

# **Quarterly Consultation**

## No 25

### **Consultation Paper**

CP19/27\*\*

September 2019

## How to respond

The Financial Conduct Authority invites comments on this Consultation Paper. Comments should reach us by 4 October 2019 for chapters 2,7,9,10,11 and 12, and 1 November 2019 for chapters 3,4,5,6 and 8.

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

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# 1 Overview

Chapter no	Proposed changes to Handbook	Consultation closing period
2	Minor amendments to Chapter 15 of the Supervision manual (SUP) related to Alternative Investment Fund Managers Directive (AIFMD) Forms	One month
3	Amendments to the Collective Investment Schemes (COLL) sourcebook	Two months
4	Minor Handbook amendments to update references to the UK Corporate Governance Code	Two months
5	Changes to DTR to implement the European Single Electronic Format	Two months
6	Implement the changes made by Treasury to domestic legislation to reflect the amendments brought by the European Commission's Regulatory Fitness and Performance Programme (REFIT) to the European Market Infrastructure Regulation EMIR (EMIR) and make firms aware of the FCA's new powers set out in the amended domestic legislation.	Two months
7	Further Brexit-related changes to Handbook & BTS following extension of Article 50	One month
8	This Chapter does not propose changes to our Handbook. Instead we are seeking views from interested stakeholders about whether the Lending Standards Board's Standards of Lending Practice for business customers meet our Codes Recognition Criteria.	Two months
9	Modifications to periodic fees rules for Recognised Overseas Investment Exchanges that are also European Economic Area market operators.	One month
10	Changes to regulatory reporting requirements	One month
11	To modify our 'wake-up' pack and annuity information prompt rules to reflect our policy intention	One month
12	Changes to the Training and Competence (TC) sourcebook list of appropriate qualifications.	One month

## 2 Amendments to the Supervision manual related to AIFMD

### Introduction

- 2.1** This chapter proposes several minor amendments related to some of the Alternative Investment Fund Managers Directive (AIFMD) forms in the Supervision manual (SUP). These forms are in SUP 15 Annex 6 (Notifications by UK AIFMs) and are what AIFMs (Alternative Investment Fund Managers), EuSEF (European social entrepreneurship fund) managers and EuVECA (European venture capital fund) managers need to complete when notifying us, under the requirements in SUP 15.3.
- 2.2** These changes will be of interest to firms offering asset management services to professional investors and are within the scope of AIFMD.
- 2.3** The text of the proposed changes can be found in Annex B of the draft instrument at the relevant appendix.

### Summary of proposals

- 2.4** This section sets out our proposal to make a number of minor changes to AIFMD forms in SUP 15 Annex 6 (Notifications by UK AIFMs), the details of which are set out below. The table summarises which changes we propose to make to the different forms:

Form	Proposed Change to Form				
	Update to data protection wording	Update hyperlinks to FCA guidance	Removal of box for firms to confirm reading and understanding declaration	Changes to the layout and general style of the form	Improvements to EuSEF and EuVECA management and marketing form
SUP 15 Annex 6AR (AIFMD new fund under management notification)	✓	✓	✓	✓	
SUP 15 Annex 6CR (AIFMD full-scope UK AIFM material change notification)	✓	✓	✓	✓	

SUP 15 Annex 6DR (AIFMD notice of sub-threshold AIFM exceeding assets under management (AUM) limit)	✓			✓	
SUP 15 Annex 6FG (EuSEF and EuVECA management and marketing notifications)	✓			✓	✓

## Update to data protection wording

- 2.5** Due to changes in data protection legislation, specifically the introduction of the General Data Protection Regulation (GDPR), we propose to update the section of each form that refers to the GDPR requirements. We also provide a link to our privacy notice which is available on our website.

## Update to our guidance hyperlinks

- 2.6** Various links in the existing version of the notification forms, 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 these forms. 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.

## Removal of requirement to provide confirmation of having read and understood the declaration in the form

- 2.7** In some forms, firms are currently required to tick a box to confirm they have read and understood the declaration set out in the notification forms.
- 2.8** We receive many submissions that have failed to tick the declaration box but that have completed and signed all the other sections of the form. Therefore, we propose to standardise the approach and remove this requirement from the relevant notification forms for these firms (SUP 15 Annex 6AR and SUP 15 Annex 6CR).

## Changes to the layout and general style of the form

- 2.9** At the same time as updating the content, we propose to enhance the layout and style of these forms to make them look more similar to other FCA forms that are available via our data portal, Connect.
- 2.10** The proposed layout and stylistic amendments will mainly include changes to our logo, our address and removal of tables within the application form.
- 2.11** In all cases, the proposed changes do not affect the circumstances in which a firm is required to provide information to us.

## Improvements to the EuSEF and EuVECA management and marketing form

- 2.12** We are also proposing some minor changes to the EuSEF and EuVECA management and marketing notification (SUP 15 Annex 6FG) to ensure it correctly reflects recent changes to social entrepreneurship funds and venture capital funds rules.
- 2.13** Our changes are based on EU Regulation 2017/1991 which amends the EuSEF Regulation and the EuVECA Regulation. Subject to certain transitional provisions, it applied from 1 March 2018.
- 2.14** The changes we propose to this form will ensure it aligns with the changes made to the EuVECA and EuSEF manager registration form which is available on our website.

**Q2.1: Do you have any comments on the proposed amendments to SUP 15 Annex 6 forms? If so, please elaborate.**

## Cost benefit analysis

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- 2.15** Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. However, section 138L of FSMA says that we do not need to provide a CBA where we consider that there will be no increase in costs, or the increases will be of minimal significance. Having assessed the changes proposed in this chapter and having considered previous estimates of similar reporting changes, we believe this exemption applies to the proposals in this chapter.

### ***Update to data protection wording***

- 2.16** We expect this change to have no cost implications for firms as it does not change the data that needs reporting to us, it simply clarifies the existing requirements.

### ***Update to FCA guidance hyperlinks***

- 2.17** This change has no cost implications for firms as it updates hyperlinks and does not alter any reporting requirements.

### ***Removal of requirement to provide confirmation of having read and understood the declaration in the form***

- 2.18** We expect this change to have no cost implications for firms as it does not change the data that needs reporting to us, it simply makes it easier for firms to complete the form.

### ***Changes to the layout and general style of the form***

- 2.19** This change has no cost implications for firms as it aligns the layout and style of the form to other FCA forms and does not alter any reporting requirements.

### ***Improvements to the EuSEF and EuVECA management and marketing form***

- 2.20** The proposed changes are generally either cosmetic or designed to simplify the Handbook. To the extent that they do result in an increase in costs we consider that the increase will be of minimal significance.
- 2.21** In any event, 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.



**Q2.2 Do you have any comments on the analysis of costs in this section?**

## Impact on Mutual Societies

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- 2.22** 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

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- 2.23** Section 1B of FSMA requires us, when discharging our general functions, to act in a way that is compatible with our strategic objective and advances one or more of our operational objectives. We also need, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, to carry out our general functions in a way that promotes effective competition in the interests of consumers.
- 2.24** We believe that the proposed amendments to the AIFMD-related forms in SUP 15 Annex 6 'Notifications by UK AIFM' 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. In turn, this will allow more effective and efficient supervision of firms which will help us to advance our consumer protection objective. We do not believe that the proposed changes will have an impact on competition. The changes are expected to impose minimal costs on firms and do not affect firms' incentives or ability to compete in the market.

## Equality and diversity

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- 2.25** 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, i.e. 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.

## 3 Amendments to the Collective Investment Schemes sourcebook

### Introduction

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- 3.1** In Chapter 8 of CP15/27: UCITS V implementation and other changes to the Handbook affecting investment funds, we discussed whether there is a need to amend our rules about which counterparties can transact with an authorised fund manager for an over-the-counter (OTC) derivative transaction. In the light of the responses and subsequent representations by firms and trade associations, we are now proposing to change the Collective Investment Schemes sourcebook (COLL) to bring it into line with international standards on clearing and settlement of derivative transactions and to better reflect current market practices.
- 3.2** In addition, we are proposing to amend our rules in COLL relating to Property Authorised Investment Funds (PAIF); notifications by individually recognised schemes; and minor changes to improve or correct the drafting of COLL rules.
- 3.3** This chapter will be of interest to managers of UK authorised funds and operators of individually recognised non-UK schemes.
- 3.4** The proposed amendments are set out in Annex A of the draft instrument at the relevant appendix.

### Summary of proposals

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- 3.5** This section sets out our proposed amendments to COLL:
- COLL 5.2.23R: Eligible counterparties
  - COLL 6.2.23R and COLL 8.5.12AR: Property Authorised Investment Funds
  - COLL 9.3: Notifications by individually recognised schemes
  - Minor amendments to COLL 5.2.4R (2), 6.6.12R and 8.5.4R

#### **Amendment to COLL 5.2.23R: Eligible counterparties for over-the-counter (OTC) derivative transactions**

- 3.6** COLL 5.2.23R sets out the types of entity which may be a counterparty to an OTC derivative contract with an Undertaking for Collective Investment in Transferable Securities (UCITS) scheme. This rule implements the UCITS Directive requirement for the counterparty to an OTC derivative transaction to be prudentially regulated. The UK's implementation permits banks regulated under the Capital Requirements Directive (CRD), investment firms regulated under the Markets in Financial Instruments Directive (MiFID), and certain non-EU banks to act as counterparties. COLL 5.6.15R applies the same requirements to the authorised fund manager of a non-UCITS retail scheme (NURS) when transacting in OTC derivatives.

- 3.7** These rules currently work effectively for EU counterparties because it is normal for the clearing member of the central counterparty (CCP) to be the counterparty to the OTC derivative contract. These clearing members are normally a bank or investment firm (which meet our existing criteria).
- 3.8** However, we have received feedback that the rule unduly limits certain types of counterparties, particularly CCPs where it is the CCP itself, acting as agent for the clearing member, that is the counterparty to the transaction (not the bank or investment firm that is the clearing member). These kinds of institutions cannot be eligible counterparties under COLL 5.2.23R at present.
- 3.9** The current rule also does not fully reflect the change in market practices brought about by the introduction of central clearing for several types of OTC derivative under the European Market Infrastructure Regulation (EMIR). Therefore, we propose to modify COLL 5.2.23R to extend the range of entities that can be an approved counterparty to include:
- any EU CCP that has been authorised under EMIR
  - any non-EU CCP that has been recognised under the processes set out in article 25 of EMIR
  - CCPs from jurisdictions that have been assessed by the Financial Stability Board (FSB) as having implemented the G20 reforms on OTC derivatives as at June 2019

**Q3.1: Do you have any comments on the proposed amendments to COLL 5.2.23R? If so, please elaborate.**

**Amendment to COLL 6.2.23R and 8.5.12AR: Property Authorised Investment Funds**

- 3.10** COLL 6.2.23R and COLL 8.5.12AR support the corporate ownership condition applicable to PAIFs, which is set out in Regulations 69K and 69L of the Authorised Investment Fund (Tax) Regulations 2006<sup>1</sup>. The purpose of the corporate ownership condition, as stated in HMRC's Company Taxation Manual<sup>2</sup>, is to "ensure that the UK retains the ability to tax investors fairly on income from UK land and property."
- 3.11** The effect of the condition is to prevent a body corporate from beneficially holding 10% or more of a PAIF. This is referred to in the COLL rules as the "maximum allowable". However, it is still possible for a body corporate to have an indirect interest of more than 10% of a PAIF by holding units in a feeder fund investing in units of the PAIF. In these circumstances, the feeder fund must be the beneficial owner of the interest in the PAIF and not the body corporate holding the units in the feeder fund.
- 3.12** The existing rules at COLL at 6.2.23R and 8.5.12AR require the authorised fund manager of a PAIF to "take reasonable steps to ensure that no body corporate holds more than 10% of the net asset value of that fund." We propose to align the text with the underlying tax regulations by clarifying that a body corporate may have an indirect interest in a PAIF of more than 10% where the conditions set out above are met.

**Q3.2: Do you have any comments on the proposed amendments to COLL 6.2.23R and 8.5.12AR? If so, please elaborate.**

<sup>1</sup> SI 2006/964

<sup>2</sup> HMRC Company Taxation Manual - CTM48817: the corporate ownership condition

### **COLL 9.3: Notifications by individually recognised schemes**

- 3.13** A non-UK fund that has been individually recognised under section 272 of the Financial Services and Markets Act (FSMA) can be marketed to the general public in the UK. Section 277A of FSMA gives us a power to require the fund operator to provide information to us periodically to show that it continues to comply with UK regulatory requirements. We now propose to exercise this power to direct what information must be provided and how often. This will ensure that we receive consistent and up-to-date information about the funds recognised under this section.
- 3.14** We propose to add a direction to COLL 9.3, setting out requirements for the operator of each s.272 recognised fund to provide us with an annual certificate which explains whether, and if so how, the scheme's ability to comply with the conditions of its recognition has changed. In doing so, the operator must set out what steps it has taken to inform itself of any changes to the relevant FCA rules for comparable authorised schemes, and consider any such changes together with any changes made to the recognised scheme itself.
- 3.15** The direction also specifies when and how the certificate should be submitted to us. We do not propose to specify a form or template for the operator to complete.
- 3.16** In certain circumstances, it may be unnecessary to submit the certificate if less than 12 months has passed since the last submission. Guidance at COLL 9.3.6G explains what these circumstances are.

**Q3.3: Do you agree with our proposal to add a direction in COLL. 9.3 requiring operators of s.272 recognised schemes to provide an annual certificate? If not, please elaborate.**

### **Minor Amendments to COLL 6.6.12R, 8.5.4R and 5.2.4R (2)**

- 3.17** We propose to make some minor amendments to COLL 6.6.12R and 8.5.4R concerning the safekeeping obligations of depositaries. The changes will clarify the interaction between these rules and the requirements of relevant EU legislation affecting depositaries of all UCITS schemes and of those NURS and qualified investor schemes managed by a full-scope AIFM. The proposed drafting changes will not add to or alter the obligations of any depositaries of authorised funds.
- 3.18** We also propose to add the missing words "that may" to COLL 5.2.4R (2) to make the sentence grammatically correct. There is no change of meaning as a result.

**Q3.4 Do you have any comments on the proposed amendments to COLL 6.6.12R, 8.5.4R and 5.2.4R (2)? If so, please elaborate.**

### **Cost benefit analysis**

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- 3.19** Section 138I (2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a CBA when proposing draft rules. However, section 138L (3) of FSMA states that section 138I (2)(a) does not apply where we consider that there will be no increase

in costs or the increase will be of minimal significance. Our proposals simplify our Handbook and so do not give rise to any significant new costs or increase in costs.

- 3.20** The proposal for COLL 5.2.23R extends the scope of the rule but does not impose any obligation on an authorised fund manager to change its current practice. We therefore consider that there are no costs to this proposal other than those incurred by firms in reading and considering the effect of the change, which we believe are of minimal significance.
- 3.21** For funds whose investment objectives and policies allow the use of OTC derivatives, whether for investment purposes or efficient portfolio management, the benefits of the proposal will be the ability to enter into a wider range of centrally-cleared transactions, which provide greater efficiency and certainty of settlement compared to bilateral contracts. This should improve authorised fund managers' ability to operate funds in line with the investment policy and risk profile and may also result in cost savings through operational efficiency.
- 3.22** Our proposals for COLL 6.2.23R and 8.5.12AR clarify an existing rule in our Handbook by aligning the text with the underlying tax legislation and so do not give rise to any significant new costs or increase in costs.
- 3.23** Section 138I of FSMA does not require us to publish a CBA when proposing to exercise a power of direction, but in any event, we consider that any additional costs incurred by operators of s.272 recognised schemes in understanding and implementing the terms of the direction would be of minimal significance.
- 3.24** The benefit to firms will come from the certainty that compliance with the direction fulfils their legal obligation under s.277A of FSMA to provide information to us. By requiring operators of these funds to take steps to check whether each fund is still meeting its obligations under the UK regulatory system, there is less risk of investors buying or holding units in unsuitable or excessively risky funds.
- 3.25** Minor changes to improve or correct the drafting of COLL rules are not expected to result in costs to firms of more than minimal significance, while benefiting Handbook users by offering more easily understandable text.
- 3.26** Do you have any comments on the analysis of costs in this section?

## Compatibility statement

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- 3.27** Section 1B of FSMA requires us, when discharging our general functions, to act in a way that is compatible with our strategic objective and advances one or more of our operational objectives. We also need, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, to carry out our general functions in a way that promotes effective competition in the interests of consumers.
- 3.28** We believe that the proposed changes to COLL are compatible with our strategic objective and advance our operational objectives under section 1B of FSMA. The proposal to allow a wider range of counterparties for OTC derivative transactions will advance our consumer protection objective by enabling the use of

centrally-cleared contracts in preference to bilateral arrangements, while promoting effective competition by allowing access to a wider range of non-UK counterparties subject to appropriate supervision.

