1: Best estimate costs for firms and the FCA

Ongoing cost for firms per year	One-off cost for the FCA
£170,000	£74,000

3.25 We estimate that the ongoing cost for firms could range between £127,000 and £211,000.

3.26 We estimate that the total one-off cost that the FCA will incur from these changes will range between £55,300 and £92,000.

New guidance notes to make clear firms' obligations to notify us

3.27 MiFID already requires firms to notify us when they reassess the collective suitability of their management body. Our proposal of including guidelines on collective suitability to 'MiFID members of the management body and key function holders – Article 4 Information Form (SMR)' and to 'Notification Procedures for Changes to the Management Bodies for non-SMF Directors' form will allow firms to provide this information in a clear and consistent way.

3.28 As firms will have the option to provide this information as part of these forms rather than by email or any other means, reporting costs are expected to be minimal.

Benefits

For firms

- 3.29** In this section, we discuss the benefits of our proposals and the ways they can be achieved. We have not attempted to quantify the benefits because we believe that they cannot be reliably estimated.
- 3.30** The proposed changes to supplementary MiFID forms will benefit solo-regulated and optional exemption MiFID firms since these changes will allow firms to continue to demonstrate compliance with MiFID and CRD requirements after the commencement of the extension of the SM&CR.
- 3.31** Our proposal of introducing guidance to these forms supports firms in complying with MiFID's requirement of notifying us whenever firms reassess their management body. It also provides firms with an option of notifying us in a clear and consistent way which, as a result, will assist firms in submitting accurate information.

For the FCA, the market and consumers

- 3.32** The proposed changes set out in this Chapter will allow us to continue to demonstrate compliance with our Directive obligations to be able to object to all Board roles. This will also support our supervisory function of ensuring that only individuals deemed as fit and proper are appointed to their firm's management body.
- 3.33** Board members play an important role in a firm's governance, whether or not they are Senior Managers under the SM&CR. Our proposals will promote greater scrutiny of appointments in firms, helping to ensure firms only appoint those who are fit and proper. This in turn could help safeguard market integrity and help protect consumers through higher standards of governance and decision making.

Q3.3: Do you have any feedback on this CBA?

Impact on mutual societies

- 3.34** 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 believe this will be the case.

Compatibility statement

- 3.35** Section 1B of FSMA requires us, when discharging our general functions, so far as is reasonably possible, to act in a way that is compatible with our strategic objective and advances one or more of our operational objectives. The FCA also needs, so far as is compatible with acting in a way that advances the consumer protection objective or the market integrity objective, to carry out its general functions in a way that promotes effective competition in the interests of consumers.
- 3.36** The proposed changes strike an appropriate balance between our continuing to focus on SMFs who hold the most significant risk-taking roles and meeting our Directive obligations to be able to object to all Board roles. Our proposals also advance our operational objectives for securing an appropriate degree of protection for consumers, and for protecting and enhancing the integrity of the UK financial system.

Equality and diversity

- 3.37** We have considered the equality and diversity issues that may arise from the proposed amendments. We do not consider that the proposals raise concerns regarding equality and diversity issues or adversely impact any of the groups with protected characteristics under the Equality Act 2010.
- 3.38** However, we will continue to consider potential impacts during the consultation period and will revisit our assessment when publishing our finalised forms and guidance notes. In the interim, we welcome any feedback to this consultation.

4 Changes to Handbook form SUP 10C Annex 10D: *Statement of Responsibilities*

Introduction

- 4.1** The Senior Managers and Certification Regime (SM&CR) replaced the Approved Persons Regime (APR) for banks, building societies, credit unions and investment firms regulated by both the FCA and PRA (dual-regulated) in March 2016. This regime was then extended to insurers in July 2018 and firms regulated by the FCA but not the PRA (solo-regulated) in December 2019.
- 4.2** The SM&CR sets out which roles are senior management functions. Every senior manager needs to have a '*statement of responsibilities*' (SoR) that clearly says what they are responsible and accountable for. There are some specific responsibilities that firms need to give to their senior managers, known as '*prescribed responsibilities*' (PR). This is to make sure there is a senior manager accountable under the SM&CR for key conduct and prudential risks.
- 4.3** Firms are required to notify us and the PRA of which prescribed responsibilities their senior managers are to perform as part of their senior management function and how they fit in with the firm's overall governance and management arrangements. This is done by submitting Handbook form SUP 10C Annex 10D: *Statement of Responsibilities*,¹⁴ which is an FCA and PRA shared (dual) form.
- 4.4** Since March 2016, we have made a number of incremental changes to the wording of our rules that have not been fully reflected in this form. As a result, there are slight discrepancies between the descriptions of the prescribed responsibilities in the *Statement of Responsibilities* form and the SM&CR rules.
- 4.5** Some of the proposed changes in wording will also give firms a clearer understanding of the specific responsibilities a Senior Manager can be held accountable for.
- 4.6** This chapter will be of interest to solo-regulated and dual-regulated firms that are subject to SM&CR.

Summary of proposals

Proposed amendments to *Statement of Responsibilities* form

- 4.7** We are proposing to make minor amendments to the prescribed responsibilities language in this form to make it consistent with the wording used in our and the PRA's SM&CR rules.

¹⁴ www.handbook.fca.org.uk/form/sup/SUP_10C_ann_10_SOR_dual_regulated_20181210.pdf

4.8 We are also proposing to make changes to the wording of *Prescribed Responsibility R* on recovery and resolution. This change is contingent on the PRA's intention to incorporate a responsibility for *resolution assessments* as published in Consultation Paper (CP) 31/18 '*Resolution assessment and public disclosure by firms*'.¹⁵

4.9 We propose to amend the *Statement of Responsibilities* form as follows:

Change to form	Current FCA SM&CR rule	Current PRA SM&CR rule	Proposed change in SoR form to reflect SM&CR rules
Wording of PR B – dual	Responsibility for the firm's performance of its obligations under the <i>certification regime</i>	(A2) responsibility for the firm's performance of its obligations under the certification regime (PR B)	Responsibility for the <i>firm's</i> performance of its obligations under the employee <i>certification regime</i>
Wording of PR B1	Responsibility for the firm's: (a) conduct rules for training; and (b) conduct rules reporting	N/A – FCA only	Responsibility for the <i>firm's</i> : obligations in relation to the: (a) <u>conduct rules for</u> training; and (b) <u>conduct rules reporting</u>
Wording of PR R	N/A – PRA only	Responsibility for developing and managing the firm's recovery plan and resolution pack and for overseeing the internal processes regarding their governance (PR R)	Responsibility for developing and maintaining the firm's recovery plan and , resolution pack and , where relevant, <u>resolution assessment</u> , and for overseeing the internal processes regarding their governance
Wording of PR D	Responsibility for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime	N/A – FCA only	Overall responsibility <u>Responsibility</u> for the firm's policies and procedures for countering the risk that the firm might be used to further financial crime

Change to form	Current FCA SM&CR rule	Current PRA SM&CR rule	Proposed change in SoR form to reflect SM&CR rules
Wording of PR J2 – dual	Responsibility for: (a) providing for an effective internal audit function in accordance with the PRA Rulebook (b) overseeing the performance of the internal audit function.	The responsibility set out in rule 3.3(1) is a prescribed responsibility in the circumstances specified: (1) if a firm is not significant and outsources its internal audit function to an external third party service provider (that is, a service provider outside the firm or the firm's group), responsibility for providing for an effective internal audit function in accordance with Conditions Governing Business 5 and for overseeing the performance of the internal audit function (PR J2).	i) Deletion of footnote: Applies to large NDFs and not Solvency II firms ii) Deletion of footnote and corresponding checkbox: Applies to Large NDFs and not Solvency II firms
Wording of PR FF- dual	Responsibility for the firm's compliance with the UK regulatory system applicable to the firm	Responsibility for the firm's compliance with the UK regulatory system applicable to the firm	Responsibility for the firm's compliance with the UK regulatory system <u>applicable to the firm</u>

4.10 Besides the proposed changes set out in the table above, we are also proposing to delete *Annex A* within this form. As *Annex A* replicates the FCA's guidance provision at *SYSC 25 Annex 1*, retaining this Annex means that the form will have to be updated every time there is a change in this provision.