- 3.29** The proposed new direction in COLL 9.3 will support our investor protection objective by requiring a fund operating under a non-UK regulatory regime to provide necessary information to us about the level of protection offered to UK investors. The amendments to the PAIF rules and the other minor changes are compatible with our objectives and have regard to the need for the FCA to act proportionately, by improving rules that are obscurely or defectively drafted so readers can better understand what is required of them.

## Impact on mutual societies

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- 3.30** 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.

## Equality and diversity

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- 3.31** 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, i.e. 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.

## 4 Minor Handbook amendments to update references to the UK Corporate Governance Code

### Introduction

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**4.1** In this chapter, we are proposing some minor changes to various parts of our Handbook as listed below:

- Listing Rules Sourcebook (LR)
- Disclosure Guidance and Transparency Rules sourcebook (DTR)
- Statements of Principle and Code of Practice for Approved Persons sourcebook (APER)
- Senior Management Arrangements, Systems and Controls Sourcebook (SYSC)
- Code of Conduct Sourcebook (COCON)
- Decision Procedure and Penalties Manual (DEPP)

**4.2** This chapter will be of interest to:

- issuers with securities admitted to our Official List or considering a listing
- UK incorporated issuers with securities admitted to trading on a regulated market or considering admission to trading on a regulated market
- firms advising issuers or persons investing in them
- firms or persons investing or dealing in UK listed securities or securities admitted to trading on a regulated market
- firms subject to the SYSC, APER, DEPP and COCON provisions of the Handbook
- auditors and other advisors assisting issuers with the preparation and publication of their annual financial reports

**4.3** The proposed amendments and statutory powers they will be made under are set out in the relevant appendix.

### Summary of proposals

**4.4** In this chapter we set out our proposals for updating references to the UK Corporate Governance Code (the Code) in the Handbook to ensure our requirements keep pace with evolving best practice and align with the latest edition of the Code that was published by the Financial Reporting Council (FRC) in July 2018.

### Background

**4.5** The FRC is responsible for promoting confidence in corporate governance and reporting, and for keeping the UK Corporate Governance Code under review. In July 2018, the FRC published a new edition of the Code which applies to accounting

periods beginning on or after 1 January 2019<sup>3</sup>. This followed a comprehensive review of the Code by the FRC, including a public consultation which concluded in early 2018. The FRC sought to ensure that the Code remains fit for purpose in a changing economic and social climate, and continues to promote improvement in the quality of governance.

**4.6** The new Code sets out standards of good practice in a number of areas, which we support in our Handbook. The areas covered by the new Code are: board leadership and company purpose; division of responsibilities; composition, succession and evaluation; audit, risk and internal control; and remuneration. The Code is supported by guidance published by the FRC (which is also referred to in the Code). This is updated from time to time and includes revised guidance on Board Effectiveness published by the FRC in 2018.

**4.7** The Code applies to all companies with a premium listing. It comprises a set of high-level Principles, covering the five topic areas referenced above, and a set of 41 more detailed Provisions that apply on a 'comply or explain' basis. As before, the Code does not set out a rigid set of rules and continues to offer flexibility so that boards can adopt different approaches.

**4.8** The 2018 Code retains elements of the 2016 Code which remain relevant, and adapts others to reflect the changing economic and social climate to ensure that premium listed companies achieve the highest standards of governance. However, there are important changes (the majority of which were in section A (Leadership) and B (Effectiveness) of the 2016 Code. Also, the concept of 'supporting principles' has been removed from the new Code. Some of these supporting principles have been incorporated into the Principles (discussed below) while others have been deleted or moved into guidance.

**4.9** At the heart of the new Code is an updated set of Principles (which replace the Main Principles in the 2016 edition) that underline the value of good corporate governance to a company's long-term sustainable success.

**4.10** The Code now places greater emphasis on relationships between companies, shareholders and stakeholders. It promotes the importance of establishing a corporate culture that is aligned with the company purpose and business strategy, promotes integrity and values diversity. Among the main changes relative to the 2016 edition of the Code are Provisions to promote:

- greater board engagement with the workforce
- a culture which aligns company values with strategy and a focus on preserving value over the long term
- board diversity and succession planning, including by setting expectations for the role of the nomination committee and encouraging board evaluation
- greater consideration of workforce remuneration and related policies when setting director remuneration

**4.11** Our approach is to bring Handbook references to the Code up to date so they align with the new Code and ensure that our requirements keep pace with evolving best

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<sup>3</sup> A number of relevant documents are available on the UK Corporate Governance Code page of the FRC's website, including the [new 2018 Code](#), the [2017 Consultation Paper](#), and a set of [FAQs](#).



practice. These proposed changes will apply to accounting periods beginning on or after 1 January 2019, to which the revised Code applies.

- 4.12** In particular, for issuers, our LR require that premium listed companies disclose how they have applied the Principles of the Code and whether they have complied with, or explain their departures from, all relevant Code provisions. We also provide guidance on where compliance with the Code will meet certain of the issuer's obligations in DTR. Where the Code is applicable to firms, we state in guidance provisions in SYSC, COCON, APER and DEPP where we consider the Code to be consistent with our standards or where we give credit for following the Code in meeting our standards.
- 4.13** In light of the changes to the Code, we are proposing to amend the references to the Code in these parts of the Handbook and ensure that our existing references to related FRC guidance publications are to the current editions. We are proposing some transitional provisions in LR and DTR so that the previous edition of the Code (published in 2016) will continue to apply to earlier accounting periods and propose to delete certain expired transitional provisions.

## Our proposals

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### Definition of the Code

- 4.14** We are proposing to update the definition of the Code in the Glossary and in LR in the related Appendix to refer to the edition published by the FRC in July 2018. Existing Handbook provisions in LR, DTR, SYSC, COCON, APER and DEPP which reference the Code will therefore automatically update to refer to this edition.
- 4.15** We are proposing to introduce new transitional provisions in LR and DTR which will continue to apply the 2016 edition of the Code to accounting periods beginning before 1 January 2019. Expired transitional provisions relating to earlier editions of the Code will be deleted in LR and DTR.

**Q4.1: Do you agree with our proposal to update the definition of the Code in the Glossary and LR Appendix 4?**

**Q4.2: Do you agree with our proposed transitional provisions in LR and DTR?**

### Updating references to the Code in LR

- 4.16** The Code is supported in LR. Issuers with a premium listing are currently required to state how they have applied the 'Main Principles' of the Code. They must also report on the extent to which they have complied with the Code's Provisions or explain their reasons for departing. Additionally, before the annual report is published, they must ensure the auditor reviews certain disclosures on 'accountability' in section C. These include the statements on the issuer's going concern and longer-term viability. They include statements on the audit committee and auditor.
- 4.17** We propose to maintain this approach in LR. We are therefore proposing to make changes to the references to the Code in LR 9.8.6R (3) and (5), and LR 9.8.10R so they reflect the corresponding requirements in the new Code. Similarly, we propose to

update the modified requirements for compliance with LR 9.8.6R (6) for closed-ended investment funds in LR 15.6.6R by updating the references to Code provisions to reflect the corresponding requirements in the new Code.

- 4.18** This will also retain our longstanding requirement for the auditor to review the issuer's statements under the Code in relation to its arrangements for people within the company to 'raise concerns'. In LR9.8.10R(2)(c) we propose to cross refer to Provision 6 in the 2018 Code which builds on existing standards for these arrangements in provision C.3.5 in the 2016 Code. The new Provision also identifies the board (previously the audit committee) as responsible for keeping these arrangements under review.
- 4.19** The new Code applies to accounting periods beginning on or after 1 January 2019. We propose that the changes to our rules will align with this commencement date. Therefore, reporting under the new Code should start from January 2020, subject to the transitional Provisions (referred to above) for earlier accounting periods.

**Q4.3: Do you agree with our proposed amendments to LR 9.8.6R, LR 9.8.10R and LR 15.6.6R?**

### Updating references to the Code in DTR

- 4.20** We propose to maintain, so far as possible, the guidance Provisions in DTR 7.1.7G (Audit committees) and DTR 7.2.4G and DTR 7.2.8G (Corporate governance statements) which express our view that compliance with certain LR and certain Provisions of the Code will result in compliance with our rules in DTR 7.1.1R to DTR 7.1.5R, and will satisfy the requirements of DTR 7.2.2R and DTR 7.2.3R, and of DTR 7.2.7R respectively.
- 4.21** To do so, we are proposing to update the references to the Code in DTR 7.1.7G and DTR 7.2.8G to reflect the corresponding Provisions in the latest edition where available. We have also cross-referred to relevant guidance in paragraph 63 of the 'Guidance on Board Effectiveness' published by the FRC in July 2018. However the requirements to disclose the composition of the committees in DTR 7.1.5R and DTR 7.2.7R are not duplicated in the 2018 editions of the Code or the Guidance on Board Effectiveness and will no longer be covered by our guidance in DTR 7.1.7G and DTR 7.2.8G.

**Q4.4: Do you agree with our proposed amendments to DTR 7.1.7G and DTR 7.2.8G?**

### Updating references to the Code in COCON, SYSC, APER and DEPP

- 4.22** In our authorisations and supervisory roles, we take into account how firms have applied the Code's provisions. We propose that references to the Code in COCON, SYSC, APER and DEPP will update via the change to the definition of the Code in the Glossary that we refer to above. We are also using this opportunity to amend some other previously superseded references to the Code and associated FRC publications in these sourcebooks and manual, and out of date explanations of who the Code applies to.

**Q4.5: Do you agree with our proposed amendments to COCON, SYSC, APER and DEPP in relation to the Code?**

## Cost benefit analysis

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- 4.23** The Financial Services and Markets Act 2000 (FSMA), as amended by the Financial Services Act 2012, 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, defined as 'an analysis of the costs, together with the benefits that will arise if the proposed rules are made'.
- 4.24** Our proposals are designed to ensure that our Handbook references to the UK Corporate Governance Code are updated to align with the 2018 edition of the Code, rather than the 2016 edition of the Code.
- 4.25** The changes to the Code were subject to extensive consultation by the FRC following a comprehensive review. They reflect the industry input received. We consider that our proposed rule changes are simply keeping pace with current best-practice standards as reflected in the Code.
- 4.26** We expect that issuers who already adopt and report against the Code will reassess (or have already reassessed) how their existing governance practices enable them to achieve the high-level Principles in the 2018 edition of the Code and the extent to which they comply or depart from the more detailed provisions which support them. An issuer's decision to make consequential changes to its governance structures will depend largely on its own requirements and whether it already follows latest best practice.
- 4.27** Issuers with a premium listing who are subject to our LR disclosure requirements on corporate governance in LR9.8.6R should also consider how they will continue to comply with these rules in relation to the 2018 edition of the Code. Accordingly, these issuers may incur some incremental, upfront costs in familiarising themselves with our proposed requirements in relation to the new or changed governance standards set out in the 2018 Code and potentially adjusting their disclosures. Further costs may accrue to issuers who are required to change their existing governance arrangements to support their statement on how they have applied the Principles set out in the 2018 Code (LR9.8.6R(5)).
- 4.28** In our view, we cannot reasonably estimate the size of the incremental costs to issuers of these proposals. This is because we cannot forecast the type and scale of changes that issuers will decide to make to their governance processes and any consequential changes to their disclosures under the LRs as this will depend on the issuer's own requirements and circumstances. There is also significant flexibility available to issuers in applying the Principles set out in the Code, and the FRC has reported in its consultation paper a high level of compliance with the 2016 Code which the 2018 edition builds on, taking into account feedback from a wide range of stakeholders. Investors should benefit from our proposals because they aim to ensure that the disclosures made by the issuers they invest in provide transparency on how they meet up to date, best practice standards in governance.
- 4.29** While FSMA does not require us to publish a CBA for new guidance, we would do so for general guidance about our rules if our high-level assessment of the impact of our proposals identified an element of novelty that might in effect be prescriptive or prohibitive such that significant costs may be incurred. We do not consider this to be the case for our proposed changes to the guidance provisions in the Handbook which reference the Code (in DTR, SYSC, COCON, APER and DEPP). Therefore, we have not included a CBA on these proposals.

## Impact on mutual societies

- 4.30** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significant impact on authorised persons who are mutual societies compared to other authorised persons.
- 4.31** We do not expect the proposals in this chapter to have a significantly different impact on mutual societies.

## Compatibility statement

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- 4.32** Section 138I(2)(d) of FSMA requires us to explain why we consider our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B of FSMA.
- 4.33** We consider that our proposals in relation to the UK Corporate Governance Code in this chapter are compatible with our strategic objective of ensuring that the relevant markets function well.
- 4.34** Our proposals assist in ensuring that the sourcebooks which reference the Code remain effective. These proposals are primarily intended to advance our operational objectives of:
- ensuring market integrity – protecting and enhancing the integrity of the UK financial system by ensuring that the LR, DTR, COCON, APER, SYSC and DEPP reflect best practice and the evolution of industry standards
  - delivering consumer protection – maintaining and securing an appropriate degree of protection for consumers, by ensuring that the LR, DTR, COCON, APER, SYSC and DEPP remain effective
- 4.35** In preparing these proposals, we have had regard to the regulatory principles in section 3B of FSMA.

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

- 4.36** We consider our proposals in relation to the UK Corporate Governance Code will have minimal impact on our resources.

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

- 4.37** We consider the proposals in relation to the UK Corporate Governance Code will not significantly increase the administrative burden on issuers.

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

- 4.38** The proposals in this chapter provide transparency to the rule making process.

## Equality and diversity

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- 4.39** We have considered the equality and diversity issues that may arise from the proposals in this chapter. Overall, we do not consider that these proposals raise concerns with regards to equality and diversity issues. We do not consider that they adversely impact any of the groups with protected characteristics under the Equality Act 2010, i.e. age,

disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

- 4.40** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim, we welcome any input to this consultation on such matters.

## 5 Amendments to the DTR to implement ESEF

### Introduction

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- 5.1** In this chapter, we are proposing some minor changes to the Disclosure Guidance and Transparency Rules sourcebook (DTR).
- 5.2** This chapter will be of interest to:
- issuers with securities admitted to our Official List or considering a listing
  - issuers with securities admitted to trading on a regulated market, or considering admission to trading on a regulated market, where the UK acts as home Member State and the FCA's DTRs apply
  - firms advising issuers or advising persons investing in them
  - firms or persons investing or dealing in UK listed securities or securities admitted to trading on a regulated market
  - accountants and other advisors and service providers assisting issuers with the preparation and publication of their annual financial statements
- 5.3** The proposed amendments and statutory powers they will be made under are set out in the relevant Appendix.

### Summary of proposals

- 5.4** In this chapter we propose a new provision in the DTR to implement requirements for annual corporate reporting in the European single electronic format (also referred to as ESEF) under the Transparency Directive (TD)<sup>4</sup>. This caters for a scenario where the UK remains subject to EU law on 1 January 2020.

### Background

- 5.5** The TD establishes requirements in relation to the disclosure of periodic and ongoing information about issuers whose securities are already admitted to trading on a regulated market situated or operating within a Member State.
- 5.6** These include a requirement for issuers to make public an annual financial report which includes their audited annual financial statements. These reports must also be filed with the officially appointed mechanism in the relevant jurisdiction. In the UK, we have designated the National Storage Mechanism (NSM) for this purpose.
- 5.7** When the TD was amended in 2013 by the Transparency Directive Amending Directive<sup>5</sup> (TDAD), a new requirement stipulated that issuers must prepare their annual financial reports in a single electronic reporting format with effect from 1 January

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4 2004/109/EC

5 2013/50/EU

2020 (new paragraph (7) in Article 4). The purpose set out in the TDAD was to make reporting easier and facilitate the accessibility, analysis and comparability of annual financial reports.

**5.8** The electronic reporting format was subsequently specified in a regulatory technical standard (RTS)<sup>6</sup> which was published by the Official Journal in May 2019 and came into force on 18 June 2019. This is referred to as the European single electronic format (ESEF). It introduces mandatory structured data formatting for annual corporate reporting and sets the standards for complying with Article 4(7) TD. It applies to annual financial reports for financial years beginning on or after 1 January 2020.

**5.9** We are proposing a minor change to the DTR for the purpose of implementing ESEF in the UK, which will apply if the UK remains in the EU on 1 January 2020.

### **Overview of the ESEF requirements**

**5.10** Under the new requirements, issuers will be required to mark up or 'tag' specified disclosures in their annual financial statements using structured data formatting processes. This will make the document 'machine readable' to enable investors and other market participants to use software tools to screen and analyse data across issuers.

**5.11** First, issuers will need to prepare their entire annual financial report in Extensible Hypertext Markup Language (XHTML). Further, issuers who prepare consolidated annual financial statements in accordance with International Financial Reporting Standards (IFRS) must tag certain disclosures in those statements using inline Extensible Business Reporting Language (iXBRL) and following the taxonomy contained in the RTS. These obligations will apply to all issuers, irrespective of where they are incorporated.