4.11 In all cases, these changes are minor amendments to ensure consistency with SM&CR rules. These changes do not affect a firm's obligation to submit this form to both regulators.

Q4.1 Do you have any comments on the proposed amendments to SUP10C Annex 10D Statements of Responsibilities form? If so, please elaborate.

Cost benefit analysis

4.12 Section 138I of Financial Services and Markets Act (FSMA) requires us to perform a cost benefit analysis of our proposed requirements and to publish the results, unless we consider the proposal will not give rise to any cost or to an increase in costs of minimal significance.

4.13 The proposed changes will benefit firms as they decrease the risk of firms misinterpreting the prescribed responsibilities listed in this form and, as a result, submitting inaccurate information to us and the PRA.

- 4.14** The cost of these changes is expected to be minimal as these amendments will not affect SM&CR rules and, as such, will not require firms to submit additional information. As a result, we have judged there is no need to carry out a quantitative assessment of the costs, and have not done so.

Impact on Mutual Societies

- 4.15** 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 believe this will be the case.

Compatibility statement

- 4.16** Section 1B of FSMA requires the FCA, when discharging its general functions, to act in a way that is compatible with its strategic objective and advances one or more of its operational objectives. The FCA also needs, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, to carry out its general functions in a way that promotes effective competition in the interests of consumers.
- 4.17** We believe that the proposed amendments to Handbook form SUP 10C Annex 10D: *Statement of Responsibilities* are compatible with our strategic objective and advance our operational objectives under section 1B of FSMA. In particular, these proposed changes help secure an appropriate level of protection for consumers by ensuring that competent Senior Managers operate in the financial market. Therefore, we are satisfied that these proposals are compatible with our general duties under section 1B of FSMA, having regard to the matters set out in section 1C(2) FSMA and the regulatory principles in section 3B.

Equality and diversity

- 4.18** We do not think that the proposals in this chapter adversely impact any of the groups with protected characteristics under the Equality Act 2010, ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment. We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

5 Updates to Handbook form SUP 8 Annex 2 *Application form for a waiver or modification of rules*

Introduction

- 5.1** Section 138A(4) of the Financial Services and Markets Act 2000 (FSMA) provides for a firm to be granted a waiver for or modification of a rule in the FCA Handbook or PRA Rulebook if they meet the following two statutory tests:¹⁶
- compliance by a firm with the unmodified rules would be unduly burdensome or would not achieve the purpose for which the rules were made, and
 - the waiver would not adversely affect any of the FCA's and PRA's operational objectives
- 5.2** Firms need to explain how they satisfy these two statutory tests by completing existing Handbook Form SUP 8 Annex 2 *Application form for a waiver or modification of rules*, and submitting it to us or the PRA.
- 5.3** The '*Application form for a waiver or modification of rules*' was last updated in October 2018. Since then, there have been various regulatory and legislative changes that have not been reflected in the form.
- 5.4** This chapter proposes to update the form to make it consistent with current legislation and the latest FCA guidance links. The recommended changes to this form are consequential and do not introduce new policy. At the same time, we propose to make changes to update the style and layout to be more consistent with other FCA forms.
- 5.5** This chapter will be of interest to solo-regulated and dual-regulated firms.

Summary of proposals

- 5.6** This section sets out our proposed changes to SUP 8 Annex 2 *Application form for a waiver or modification of rules*.

Update data protection legislation

- 5.7** Due to changes in data protection legislation, specifically the introduction of the General Data Protection Regulation (GDPR), we propose to update the section referring to data protection legislation within this form to refer to current GDPR requirements.

¹⁶ www.legislation.gov.uk/ukpga/2000/8/section/138A

Update FCA guidance links

- 5.8** Various links in the existing version of the application form, some of which refer to additional guidance, are no longer up to date. As a result, we propose to include the most recent additional guidance links in this application form. This will avoid the need for firms to perform a manual search and mitigates the risk of firms submitting inaccurate information and contacting our Contact Centre for more details.

Changes to the layout and general style of the form

- 5.9** At the same time as updating the content, we propose to enhance the layout and style of this form to make it look similar to the other FCA and PRA forms that are available via our data portal, *Connect*.
- 5.10** The proposed layout and stylistic amendments will mainly include changes in the format of headings, and moving text to other sections within the application form.
- 5.11** In all cases, the proposed changes do not affect a firm's right to submit an *'Application form for a waiver or modification of rules'* to us or the PRA.

Q5.1 **Do you have any comments on the proposed amendments to SUP8 Annex 2 *'Application form for a waiver or modification of rules'*? If so, please elaborate.**

Cost benefit analysis

- 5.12** Section 138I of Financial Services and Markets Act (FSMA) requires us to perform a cost benefit analysis of our proposed requirements and to publish the results, unless we consider the proposal will not give rise to any cost or to an increase in costs of minimal significance.
- 5.13** The cost for these changes is expected to be minimal as these amendments will not affect existing rules or require firms to submit additional information to either regulator.
- 5.14** The proposed changes set out in this chapter will be of benefit to firms as they will support firms in submitting accurate information to us.

Impact on Mutual Societies

- 5.15** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules will have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. We do not believe this will be the case.

Compatibility statement

- 5.16** Section 1B of FSMA requires the FCA, when discharging its general functions, to act in a way that is compatible with its strategic objective and advances one or more of its operational objectives. The FCA also needs, so far as is compatible with acting in a way

that advances the consumer protection objective or the integrity objective, to carry out its general functions in a way that promotes effective competition in the interests of consumers.

- 5.17** We believe that the proposed amendments to SUP8 Annex 2 '*Application form for a waiver or modification of rules*' are compatible with our strategic objective and advance our operational objectives under section 1B of FSMA. The proposed changes will support firms in providing accurate data to us and the PRA. As a result, these changes will also support both regulators in effectively assessing whether firms should be granted a waiver or modification for a rule as per FSMA statutory tests.

Equality and diversity

- 5.18** We have considered the equality and diversity issues that may arise from the proposed amendments. We do not think that the proposals in this chapter adversely impact any of the groups with protected characteristics under the Equality Act 2010, ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment. We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

Annex 1

Abbreviations used in this paper

APR	Approved Persons Regime
CRD	Capital Requirements Directive
EBA	European Banking Authority
EEA	European Economic Area
ESMA	European Securities and Markets Authority
EU	European Union
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
GDPR	General Data Protection Regulation
MiFID	Market in Financial Instruments Directive
NED	Non-Executive Director
PR	Prescribed Responsibilities
PRA	Prudential Regulation Authority
QCP	Quarterly Consultation Paper
SM&CR	Senior Managers and Certification Regime
SMF	Senior Management Function
SoR	Statement of Responsibilities
SRO	Supervised run-off
TPR	Temporary Permissions Regime

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.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 7948 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN

Appendix 1

List of questions

- Q2.1:** Do you have any comments on the proposed modifications to the general provision and fees and levy rules in relation to Gibraltar based firms for 2019/20?
- Q3.1** Do you have any comments on the proposed amendments to SUP10A Annex 10 and SUP10C Annex 11? If so, please elaborate.
- Q3.2:** Do you agree with our proposal of allowing firms to provide information on collective suitability at the same time as notifying the FCA of changes to their management body? If not, please elaborate.
- Q3.3:** Do you have any feedback on this CBA?
- Q4.1** Do you have any comments on the proposed amendments to SUP10C Annex 10D *Statements of Responsibilities* form? If so, please elaborate.
- Q5.1** Do you have any comments on the proposed amendments to SUP8 Annex 2 *'Application form for a waiver or modification of rules'*? If so, please elaborate.

Appendix 2

Draft Handbook text

FEES (EXITING THE EUROPEAN UNION: GIBRALTAR) INSTRUMENT 201[X]**Powers exercised by the Financial Ombudsman Service**

A. The Financial Ombudsman Service Limited:

- (1) makes and amends the rules for the voluntary jurisdiction; and
- (2) fixes and varies the standard terms for voluntary jurisdiction participants;

as set out in Annex B to this instrument, in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (1) section 225 (The scheme and the scheme operator);
- (2) section 227 (Voluntary jurisdiction);
- (3) paragraph 14 (The scheme operator’s rules) of Schedule 17;
- (4) paragraph 15 (Fees) of Schedule 17; and
- (5) paragraph 18 (Terms of reference to the scheme) of Schedule 17.