**5.12** The taxonomy in the RTS is based on that published by the IFRS Foundation.<sup>7</sup> Issuers are permitted to extend this taxonomy by creating their own tags as long as they 'anchor' (link or connect) these tags to the closest core element in the taxonomy. This is to provide issuers with flexibility as to how they mark up their disclosures, but doing so in a controlled fashion that does not impair the comparability of the data.

**5.13** There is a phased implementation of the mandatory tagging requirements. It will start with basic information on the issuer and figures in the primary financial statements (financial position, profit or loss, changes in equity and cashflow) for financial years beginning on or after 1 January 2020. It will cover all disclosures in IFRS consolidated annual financial statements (including the notes) for financial years beginning on or after 1 January 2022.

**5.14** EU incorporated issuers will also have the option to tag other disclosures in the annual financial report beyond the mandatory tagging requirements. If they choose to do so they must use iXBRL and a taxonomy specific to those parts that has been provided

<sup>6</sup> Commission Delegated Regulation (EU) 2018/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format. Publication in the EU's Official Journal was on 29 May 2019.

<sup>7</sup> The ESEF RTS is expected to be updated annually to take account of changes in the underlying taxonomy which is published by the IFRS Foundation and copied into the RTS. On 6 June 2019, ESMA published a draft RTS amending Delegated Regulation (EU) 2018/815 on the updates to the taxonomy to be used for the ESEF.

by the Member State in which they are incorporated. This option is not yet available to third country issuers.

- 5.15** The European Securities and Markets Authority (ESMA) has published guidance materials on its website to assist issuers and their service providers in preparing for ESEF.<sup>8</sup> We also intend to publish further information on meeting the requirements under our proposed new DTR provision which implements ESEF.

## Our proposals

- 5.16** DTR 4.1 sets out our rules which implement TD requirements for annual financial reports. We are proposing a new rule in DTR 4.1 (DTR 4.1.14R) to implement Article 4(7) of the amended TD which stipulates that issuers must prepare their annual financial reports in a single electronic reporting format in accordance with the RTS, as amended from time to time. In line with the RTS we are proposing that the new rule will apply to annual financial reports for financial years beginning on or after 1 January 2020. This caters for a scenario where the UK remains subject to EU law on 1 January 2020.
- 5.17** However, if the UK leaves the EU before 1 January 2020 without a withdrawal agreement and implementation period having been ratified, the ESEF requirements will not be operative in the UK and the changes we are proposing to the DTRs will not come into force. To have similar electronic reporting standards applying to the UK's transparency regime, we could make those standards using powers under the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 but would need to consult on them separately.

### **Q5.1: Do you agree with our proposed amendment to DTR 4.1 for the implementation of ESEF in the UK?**

## Cost benefit analysis

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- 5.18** The Financial Services and Markets Act 2000 (FSMA), as amended by the Financial Services Act 2012, 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, defined as 'an analysis of the costs, together with the benefits that will arise if the proposed rules are made'.
- 5.19** Our proposed changes to DTR in relation to ESEF are required to implement Article 4(7) TD. These changes are non-discretionary and have already been subject to a cost benefit analysis at EU level which we discuss below.
- 5.20** Our new requirements will apply to all issuers of securities admitted to trading on a regulated market for whom the UK is their home Member State under the TD. We expect all impacted issuers to incur upfront costs in familiarising themselves with the new requirements and switching to the XHTML format for preparing and filing their annual financial reports.
- 5.21** Issuers who prepare their annual financial statements under IFRS will also incur annual costs in creating an iXBRL tagged report under the ESEF rules. There are various

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8 <https://www.esma.europa.eu/policy-activities/corporate-disclosure/european-single-electronic-format>



options for issuers as to how to meet the tagging requirements of the RTS. For instance, issuers may integrate tagging into existing internal processes for producing their annual financial reports. Or they may outsource the work to a third party. The options chosen will determine the magnitude of tagging costs.

**5.22** ESMA has published its own cost benefit analysis for ESEF which can be viewed on its website.<sup>9</sup> In that analysis it identified various options for producing XBRL reports and considered the varying costs and challenges for issuers that these presented:

- outsourcing of the XBRL report creation process to a specialised third party
- use of form-based solutions offered by a recipient (a Member State's national storage mechanism) or a third-party
- adding XBRL tags to a report created in other common format (e.g. Microsoft Word, Microsoft Excel, PDF) using off-the-shelf third-party tools
- integrating production of XBRL reports in the existing systems of an issuer using in-house resources or comprehensive disclosure management systems available on the market

**5.23** An issuer's approach to tagging will be influenced ultimately by its own particular circumstances and the legacy systems that it uses for preparing financial data. For example, the approach to producing an iXBRL report is likely to depend heavily on the amount of data to be tagged and the complexity of that process, particularly for the parent of a large consolidated group. Deciding to create extensions to the taxonomy may also add to the issuer's costs. Some issuers might decide to frontload these costs by fully automating the tagging process. This could ultimately save time at the end of the financial year and ensure that the four-month TD reporting deadline is met. Other issuers whose financial statements are less detailed might routinely outsource the tagging process to a service provider at the end of the year for an annual fee.

**5.24** It should also be noted that any additional tagging costs may reduce (or be eliminated) over the longer term as ESEF becomes embedded in annual corporate reporting processes and more service providers and software solutions enter the market. We note for example that ESMA has previously identified more than 300 licensed tools already available on the market (excluding filing agencies and their internal solutions) with over 150 software vendors present. Those numbers were complemented with approximately 40 open source solutions covering the XBRL basics. Also, an issuer's costs may be initially higher when its production of iXBRL tagged reports is fully integrated rather than outsourced. However, the cost of producing subsequent reports may reduce once the integrated system is up and running.

**5.25** For issuers that are already experienced in preparing financial data in structured data format, the ESEF costs may be incremental rather entirely new. For example, issuers in the UK may already submit audited financial statements in structured data format to HMRC or Companies House.

**5.26** In terms of the benefits of ESEF, it is envisaged that structured data formatting should create more transparency, availability and comparability of issuers' financial statements. It is anticipated this will, over time, lead to better efficiencies in capital allocations and increase issuers' ability to attract capital across the EU from professional and retail investors.

<sup>9</sup> ESMA published a cost-benefit analysis for ESEF in the Feedback Statement to its public consultation on the RTS that gives effect to ESEF. The Feedback Statement is available here <https://www.esma.europa.eu/policy-activities/corporate-disclosure/european-single-electronic-format>.

- 5.27** If and when these benefits will materialise will depend largely on the speed and extent to which EU market participants, mainly analysts and investors, take advantage of the opportunities that ESEF offers. We would expect this to increase as the market becomes more familiar with ESEF and the fuller tagging requirements start to apply from 1 January 2022.
- 5.28** With these points in mind, we consider that the costs of ESEF are likely to be outweighed by the benefits over the medium to longer term as anticipated costs savings emerge for issuers and market participants incorporate the new format into their processes for evaluating investments.
- 5.29** Given these variables and uncertainties, it is not reasonably practicable for us to provide a quantitative assessment of the costs and benefits of ESEF.

### **Impact on mutual societies**

- 5.30** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significant impact on authorised persons who are mutual societies compared to other authorised persons.
- 5.31** We do not expect the proposals in this chapter to have a significantly different impact on mutual societies.

## **Compatibility statement**

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- 5.32** Section 138I(2)(d) of FSMA requires us to explain why we consider our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B of FSMA.
- 5.33** We consider that our proposals in this chapter are compatible with our strategic objective of ensuring that the relevant markets function well.
- 5.34** Our proposals for implementing the ESEF requirements via the DTR should increase transparency in regulated markets for stakeholders, promoting our strategic objective to ensure that relevant markets function well and promoting our operational objective to ensure market integrity. This in turn can contribute to the effectiveness of capital allocation, benefitting issuers and investors.
- 5.35** In preparing these proposals, we have had regard to the regulatory principles in section 3B of FSMA.

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

- 5.36** Our proposals to implement the ESEF requirements implement EU legislation in the UK (if the ESEF requirements apply in the UK on 1 January 2020, as discussed above). Any impacts on our resources will be consequential to that.

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

- 5.37** Our proposals to implement the ESEF requirements implement EU legislation in the UK (if the ESEF requirements apply in the UK on 1 January 2020, as discussed above). Any impacts on issuers and primary information providers will be consequential to that.

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

**5.38** The proposals in this chapter provide transparency to the rule making process.

## **Equality and diversity**

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**5.39** We have considered the equality and diversity issues that may arise from the proposals in this chapter. Overall, we do not consider that these proposals raise concerns with regards to equality and diversity issues. We do not consider that they adversely impact any of the groups with protected characteristics under the Equality Act 2010, i.e. 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 interim, we welcome any input to this consultation on such matters.

## 6 Implementing the amendments to the European Market Infrastructure Regulation (EMIR) brought in by REFIT<sup>10</sup>

### Introduction

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- 6.1** The European Regulation on over-the-counter (OTC) derivatives, central counterparties (CCPs) and trade repositories, known as the European Market Infrastructure Regulation (EMIR)<sup>11</sup> has been amended in the context of the European Commission's Regulatory Fitness and Performance Programme (REFIT). Collectively this is referred to in this consultation paper as "EMIR REFIT". The amendments brought in by REFIT to EMIR came into force on 17 June 2019.
- 6.2** EMIR REFIT aims to make some of the current EMIR requirements for firms trading in derivatives simpler and more proportionate. Amongst other things, it introduces new exemption and notification requirements to competent authorities (such as us), for firms that enter into derivative contracts.
- 6.3** HM Treasury made changes to the domestic legislation implementing EMIR<sup>12</sup> to allow us to specify what information is required to be included in an application or notification to them (the 2019 SI). These changes were made on 17 June 2019 and came into force on 9 July 2019.
- 6.4** We are now consulting on changes to the Handbook as a consequence of these changes to the domestic legislation. In addition, we are also proposing to amend the Glossary to update the definition of EMIR as well as the implementing SI with the latest version of the legislation.

The proposed amendments are set out in the relevant appendix.

### Summary of proposals

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- 6.5** EMIR REFIT introduces new applications and notifications for firms within the scope of EMIR. HM Treasury has made changes to the domestic legislation (the 2019 SI) to allow us to specify what information is required to be included in an application or notification, to reflect these changes brought in by EMIR REFIT. The 2019 SI gives us a power of direction as to the form and content of these applications and notifications.

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10 Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories

11 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

12 The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (Amendment) Regulations 2019

## New notifications and exemptions under EMIR REFIT

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### Clearing obligation notifications

- 6.6** EMIR REFIT introduces a new exemption from the clearing obligation for financial counterparties (FCs). Previously, all FCs were subject to the clearing obligation, based on a set of thresholds. Under new article 4a(1) EMIR REFIT, FCs that do not exceed the clearing thresholds are exempted from the clearing obligation.
- 6.7** If an FC chooses not to calculate its positions, or where the result of that calculation exceeds any of the clearing thresholds, the FC must notify immediately us (as well as ESMA).
- 6.8** Similarly, under the second sub paragraph of new article 10(1) EMIR REFIT if a non-financial counterparty (NFC) chooses not to calculate its positions, or where the result of that calculation exceeds any of the clearing thresholds, the NFC must immediately notify us (as well as ESMA).
- 6.9** Both FCs and NFCs may later demonstrate to us that they no longer exceed the thresholds.

### Intragroup reporting obligation exemption applications

- 6.10** New article 9(1) EMIR REFIT introduces a new exemption from the reporting obligation for derivative contracts transacted within the same group where at least one of the counterparties is a NFC, under certain conditions. In order for UK firms to benefit from this exemption, under the fourth subparagraph of article 9(1), UK counterparties need to notify us of their intention to apply this exemption (the "NFC intragroup reporting exemption").

## Proposed changes to our Handbook

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- 6.11** The 2019 SI reflects the changes to notifications and applications requirements in EMIR and gives us a power of direction as to their form and content. We are consulting on consequential changes to the guidance contained in SUP15A.1.2 G to amend cross references, consistently with the new powers of direction given to us.

**Q6.1: Do you have any comments to our proposed amendments to SUP 15A?**

### Glossary amendments

- 6.12** We are proposing to amend the Glossary to reflect that the definition of the term EMIR should now refer to the latest version of the regulation.
- 6.13** We are also proposing to make a consequential change to the definition of the OTC derivatives, CCPs and trade repositories regulation in our Glossary to reflect the 2019 SI.

**Q6.2: Do you have any comments to our proposals to amend the Glossary?**

## Cost benefit analysis

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- 6.14** As we are not making any new rules but adding guidance, our statutory cost benefit analysis (CBA) requirements do not apply. However, we have committed to consider conducting and publishing an analysis of the costs and benefits of any guidance that is likely to result in firms or consumers incurring significant costs that were not formally considered during consultation on rules or principles that the guidance relates to.
- 6.15** In this case, the changes to the guidance update cross references to directly applicable requirements under EMIR as amended by REFIT. Given this, we consider that the costs arising from the proposed Handbook changes are consequential in nature as they describe requirements in EMIR or primary legislation. For this reason, no further CBA of this proposal is provided.

## Compatibility statement

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- 6.16** These proposals set out in this consultation are primarily intended to advance our operational objective of ensuring markets function well. This is because they are designed to make the Handbook consistent with the directly applicable EMIR REFIT Regulation.

## Equality and diversity

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- 6.17** We have considered the equality and diversity impact of these proposed changes and do not consider that they give rise to any discrimination or other equality concerns.

## 7 Further Brexit-related changes to Handbook & BTS following extension of Article 50

### Introduction

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- 7.1** The period under Article 50(3) of the Treaty on European Union has been extended. This means that 'exit day' - the day the United Kingdom (UK) leaves the European Union (EU) under the European Union (Withdrawal) Act 2018 (EUWA) - has changed to 31 October 2019 (at 11pm GMT).
- 7.2** The EUWA will repeal the European Communities Act 1972 and convert existing directly applicable EU law into UK law on exit. It also gives ministers powers to make secondary legislation amending this body of law to ensure it functions effectively when the UK leaves the EU. The Government has delegated some of these powers to us, the Prudential Regulation Authority (PRA), the Bank of England (the Bank) and the Payment Systems Regulator (PSR).
- 7.3** As the UK continues to be an EU Member State until exit day, we need to continue to implement any new EU legislation that is not already implemented which begins to apply up to that date. In parallel, we need to continue to fix deficiencies arising from the UK's withdrawal from the EU in any affected Handbook provisions and in any new EU binding technical standards (BTS). Under the EUWA, 'deficiencies' include, for example, provisions which may become redundant when the UK leaves the EU or which make provision for arrangements involving the EU which are no longer appropriate.
- 7.4** We have prepared this consultation on the basis that the statutory instruments (SIs) in Annex 1 - Part C will be made before exit day. If the statutory instruments (SIs) are not made, or there is a delay in making them, this may have an impact on our final rules.
- 7.5** This consultation follows, and should be read together with, our previous Brexit consultation papers (CPs) and policy statement (PS)<sup>13</sup> on, and approach to, amending financial services legislation under the EUWA. We are now consulting on further changes, which also relate to the Government's new SIs, to ensure that an operable legal framework is in place after the UK leaves the EU.
- 7.6** Although the proposed changes are minor or consequential in nature we have chosen to consult, to the extent possible, in the interests of transparency and to inform stakeholders of the proposed amendments ahead of exit day. We are consulting on Brexit-related changes to:
- a.** Handbook provisions not included in the March 2019 Brexit instruments (contained in Brexit PS19/5): For this consultation, we have included provisions in effect or

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13 CP18/28 and CP18/36 on proposed changes to the Handbook and BTS; CP18/29 on a temporary permissions regime for inbound firms and funds; CP19/2 on Brexit and contractual continuity; CP18/34 on regulatory fees and levies (regarding question 10 on firms in the temporary permissions regime contributing to the devolved authorities' debt advice levy); and PS19/5.

expected to be in effect by 31 December 2019. We have extended the limit of our review to the end of 2019 by way of contingency planning. This will ensure that, in the event of a no-deal exit, our rule amendments also cover instruments which come into force in the immediate period after exit day. We have also included Handbook provisions that are expected to be in effect by 31 December 2019, but not yet made by our Board.<sup>14</sup>

- b.** BTS that start to apply between 12 April 2019 and 31 October 2019; three BTS under the Capital Requirements Regulation, and one BTS under the Credit Ratings Agencies Regulation where it is appropriate to make further changes so that they are effective at exit day.

**7.7** The consultation period for this chapter closes on 4 October 2019. Responses to this chapter will be shared with the Bank and the PRA.

**7.8** If a withdrawal agreement with an implementation period has not been ratified by the UK and the EU (i.e. in the event of a no-deal exit), and having considered any consultation responses received, we expect to present the final Handbook and BTS instruments to our Board for making ahead of 31 October 2019.

**7.9** We intend to use the delegated EUWA powers to make our proposed amendments to the Handbook and BTS. But, for the proposed Handbook provisions relating to the Senior Managers & Certification Regime (SM&CR), we intend using our Financial Services and Markets Act 2000 (FSMA) powers. In amending our Handbook guidance, we are using our general power under section 139A of FSMA (power of the FCA to give guidance). All changes proposed under the EUWA powers will be subject to approval by the Treasury before the relevant instruments are made by our Board. We have consulted with the Bank/PRA on our proposed amendments to our Handbook instruments and BTS. Where required by statutory instrument, we will seek consent on shared BTS we have led on amending.

**7.10** This chapter includes:

- a.** A summary of our proposals for further Brexit-related changes (deficiency-fixing and consequential changes) to our Handbook rules and BTS.
- b.** An update on our proposed use of the temporary transitional power (TTP).
- c.** An update on the temporary permissions regime (TPR).
- d.** Annex 1 to this chapter lists the Handbook instruments resulting in changes we are consulting on, and the BTS and relevant Government SIs.
- e.** Appendix 5 include the draft instruments reflecting the proposed changes in this chapter, except those changes relating to Securities Financing Transaction Regulation (SFTR) fees. Those changes are set out in the instrument appendix to Chapter 9.

## Summary of proposals

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**7.11** With the exception of SFTR fees related changes, Appendix 5 contains the draft instruments setting out the detailed proposed amendments to various Handbook sourcebooks, chapters and the Glossary, and BTS. Stakeholders should read this appendix for a full understanding of all the Handbook and BTS changes proposed. We have not provided further substantive detail on these proposed changes here, but have summarised them below.

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<sup>14</sup> These provisions are subject to being made by the Board, and do not appear in the Handbook version in effect on 31 December 2019.



## Handbook instruments

**7.12** In Annex 1 - Part A we list the Handbook instruments reviewed that introduce changes to the Handbook material included in the scope of this consultation. A summary of the proposed changes and the Handbook areas affected is set out in the table below.

Handbook areas	Proposed changes
COLL 5.2.23	Consequential amendment. Delete Glossary term ' <i>Home State authorisation</i> ' (deleted by the March Exit Glossary instrument - FCA 2019/19).
COLL 6.6.19 COLL 8.5.16	<p>New rules for UK authorised fund managers (AFMs) introduce requirements to appoint independent directors to the governing body of the AFM and to perform an annual assessment of value for each fund the AFM manages. In broad terms, we propose to maintain how these rules apply but to make minor drafting changes to align them with the position for EEA and UK management companies and AIFMs after exit day. As a result:</p> <ul style="list-style-type: none"> <li><b>i.</b> references to EEA management companies and EEA AIFMs will be replaced with references to firms managing UK authorised funds under a temporary permission, and</li> <li><b>ii.</b> reference to a UK management company of an EEA UCITS scheme is being deleted because such firms may no longer be able to manage those funds and, if they are able to do so after exit day, would be covered by the general transitional provisions.</li> </ul>
COBS 22.4 COBS 22.5	Consequential changes in relation to binary options and contracts for difference to reflect the assumption that UK firms will lose passporting rights after exit day. Additionally, the rules will not apply to EEA firms unless they have temporary permission, are in the financial services contracts regime as a supervised run-off firm or are a contractual run-off firm. This means that the rules will not apply to EEA firms which are operating in the UK outside of those regimes. For example, the rules will not apply to an EEA firm operating in the UK through the Overseas Persons Exclusion. As a result of the changes, EEA firms operating outside the temporary regimes will be treated in the same way as third country firms. This is due to changes being made to the glossary terms used in the application provisions. The rules will automatically apply to temporary permission firms, supervised run-off firms and contractual run-off firms.
Glossary (firm, Home State regulator, regulatory system) PRIN 3.1.1A and 3.3.3 BCOBS 1.1.1A and 2.1.1 GEN 2.2.36	Minor amendments relating to provisions introduced by our FCA 2019/5 Payment Services and Electronic Money (Principles for Businesses and Conduct of Business) Instrument 2019. These provisions extended the application of the Principles for Businesses to certain payment service providers and electronic money issuers that are not credit institutions; and of certain communication rules and guidance to communications with payment service and e-money customers. The amendments to PRIN and BCOBS (and consequential amendments to the Glossary) delete provisions referring to inward passporting EEA firms. The amendments to GEN give guidance regarding the application of Handbook rules and guidance for firms in the temporary permissions and financial services contracts regime.
SUP 12.4 (heading) SUP 16.1.2 Glossary (appointed representative directory person)	Consequential changes to reflect the loss of passporting rights for EEA tied agents and certain changes made in Brexit PS19/5. The Reporting of Information about Directory Persons (Dual-regulated firms) Instrument 2019 includes provisions that refer to passporting between UK and EEA countries by EEA tied agents. Therefore, we propose amending the Glossary as well as the heading at SUP 12.4 (deleting reference to 'EEA registered tied agents') and amending SUP 16.1.2G(1) to reflect changes set out in Brexit PS19/5.

Annex 1 to SYSC 1, Table A: Application of the common platform requirements in SYSC 4 to SYSC 10 SYSC 6.1.2	PS19/14 set out the final policy and the final rules for peer-to-peer (P2P) platforms. The new P2P rules and guidance will come into force on 9 December 2019, except for those applying MCOB to P2P platforms that offer home finance products which came into force on 4 June 2019. We are consulting on consequential changes needed to ensure the new P2P rules and guidance reflect changes made in the Exiting the European Union: High Level Standards (Amendments) Instrument 2019. These amendments do not change the policy intent of the final P2P rules and guidance published in PS19/14.
MCOB 1.2.22 MCOB 1.2.23 MCOB 15.5.3	Our new rules for home finance facilitated by a peer-to-peer (P2P) platform include two references to firms not acting in a way that would be non-compliant with EU law (MCOB 1.2.22R(5) and MCOB 1.2.23G(1)). We propose amending these provisions so that they refer to EU law in force immediately before exit day. We also propose deleting the guidance at MCOB 15.5.3G as the reference to the scope of the Mortgage Credit Directive (MCD) is no longer relevant and could confuse readers.
Glossary (SRD, SRD asset manager, SRD institutional investor) SYSC 3.4, COBS 1 Annex 1, COBS 2.2B, COBS 18.5A	To implement the Revised Shareholder Rights Directive (SRD II) we set requirements on asset managers and life insurers to make disclosures about their engagement policies and investment strategies as set out in PS19/13 (Proposals to promote shareholder engagement: Feedback to CP19/7 and final rules). We propose making a small number of amendments to our SYSC and COBS rules.
Glossary (TD Equivalence Decision) LR 9.2, 14.3, 21 DTR 1B, 7.3	<p>In its policy note on Official Listing of Securities, Prospectus and Transparency (Amendment) (EU Exit) Regulations 2019, the Treasury proposed that the UK's primary markets regime after exit day should apply to all issuers that:</p> <ul style="list-style-type: none"> <li><b>i.</b> have securities admitted to trading on a regulated market in the UK or admitted to listing in the UK, or</li> <li><b>ii.</b> are making a public offer in the UK.</li> </ul> <p>This applies irrespective of the country in which the issuer was incorporated. In November 2018, we consulted on a number of changes to the LR, DTR and PR to ensure consistency with this approach. We are now consulting on further changes to amend the new LR and DTR that have been made since March which implemented the provisions in the Revised Shareholder Rights Directive (SRD II) on related party transactions and which came into force on 10 June 2019.</p> <p>We are proposing to amend the scope of application of the related party transaction rules in DTR7.3. These rules currently apply to UK incorporated issuers with voting shares admitted to trading to a regulated market in the EEA. From exit day, DTR7.3 will only apply to UK incorporated issuers with voting shares admitted to a UK regulated market. These changes will alter the scope of application of these rules. This is consistent with our broader approach to onshoring our primary markets sourcebooks following exit day described above. We are also proposing to amend DTR 7.3.2R so that issuers will be required to use the definition of a 'related party' in IFRS as adopted by the UK, rather than IFRS as adopted by the EU.</p> <p>In addition, we are also proposing that the continuing obligations in the LR which extend the application of DTR 7.3 to certain listed companies will also change. Currently, LR 9.2.6 CR, LR 14.3.25R and LR 21.8.17AR differentiate between issuers incorporated in the EEA and other overseas incorporated issuers. Following exit day, all overseas incorporated issuers with a premium or standard listing of equity shares, or a premium listing of depository receipts, will be subject to the same requirements. The LR will no longer provide an exemption for issuers that are required to comply with requirements imposed by another EEA state that correspond to DTR 7.3.</p> <p>The transitional relief in LR TR 14 (under which issuers are only required to comply with the new related party rules from the start of the financial year beginning on or after 10 June 2019) will not be available to issuers that were admitted to listing after 10 June 2019.</p>
PROD 3.2	Consequential amendment. Minor amendment to add the words 'UK provisions implementing' when referencing MiFID.

<p>PRR</p>	<p>The Prospectus Regulation Rules sourcebook (PRR) replaced the Prospectus Rules sourcebook, and other parts of the Handbook were amended from 21 July 2019 by our <a href="#">Prospectus Regulation Rules Instrument 2019</a>, FCA 2019/80 arising from the application of the Prospectus Regulation, (EU) 2017/1129, in the UK that day. The Prospectus Regulation Rules Instrument 2019 also included consequential changes to the Listing Rules sourcebook (LR). In this instrument, we have made amendments to PRR and discrete provisions in other sourcebooks to reflect the onshoring of the Prospectus Regulation, which are largely consequential in nature. Note that:</p> <ul style="list-style-type: none"> <li><b>i.</b> For references in PRR to European Securities and Markets Authority (ESMA) guidelines on risk factors: ESMA has published its Final Report, but the guidelines are not yet applicable. We plan to reassess references to these ESMA guidelines prior to making the instrument.</li> <li><b>ii.</b> For PRR Appendix 2: We intend to insert a hyperlink to the onshored disclosure annexes in Regulation 2019/980, though we may revisit the position in due course.</li> </ul> <p>We are also proposing changes to the Prospectus RTS Regulation (EU) 2019/797 on the regulatory technical standards (RTS) – see the BTS section below.</p>
<p>Glossary (EEA SMCR firm, MiFID authorisation and management body change notification ITS) SYSC 23 (Annex 1 Part Three 3.4; Annex 1 Part One 1.3) SUP 10 (various) SUP 15.15 (various)</p>	<p>In Brexit CP18/36, we proposed changes to near-final SM&amp;CR rules for FCA- authorised firms. We did this to ensure that the rules function in the event of a no-deal exit. Since then, we have also published PS19/20 (<a href="#">Optimising the Senior Managers &amp; Certification Regime - feedback to CP19/4</a>) which set out final SM&amp;CR rules for FCA- authorised firms. As a result, certain provisions on which we already consulted in Brexit CP18/36 need to be updated to reflect the SM&amp;CR final rules in PS19/20. As with Brexit CP18/36, we are using our FSMA powers to make amendments to these provisions.</p>

<p>SFTR (FEES, DEPP, EG)</p> <p>Glossary (trade repository, securities financing transaction)</p>	<p>We are proposing to expand our definition of the activities undertaken by trade repositories (TRs) to include activities under the Securities Financing Transaction Regulation (SFTR), which comes into effect from April 2020.</p> <p>In March 2019, we made rules (PS19/10) enabling us to charge fees from TRs when responsibility for regulating them passes from ESMA to the FCA after the UK leaves the EU. These rules covered their activities under the European Market Infrastructure Regulation (EMIR), which ESMA currently regulates. Although the SFTR trade reporting obligation does not come into application until April 2020, TRs are able to apply for registration before then so that they are compliant with the Regulation when that obligation comes into force. When the UK leaves the EU, UK-based TRs will be able to apply to the FCA. In preparation for this, taking account generally of the approach adopted in the case of onshored EMIR, the draft instrument proposes:</p> <ul style="list-style-type: none"> <li><b>i.</b> Discounting the application fee by 50% for TRs which are already registered with the FCA for EMIR or SFTR activities or Securitisation Repositories registered for Securitisation Regulation activities and which wish to add an additional activity. This follows the model of variations of permission (VoPs) for FSMA firms. They are generally charged half the application fee when they request a VoP. UK firms already registered with ESMA will convert to FCA regulation without payment of any fee. This will register them for EMIR activity. If they then apply for SFTR activity, they will be seeking a variation of registration, not making a new application so will pay only £2,500 for registration. Going forward, a firm will pay the full fee to register whether it applies under one or more than one of the regulations, and the discounted fee if it later wishes to extend its activities under another regulation.</li> <li><b>ii.</b> Expanding the definition of income from which TRs' annual periodic fees are calculated to include SFTR activities. Firms will report this in their applications, and we will use the information to calculate their fees from April 2020.</li> <li><b>iii.</b> Making provision for the possibility of recognised third country TRs under the onshored legislation, in due course.</li> </ul> <p>To be registered as a TR for SFTR activities in the UK after the UK leaves the EU, firms will need to complete an FCA registration form providing the required details set out in the onshored BTS for applications for SFTR. The registration form allows firms to submit either the full information required in the BTS, or the abbreviated information under Article 26 of the BTS if the firm is already registered as a TR with the FCA for EMIR.</p> <p>TRs providing securities financing transaction services in the EU are regulated under SFTR and supervised by ESMA. The Treasury intends to make us the supervisor responsible for TRs registered under the UK SFTR regime. More information on our regulation of TRs can be found on our website.</p> <p>The legislation that transfers these responsibilities to us will apply our existing supervisory and enforcement processes as necessary to enable us to fulfil these new roles effectively. Therefore, we propose minor amendments to the Decision Procedure and Penalties Manual (DEPP) and the Enforcement Guide (EG). These amendments are to reflect the changes made by the legislation and describe our enforcement powers and processes in relation to TRs.</p> <p>Please refer to the instrument appendix to Chapter 10 for the SFTR fees related changes.</p>
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Glossary (insurance special purpose vehicle)	<p>In Brexit CP18/36, we proposed maintaining the current scope of the COBS 18.6A Insurance Special Purpose Vehicle (ISPV) regime. To take advantage of COBS 18.6A, an ISPV must assume risks from a 'regulated insurance entity' which is an insurance entity authorised under Solvency II. As Solvency II firms are exempt from MiFID II, rules derived from MiFID II will not apply to these ISPVs and instead COBS 18.6A applies.</p> <p>The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 ('MiFID onshoring regulations') amend the way that the onshored MiFID II regime will apply to ISPVs. These regulations stipulate that any ISPV with Part 4A permission to undertake risk transformation activity will not be an 'investment firm' for MiFID authorisation purposes. This means they may be able to rely on the Regulated Activities Order (RAO) exclusion that allows a company to issue its own securities without carrying on the regulated activity of 'dealing as principal' and so the MiFID authorisation regime will not apply.</p> <p>We propose amending the Glossary definition of an 'insurance special purpose vehicle' as a consequential change to reflect the changes in the MiFID onshoring regulations. This will mean that authorised ISPVs that assume risks from insurers from within or outside the EEA will fall under the scope of COBS 18.6A.</p>
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**Q7.1: Do you have any comments on the proposed Handbook amendments?**

**Binding technical standards (BTS)**

- 7.13** We made two sets of BTS instruments in March and April 2019. We are proposing to amend provisions in BTS that have been made since then. These proposed changes relate to the following:
- a.** Payment Services Directive 2 (PSD2)
  - b.** Prospectus Regulation (PR)
  - c.** Securities Financing Transactions Regulation (SFTR)
  - d.** Securitisation Regulation (SR)
  - e.** 4th Money Laundering Directive (4MLD)
- 7.14** We also propose minor changes to three BTS under the Capital Requirements Regulation (CRR) and to one BTS under the Credit Ratings Agencies Regulation.
- 7.15** There are several BTS mandated under EU legislation that have not been finalised by the EU. We have included BTS that have been published in the Official Journal of the EU by 26 July 2019. BTS that have not reached that stage are not included in this consultation, such as certain remaining BTS mandated under the Benchmark Regulation.
- 7.16** We propose to amend 12 new BTS. The Treasury intends to add these new BTS to the Schedule of the Regulators' Powers SI (The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018). This will enable us to amend deficiencies within these BTS arising from the UK's exit from the EU. The list of new BTS is set out in Annex 1 - Part B.
- 7.17** Some BTS are relevant to firms and persons supervised by us and the Bank/PRA. The legislation giving us the power to correct BTS designates an appropriate regulator for each BTS and, in some cases, this is shared between two regulators. We and the Bank/PRA have taken the approach that one authority will take the lead in making corrections in preparation for exit day, based on which authority's remit and objectives are most relevant. We have collaborated with the Bank/PRA and we will be sharing consultation responses with each other.

**7.18** It is important to both the Bank/PRA and us that the substance of our SFTR BTS maintains an appropriate degree of alignment after exit day. Therefore, any changes to these BTS before exit day will be made with each other's consent.

**7.19** The FCA is the lead authority for two SFTR BTS:

- a.** Commission Delegated Regulation (EU) 2019/356 of 13 December 2018, and
- b.** Commission Implementing Regulation (EU) 2019/363 of 13 December 2018.