B. The making and amendment of the rules and guidance and the fixing and varying of the standard terms, as set out at paragraph A above, by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

C. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:

- (1) the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137SA (Rules to recover expenses relating to the single financial guidance body);
 - (c) section 137SB (Rules to recover debt advice expenses incurred by the devolved authorities);
 - (d) section 137T (General supplementary powers);
 - (e) section 139A (Power of the FCA to give guidance);
 - (f) section 226 (Compulsory jurisdiction);
 - (g) section 234 (Industry funding);
 - (h) section 333T (Funding of action against illegal money lending); and
 - (i) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority);
- (2) regulation 118 (Costs of supervision) of the Payment Services Regulations 2017 (SI 2017/752); and

- (3) regulation 59 (Costs of supervision) of the Electronic Money Regulations 2011 (SI 2011/99).
- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority consents to and approves the rules and guidance and standard terms made and amended and fixed and varied by the Financial Ombudsman Service Limited, as set out at paragraph A above.

Commencement

- F. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018, immediately after the Exiting the European Union: Gibraltar (General Rules) Instrument 2019 comes into effect.

Amendments to the Handbook

- G. 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)
General Provisions (GEN)	Annex A
Fees manual (FEES)	Annex B
Dispute Resolution: Complaints sourcebook (DISP)	Annex C

Citation

- H. This instrument may be cited as the Fees (Exiting the European Union: Gibraltar) Instrument 201[X].

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

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

[*Editor's note*: this instrument takes into account the changes made by the Exiting the European Union: Gibraltar (General Rules) Instrument 2019, which come into effect on exit day, before this instrument enters into effect.]

Annex A

Amendments to the General Provisions (GEN)

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

2 **Interpreting the Handbook**

2.1 **Introduction**

...

2.1.8 R This chapter applies to all ~~rules~~ provisions made by *FOS Ltd*.

...

2.3 **General saving of the Handbook for Gibraltar**

...

2.3.5 G Provisions in *FEES* that immediately before *exit day* applied in relation to or in connection with Gibraltar shall continue to apply after *exit day*. The exceptions to this provision are the fee rates set out in *FEES* which may change each *fee year*.

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text.

4 Periodic fees

4.1 Introduction

...

- 4.1.2A R (1) In accordance with GEN 2.3, rules or guidance in FEES 4 that immediately before *exit day* applied in relation to or in connection with Gibraltar shall continue to apply after *exit day*. The exceptions to this provision are the fee rates set out in Part 1, Part 2, Part 2(a) and Part 2(b) of FEES 4 Annex 2AR and Part 5 of 4 Annex 11R, which may change each *fee year*.
- (2) The modifications that will continue to apply to Gibraltar-based *firms* (as defined in GEN 2.3) are:

<u>Activity group</u>	<u>Percentage deducted from the tariff payable under FEES 4 Annex 2AR and 4 Annex 11R applicable to the Gibraltar-based <i>firm</i></u>
<u>A.1</u>	<u>10%</u>
<u>A.3</u>	<u>10%</u>
<u>A.4</u>	<u>10%</u>
<u>A.7</u>	<u>10%</u>
<u>A.9</u>	<u>10%</u>
<u>A.10</u>	<u>10%</u>
<u>A.13</u>	<u>10%</u>
<u>A.18</u>	<u>10%</u>
<u>A.19</u>	<u>50%</u>
<u>B. MTF and OTF operators</u>	<u>Not applicable</u>
<u>AP.0</u>	<u>100%</u>
<u>G.2</u>	<u>40%</u>

<u>G.3</u>	40%
<u>G.10</u>	40%
<u>Note 1</u>	<u>The modifications to fee tariffs payable by a Gibraltar-based <i>firm</i> apply only in relation to the relevant regulated activities of the <i>firm</i> which are carried on in the United Kingdom.</u>
<u>Note 2</u>	<u>The FCA minimum fees described in Part 2 of FEES 4 Annex 2AR and Part 5 of FEES 4 Annex 11R apply in full and the modifications in this FEES 4.1.2AG(2) do not apply to them</u>

...

5 Financial Ombudsman Service Funding

5.1 Application and purpose

...

5.1.8 R In accordance with GEN 2.3, provisions in FEES 5 that immediately before *exit day* applied in relation to or in connection with Gibraltar shall continue to apply after *exit day*. The exceptions to this provision are the amount of annual and case fees payable that are set out in FEES 5 Annex 1R, 5 Annex 2R and 5 Annex 3R, which may change each *fee year*.

...

7A SFGB levies

7A.1 Application and purpose

...

7A.1.10 R (1) In accordance with GEN 2.3, rules or guidance in FEES 7A that immediately before *exit day* applied in relation to or in connection with Gibraltar shall continue to apply after *exit day*. The exceptions to this provision are the fee rates set out in Part 1 of FEES 7A Annex 1R, Part 4 of 7A Annex 2R and 7A Annex 3R which may change each *fee year*.

(2) The modifications that will continue to apply to Gibraltar-based *firms* (as defined in GEN 2.3) in relation to payment of the SFGB money advice levy are:

<u>Activity group</u>	<u>Percentage deducted from the tariff payable under FEES 7 Annex 1R applicable to the Gibraltar-based firm</u>
<u>A.1</u>	<u>10%</u>
<u>A.3</u>	<u>10%</u>
<u>A.4</u>	<u>10%</u>
<u>A.7</u>	<u>10%</u>
<u>A.9</u>	<u>10%</u>
<u>A.10</u>	<u>10%</u>
<u>A.13</u>	<u>10%</u>
<u>A.18</u>	<u>10%</u>
<u>A.19</u>	<u>50%</u>
<u>B. MTF and OTF operators</u>	<u>Not applicable</u>
<u>AP.0</u>	<u>100%</u>
<u>G.2</u>	<u>40%</u>
<u>G.3</u>	<u>40%</u>
<u>G.10</u>	<u>40%</u>
<u>Note 1</u>	<u>The modifications to fee tariffs payable by a Gibraltar-based firm apply only in relation to the relevant regulated activities of the firm which are carried on in the United Kingdom.</u>
<u>Note 2</u>	<u>The FCA minimum fees described in FEES 7A Annex 1R apply in full.</u>

...

7B The DA levy**7B.1 Application and purpose**

...

7B.1.10 R In accordance with GEN 2.3, rules or guidance in FEES 7B that immediately before exit day applied in relation to or in connection with Gibraltar shall

continue to apply after *exit day*. The exceptions to this provision are the fee rates set out in Part 4 of *FEES 7B* Annex 1R, which may change each *fee year*.

...

13 Illegal money lending levy

13.1 Application and purpose

...

13.1.9 R In accordance with *GEN 2.3*, rules or guidance in *FEES 13* that immediately before *exit day* applied in relation to or in connection with Gibraltar shall continue to apply after *exit day*. The exceptions to this provision are the fee rates set out in *FEES 13* Annex 1R, which may change each *fee year*.

Annex C

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

4 Standard terms

...

4.2 Standard terms

...

4.2.6 R The following *rules* in *FEES* apply to *VJ participants* as part of the *standard terms*, but substituting ‘*VJ participant*’ for ‘*firm*’:

...

(11) *FEES* 5.3.8AR; ~~and~~

(12) *FEES* 5 Annex 2R and *FEES* 5 Annex 3R; ~~and~~

(13) *FEES* 5.1.8R.

...

Appendix 3

Draft Handbook text

REPORTING OF CHANGES TO THE MANAGEMENT BODY (FCA-AUTHORISED FIRMS) INSTRUMENT 2019

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) 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 60 (Applications for approval);
 - (2) section 62A (Changes to responsibilities of senior managers);
 - (3) section 137A (The FCA’s general rules);
 - (4) section 137T (General supplementary powers);
 - (5) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [9 December] 20[19] [main commencement date of the SMCR for solo-regulated firms].

Amendments to the Handbook

- D. The FCA’s Handbook of rules and guidance is amended in accordance with paragraphs E, F and G of this instrument.
- E. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with Annex A to this instrument.
- F. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.
- G. In each case in which Annex B of this instrument says that the Supervision manual is amended by inserting a new form into that manual or by amending a form in that manual, as set out in Annex C to this instrument, the Supervision manual is amended accordingly.

Citation

- H. This instrument may be cited as the Reporting of Changes to the Management Body (FCA-Authorised Firms) Instrument 2019.

By order of the Board
[*date*] 2019

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.

1 Application and purpose

...

1 Annex 1 Detailed application of SYSC

...

Part 3	Tables summarising the application of the common platform requirements to different types of firm	
...		
3.3A	R	

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

Provision SYSC 4	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...
SYSC 4.3A.3R
<u>SYSC 4.3A.3AG</u>	<u>Guidance</u>	<u>Guidance for a CRR firm that is a UCITS investment firm</u>	<u>Not applicable</u>	<u>Not applicable</u>
...

...

Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
SYSC 4.3A.3R
<u>SYSC 4.3A.3AG</u>	<u>Guidance</u>	<u>Not applicable</u>
...

4 General organisational requirements

...

4.3A Management body

Management body

...

4.3A.3 R ...

4.3A.3A G (1) A firm should have procedures for monitoring the collective adequacy of the knowledge, skills and experience of its management body as well as of its individual members.

(2) A firm may wish to use the “Template for a matrix to assess the collective competence of members of the management body” in Annex I of the joint ESMA and EBA publication titled “Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU” when assessing collective competence.

...

Annex B

Amendments to the Supervision manual (SUP)

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

10C FCA senior managers regime for approved persons in SMCR firms

...

10C Annex Statement of responsibilities

10D

Amend the form titled “Statement of responsibilities for solo-regulated SMCR firms” as shown in Part One of Annex C of this instrument.

10C Annex MiFID Article 4 SMR Information Form

11D

Amend the form titled “MiFID Article 4 SMR Information Form” as shown in Part One of Annex C of this instrument.

...

15 Notifications to the FCA

15.1 Application

...

SMCR firms

15.1.7 R The following apply only to *SMCR firms*:

- (1) *SUP* 15.2.5G (Purpose); ~~and~~
- (2) *SUP* 15.11 (Notification of COCON breaches and disciplinary action); and
- (3) *SUP* 15.15 (Notification of changes in the management body).

...

Insert a new section, SUP 15.15, after SUP 15.14 (Notifications under the Payment Services Regulations). The text is not underlined.

15.15 Notification of changes in the management body

Application

15.15.1 R This section applies to a *firm* that meets the following conditions:

- (1) it is:
 - (a) a *MIFID investment firm*; or
 - (b) a *MiFID optional exemption firm*;
- (2) it is an *SMCR firm*;
- (3) it is an *FCA-authorised person*; and
- (4) it is a *UK domestic firm*.

Purpose

15.15.2 G The purpose of this section is:

- (1) to set out material related to the requirement in the *MiFID authorisation and management body change notification ITS* for a *MIFID investment firm* to notify the *FCA* of changes to its *management body*;
- (2) to apply those requirements to *MiFID optional exemption firms*; and
- (3) to give *guidance* to *firms* about notifying the *FCA* of inadequacies in their *management body*.

15.15.3 G Article 5 of the *MiFID authorisation and management body change notification ITS* says that a *MIFID investment firm* should:

- (1) notify the *FCA* of any change to the membership of its *management body*:
 - (a) before such change takes effect; or
 - (b) within 10 *business days* after the change if, for substantiated reasons, it is not possible to make the notification before that change takes effect; and
- (2) make the notification using the template in Annex III of the *MiFID authorisation and management body change notification ITS*.

Supplemental requirement for MIFID investment firms

- 15.15.4 R Where:
- (1) a *person* becomes a member of the *management body* of a *MiFID investment firm*; and
 - (2) the *firm* must notify that change to the *FCA* under Annex III of the *MiFID authorisation and management body change notification ITS*;
- the *firm* must (subject to *SUP* 15.15.6R) complete and submit to the *FCA* the form titled “Notification Procedures for Changes to the Management Body for Non-SMF Directors” (*SUP* 15 Annex 14R) as part of the notification referred to in (2).

Requirement for MIFID optional exemption firms

- 15.15.5 R A *MiFID optional exemption firm* must (subject to *SUP* 15.15.6R) comply with article 5 of the *MiFID authorisation and management body change notification ITS* and *SUP* 15.15.4R as if it were a *MIFID investment firm*.

Exclusion where also performing a controlled function

- 15.15.6 R *SUP* 15.15.4R and *SUP* 15.15.5R do not apply if the *person* who has or will join or leave the *management body* of the *firm* performs a *governing function* in relation to the *firm* in their role as a member of the *management body*.
- 15.15.7 G The reason for *SUP* 15.15.6R is that the *firm* will already be required to inform the *FCA* of the change by making an application or giving a notice to the *FCA* under *SUP* 10C (FCA senior managers regime for approved persons in SMCR firms).

Method of submission

- 15.15.8 R (1) A *firm* must make a notification:
- (a) under *SUP* 15.15.4R or *SUP* 15.15.5R; or
 - (b) of a change in its *management body* under the template in Annex III of the *MiFID authorisation and management body change notification ITS*;
- by submitting the notification online at fca.org.uk using the *FCA*’s and *PRA*’s *online notification and application system*.
- (2) A *firm* must use the version of the notification form made available for these purposes on the electronic system referred to in (1), which is based on the version found:
- (a) in *SUP* 15 Annex 14R (in the case of the Notification Procedures for Changes to the Management Body for Non-SMF Directors form); or

- (b) at <https://www.fca.org.uk/publication/forms/mifid-changes-management-body-form.docx> (in the case of the form in Annex III of the *MiFID authorisation and management body change notification ITS*).
- 15.15.9 R (1) If the information technology systems used by the *FCA* fail and online submission is unavailable for 24 hours or more, a *firm* must make a notification referred to in *SUP* 15.15.8R(1)(a) or (b) in the way set out in *SUP* 15.7.4R to *SUP* 15.7.9G (Form and method of notification) until such time as facilities for online submission are restored.
- (2) When this *rule* applies, a *firm* must use the version of the notification form set out in the places listed in *SUP* 15.15.8R(2).
- 15.15.10 G If the information technology systems used by the *FCA* fail and online submission is unavailable for 24 hours or more, the *FCA* will endeavour to publish a notice on its website confirming that:
- (1) online submission is unavailable; and
- (2) the alternative methods of submission in *SUP* 15.15.9R apply.
- 15.15.11 G Where *SUP* 15.15.9R applies to a *firm*, *GEN* 1.3.2R (Emergency) does not apply.
- Notification of inadequacies in the management body
- 15.15.12 G A *firm* should notify the *FCA* under *Principle* 11, *SUP* 10C (in the case of a notification about an *SMF manager*) and *SUP* 15.3 (General notification requirements):
- (1) if the *firm* concludes that a member of its *management body* is not suitable individually;
- (2) if the *firm* concludes that its *management body* is not suitable collectively;
- (3) of what measures the *firm* proposes to take or has taken in relation to the matters in (1) or (2).

Amend the following as shown.

15 Annex 1R **Application of SUP 15 to incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions**

1.	<i>SUP 15 applies in full to an incoming EEA firm, or incoming Treaty firm, which has a top-up permission. However, SUP 15.15 does not apply to such firms.</i>				
...					

Applicable sections		Application
...
<i>SUP 15.14</i>
<u><i>SUP 15.15</i></u>	<u>Notification of changes in the management body</u>	<u>Does not apply</u>

...

Insert the following annex after SUP 15 Annex 13D (NOT005 Notification that there are problems with a dedicated interface under SCA-RTS article 33(3)). The text (which consists of a form) is included in Part Two of Annex C of this instrument.

15 Annex **Notification Procedures for Changes to the Management Body for Non-SMF Directors**
14R

Notification Procedures for Changes to the Management Body for Non-SMF Directors

Annex C

Handbook forms

Part 1 (Amended forms)

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



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Application number or IRN
(for FCA/PRA use only)



Senior Managers Regime: Statement of Responsibilities

...