**7.20** The PRA is the lead authority for Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 under EMIR. Details on proposed changes can be found in the Bank/PRA's consultation paper (CP18/19, July 2019).

**7.21** All changes to BTS should be read alongside the amendments made to the onshored EU legislation, as amended by the Treasury. You may also find it useful to refer to the amendments to our Handbook, where Handbook provisions and BTS interrelate. We have outlined our changes to the BTS below.

### ***Payment Services Directive 2***

**7.22** In the event of a no-deal exit, Brexit-related amendments to the Payment Services Regulations 2017 will come into effect. These amendments will require firms in the UK to comply with regulatory technical standards for strong customer authentication made by the FCA (UK SCA-RTS) instead of the EU SCA-RTS. In CP18/44 we consulted on making the UK SCA-RTS - substantially in the form of the EU SCA-RTS - with some changes to ensure that the UK SCA-RTS operate effectively in the UK once the UK has left the EU.

**7.23** The EU SCA-RTS will fully come into effect on 14 September 2019. As a result of the change of exit day, the EU SCA-RTS will now in its entirety become part of UK law on exit day. Therefore, in addition to making the UK SCA-RTS on exit day, we also propose to revoke the EU SCA-RTS in the UK in the event of a no-deal exit.

**7.24** Commission Implementing Regulation (EU) 2019/410 and Commission Delegated Regulation (EU) 2019/411 contain requirements relating to details of payment institutions and e-money institutions to be included in the EU central register, currently including firms providing services in the UK. In the event of a no-deal exit, these regulations will become part of UK law on exit day. However, the EU central register will no longer need to contain details of firms providing services in the UK. Therefore, we propose that the Second Technical Standards (Payment Services Directive) (EU Exit) Instrument 2019 will revoke Commission Implementing Regulation (EU) 2019/410 and Commission Delegated Regulation (EU) 2019/411 in the UK in the event of a no-deal exit.

### ***Prospectus Regulation***

**7.25** Under the Treasury's SI, The Prospectus (Amendments etc.) (EU Exit) Regulations 2019, the requirement for us to send data to ESMA for the classification of prospectuses and the annual statistical report has been removed. We propose amending Commission Delegated Regulation 2019/979 to reflect this removal, to address other consequential changes flowing from the Treasury's proposed onshoring amendments to the Prospectus Regulation and Delegated Regulation 2019/980, and to make necessary amendments to legislative cross-references. If, after exit day, we thought it necessary to collect data for classification of prospectuses from issuers for supervisory purposes, we would consult the market then on such a proposal.

This proposal may involve revisiting the content of onshored Commission Delegated Regulation 2019/979.

### ***Securities Financing Transactions Regulation***

- 7.26** The SFTR imposes requirements on entities that enter into securities financing transactions. It also establishes common organisational and conduct of business standards for trade repositories (TRs).
- 7.27** Further to the Treasury's SI, the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019, we are proposing changes to the SFTR technical standards currently applying under EU law. The reporting obligation in Article 4(1) of SFTR does not become applicable in the EU for the first time until 11 April 2020 and, as the legislation currently stands, will not be incorporated into UK legislation on exit day.
- 7.28** In this consultation, we refer to onshoring SFTR technical standards, making FCA Handbook amendments and a new UK TR authorisation application form. All of these instruments are contingent on the UK having requirements in place equivalent to the EU SFTR reporting obligation, and this remains the working assumption. However, without a reporting obligation in place, a number of the requirements we are consulting on would not have a practical effect.
- 7.29** If a reporting obligation is not legislated for ahead of 11 April 2020, we could create a similar (but not identical in terms of scope) reporting obligation using our general rule-making powers, subject to FSMA process requirements. Such provisions would require the relevant counterparties subject to the onshored SFTR reporting obligation to report securities financing transactions to TRs registered under the SFTR. The amendments to EG, DEPP and FEES take account of similar previous changes relating to TRs' functions under EMIR and, in particular, processes surrounding applications to the FCA to become TRs.
- 7.30** We are consulting on proposed changes to BTS concerning the data publication and data access requirements for TRs, general requirements in secondary EU legislation concerning format and frequency of reports to be made to a TR, and the two BTS associated with registration and application of TRs for which we are the appropriate regulator. The changes are mechanical and consequential in nature, taking account of other onshoring legislation.
- 7.31** We are also revoking the Commission Implementing Regulation (EU) 2019/365 of 13 December 2018 laying down implementing technical standards with regard to the procedures and forms for exchange of information on sanctions, measures and investigations in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council.

### ***Securitisation Regulation***

- 7.32** The UK Securitisation Regulation requires that the originator and/or sponsor (as appropriate) of a securitisation must notify us where a securitisation meets the simple, transparent and standardised (STS) criteria. It also specifies that the originator, sponsor or securitisation special purpose entity (SSPE) may voluntarily use the services of a third-party verifier, authorised by us, to check whether a securitisation meets the STS criteria. We are consulting on proposed changes to Commission Delegated Regulation (EU) No 2019/885 specifying the information to be provided in the application for authorisation of a third-party assessing STS compliance. The



changes are either consequential on the Securitisation (Amendment) (EU Exit) Regulations 2019 or minor.

- 7.33** Article 43(8) of the UK Securitisation Regulation makes transitional provisions for reporting securitisations under Article 7, effective until BTS have been made under Article 7(3). These transitional provisions refer to Commission Delegated Regulation (EU) 2015/3, which will no longer be in place from exit day. We therefore propose to reinstate Commission Delegated Regulation (EU) 2015/3 for purposes of the transitional provisions in Article 43(8) of the UK Securitisation Regulation, with changes to fix Brexit-related deficiencies. We will confirm whether we go ahead with our proposal and, if appropriate, publish the instrument required for these purposes in the Handbook Notice following this quarterly consultation.

#### ***4th Money Laundering Directive***

- 7.34** The BTS in relation to the 4th Money Laundering Directive (EU 2015/849) set out certain additional measures that financial institutions should take when they have a branch or majority-owned subsidiary located in a third country whose law does not permit the implementation of group-wide anti-money laundering and countering the financing of terrorism policies and procedures. In particular, it sets out what steps should be taken to assess the risk of operating in that third country, what restrictions on activities might be appropriate, and what additional steps might be taken at group level to mitigate any risks arising. The changes we propose are cross-cutting, consequential and in line with our general onshoring approach.

#### ***Capital Requirements Regulation***

- 7.35** From exit day, the current EU Credit Rating Agencies Regulation (CRAR) will be onshored into UK law and we (the FCA) will become the regulator of UK credit rating agencies (CRAs). As part of their EU withdrawal preparations, certain EU CRAs are registering new UK entities to ensure that they are able to continue to issue ratings in the UK from exit day. Under the Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019 (CRAR SI), where those new entities have submitted an advance application for registration as a CRA prior to exit day, they will be deemed to be validly registered as a CRA under the temporary registration regime from exit day until the FCA has determined their application.
- 7.36** Under article 4 of the onshored CRAR, UK regulated entities may use credit ratings for regulatory purposes if they are issued or endorsed by registered UK CRAs.<sup>15</sup> However, where a CRR firm wishes to use a rating for the purposes of prudential calculations, the relevant UK CRA will also need to have had its ratings categories mapped in BTS 2016/1799 (for the purposes of the Standardised Approach to credit risk in the CRR) or BTS 2016/1801 (for the purposes of the CRR provisions relating to securitisation exposures). Those BTS are the joint responsibility of the FCA and the PRA under the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018. In April 2019, the two BTS were split into separate FCA and PRA versions by the PRA's Technical Standards (Capital Requirements) (EU Exit) (No. 3) Instrument 2019.
- 7.37** We are proposing to amend Part 1 (FCA version) in BTS 2016/1799 and in BTS 2016/1801 to refer to the new UK entities of certain CRAs where the existing mappings currently refer only to specific EU legal entities. This will ensure that UK CRR firms can

<sup>15</sup> UK regulated entities may also use ratings issued by a third country CRA that has been certified by the FCA under article 5 CRAR where those ratings relate to third country issuers or financial instruments.



use the ratings issued by those new UK CRAs from exit day. Firms should note that these amendments do not pre-judge the outcome of the FCA registration process in relation to any particular CRA that has submitted an application under the CRAR SI. We are discussing with the PRA equivalent amendments to the PRA versions of these BTS.

**7.38** In the absence of our proposed amendments to the BTS, there is a risk that the regime governing the regulatory use of credit ratings in the UK will not operate effectively from exit day. In particular, the CRA temporary registration regime would not provide the desired continuity for UK CRR firms seeking to use ratings issued by the new UK CRAs where those CRAs do not currently have mappings under the BTS. This may be particularly important where pre-exit day EU ratings are onshored by being reissued from a new UK CRA after exit day (for example, where a subsequent ratings action means that a pre-exit day EU rating can no longer benefit from the transitional provisions).

**7.39** Under the transitional provision in article 4(1A) CRAR and the provisions relating to CRAs in the FCA and PRA's separate transitional directions, UK firms may use pre-exit day ratings issued by EU CRAs for up to one year from exit day. As a result, we are retaining existing mappings for EU CRAs in the FCA versions of BTS 2016/1799 and BTS 2016/1801 for the time being, as they may remain relevant for ratings that fall within scope of the transitional provisions. As we approach the end of the transitional period, we will consider whether further amendments are required in accordance with our ongoing post-exit day powers to maintain those BTS. Firms should note, however, that the presence of a mapping for a CRA in the BTS does not guarantee that the ratings of that CRA are eligible for regulatory use in the UK. In each case, firms should also consider the CRAR and any applicable transitional provisions and related guidance when determining if they may use a credit rating.

**7.40** In July 2019, the PRA published proposed amendments to Part 2 (the PRA version) of Commission Implementing Regulation (EU) 2016/1646 in Appendix 3 to PRA CP18/19. Those amendments reflect that the definition of a 'regulated market' under the onshored Capital Requirements Regulation (as amended by The Capital Requirements (Amendment) (EU Exit) Regulations 2018) will be reduced in scope from exit day to refer only to relevant UK markets. Remaining EU markets will therefore be treated as third country markets for the purposes of the related rules specified in Article 197(8) CRR. We intend to make identical changes to Part 1 (the FCA version) of those BTS. Firms should refer to paragraphs 3.4 and 3.5 and Appendix 3 of the [Bank/PRA's consultation paper](#) (CP18/19, July 2019) for further information.

**Q7.2: Do you have any comments on the proposed BTS amendments?**

***European Market Infrastructure Regulation (EMIR)***

**7.41** The revised European Market Infrastructure Regulation (EMIR REFIT) applies, for the most part, before 31 October 2019. The Treasury has laid an SI (The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) (No. 2) Regulations 2019) which deals with deficiencies in the EMIR REFIT regulation. In particular, it proposes changes to the operation of the power to suspend the clearing obligation, currently conferred on the European Commission. It also extends the temporary exemption from the clearing obligation for Pension Scheme Arrangements, which had expired under the previous version of EMIR, but was extended under EMIR REFIT. No changes to our rules or to BTS were necessary in relation to these changes.

## Update on use of temporary transitional power

**7.42** On 1 February 2019, we published a statement about our general approach to using the temporary transitional power (TTP) and, on 29 March 2019, we published the main FCA transitional direction, the FCA's prudential transitional direction, and an explanatory note. On 25 July 2019, we updated firms about our intention to extend the proposed duration of the directions from 30 June 2020 to 31 December 2020. This date is aligned with the end date intended by the Bank and the PRA.

**7.43** We will publish more information before exit day on how firms should comply with the rules after exit day. We expect to make transitional directions shortly before exit day. These will be updated to take account of exit instruments made between 29 March 2019 and exit day. Firms will not be expected to make individual applications to benefit from the FCA's transitional directions.

**Q7.3: Do you have any comments on our TTP approach, including on its application to the further changes proposed in this chapter, or its application to the changes in relevant draft statutory instruments that have been laid or published since 29 March 2019 (Annex 1 - Part C)?**

## Temporary permissions regime

**7.44** In March 2019, in preparation for exiting the EU, we made rules that apply a subset of our Handbook to firms in the temporary permission regime (TPR) and the supervised run-off regime (TP firms). These rules are set out in the General Provisions (GEN), in GEN 2.2.26R onwards (FCA instrument 2019/36). The application of these rules is based on the EUWA definition of 'exit day', which is 31 October 2019. Among other rules, GEN 2.2.26R continues to apply rules that applied to an EEA passporting firm immediately before 31 October 2019. It will therefore apply any rules made by us after March 2019 to TP firms immediately before exit day. The same approach applies to so-called TP UCITS qualifiers and TP AIFM qualifiers, which market but do not manage such funds in the UK. Further details of the rules that apply to TP firms are set out in our Brexit CPs 18/29 and 18/36, and Brexit PS19/5.

### ***Application of rules for overdrafts and buy now pay later offers to firms subject to TPR***

**7.45** We previously consulted on applying the rules we made for overdrafts and buy now pay later offers to firms that operate in the UK which, after exit day, would be subject to the TPR. This covers the rules we made in the following instruments which are due to come in to force after 31 October 2019:

- a.** FCA 2018/52 (Competition Remedies instrument): rules which come in to force on 18 December 2019.
- b.** FCA 2019/71 (PS19/16- High-cost credit-Overdrafts): rules which come in to force on 18 December 2019 and 6 April 2020.
- c.** FCA 2019/72 (PS19/17- High-cost credit- Buy Now, Pay Later): rules which come in to force on 12 November 2019.

**7.46** We are also proposing to apply the draft rules contained in CP19/18 on Overdraft Pricing Remedies and Competition Remedies to any firm subject to the TPR (in that CP, we proposed that these rules should come into force on 18 December 2019 and 6 April 2020).

- 7.47** We propose that these rules and draft rules come into force on the respective implementation dates listed. The rules in the instruments set out above are intended to apply to firms operating in the UK. They are consumer protection measures which address the harm we have found in different sectors of the high-cost credit market. A number of the rules also promote competition. More detail on each of these rules and the harm they address can be found in the following PSs:
- a.** PS19/16 High-Cost Credit Review: Overdraft Policy Statement
  - b.** CP18/42 High-Cost Credit Review: Overdrafts Consultation and Policy Statement
  - c.** PS19/17 Buy Now Pay Later offers
- 7.48** We want to ensure that firms providing overdrafts or buy now pay later offers in the UK are subject to the same rules and that consumers benefit from the same levels of protection. We propose that these rules should apply to any firms operating in the UK, which, after exit day, would be subject to the TPR just as the rules would have applied to such firms under current passporting arrangements. These proposals would ensure the rules apply as intended in the event of a no-deal exit before the rules come into force.
- 7.49** Our general approach to TPR rules is to ensure the applicability of existing rules from exit day and certain directive based rules (see GEN 2.2.37G(2)). However, they do not generally cover the applicability of amendments to the Handbook after exit day. The rules listed above come into force after exit day. The general approach allows for the Handbook to be amended for TPR firms and for specific rules, such as these, to be applied to them.

## Cost benefit analysis

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- 7.50** Under the powers to address deficiencies in our rules and BTS in the Financial Regulators' Powers SI there is no obligation to conduct a cost benefit analysis (CBA). We have therefore not produced a CBA for the proposed amendments to rules and BTS where we have used those powers.
- 7.51** For some of the proposed rule changes we intend to use our powers in FSMA. FSMA requires us to publish a CBA of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'. We are not required to undertake a CBA if, in making the appropriate comparison, there will be no increase in costs, or there will be an increase in costs but that increase will be of minimal significance. We have set out below our assessment of relevant rule changes in light of these obligations.
- 7.52** For the high-cost credit proposals, only a small number of firms will be affected by the changes proposed and these firms are not significant participants in the sectors affected by the rule changes we have previously made in the high-cost credit market. Additionally, we do not expect there to be a significant increase in costs for these firms resulting from these proposals. This is because firms will have to comply with these rules (and incur the one-off costs of becoming compliant) when they become regulated firms. Therefore, the effect of these proposals is that one-off costs are brought forward in time, rather than new costs being imposed on firms. We therefore believe the costs of our proposals will be of minimal significance and we are not required to conduct a CBA.
- 7.53** For the SM&CR proposals, we do not expect there to be a significant increase in costs for firms, other than what we have already consulted on in Brexit CP18/36. This is because the

proposed changes are minor and do not require firms to comply with additional rules other than those they are already required to comply with. We therefore believe the costs related to these proposals will be of minimal significance and we are not required to conduct a CBA. For the costs and benefits of the related SM&CR proposals, stakeholders may wish to consult our previous Brexit CPs and PS, specifically CP18/36.