3.2 Prescribed Responsibilities

...

FCA / PRA / Dual PR	Ref	Prescribed Responsibility (PR)	Large CRR firms ¹	Small CRR firms	Third country CRR firms	Credit unions	Solvency II firms and Large NDFs	Small NDFs & Small run off firms ²	Third Country branches of insurers	UK ISPVs	Swiss General Insurers	Is this PR shared between senior managers
...												
Dual	B	Responsibility for the <i>firm's</i> performance of its obligations under the <i>employee certification regime</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FCA	B1	Responsibility for the <i>firm's</i> : obligations in relation to the: (a) <u>conduct rules for training</u> ; and (b) <u>conduct rules reporting</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...												
FCA	D	Overall responsibility Responsibility for the <i>firm's</i> policies and procedures for countering the risk that the <i>firm</i> might be used to further financial crime	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...												
Dual	J2	Responsibility for providing for and oversight of the internal audit function, where this function is outsourced to an external third-party provided by a non-significant firms.					<input type="checkbox"/>					<input type="checkbox"/>
...												
PRA	R	Responsibility for developing and maintaining the <i>firm's</i> <u>recovery plan</u> , and <u>resolution pack</u> and, where relevant, <u>resolution assessment</u> , and for overseeing the internal	<input type="checkbox"/>									<input type="checkbox"/>

		processes regarding their governance										
...												
Dual	FF	Responsibility for the <i>firm's</i> compliance with the <i>UK regulatory system applicable to the firm</i>			<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>

If the *individual* has not been allocated a *prescribed responsibility*, please go to Section 3.3.

¹ Large CRR *firm* means a CRR *firm* that is not a small CRR *firm* (see SYSC 4.7.5 and the Allocation of Responsibilities Part of the *PRA Rulebook*). This includes UK banks and designated investment firms.

² Small NDFs and Small Run Off firms are treated differently in the PRA Rulebook however for the purposes of this table we have used one column. PRs A and B are FCA only when applied to small run off firms

⁵ ~~Applies to Large NDFs and not Solvency II firms~~

3.3.1 Overall Responsibility

...

A *firm* may wish to refer to SYSC 25 Annex 1G (~~replicated in Annex A of this form~~) to help it make sure it has not failed to allocate overall responsibility for a particular activity of the *firm*. Please note that the *FCA* does not require *firms* to organise themselves by the functions in SYSC 25 Annex 1G, and that the Annex is not comprehensive. It is important that a *firm* does not fail to allocate overall responsibility for business areas, activities and management functions, in line with SYSC 26.

...

3.3.2 Local Responsibility

...

A *firm* may wish to refer to SYSC 25 Annex 1G (~~replicated in Annex A of this form~~) to help it make sure it has not failed to allocate local responsibility for a particular activity of the *firm*. Please note that the *FCA* does not require *firms* to organise themselves by the functions in SYSC 25 Annex 1G, and that the Annex is not comprehensive. It is important that a *firm* does not fail to allocate local responsibility for business areas, activities and management functions, in line with SYSC 26.

...

...

ANNEX A

SYSC 25
Annex 1GThe main business activities and functions of an *SMCR firm*

Business areas and management functions	Explanation
(1) Payment services	This means: <ul style="list-style-type: none"> (1) payment services; (2) issuing and administering other means of payment (for example, cheques and bankers' drafts); (3) issuing electronic money; and (4) current accounts.
(2) Settlement	This means clearing and settlement of any transactions described in rows (3) and (6) to (9) of this annex in relation to the assets covered by (9). It also includes clearing and settlement of any transactions described in row (10).
(3) Investment management	This has the same meaning as <i>managing investments</i> with the following adjustments: <ul style="list-style-type: none"> (a) it covers all types of assets; and (b) the exclusions in the <i>Regulated Activities Order</i> do not apply. It also covers fund management.
(4) Financial or investment advice	This includes advising on investments.
(5) Mortgage advice	This has the same meaning as <i>advising on regulated mortgage contracts</i> but is expanded to cover land anywhere in the world and to cover security of any kind over land.
(6) Corporate investments	This means acquiring, holding, managing and disposing a <i>firm's</i> investments made for its own account.
(7) Wholesale sales	This means the <i>selling of any investment to a person other than a retail customer.</i> It does not include the activities in (1).
(8) Retail sales	This means the <i>selling of any investment to a retail customer.</i>

Business areas and management functions	Explanation
	It includes savings accounts. It does not include the activities in (1).
(9) Trading for clients	This means <i>dealing in investments as agent and execution of orders on behalf of clients</i> but the list of products includes money market instruments and foreign exchange.
(10) Market making	This has the same meaning as it does in <i>MIFID</i> (see the definition of market maker in article 4.1(7)).
(11) <i>Investment research</i>	
(12) Origination/syndication and underwriting	<p>Origination and syndication include:</p> <p>(1) entering into or acquiring (directly or indirectly) any commitment or <i>investment</i> with a view to transferring some or all of it to others, or with a view to others investing in the same transaction;</p> <p>(2) sub-participation; and</p> <p>(3) any transaction described in the <i>Glossary</i> definition of <i>originator</i>.</p> <p>Underwriting includes underwriting that is not on a firm commitment basis.</p> <p>A commitment or <i>investment</i> includes an economic interest in some or all of it.</p> <p>This activity also includes the provision of services relating to such transactions.</p>
(13) Retail lending decisions	<p>Deciding whether, and on what terms, to lend to <i>retail customers</i>.</p> <p>Lending includes granting credit, leasing and hire (including finance leasing).</p>
(14) Wholesale lending decisions	<p>Deciding whether, and on what terms, to lend to <i>persons who are not retail customers</i>.</p> <p>Lending includes granting credit, leasing and hire (including finance leasing).</p>
(15) Design and manufacturing of products intended for wholesale customers	Wholesale customers mean <i>persons who are not retail customers</i>
(16) Design and manufacture of products intended for <i>retail customers</i>	
(17) Production and distribution of marketing materials and communications	This includes <i>financial promotions</i>
(18) Customer service	This means <i>dealing with clients</i> after the point of sale, including queries and fulfilment of <i>client</i> requests

Business areas and management functions	Explanation
(19) Customer complaints handling	<p>This includes the <i>firm's</i> compliance with <i>DISP</i>.</p> <p>It also includes:</p> <p>(1) any similar procedures relating to activities that do not come under the jurisdiction of the <i>Financial Ombudsman Service</i>;</p> <p>(2) activities that take place outside the <i>UK</i>; and</p> <p>(3) activities that are not subject to any ombudsman service.</p>
<p>(20) Collection and recovering amounts owed to a <i>firm</i> by its customers</p> <p>Dealing with customers in arrears</p>	<p>"Customer" means any <i>person</i> falling into any of the definitions of <i>client</i> in the <i>Glossary</i> so far as they apply to the <i>FCA's Handbook</i>. The definition is extended to cover all services provided by the <i>firm</i> and not just those that are provided in the course of carrying on a regulated activity or an ancillary service.</p>
(21) Middle office	<p>This means risk management and controls in relation to, and accounting for, transactions in <i>securities</i> or <i>derivatives</i></p>
(22) Issuing Commitments	<p>This means the activity described in SYSC 27.7.6R(1)(i) (examples of what the significant management <i>FCA-specified significant harm function</i> can cover)</p>
(23) Processing	<p>This means the activity described in SYSC 27.7.6R(1)(j) (examples of what the significant management <i>FCA-specified significant harm function</i> can cover).</p>
(24) Human resources	<p>This includes recruitment, training and competence and performance monitoring</p>
(25) Incentive schemes for the <i>firm's</i> staff	<p>This is not limited to schemes based on sales.</p>
(26) <i>Providing information in relation to a specified benchmark</i>	
(27) <i>Administering a specified benchmark</i>	
(29) Administration of insurance	<p>This means the activity described in SYSC 27.7.6R(1)(k) (examples of what the significant management <i>FCA-specified significant harm function</i> can cover).</p>
<p>Note (1): The purpose of this annex is explained in SYSC 25.7 (Guidance about SYSC 25 Annex 1G) and SYSC 26.11.2G</p>	
<p>Note (2): A <i>firm</i> does not have to use the split of example activities in this annex for the purposes in Note (1). If a <i>firm</i> does decide to use it, the <i>firm</i> should adapt it to suit the <i>firm's</i> management arrangements better.</p> <p>For example, a <i>firm</i> may find the split of activities into <i>retail</i> and <i>wholesale</i> activities unsuitable. If so, the <i>firm</i> might:</p>	

Business areas and management functions	Explanation
	<p>(a) treat <i>retail</i> and wholesale activities together; or</p> <p>(b) use its own definition of retail and wholesale activities.</p>



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



MIFID members of the management body and key function holders - Article 4 Information Form (SMR)

...

1

If you have completed a Long Form A, please provide the information below

...

6 Financial and non-financial interests

If you have not already provided this information in section 5 of the Long Form A, please provide information on any financial and non-financial interests or relationships of the person and his/her the person's close relatives to members of the management body and key function holders in the same institution, the parent institution and subsidiaries and shareholders

...

9 Collective knowledge, skills and experience

Please provide a statement of your assessment of the collective suitability of the management body as a whole, including how the individual is to be situated in the overall suitability of the management body. You may also provide this information in the Suitability Matrix in Annex 1 of the EBA Suitability Guidelines³ or using another method.

³ <https://www.esma.europa.eu/document/joint-esma-and-eba-guidelines-assessment-suitability-members-management-body-and-key-0>

2

If you have completed a Form E, please provide the information below

...

8 Financial and non-financial interests

If you have not already provided this information in section 5 of the Long Form A, please provide information on any financial and non-financial interests or relationships of the person and his/her the person's close relatives to members of the management body and key function holders in the same institution, the parent institution and subsidiaries and shareholders

...

12 Collective knowledge, skills and experience

Please provide a statement of your assessment of the collective suitability of the management body as a whole, including how the individual is to be situated in the overall suitability of the management body. You may also provide this information in the Suitability Matrix in Annex 1 of the EBA Suitability Guidelines⁴ or using another method.

⁴ <https://www.esma.europa.eu/document/joint-esma-and-eba-guidelines-assessment-suitability-members-management-body-and-key-0>

3

If you have completed a Form M, please provide the information below

...

7 Collective knowledge, skills and experience

Please provide a statement of your assessment of the collective suitability of the management body as a whole, including how the individual is to be situated in the overall suitability of the management body. You may also provide this information in the Suitability Matrix in Annex 1 of the EBA Suitability Guidelines⁵ or using another method.

⁵ <https://www.esma.europa.eu/document/joint-esma-and-eba-guidelines-assessment-suitability-members-management-body-and-key-0>

Part 2 (New form)

All the text in this Part of this Annex (which consists of a form) is new and not underlined. The form is to be inserted in the place specified in paragraph F of the cover sheet of this instrument.



Notification procedures for changes to the management body for non-SMF Directors

Full name of the notifying *firm* and Firm Reference Number (FRN)

Purpose of this form

MiFID II requires certain information to be provided by *MiFID* and *optional exemption MiFID* firms when making changes to their *management body*. This form should only be completed if a firm is notifying the FCA of an appointment of a non-SMF Director to its [management body](#)⁶. If a firm is notifying the FCA of a non-SMF Director who left the firm's management body, the firm should submit the Annex III ESMA template only. The information required is detailed in the *MiFID II* Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS). The information in this form is required to enable us to fulfil our obligations in obtaining this information.

Important information you should read before completing this form

We require solo-regulated *MiFID investment firms* and *MiFID optional exemption firms* (except *credit institutions*) making changes to their *management body* to provide these details. Please keep a copy of the forms you complete and the supporting documents that you include with the notification for your future reference.

The notes that accompany this form will help you complete the questions and they also explain why we require the information we ask you for.

For the purposes of complying with the requirements of the General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018, please note that any personal information provided to us will be used to discharge our statutory functions under the Financial Services and Markets Act 2000 (FSMA) and other relevant legislation, and may be disclosed to third parties for those purposes.

It is important that you provide accurate and complete information and disclose all relevant information. If you do not, it will call into question your suitability to be authorised, and you may be committing a criminal offence and could face prosecution under section 398A of FSMA.

Terms in this form

In this notification form we use the following terms:

- 'non-SMF Director' refers to an individual who is a member of the firm's management body but is not an SMF manager or applying to be approved as one

⁶ <https://www.handbook.fca.org.uk/handbook/glossary/?starts-with=M>

- 'you' refers to the person(s) signing the form on behalf of the notifying firm
- 'the individual / appointee' refers to the person who is a non-SMF Director
- 'the notifying firm' refers to the firm notifying the FCA of changes to the firm's management body
- 'we', 'us' or 'our' refers to the FCA
- 'the FCA' refers to the Financial Conduct Authority, and
- 'FSMA' refers to the Financial Services and Markets Act 2000

Filling in the form using Connect

- 1** If you are using your computer to complete the form:
 - use the TAB key to move from Question to Question and press SHIFT + TAB to move back to the previous Question, and
 - save all the parts of the form you have completed
- 2** If you think a Question is not relevant to you, write 'not applicable' and explain why. When completing the Annex III ESMA template, you may cross-refer to this form for any information already provided.
- 3** If you leave a Question blank or do not attach the required supporting information without telling us why, we will have to treat the notification as incomplete. This will increase the time taken to assess your notification.
- 4** If there is not enough space on the forms, you may need to use separate sheets of paper. Clearly mark each separate sheet of paper with the relevant Question number.
- 5** Ensure you have:
 - completed the Annex III ESMA template and attached it
 - completed this information form, and
 - attached any supporting documents

When you are required to attach supporting documents (e.g. Disclosure and Barring Service check where relevant) to your notification, failure to do so will mean your notification will not be progressed and you will be prevented from being able to submit your notification through Connect.

1 Notifying Firm Details

Phone number (including STD code)	
Email address	

2 Details of the person subject to notification

Appointee Individual Reference Number (IRN) – if applicable	
Or name of previous regulatory body – if applicable	
AND previous reference number – if applicable	
Title (e.g. Mr, Mrs, Ms)	
Surname	
ALL forenames	
Name commonly known by	
Date of birth (dd/mm/yyyy)	
Previous name	
Date of name change	
Reason for change	
Nationality	
Passport number if appointee does not have an NI Number, or if a passport number has previously been provided but an NI number has not	
Place of birth	
Private address (including postcode)	

3 Description of position being notified

3.1 Name of the position for which the appointee will be responsible

--

3.2 Please note the key responsibilities of the role:

--

3.3 Date of appointment

--

3.4 If applicable, length of appointment

--

3.5 FRN(s) (if applicable)

--

4 Curriculum Vitae

4.1 Relevant education and professional training

This information may already have been included in the CV or page 4 of the Annex III ESMA template. If already provided, there is no need to detail here.

Complete any information not already provided

Relevant Education	
--------------------	--

Professional Training	
-----------------------	--

4.2 Professional experience, including the names of all organisations for which the person has worked and nature and duration of the functions performed

This information may already have been included in a CV or page 4 of the Annex III ESMA template. If already provided, there is no need to detail here.

Complete any information not already provided

Name of organisation	Nature of functions performed	Duration

4.3 For positions held in the previous 10 years, when describing those activities details shall be included on all delegated powers and internal decision-making powers held and the areas of operations under control

This information may already have been included in the CV.

If you have not provided the information above, or need to provide further information for positions held in the previous 10 years, set this out below.

Period (mm/yyyy) From - To	Name of employer	Delegated powers and internal decision-making powers	Areas of operation under control

5 Reputation and experience

5.1 Please provide a list of reference persons including contact information

Reference	Contact information

5.2 Please attach any letters of recommendation to the notification as supporting documents

6 Fitness and propriety

By virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, if the *appointee* is subject to the law of England and Wales, the *appointee* must disclose spent convictions and cautions (other than a protected conviction or caution). By virtue of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 and the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979, if the *appointee* is subject to the law of Scotland or Northern Ireland, the *appointee* must disclose spent convictions (other than a protected conviction).