## Compatibility statement

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- 7.54** In relation to changes in this chapter that we propose to make using the delegated powers under the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018, we consider that they are appropriate to prevent, remedy or mitigate any failure of the relevant FCA Handbook provisions or BTS to operate effectively, or any other deficiency in the relevant FCA Handbook provisions or BTS, arising from the withdrawal of the UK from the EU. The changes proposed under these powers do not impose or increase taxation or fees; make retrospective provision; create a criminal offence which is capable of leading to imprisonment of more than two years; establish a public authority; implement the Article 50 Withdrawal Agreement; result in the transfer of a function of an EU authority to a UK authority; confer any power to legislate by means of orders, rules, regulations or any other subordinate instrument; or amend any legislation other than the relevant FCA Handbook provisions and BTS.
- 7.55** The proposed amendments in relation to high-cost credit are compatible with our general duties because they improve the application and usability of the amended provisions, and enhance the compatibility of those provisions with our statutory duties. How those provisions are themselves compatible our strategic objective and advance our operational objectives having regard to the matters set out in section 1C(2) FSMA and the regulatory principles in section 3B is described in the previous CPs relevant to those provisions. 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 for the proposed amendments in relation to high-cost credit.
- 7.56** The proposed amendments in relation to the SM&CR rules and fees rules are compatible with our general duties (as described in the previous CPs). The proposed changes will ensure the proper functioning of SM&CR and fees rules in the event of a no-deal exit and, as a result, also supports firms in complying with these rules.

## Equality and diversity

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- 7.57** We have assessed whether the proposals in this chapter would give rise to equality and diversity matters, or would adversely impact anyone with a protected characteristic under the Equality Act 2010. We consider that they do not.

## Annex 1

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### List of Handbook instruments, BTS, and relevant statutory instruments

#### A. *List of Handbook instruments reviewed (not included in PS19/5) resulting in changes to the Handbook on which we are consulting*

- FCA 2018/17 Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2018
- Conduct of Business (Binary Options) Instrument 2019 (FCA2019/15)
- FCA 2018/52 Current Accounts and Overdrafts (Information and Tools for Customers) Instrument 2018
- FCA 2019/5 Payment Services and Electronic Money (Principles for Businesses and Conduct of Business) Instrument 2019
- FCA 2019/11 Reporting of Information about Directory Persons (Dual-Regulated Firms) Instrument 2019
- Operating an electronic system in relation to lending (Peer-to-Peer Lending) Instrument 2018 (CP18/20)
- Mortgages and home finance (peer to peer) instrument 2018 (CP18/20) FCA 2019/75
- Shareholder Rights Directive (Asset Managers and Insurers) Instrument 2019 (CP19/7)
- Listing and Disclosure Sourcebooks (Shareholder Rights Directive) Instrument 2019 (CP19/7)
- HCC Buy now pay later (CP18/43) FCA2019/72
- Personal Current Accounts and Overdrafts Instruments 2019
- Conduct of Business Sourcebook (Contracts for difference) Instrument 2019 (CP18/38)
- Prospectus Regulation Rules Instrument 2019 (CP19/6)
- High-cost Credit Review – Overdraft Pricing Remedies and Competition Remedies – PS to CP19/18

#### B. *List of BTS proposed to be amended using delegated powers*

- Capital Requirements Regulation (CRR)
  - Commission Implementing Regulation (EU) No 2016/1799 (amendment)
  - Commission Implementing Regulation (EU) No 2016/1801 (amendment)
  - Commission Implementing Regulation (EU) No 2016/1646 (amendment)
- Payment Services Directive 2 (PSD2)
  - Commission Implementing Regulation (EU) 2019/410 laying down implementing technical standards with regard to the details and structure of the information to be notified, in the field of payment services, by competent authorities to the European Banking Authority
  - Commission Delegated Regulation (EU) 2019/411 setting technical requirements on development, operation and maintenance of the electronic central register within the field of payment services and on access to the information contained therein
- Prospectus Regulation (PR)
  - Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301

- Securities Financing Transactions Regulation (SFTR)
  - Commission Delegated Regulation (EU) 2019/356 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of securities financing transactions (SFTs) to be reported to trade repositories
  - Commission Implementing Regulation (EU) 2019/363 of 13 December 2018 laying down implementing technical standards with regard to the format and frequency of reports on the details of securities financing transactions (SFTs) to trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) No 1247/2012 with regard to the use of reporting codes in the reporting of derivative contracts
  - Commission Delegated Regulation (EU) 2019/358 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on the collection, verification, aggregation, comparison and publication of data on securities financing transactions (SFTs) by trade repositories
  - Commission Delegated Regulation (EU) 2019/359 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration and extension of registration as a trade repository
  - Commission Implementing Regulation (EU) 2019/364 of 13 December 2018 laying down implementing technical standards with regard to the format of applications for registration and extension of registration of trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council
  - Commission Implementing Regulation (EU) 2019/365 of 13 December 2018 laying down implementing technical standards with regard to the procedures and forms for exchange of information on sanctions, measures and investigations in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council
  - Commission Delegated Regulation (EU) 2019/357 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on access to details of securities financing transactions (SFTs) held in trade repositories
- 4th Money Laundering Directive (4MLD)
  - Commission Delegated Regulation 2019/758 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries
- Securitisation Regulation (SR)
  - Commission Delegated Regulation 2019/885 RTS on information to be provided in the application for the authorisation of a third party verifying STS compliance
- Credit Ratings Agencies Regulation (CRAR)
  - Commission Delegated Regulation (EU) 2015/3 of 30 September 2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments

**C. *List of relevant (the Treasury's) statutory instruments***

- The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment etc., and Transitional Provision) (EU Exit) (No.2) Regulations 2019
- The Financial Services (Miscellaneous) (Amendment) (EU Exit) (No.3) Regulations 2019
- The Capital Requirements (Amendment) (EU Exit) Regulations 2019
- The Prospectus (Amendment etc.) (EU Exit) Regulations 2019
- The Risk Transformation and Solvency 2 (Amendment) (EU Exit) Regulations 2019
- The Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019
- The Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019
- The Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2019
- The Securitisation (Amendment) (EU Exit) Regulations 2019



## 8 Lending Standards Board – FCA code recognition

### Introduction

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- 8.1** We have established a process and criteria for recognising industry codes for unregulated financial markets and activities<sup>16</sup>. Industry groups that have new or existing codes of conduct which set 'proper standards of market conduct' for regulated firms undertaking unregulated activities within financial markets may apply to us to have their codes formally recognised.
- 8.2** In this Chapter, we are seeking views on whether we should recognise the Lending Standards Board's (LSB) Standards of Lending Practice for business customers<sup>17</sup> ("the LSB's code").
- 8.3** We consider that this code sufficiently meets our recognition criteria.

### Background

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- 8.4** Our Handbook explains that, in the context of unregulated activities, behaviour that is in line with an FCA-recognised industry code will tend to indicate compliance with rules that reference 'proper standards of market conduct' (eg the Code of Conduct sourcebook (COCON) 2.1.5R<sup>18</sup>) – see the Decision Procedure and Penalties Manual (DEPP) 6.2.1G(4A)<sup>19</sup>. Following a recognised code will be one of the ways for a person to establish that they have observed proper standards of market conduct in relation to unregulated activities.

### The LSB's Standards of Lending Practice for business customers

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- 8.5** The LSB is a self-regulatory body providing independent oversight of its registered firms' adherence to voluntary standards, with sanctions for material breaches.
- 8.6** Following the transfer of consumer credit regulation to the FCA, an independent review of the LSB's Lending Code concluded there was still a role for voluntary self-regulation, but that duplication of self-regulation with functions performed by us should end.

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<sup>16</sup> <https://www.fca.org.uk/about/recognised-industry-codes-criteria-process>

<sup>17</sup> <https://www.lendingstandardsboard.org.uk/the-standards-for-business-customers/#the-standards-for-business-customers>

<sup>18</sup> <https://www.handbook.fca.org.uk/handbook/COCON/2/1.html>

<sup>19</sup> <https://www.handbook.fca.org.uk/handbook/DEPP/6/2.html>



- 8.7** To provide clarity and focus, lending to personal and business customers was divided into separate codes, which were launched in March 2017 and fully implemented by July 2018.
- 8.8** The LSB's code aims to cover the whole customer journey. Each section states the desired customer outcome, a statement of how a firm should achieve that outcome and a detailed set of standards demonstrating the LSB's approach to achieving that outcome. A separate Information for Practitioners document includes guidance on the code. The LSB has not sought recognition of this additional guidance, nor are we proposing to offer it.
- 8.9** The LSB has 22 registered firms signed up to the code. The small business lenders cover approximately 96% of the SME lending market.<sup>20</sup>
- 8.10** Our analysis of the code against our recognition criteria is set out in Table 1.

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20 The SLPs for business customers apply to businesses/organisations, which at the point of lending:

- have an annual turnover of up to £6.5 million in their previous financial year (exclusive of VAT and other turnover related taxes), and;
- do not have a complex ownership structure (for example, businesses with overseas, multiple, or layered ownership structures).

With effect from 1 November 2019, the turnover threshold will be £25m.

**Table 1: Analysis of LSB's codes against FCA Code Recognition Criteria**

<p><b>Does this code advance our statutory objectives?</b></p>	<p>The LSB's code is designed to fill a gap in protection by setting a benchmark for good lending practice, setting out how registered firms should deal with their business customers throughout the entire product lifecycle. We consider that this would advance our objective of markets working well.</p> <p>The code would also advance our operational objective of protecting and enhancing the integrity of the UK financial system.</p>
<p><b>Does this code:</b></p> <ul style="list-style-type: none"> <li>• focus on market activities and issues which are not already covered by binding regulatory rules?</li> <li>• represent an effort to raise standards, taking into account the views of all relevant stakeholders during its development?</li> <li>• condone any practice we have previously objected to, or which we would expect not to condone if it became known?</li> </ul> <p>And has it been:</p> <ul style="list-style-type: none"> <li>• subject to public scrutiny that has allowed alternative views to be expressed and taken into consideration, including from firms, public authorities, consumer groups and academics?</li> <li>• made publicly available and free for all parties who wish to use it?</li> </ul>	<p>The code covers some activities within our regulatory perimeter (e.g. business loans of £25,000 or less to sole traders and certain partnerships which are not otherwise exempt or excluded). We understand the regulated activities covered by the code to be significantly lower than the unregulated activities in both volume and value. The code includes a general statement that if legislation or statutory rules (which would include our rules) replicate or conflict with the standards, then the relevant legislation or statutory rules supersede the standards, but no examples are given. We would make clear on our website that our recognition extends only to the code in relation to unregulated activities.</p> <p>The code has evolved, through the Banking Code and then the Lending Code, since the establishment in 2001 of the Banking Codes Standards Board (the LSB's predecessor body). It is subject to regular review and 'continuous improvement'. This includes formal reviews at least every 3 years; interim updates following thematic reviews and industry developments; and regular updates of the 'good practice' in the Information for Practitioners.</p> <p>In reviewing the code, the LSB seeks views from a wide range of stakeholders. This includes lenders, bodies which represent small businesses, and other bodies including the FCA and the Financial Services Consumer Panel.</p> <p>We have not identified any instances where the code endorses practices that we have previously objected to or would expect not to condone.</p> <p>The code is published on the LSB's website. Any lender that meets certain registration requirements (including a review of its adherence to the LSB's codes) can register with the LSB and commit to abide by them. However, fees are charged to cover the costs of the LSB and its oversight.</p>
<p><b>It is reasonable to state that this code:</b></p> <ul style="list-style-type: none"> <li>• is a widely supported, clear, practical and unambiguous articulation of the proper standard of market conduct, covering significant conduct issues that a reader would expect to be covered?</li> <li>• sets standards broadly comparable in substance or intended outcomes to those that exist in other analogous financial markets?</li> <li>• encapsulates what would otherwise be considered good and fair practice among knowledgeable, experienced and reasonable market participants representing their industry and profession?</li> </ul>	<p>The code covers significant conduct issues that would be expected to be covered (in particular product information and sale, credit monitoring and financial difficulty) and are expressed in clear language.</p> <p>The code sets standards that are broadly comparable with those for regulated consumer credit, albeit not in as much detail.</p> <p>Market participants' support for these standards is evidenced by the high proportion of lenders that have signed up to them voluntarily.</p>

**Q8.1: Do you think the LSB's code for business customers should be recognised by the FCA? If not, please explain why.**

## Cost benefit analysis

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**8.11** We are not required to conduct a cost benefit analysis on consultation proposals to recognise industry codes of conduct, and we have not done so in this instance.

## Compatibility statement

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**8.12** Section 1B of FSMA requires us, when discharging our general functions, to act in a way that is compatible with our strategic objective and to advance one or more of our operational objectives. We also need, to carry out our general functions in a way that promotes effective competition in the interests of consumers, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective.

**8.13** We consider the proposal to recognise the LSB's code for business customers is compatible with our strategic objective of ensuring that the relevant markets function well, and advances the operational objective of protecting and enhancing the integrity of the UK financial system. We will, for example, be able to take action against individuals subject to the Senior Managers and Certification Regime (SM&CR) if we see behaviour that runs contrary to an industry code that has been recognised for conduct standards within unregulated markets.

## Equality and diversity

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**8.14** We do not believe that the proposals adversely impact any of the groups with protected characteristics specified in legislation, i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment. We will continue to consider the equality and diversity implications of the proposal during the consultation period. In the interim, we welcome any feedback to this consultation.

## 9 Modifications to periodic fees rules for Recognised Overseas Investment Exchanges

### Introduction

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- 9.1** This chapter sets out our proposal to modify the periodic fee rules for Recognised Overseas Investment Exchanges (ROIEs) that are also European Economic Area (EEA) market operators.
- 9.2** EEA market operators who operate a regulated market, a multilateral trading facility (MTF) or an organised trading facility (OTF) can currently rely on the Markets in Financial Instruments Directive II (MiFID II) passporting rights to ensure that members based in the UK have access to their markets, where they engage in regulated activities to do so. Their day to day supervision is only the Home State responsibility. We do not have regulatory responsibilities for their activities and therefore we do not charge them any periodic fees (paid annually).
- 9.3** Once the UK has left the European Union (EU), passporting rights will no longer apply to MiFID II EEA market operators seeking to facilitate the participation of the exchange in UK markets.
- 9.4** In September 2018, we published a direction clarifying how an EEA market operator may make an application to become a ROIE. This would enable the participation of the exchange in UK markets, should they no longer be able to rely on MiFID passport rights once the UK leaves the EU. Since September 2018, EEA market operators have applied for and been granted recognition as ROIEs.
- 9.5** Under the current ROIE fees rules, these EEA market operator ROIEs are required to pay periodic fees from the time they have been granted recognition. Although many have been granted recognition they can continue to rely on their passporting rights until the UK leaves the EU.

### Summary of proposals

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- 9.6** It is our policy intention that EEA market operators that are also ROIEs ("EEA/ROIEs") should only commence paying periodic fees from when the UK leaves the EU. The modifications to the existing ROIE fees rules we are proposing is intended to give effect to this policy as follows:
- The EEA/ROIEs commence paying periodic fees in the fee-year within which the UK leaves the EU.

- The amount they pay will be the ROIE periodic fee payable in that fee-year prorated by the number of months of that fee-year the UK is no longer in the EU. For subsequent fee-years they will pay the full periodic fee applicable for that fee-year.

**9.7** For example, if the UK leaves the EU without an agreement and transition period on the 31 October 2019 (no-deal Brexit) EEA/ROIEs will pay 5/12ths of the £60,000 ROIE periodic fee covering the period 1 November 2019 to 31 March 2020 (5 months). From the 2020/21 EEA/ROIEs will pay the full ROIE periodic fee applicable in that and subsequent fee-years.

**9.8** The proposed amendment in FEES 4 Annex 2AR includes references to exit day. We have included a definition to be in force before 31 October 2019.

**Q9.1: Do you have any comments on our proposed modifications to the periodic fees rules for Recognised Overseas Investment Exchanges that can currently rely on the MiFID II passporting rights?**

## Cost benefit analysis

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

## Compatibility statement

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**9.10** 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. Our proposals are not intended in themselves to advance our operational objectives, but the fees we collect will fund our capacity to achieve them. Therefore, these proposals will indirectly advance our operational objectives.

**9.11** In preparing these proposals, we have had regard to the regulatory principles set out in s.3B of FSMA. The most relevant regulatory principles are considered below:

**The principle that a burden or restriction should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.**

Our proposals will ensure that EEA/ROIEs will only pay periodic fees from the time that MiFID II passport rights will no longer apply to EEA market operators to facilitate the participation of the exchange in UK markets.

**The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation**

Our proposals take account of the differences between ROIEs that are also EEA market operators and ROIEs that are not.

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

Our proposals make clear our policy approach for all ROIEs.

## **Equality and diversity**

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- 9.12** We do not think that the proposals in this chapter adversely impact any of the groups with protected characteristics under the Equality Act 2010, i.e. 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.

## 10 Changes to reporting requirements in the Supervision manual

### Introduction

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- 10.1** We collect regulatory data to inform and support our supervision of firms. Our data reporting requirements are set out in the Handbook, predominantly in the Supervision manual (SUP). We use internal feedback and feedback directly from firms to clarify and improve these requirements. This chapter sets out our proposed changes to regulatory reporting forms, their application rules and supporting guidance notes.
- 10.2** This chapter of the consultation paper (CP) will be of interest to:
- Payment Service providers (PSPs) that offer payment accounts within the meaning of the Payment Accounts Regulations (PARs)
  - Client Assets sourcebook (CASS) debt management firms
- 10.3** The proposed changes to the Handbook text itself, and the statutory powers they will be made under, are set out in the relevant appendix of this CP.

### Summary of proposals

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#### Alterations to reporting under the Payment Accounts Regulations (SUP 16.22)

- 10.4** We propose to alter the rules in SUP 16.22 to improve the wording about how firms should submit payment account data. We will also provide guidance on where questions regarding the reporting can be directed when approaching the next submission deadline (within two months of the relevant reporting period, the next one of which covers 1 March 2018 to 29 February 2020).

**Q10.1: Do you have any comments on our proposals to alter the reporting requirements under the Payment Accounts Regulations (SUP 16.22)?**

#### Alterations to the guidance notes (contained in SUP 16 Annex 38B) for form CCR005 (client money and assets data for consumer credit firms)

- 10.5** We propose to alter the guidance notes contained in SUP 16 Annex 38B which incorrectly refers to CASS large debt management firms in the guidance for question 3A. The references should be to all CASS debt management firms, and so, we propose to alter the guidance in this annex to avoid any confusion for firms reporting the CCR005 data item.

**Q10.2: Do you have any comments on our proposals to change references to CASS large debt management firms to CASS debt management firms in the guidance notes to question 3A of CCR005 contained in SUP 16 Annex 38B?**

## Cost benefit analysis

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- 10.6** Sections 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA provides that section 138I(2)(a) does not apply where we consider that there will be no increase in costs, or the increases will be of minimal significance.
- 10.7** Having assessed the individual changes proposed in this chapter and based on previous estimates relating to similar reporting changes, we believe the exemption of minimal significance applies to the all the items and that therefore no CBA is required for the proposals in this chapter.
- 10.8** With regard to the changes to SUP 16.22, we are not required to publish a CBA in respect of the exercise of our powers under the Payment Services Regulations 2017 (PSRs) or the Payment Account Regulations 2015 (PARs). Under Regulation 106 PSRs, we are required to have regard to the principle that a burden or restriction which is imposed on a person should be proportionate to the benefits. We have considered whether these proposals impose costs on PSPs are beyond those inherent in the PSRs. We also consider proportionality in respect of the exercise of our powers under the PARs.
- 10.9** As the changes proposed under the PSRs and PARs are designed to correct or clarify the existing reporting obligations, we consider that there is not likely to be an increase in cost, and that any increase in cost will be of minimal significance.

**Q10.3: Do you have any comments on our assessment that any increase of costs from the changes set out in this chapter will be of only minimal significance?**

## Impact on mutual societies

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- 10.10** Section 138K(2) of FSMA requires us to provide an opinion on whether the impact of proposed rules on mutual societies is significantly different to the impact on other authorised persons. We are satisfied that the proposed changes in this chapter do not impact mutual societies any differently to any other authorised persons.

## Compatibility statement

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- 10.11** Section 1B of FSMA requires us, so far as is reasonably possible, to act in a way that is compatible with our strategic objective and advances one or more of our operational objectives. We also need to carry out our general functions in a way that promotes effective competition in the interests of consumers.



- 10.12** The proposed changes in this chapter will allow us to collect more accurate firm data. In turn, this will allow more effective and efficient supervision of firms which will help us to advance our consumer protection objective.
- 10.13** We do not believe that the proposed changes will have an impact on competition. The changes are expected to impose no or minimal costs on firms and do not affect firms' incentives or ability to compete in the market.

## Equality and diversity

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

# 11 Changes to our 'wake-up' pack and annuity information prompt rules

## Introduction

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### 'Wake-up' packs

- 11.1** Open market options statements – commonly known as 'wake-up' packs – are intended to give consumers adequate information about their retirement options. 'Wake-up' packs include signposts to additional sources of information, guidance or advice to help consumers compare options and to decide which option(s) may be most appropriate for them.
- 11.2** However, our [Retirement Income Market Study](#) highlighted concerns that 'wake-up' packs were largely ineffective at stimulating more informed consumer decisions, primarily because of their length and complexity. Evidence gathered in trials and responses to our [Retirement Outcomes Review \(ROR\) Interim Report](#) supported steps to streamline the key information provided in 'wake-up' packs, provide the packs to consumers earlier in the consumer journey and to increase the frequency of delivery of these packs.
- 11.3** In [CP18/17](#) we consulted on requiring changes to the packs. We then finalised these changes in [PS19/1](#). Our new rules and guidance come into force on 1 November 2019.
- 11.4** In this chapter, we propose two changes to our 'wake-up' pack rules and guidance to ensure that they better reflect our policy intention. We aim to bring these changes into force on 1 November 2019.
- 11.5** These changes will be of interest to pension providers.

### Annuity information prompt

- 11.6** In [CP16/37](#) we consulted on rules to introduce annuity information prompts ('information prompt') to help inform consumers how much they could gain by shopping around and switching annuity provider. Where relevant, the information prompt will show the difference between the firms' quote and the highest quote available on the market for a like-for-like annuity. Following publication of [PS17/12](#), rules for the information prompt came into force in March 2018.
- 11.7** These rules did not cover enhanced annuities. However, a number of respondents to our ROR Interim Report supported the introduction of measures to raise consumer awareness of potential eligibility to purchase an enhanced annuity. Therefore, in [CP18/17](#) we consulted on a requirement for firms to ask consumers purchasing an annuity, questions about their health and lifestyle. This would help firms determine whether the consumer is eligible to purchase an enhanced annuity. We proposed that firms must use this information when generating a market-leading quote for comparison.

- 11.8** We finalised these changes in PS19/1. Our new rules and guidance come into force on 1 November 2019.
- 11.9** In this chapter, we propose a change to our information prompt rules and guidance. We describe how we propose to bring this change into force in paragraph 12.26.
- 11.10** This change will be of interest to annuity providers and third-parties providing annuity quotes to consumers.

## Summary of proposals

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### Proposed amendments to our 'wake-up' pack rules

- 11.11** Our rules and guidance on 'wake-up' packs are set out in the Conduct of Business Sourcebook (COBS) at 19.4. The two changes we propose to make are set out below.

#### *Serious ill-health lump sum*

- 11.12** Where a consumer has less than 12 months to live, there are certain circumstances in which they can take the entirety of their pension benefits as a serious ill-health lump sum. Such payment will be an authorised payment for the purposes of pension tax rules.
- 11.13** We have become aware, since publishing PS19/1, that an unintended consequence of the changes we have made to our rules on 'wake-up' packs is that - from 1 November - a pension provider will be required to give a consumer a 'wake-up' pack even when they have requested payment of their pension savings as a serious ill-health lump sum.
- 11.14** Giving the consumer a pack when such lump sum is requested could be insensitive, and the contents are unlikely to be relevant or helpful to the consumer.
- 11.15** Unfortunately, this issue was not raised with us when we consulted on these new rules in CP18/17. So, we are now proposing to amend COBS 19.4 to make it clear that a pension provider is not required to give a consumer a pack when the consumer has requested payment of their pension savings as a serious ill-health lump sum, and the firm has not rejected that request.
- 11.16** In cases where a consumer's request for a serious ill-health lump sum is rejected, but a 'wake-up' pack has fallen due in the period where the request was being considered (if, for example, the consumer is approaching age 50), the firm must provide a pack within two months of rejecting the consumer's request.

**Q11.1:** Do you agree with our proposal to amend COBS 19.4 to make it clear that a pension provider is not required to give a consumer a 'wake-up' pack when the consumer has requested payment of their pension savings as a serious ill-health lump sum, and the firm has not rejected that request? If you disagree, please explain why.

#### *Consumers over 55 on 1 November 2019*

- 11.17** In PS19/1 we introduced additional trigger points for pension providers to give 'wake-up' packs to consumers. This includes giving a pack within 2 months after a consumer reaches the age of 50, 4 to 10 weeks before a consumer reaches the age of 55, and 4 to 10 weeks

before each birthday which is at 5 year intervals after the age of 55 unless the consumer has fully crystallised their pension pot (unless the consumer has received a pack in the previous 12 months).

- 11.18** Our policy intention is that firms will be required to send wake up packs at each of the age triggers from 1 November 2019, including each trigger requiring packs to be sent ahead of consumers turning 60, 65 and so on.<sup>21</sup> For example, we intend that it should be a requirement that a consumer who will reach the age of 65 in 2020 should be sent a 'wake-up' pack four to ten weeks before their birthday.
- 11.19** However, we have become aware, since publishing PS19/1, that our final rules could be interpreted as only requiring a pension provider to give a consumer a pack for ages 60 onwards if that consumer was previously caught by the requirement to receive a pack at age 55.
- 11.20** So, we are now proposing to amend COBS 19.4 to clarify our policy intention.

**Q11.2: Do you agree with our proposal to amend COBS 19.4 to make it clearer that firms will be required to send 'wake-up' packs at each of the triggers from 1 November 2019, including all triggers requiring packs to be sent ahead of consumers turning 60, 65 and so on? If you disagree, please explain why.**

### **Proposed amendments to our annuity information prompt rules**

- 11.21** Our rules and guidance on the information prompt are set out in COBS 19.9.
- 11.22** Our policy intention is that where a consumer refuses to answer questions about their health and lifestyle, the firm must generate a market-leading annuity quote for comparison on a non-enhanced basis.
- 11.23** We take this view because these consumers may still be able to get a better income from their annuity - or a better-priced annuity - if they shopped around. So, there is clearly still value in giving the consumer a market-leading quote.
- 11.24** The final rules and guidance say that where a consumer refuses to answer questions about their health and lifestyle, the firm does not need to produce a market-leading quote at all. Instead, COBS 19.9.15 R says that the firm must simply present its own quote to the consumer (in the template in Part 3 or Part 6 of COBS 19 Annex 3R, as relevant) and explain to those consumers what they may be missing out on.
- 11.25** So, we are now proposing to amend COBS 19.9 to reflect our policy intention.
- 11.26** We will allow firms to comply with the rule as set out in the appendix to PS19/1 (ie to provide the templates in Parts 3 or 6 of COBS 19 Annex 3R, as relevant, where the consumer refuses to answer their health and lifestyle questions) until 1 January 2020. However, firms are encouraged

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21 To be clear, the rules require firms to start sending these 'wake-up' packs:

- to consumers whose 50th birthday is on or after 1 November 2019, within 2 months of that birthday; and
- to consumers whose 55th, 60th, 65th, and so on, birthday is 10 weeks or more after the 1 November 2019 (so whose birthday is on or after 10 January 2020), 4 to 10 weeks before that birthday.

However, should firms wish to start issuing 'wake-up' packs to consumers before these points, our rules do not prevent them from doing so.

to comply from 1 November 2019, and we are aware that some firms already plan to obtain market-leading quotes in these circumstances.

**Q11.3: Do you agree with our proposal to amend COBS 19.9 to make it clear that where a consumer refuses to answer a firm's questions about their health and lifestyle, the firm must generate a market-leading annuity quote for comparison on a non-enhanced basis? If you disagree, please explain why.**

**11.27** We are also proposing to amend the definition of "market-leading pension annuity quote", in COBS 19.9.1, to reflect the fact that this quote may not always be produced on a like-for-like basis with the firm's own guaranteed quote. This will be the case where a firm obtains health and lifestyle information from a consumer but does not underwrite annuities on an enhanced basis, so does not use this information in sourcing their own guaranteed quote.

**Q11.4: Do you agree with our proposal to amend the definition of "market-leading pension annuity quote"? If you disagree, please explain why.**

## Cost benefit analysis

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**11.28** Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to perform a cost benefit analysis (CBA) of our proposed requirements and to publish the results, unless we consider the proposal will not give rise to any cost or will give rise to an increase in costs of minimal significance.

## Proposed amendments to our 'wake-up' pack rules

### *Serious ill-health lump sum*

**11.29** We consider that the majority of affected firms are not making preparations to provide 'wake-up' packs to consumers requesting serious ill-health lump sums. Also, we expect that the additional costs to firms to provide packs to those consumers that request serious ill-health lump sums but whose requests are rejected, will be very minor. So, we do not anticipate this change will have a material impact on the analysis of costs and benefits set out in CP18/17.

### *Consumers over 55 on 1 November 2019*

**11.30** The CBA we published in CP18/17 assumes that, from 1 November 2019, pension providers must issue packs at each of the relevant ages, in accordance with the policy intention we're now looking to deliver through this consultation. We also consider that the majority of firms are currently implementing the rules as made in accordance with the policy intention set out in this consultation. So, we do not expect there to be any material change to the costs or benefits set out in CP18/17 because of this proposed amendment.

## Proposed amendments to our annuity information prompt rules

### **Background**

- 11.31** Both our CBAs on our annuity information prompt rules - in CP16/37 and CP18/17 - assumed that all consumers receiving a guaranteed quote would also obtain a market-leading quote. In other words, in CP16/37 we produced our cost and benefit estimates on the assumption that no consumers would withhold their consent for a market-leading quote to be generated, and in CP18/17 we produced our estimates on the basis that no consumers would refuse to answer the firm's health and lifestyle questions.
- 11.32** So, our existing estimates already assume that a consumer will always be provided with a market-leading quote in addition to the firm's own guaranteed quote.
- 11.33** Firms are already required to have systems in place to identify consumers that refuse to answer a firm's health and lifestyle questions. We consider that the additional costs resulting from our proposed change are the one-off costs of updating and training staff about the change in approach and updating IT systems to reflect it.

### **Costs**

- 11.34** We use standard assumptions to estimate firm costs based on the standardised costs model, of which further details can be found in Annex 1 'How we analyse the costs and benefits of our policies'.
- 11.35** In CP18/17 we said that there are around 15 firms with substantial sales in the annuity market. These firms will be affected by this change.
- 11.36** Based on the assumption that updating and training staff about the change in approach and updating IT systems to reflect it amounts to a small change project, we estimate that the total cost to industry will be around £255,000.
- 11.37** We have included guidance that says that firms may consider adapting the relevant templates to provide additional information about the benefits of providing health and lifestyle information when the consumer seeks an annuity quote, where the consumer refuses to answer a firm's health and lifestyle questions. If a firm chooses to do this we recognise that they will incur additional costs to amend the templates. However, given that this is not a requirement, we have not included it within our CBA.

### **Benefits**

- 11.38** Given the assumptions used to produce our CBAs in in CP16/37 and CP18/17, there are no additional benefits to this change that have not already been provided in our estimates to date.

### **Impact on mutual societies**

- 11.39** 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

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- 11.40** 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.
- 11.41** We consider that the proposed amendments set out in this chapter are compatible with our strategic objective and advance our operational objectives under section 1B of FSMA. Specifically, these proposals advance our operational objective of protecting consumers. They do so by ensuring that consumers receive improved, relevant information from firms, which enables them to make better informed decisions about their retirement income.

## Equality and diversity

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- 11.42** 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.

## 12 Changes to the Training and Competence sourcebook

### Introduction

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**12.1** Our training and competence regime supports consumers by making sure the financial services workforce is appropriately qualified and well regulated. The regime includes detailed requirements for individuals carrying on certain retail activities and qualification requirements which are set out in the Training and Competence sourcebook (TC). We generally consult for one month whenever a new qualification is added, or when other minor changes are made to the list of appropriate qualifications in TC.

**12.2** In this chapter, we propose the following changes:

#### **Glossary**

- update the Glossary definition of accredited body to reflect that the Pensions Management Institute (PMI) will cease to be recognised as an accredited body

#### **TC Appendix 4**

- updates to the appropriate qualifications tables in TC Appendix 4 including the addition of three new listings

**12.3** This chapter will be of interest to firms and individuals who are subject to our TC requirements. The text of the proposed amendments and the statutory powers under which they will be made are set out in the relevant appendix.

### Summary of proposals

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#### **Glossary**

**12.4** We received notification from the PMI that it wished to terminate its recognition as an accredited body. We therefore propose to update the Glossary definition of accredited body to reflect that the PMI ceased to be recognised as an FCA accredited body from 31 May 2019.

#### **TC Appendix 4**

**12.5** We propose updating the text in TC App 4.1.1AE(2) to signpost interested parties to the existing guidelines at TC App 7.1. This is to ensure that Handbook users are signposted to the relevant information.

**12.6** We propose to update The London Institute of Banking & Finance's qualification, 'Pension Transfers plus Diploma for Financial Advisers (DipFA®) post 2010 exam standards' which includes a Retail Distribution Review (RDR) compliant qualification for Activities 4 and 6, DipFA. We propose to update the qualification so that 'Pension Transfers' can be combined with another qualification provider's RDR compliant



qualification. Therefore, we propose to change the qualification to: "Pension Transfers when combined with either a Diploma for Financial Advisers (DipFA®) post 2010 exam standards or an RDR compliant qualification for Activities 4 and 6 (key '1')."