6.1 Criminal Proceedings

Has the appointee ever been convicted of any criminal offence (excluding spent convictions and traffic offences that did not result in a ban from driving or did not involve driving without insurance)? Is the appointee currently the subject of any criminal proceedings? Has the appointee been ordered to produce documents pursuant to any current criminal investigation?

6.2 Civil Proceedings

Has the appointee ever been the subject of a judgment debt or award against the appointee or been party to a civil proceeding which resulted in an order against the appointee? Does the appointee have any current judgment debts outstanding or have they ever failed to satisfy any such judgment debts within one year of the order being made? Has the appointee ever filed for or had a petition served for bankruptcy, been adjudged bankrupt, been subject of a bankruptcy restrictions order or made any arrangements with creditors?

6.3 Business and Employment Matters

Has the appointee ever been:

- (i) dismissed from employment as a senior executive or subject to termination of an engagement as a board member or auditor in a firm, other financial institution or company?
- (ii) disqualified from acting as a director or similar position?
- (iii) the subject of proceedings of a disciplinary nature?
- (iv) refused entry to, dismissed, suspended or requested to resign from any profession, vocation, office, employment or from any fiduciary office or position of trust (whether or not remunerated)?

6.4 Regulatory Matters

In relation to activities regulated by the FCA and/or PRA or any other regulatory body, has the appointee ever been the subject of an investigation, been subject to the rejection of an application, exclusion or limitation in any other way in terms of the right to conduct operations, been the subject of supervisory sanctions, or been the subject of a notification of breach of conduct rules?

6.5 Other Matters

Are the appointee or the firm aware of any other information relevant to this notification that we might reasonably expect to receive?

7 Assessment of reputation and experience

MiFID II requires information on whether an assessment of reputation and experience as an acquirer or as a person who directs the business has already been conducted (including the date of the assessment, the identity of that authority and evidence of the outcome of this assessment).

If an assessment of reputation and experience as an acquirer or as a person who directs the business has already been conducted please provide details of:

Date of assessment

Identity of the authority that conducted the assessment

Evidence of the outcome of assessment (please detail if this evidence is attached as a supporting document)

8 Financial and non-financial interests

If you have not already provided this information, please provide information on any financial and non-financial interests or relationships of the person and ~~his/her~~ the person's close relatives to members of the management body and key function holders in the same institution, the parent institution, and subsidiaries and shareholders.

--

9 Time devoted to the performance of functions

MiFID II requires information on the minimum time that will be devoted to the performance of the individual's functions within the firm (annual and monthly indications).

Please provide this information below.

--

10 Human and financial resources

MiFID II requires information on human and financial resources devoted to the induction and training of the members (annual indication).

Please provide this information below.

--

11 Executive and non-executive directorships

MiFID II requires a list of executive and non-executive directorships currently held by the person.

If not already provided, please provide a list of executive and non-executive directorships held by the person.

Organisation name	Type of directorship

12 Collective knowledge, skills and experience

Please provide a statement of your assessment of the collective suitability of the management body as a whole, including how the individual is to be situated in the overall suitability of the

management body. You may also provide this information in the Suitability Matrix in Annex 1 of the EBA Suitability Guidelines⁷, or using another method.

--

⁷ <https://www.esma.europa.eu/document/joint-esma-and-eba-guidelines-assessment-suitability-members-management-body-and-key-0>

Appendix 4

Draft Handbook text

WAIVER APPLICATION FORM (AMENDMENTS) INSTRUMENT 2019

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) 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 138A (Modification or waiver of rules); and
 - (2) section 139A (Power of the FCA to give guidance).

Commencement

- B. This instrument comes into force on 2 September 2019.

Amendments to the Handbook

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

Citation

- D. This instrument may be cited as the Waiver Application Form (Amendments) Instrument 2019.

By order of the Board
[date] 2019

Annex

Amendments to the Supervision manual (SUP)

All the text in this Annex (which consists of a form) is new and not underlined.

8 **Waiver and modification of rules**

...

8.3 **Applying for a Waiver**

...

8.3.3A G (1) The ~~appropriate regulator's~~ PRA's preferred method of submission for *waiver* applications is by e-mail. The FCA's preferred method of submission for *waiver* applications is through online submission via the FCA's website at www.fca.org.uk.

...

...

8 Annex 2D Application form for a waiver or modification of rules

Replace the form titled "Waiver Application form" with the new version set out below.

Waiver – Application Form (SUP 8 Ann 2D)

Waiver Application number (for FCA / PRA use only)

Firm Name

Firm Reference Number (FRN)

Address

Please tick if this firm has a PRA firm within its immediate group

Before completing this form, you may find it helpful to discuss your application with your appropriate supervisory contact at the Financial Conduct Authority or the Prudential Regulation Authority. However, you must still ensure you include all relevant information in this form. If you do not, your application will be delayed while you answer further questions from us.

Before completing this application form please read the notes at the end of the form as they explain or give help for many of the questions.

The FCA and Bank of England process personal data in line with the requirements of The General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018. For further information about the way we use the personal data collected in this form, please read our privacy notices available on our websites:

- FCA: www.fca.org.uk/privacy
- Bank of England: <https://www.bankofengland.co.uk/prudential-regulation/authorisations>

If you need more space you must use a separate sheet of paper. If you have used separate sheets of paper you must indicate how many and label them clearly.

If you are a solo regulated or dual regulated firm applying for a waiver or modification for a rule in the FCA Handbook, you can submit this notification via the FCA Connect Portal:

<https://www.fca.org.uk/firms/connect>. Alternatively, please return this form via email to centralwaiversteam@fca.org.uk.

If you are applying for a waiver or modification for a rule in the PRA Rulebook please submit this notification via email to the ATLAS Team at the PRA: PRA-waivers@bankofengland.co.uk

1 Personal details and timings for this application

If you are submitting your application using Connect you can continue to Question 1.3

Contact for this application

1.1 Contact name for this application

Title	
First names	
Surname	

1.2 Contact details

Business address	
Postcode	
Position in firm	
Daytime telephone number	
Email address	
Individual reference number (IRN), if applicable	
Name of Approved Person responsible for this application, if applicable	

1.3 Does the applicant have any timing factors that it would like us to consider?

Yes ▶ Please enter date required and the reason why

No

/ /

Additional details

Group applications

1.4 Where applicable, please list the group firms on behalf of which this application is also being made

Firm Reference Number (FRN)	Firm Name

1.5 What types of client would be affected if we granted your application? (tick all that apply)

Retail Clients

Professional Clients

Eligible Counterparty

Retail Customers (insurance mediation activities only)

Commercial Customers (insurance mediation activities only)

Customers (home finance business only)

2 Rule(s) to which the application relates

If you are applying for a waiver or modification of more than one rule, you should copy this section as appropriate and attach the copies to this application.

2.1 Please state the Handbook/Rulebook rule to which the application relates

2.2 Is there a related Handbook/Rulebook Annex?

- Yes ▶ Please provide the Annex Reference below
 No

2.3 Is there a related Handbook/Rulebook table?

- Yes ▶ Please provide the Table Reference below
 No

2.4 Which section of the Financial Service and Markets Act 2000 (FSMA) forms the basis for the application for waiver /modification of this rule?

- FSMA 138A (relevant for most rules)
 FSMA 250 (relevant for certain rules in the Collective Investment Schemes sourcebook, see SUP 8.2.3G)
 FSMA 294 (relevant for certain rules in the Recognised Investment Exchanges and Recognised Clearing Houses Sourcebook, see REC 3.3)
 OEIC Regulations – Regulation 7 (relevant for certain rules in the Collective Investment Schemes sourcebook, see SUP 8.2.3G)

2.5 Are you applying for a waiver or modification of this rule?

- Waiver
 Modification ▶ Please describe the modification you require

Unmodified Handbook text

Draft of modified Handbook text

2.6 Are you applying for a variation of an existing waiver/modification which has previously been granted to the firm?

- Yes ▶ Please give the Direction reference number
- No

2.7 Have you been able to establish whether this rule implements a European Directive requirement? (The notes at the end of this form give more guidance for this question)

- Yes, implements a Directive requirement ▶ Please state the matters considered to be relevant in assessing whether the waiver would be compatible with European Directive requirements
- No, implementation of a Directive requirement
- Not known

3 Precedents

3.1 Have you checked the waivers published by us for a precedent on which this application may be based?

Published waivers can be inspected at:

<https://www.fca.org.uk/publications>

Yes

No ▶ Please state why you think it is not relevant in this instance

3.2 If your application is based on a precedent, please give the direction reference number and preferably highlight the similarities and differences with your application.

4 Additional details

- 4.1 Please give a brief description of the nature of your business and a full and clear explanation of why you are applying for the waiver or modification. You may attach any documents that you wish to submit with this application.**

4.2 Please give a full and clear explanation of why you think you satisfy the statutory tests:

a Your compliance with the rules, or with the rules as unmodified, would be unduly burdensome because...

(In answering this question you will need to include detailed figures showing the costs to your firm of complying with the rules as is and as modified)

OR

b Your compliance with the rules, or with the rules as unmodified, would not achieve the purpose for which the rules were made because...

AND

c The direction would not adversely affect the advancement of any of the regulator's objectives because...

- If solo regulated (regardless of whether the firm is part of a PRA group) or dual regulated and applying for the waiver/ modification of a rule in the FCA Handbook please reference the FCA's operational objectives.
- If dual regulated and applying for the waiver/ modification of a rule in the PRA Rulebook please reference the PRA's objectives.
- If dual regulated and applying for the waiver/ modification of a shared rule please reference both regulator's objectives.

The FCA's operational objectives are:

- i. the consumer protection objective
- ii. the integrity objective, and
- iii. the competition objective

Additional guidance regarding the FCA's operational objectives: \

<https://www.fca.org.uk/about/the-fca>

The PRA's objectives are:

- i. the general objective – to promote the safety and soundness of firms its supervises, and
- ii. the insurance objective – to contribute to securing an appropriate degree of protection for those who are or may become policyholders

4.3 Are you happy for us to publish the waiver?

(Please see SUP 8.6.7G, Firm's objection to publication)

Yes

No ▶ Please state your reasons

We prefer to publish waivers wherever possible. If you believe you have good grounds for not publishing, you will need to give clear and substantive arguments. Please refer to section 138B of FSMA.

6

Declaration and signatures

Warning

Knowingly or recklessly giving the FCA or the PRA information, which is false or misleading in a material particular, may be a criminal offence (sections 398 and 400 of FSMA). SUP 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA or the PRA and to notify the FCA or the PRA immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the FCA or the PRA. It should not be assumed that information is known to the FCA or the PRA merely because it is in the public domain or has previously been disclosed to the FCA or the PRA or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Declaration

By submitting this application form:

- I/we confirm that this information is accurate and complete to the best of my knowledge and belief and that I have taken all reasonable steps to ensure that this is the case.
- I am/we are aware that it is a criminal offence knowingly or recklessly to give the FCA or the PRA information that is false or misleading in a material particular.
- Some questions do not require supporting evidence. However, the records, which demonstrate the applicant's compliance with the rules in relation to the questions, must be available to the FCA or the PRA on request.
- I/we will notify the FCA or the PRA immediately if there is a significant change to the information given in the form. If I/we fail to do so, this may result in a delay in the application process or enforcement action.

Declaration and signature if a third party is named

If the waiver will name a third party (for example, the firm to whom Client Money balance will be transferred to when applying for a waiver of CASS 7.11.34R, please check the box below to confirm that you have the agreement of the third party and enter the third party's name below.

I confirm the information in this form that concerns my circumstances is accurate and complete to the best of my knowledge and belief. I also confirm that I am happy for the waiver to be published, unless otherwise indicated in Question 4.3 of this form*.

Signature of named Third Party *

Name and Date

* The above question should only be completed if the form is being submitted in one of the ways set out in SUP 15.7 other than online submission. It should not be completed if the submission of this form is online.

7 Notes on completing the waivers form

Please note that defined terms used in the text are shown in italics. Definitions can be found in the Handbook Glossary or PRA Rulebook Glossary

Question Number	Notes
Front Cover	If the applicant is not a <i>firm</i> , for example an applicant for a <i>Part 4A permission</i> , give its name and indicate that it is not an <i>authorised person</i> . There is no need to give the firm reference number.
Section 1	We may contact the <i>approved person</i> , or other designated individual, about the application. The individual may have responsibility for an application for more than one applicant if they have the authority to do so.
Section 1	If the application is submitted by, or on behalf of, more than one applicant (for example, by more than one firm in a group), the names of each applicant must be given as well as each firm reference number, if applicable.
Section 2 Question 2.4	Section 138A of FSMA is the power used to give most waivers. Section 250 of FSMA and regulation 7 of the <i>OEIC Regulations</i> are relevant only for certain <i>rules</i> in the Collective Investment Schemes sourcebook (see SUP 8.2.3G). Section 294 of FSMA is relevant only for certain <i>rules</i> in the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (see REC 3.3).
Section 2 Question 2.5	Your draft modification must show how you propose to change the original text of the <i>rule(s)</i> . You must do this by underlining inserted text and scoring through deleted text.
Section 2 Question 2.6	You can find the Direction reference number on the Direction we send you.
Section 2 Question 2.7	We cannot give a <i>waiver</i> that would be incompatible with the <i>United Kingdom's</i> responsibilities under European directives. In many cases, the 'Purpose' section of a chapter or section of the FCA Handbook/PRA Rulebook will identify whether the text implements a directive requirement. We only expect you to take reasonable steps in answering this question; what is reasonable will depend on your

	resources. If you are unable to confirm which particular European directive requirements the <i>rule</i> to be waived implements, you should reply 'unable to confirm'. You will have to give us details if you are able to identify a particular European directive requirement implemented by the <i>rule</i> to be waived, but think the proposed waiver would not breach that requirement.
Section 3	You can find published <i>waivers</i> at: https://www.fca.org.uk/publications
Section 4 Question 4.1	<p>We expect you to provide (where applicable):</p> <ul style="list-style-type: none"> • relevant background information about the firm and the context in which you are applying for a <i>waiver</i>; • details of any relevant correspondence with former or other regulators; • details of any relevant correspondence with us; • details of any changes in a: <ul style="list-style-type: none"> ○ <i>rule</i>; ○ circumstance; or ○ market condition <p>that has affected the applicant or prompted your application for a <i>waiver</i>;</p> <ul style="list-style-type: none"> • details of the anticipated benefits that may be received if the <i>waiver</i> was granted (and, if not arguing the 'unduly burdensome' argument, what the estimated impact on the firm and its customers would be if the <i>waiver</i> was not granted); and • an explanation of why the <i>waiver</i> is required. <p>This list is not exhaustive. You should include any other information that you think is relevant.</p> <p>You should know what information we require and cross-reference it to the answers set out in Question 4.3, where relevant, to avoid duplication.</p>
Section 4 Question 4.2	We cannot give a <i>waiver</i> unless the statutory tests are satisfied. The tests are set out in section 138A(4) of FSMA, and reproduced in SUP 8.3.1G. The tests under sections 250 and 294 of FSMA and regulation 7 of the <i>OEIC Regulations</i> , are similar. You need to be aware that both matters ('unduly burdensome' or 'not achieve the purpose'; and 'not affect the advancement of any of the regulator's objectives')

	<p>noted require detailed explanation and substantive argument before we can process the application. Unless there are satisfactory responses to these matters, we may reject the <i>waiver</i> application, or we may need more information. You should set out only the relevant arguments in support of the unduly burdensome or purpose tests.</p> <p>The FCA and the PRA have a duty to coordinate their activities in relation to waivers and rule modifications where there are matters of common regulatory interest or where the grant of a direction by one regulator could adversely affect the advancement of the other regulator's objectives. Where this duty applies, the second regulator may need to evaluate whether approving your application might adversely affect the advancement of its own objectives. In these cases, we may ask you to provide additional supporting information.</p>
Section 4 Question 4.3	See SUP 8.6.7G (Firm's objection to publication). Please see section 138B of FSMA in relation to publication considerations.