**12.7** We propose to update the qualification Foundation Degree Award in Financial Services listed within TC Appendix 4.1 offered by Blackburn College to specify that the syllabus was in force until October 2017. The college has stopped offering the qualification since then.

**12.8** We propose to update the following Chartered Insurance Institute qualifications to reflect our policy statement PS18/20 on raising the pension transfer specialist qualification standard to include an RDR-compliant retail investment advice qualification:

Current	Proposed
Certificate in Pension Transfer Advice	Certificate in Pension Transfer Advice (meets the requirement until 30 September 2020)
Fellow or Associate including three pensions-related subjects as confirmed by the examining body	Fellow or Associate including three pensions-related subjects as confirmed by the examining body, until 30 September 2020. From 1 October 2020, when combined with an RDR compliant qualification for Activities 4 and 6.
G60 paper of Advanced Financial Planning Certificate	G60 paper of Advanced Financial Planning Certificate, until 30 September 2020. From 1 October 2020, when combined with an RDR compliant qualification for Activities 4 and 6.
Unit AF3 of the Advanced Diploma in Financial Planning	Unit AF3 of the Advanced Diploma in Financial Planning, until 30 September 2020. From 1 October 2020, when combined with an RDR compliant qualification for Activities 4 and 6.

**12.9** We propose to add three new qualifications offered by the following qualification providers:

- the Chartered Institute for Securities and Investment's 'Investment Advice Diploma (where candidate holds 3 modules including Retail Advice & Planning)' and to list this qualification as being appropriate for TC activities 4 and 6 (key a)
- a new qualification offered by The London Institute of Banking and Finance, the 'Level 4 Certificate in Long Term Care and Later Life Planning (CertLTCP)' as being appropriate for TC activity 7 (key 1)
- a new qualification offered by the Chartered Insurance Institute, the 'CII Level 6 Award in Regulated Pension Transfer Advice / Unit AF7 (when combined with an RDR compliant for Activities 4 and 6)' as being appropriate for TC activity 11 (key 1)

**Q12.1 Do you have any comments on the proposed amendments to TC?**

## Cost benefit analysis

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- 12.10** Section 138I of Financial Services and Markets Act (FSMA) requires us to perform a cost benefit analysis (CBA) of our proposed requirements and to publish the results, unless we consider the proposal will not give rise to any cost or that the increase in costs will be of minimal significance.
- 12.11** We expect firms to incur no, or minimal, additional costs as a result of these proposals as they aim to keep the list of appropriate qualifications in TC, and the Glossary definition for accredited bodies, up to date. As such, we have not conducted a CBA as per the exemption under FSMA.

## Mutual societies

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- 12.12** 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

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- 12.13** Section 1B of FSMA requires us, when discharging our general functions, as far as is reasonably possible, to act in a way that is compatible with our strategic objective and advance one or more of our operational objectives. We also need to, carry out our general functions in a way that promotes effective competition in the interests of consumers, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective.
- 12.14** We are satisfied that these proposals are compatible with our general duties under section 1B of FSMA, having regard to the matters set out in 1C(2) FSMA and the regulatory principles in section 3B.
- 12.15** In preparing the proposals as set out in this consultation, we have considered our duty to promote effective competition in the interests of consumers. It is our opinion that making changes to the appropriate qualifications lists and the Glossary definition for accredited bodies has no negative impact on competition, as this increases the number of qualifications available and keeps the list up to date.
- 12.16** In preparing the proposals as set out in this consultation, we have had regard to the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government in connection with our general duties. It is our opinion that making changes to the appropriate qualifications lists has no impact on the Treasury's recommendations.

## Equality and diversity

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- 12.17** We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions.
- 12.18** Overall, we do not consider that the proposals adversely impact any of the groups with protected characteristics, i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 12.19** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim we welcome any feedback to this consultation on such matters.

## Annex 1

### Abbreviations used in this paper

<b>AIFMD</b>	Alternative Investment Fund Managers Directive
<b>AUM</b>	Assets under management
<b>CRD</b>	Capital Requirements Directive
<b>COLL</b>	Collective Investment Schemes sourcebook
<b>EMIR</b>	European Market Infrastructure Regulation
<b>EU</b>	European Union
<b>EuSEF</b>	European social entrepreneurship fund
<b>EuVECA</b>	European venture capital fund
<b>FSB</b>	Financial Stability Board
<b>GDPR</b>	General Data Protection Regulation
<b>MiFID</b>	Markets in Financial Instruments Directive
<b>NURS</b>	Non-UCITS retail scheme
<b>OTC</b>	Over-the-counter
<b>PAIF</b>	Property authorised investment fund
<b>SUP</b>	Supervision manual
<b>UCITS</b>	Undertakings for Collective Investment in Transferable Securities
<b>CCP</b>	Central counterparty
<b>CBA</b>	Cost benefit analysis
<b>LR</b>	Listing Rules Sourcebook
<b>DTR</b>	Disclosure Guidance and Transparency Rules Sourcebook
<b>APER</b>	Statements of Principle and Code of Practice for Approved Persons Sourcebook
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls Sourcebook

<b>COCON</b>	Code of Conduct Sourcebook
<b>DEPP</b>	Decision Procedure and Penalties Manual
<b>FRC</b>	Financial Reporting Council
<b>TD</b>	Transparency Directive
<b>NSM</b>	National Storage Mechanism
<b>TDAD</b>	Transparency Directive Amending Directive
<b>RTS</b>	Regulatory Technical Standard
<b>ESEF</b>	European single electronic format
<b>XHTML</b>	Extensible hypertext markup language
<b>ixBRL</b>	Inline extensible business reporting language
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>IFRS</b>	International Financial Reporting Standards
<b>HMRC</b>	HM Revenue and Customs
<b>EMIR</b>	European Market Infrastructure Regulation
<b>REFIT</b>	European Commission Regulatory Fitness and Performance Programme
<b>FC</b>	Financial counterparties
<b>NFC</b>	Non-financial counterparties
<b>LSB</b>	Lending Standards Board
<b>SM&amp;CR</b>	Senior Managers & Certification Regime
<b>PERG</b>	Perimeter Guidance Manual
<b>PS</b>	Policy statement
<b>PSD</b>	Payment Services Directive
<b>PSD2</b>	The Revised Payment Services Directive (2007/64/EC)
<b>MiFID II</b>	Markets in Financial Instruments Directive II
<b>ROIEs</b>	Recognised Overseas Investment Exchanges

<b>EEA</b>	European Economic Area
<b>MTF</b>	Multilateral trading facility
<b>OTF</b>	Organised trading facility
<b>CASS</b>	Client Assets sourcebook
<b>CP</b>	Consultation paper
<b>FCA</b>	Financial Conduct Authority
<b>GABRIEL</b>	Gathering Better Regulatory Information Electronically
<b>PSP</b>	Payment service provider
<b>COBS</b>	Conduct of Business Sourcebook
<b>ROR</b>	Retirement Outcomes Review
<b>PMI</b>	Pensions Management Institute
<b>RDR</b>	Retail Distribution Review
<b>TC</b>	Training and Competence sourcebook
<b>EUWA</b>	European Union (Withdrawal) Act 2018
<b>PRA</b>	Prudential Regulation Authority
<b>the Bank</b>	Bank of England
<b>PSR</b>	Payment Systems Regulator
<b>BTS</b>	EU binding technical standards
<b>SIs</b>	Statutory Instruments
<b>TTP</b>	Temporary transitional power
<b>TPR</b>	Temporary Permissions Regime
<b>AFMs</b>	Authorised fund managers
<b>P2P</b>	Peer-to-Peer
<b>MCD</b>	Mortgage Credit Directive
<b>SRD II</b>	Revised Shareholder Rights Directive

<b>PRR</b>	Prospectus Regulation Rules sourcebook
<b>TRs</b>	Trade Repositories
<b>SFTR</b>	Securities Financing Transaction Regulation
<b>VoPs</b>	Variations of permission
<b>EG</b>	Enforcement Guide
<b>ISPV</b>	Insurance special purpose vehicle
<b>RAO</b>	Regulated Activities Order
<b>PR</b>	Prospectus Regulation
<b>SR</b>	Securitisation Regulation
<b>4MLD</b>	4th Money Laundering Directive
<b>CRR</b>	Capital Requirements Regulation
<b>TRs</b>	Trade repositories
<b>STS</b>	Simple, transparent and standardised
<b>SSPE</b>	Securitisation special purpose entity
<b>CRAR</b>	Credit Rating Agencies Regulation
<b>CRA<sub>s</sub></b>	Credit rating agencies
<b>EMIR REFIT</b>	Revised European Market Infrastructure Regulation

## Appendix 1

### List of questions

- Q2.1** Do you have any comments on the proposed amendments to SUP 15 Annex 6 forms? If so, please elaborate.
- Q2.2** Do you have any comments on the analysis of costs in this section?
- Q3.1** Do you have any comments on the proposed amendments to COLL 5.2.23R and 5.6.15R? If so, please elaborate.
- Q3.2** Do you have any comments on the proposed amendments to COLL 6.2.23R and 8.5.12AR? If so, please elaborate.
- Q3.3** Do you agree with our proposal to add a direction in COLL. 9.3 requiring operators of s.272 recognised schemes to provide an annual certificate? If not, please elaborate.
- Q3.4** Do you have any comments on the proposed amendments to COLL 6.6.12R, 8.5.4R and 5.2.4R (2)? If so, please elaborate.
- Q3.5** Do you have any comments on the analysis of costs in this section?
- Q4.1:** Do you agree with our proposal to update the definition of the Code in the Glossary and LR Appendix 4?
- Q4.2:** Do you agree with our proposed transitional provisions in LR and DTR?
- Q4.3:** Do you agree with our proposed amendments to LR 9.8.6R, LR 9.8.10R and LR 15.6.6R?
- Q4.4:** Do you agree with our proposed amendments to DTR 7.1.7G and DTR 7.2.8G?
- Q4.5:** Do you agree with our proposed amendments to COCON, SYSC, APER and DEPP in relation to the Code?
- Q5.1:** Do you agree with our proposed amendment to DTR 4.1 for the implementation of ESEF in the UK?



- Q6.1:** Do you have any comments to our proposed amendments to SUP 15A?
- Q6.2:** Do you have any comments to our proposal to amend the Glossary?
- Q7.1** Do you have any comments on the proposed Handbook amendments?
- Q7.2** Do you have any comments on the proposed BTS amendments?
- Q7.3** Do you have any comments on our TTP approach, including on its application to the further changes proposed in this chapter, or its application to the changes in relevant draft statutory instruments that have been laid or published since 29 March 2019 (Annex 1 - Part C)?
- Q8.1:** Do you think the LSB's code for business customers should be recognised by the FCA? If not, please explain why.
- Q9.1:** Do you have any comments on our proposed modifications to the periodic fees rules for Recognised Overseas Investment Exchanges that can currently rely on the MiFID II passporting rights?
- Q10.1:** Do you have any comments on our proposals to alter the reporting requirements under the Payment Accounts Regulations (SUP 16.22)?
- Q10.2:** Do you have any comments on our proposals to change references to CASS large debt management firms to CASS debt management firms in the guidance notes to question 3A of CCR005 contained in SUP 16 Annex 38B?
- Q10.3:** Do you have any comments on our assessment that any increase of costs from the changes set out in this chapter will be of only minimal significance?
- Q11.1:** Do you agree with our proposal to amend COBS 19.4 to make it clear that a pension provider is not required to give a consumer a 'wake-up' pack when the consumer has requested payment of their pension savings as a serious ill-health lump sum, and the firm has not rejected that request? If you disagree, please explain why.
- Q11.2:** Do you agree with our proposal to amend COBS 19.4 to make it clearer that firms will be required to send 'wake-up' packs at each of the triggers from 1 November 2019, including all triggers requiring packs to be sent ahead of consumers turning 60, 65 and so on? If you disagree, please explain why.

- Q11.3:** Do you agree with our proposal to amend COBS 19.9 to make it clear that where a consumer refuses to answer a firm's questions about their health and lifestyle, the firm must generate a market-leading annuity quote for comparison on a non-enhanced basis? If you disagree, please explain why.
- Q11.4:** Do you agree with our proposal to amend the definition of "market-leading pension annuity quote"? If you disagree, please explain why.
- Q12.1** Do you have any comments on the proposed amendments to TC?

## **Appendix 2**

### **Amendments to the Supervision manual related to AIFMD and amendments to the Collective Investment Schemes sourcebook**

**ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE AND  
AUTHORISED FUNDS (MISCELLANEOUS 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 or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 137A (The FCA’s general rules);
    - (b) section 137D (FCA general rules: product intervention);
    - (c) section 137R (Financial promotion rules);
    - (d) section 137T (General supplementary powers);
    - (e) section 139A (Power of the FCA to give guidance);
    - (f) section 214 (General);
    - (g) section 247 (Trust scheme rules);
    - (f) section 248 (Scheme particulars rules);
    - (h) section 261I (Contractual scheme rules);
    - (i) section 261J (Contractual scheme particulars rules); and
    - (j) section 277A (Regular provision of information relating to compliance with requirements for recognition);
  - (2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228);
  - (3) the following powers of direction in the Alternative Investment Fund Managers Regulation 2013 (SI 2013/1773):
    - (a) regulation 21 (Disclosure obligations for small registered UK AIFMs);
    - (b) regulation 26 (Approval for delegation of functions by full-scope UK AIFMs);
    - (c) regulation 54 (FCA approval for marketing); and
    - (d) regulation 55 (Change to information provided with application); and
  - (4) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

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

### **Amendments to the Handbook**

- D. The Collective Investment Schemes sourcebook (COLL) is amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

### **Notes**

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

### **Citation**

- G. This instrument may be cited as the Alternative Investment Fund Managers Directive and Authorised Funds (Miscellaneous Amendments) Instrument 2019.

By order of the Board  
[*date*]

## Annex A

### Amendments to the Collective Investment Schemes sourcebook (COLL)

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

#### 5 Investment and borrowing powers

...

#### 5.2 General investment powers and limits for UCITS schemes

...

Investment powers: general

5.2.4 R The *scheme property* of each *UCITS scheme* must be invested only in accordance with the relevant provisions in sections *COLL 5.2* to *COLL 5.5* that are applicable to that *UCITS scheme* and up to any maximum limit so stated, but, the *instrument constituting the fund* may further restrict:

(1) ...

(2) the proportion of the *capital property* of the *UCITS scheme* that may be invested in assets of any description;

...

...

OTC transactions in derivatives

5.2.23 R A transaction in an *OTC derivative* under *COLL 5.2.20R(1)(b)* or, for the purposes of (1) only, executed by or on behalf of a *regulated money market fund*, must be:

(1) with an approved counterparty; a counterparty to a transaction in *derivatives* is approved only if the counterparty is:

(a) an *eligible institution* or an *approved bank*; ~~or~~

(b) a person whose *permission* (including any *requirements* or *limitations*), as published in the *Financial Services Register*, or whose *Home State authorisation*, permits it to enter into the transaction as *principal off-exchange*;

(c) a CCP that is authorised in that capacity for the purposes of EMIR;

- (d) a CCP that is recognised in that capacity in accordance with the process set out in article 25 of EMIR; or
- (e) to the extent not already covered above, a CCP supervised in a jurisdiction that has implemented the relevant reforms on over-the-counter derivatives and is identified as having done so by the Financial Stability Board in its summary report on progress in implementation of G20 financial regulatory reforms dated 25 June 2019;

...

(4) ...

[**Note:** articles (8)(1)(b), 8(3) and 8(4) of the *UCITS eligible assets Directive*. In relation to *COLL* 5.2.23R(1)(e), see the table on page 3 of the Financial Stability Board’s report of 25 June 2019 which is available here: <https://www.fsb.org/wp-content/uploads/P250619-2.pdf>]

5.2.23-A    G    The jurisdictions which fall within *COLL* 5.2.23R(1)(e) are Australia, Hong Kong, Japan, Singapore, Switzerland, and the United States of America.

...

## **6            Operating duties and responsibilities**

...

### **6.2          Dealing**

...

#### **Property Authorised Investment Funds**

6.2.23    R    (1)    The *authorised fund manager* of a *property authorised investment fund* must take reasonable steps to ensure that no *body corporate* holds more than 10% of the net asset value of that fund (the “maximum allowable”).

(1A)    For the purposes of (1), a *body corporate* shall not be treated as holding more than the maximum allowable to the extent that:

- (a)    the *body corporate* holds *units* in a *unit trust scheme* which holds *shares* in the *property authorised investment fund*; and
- (b)    the *trustees* of the *unit trust scheme* are chargeable, in the *United Kingdom*, either to income tax or to corporation tax in their capacity as *trustees* of that *unit trust scheme*.

...

...

## 6.6 Powers and duties of the scheme, the authorised fund manager, and the depositary

...

Control by the depositary over the scheme property

6.6.12 R (1) The *depositary* of an *authorised fund* is responsible for the safekeeping of all the *scheme property* (other than tangible movable property) entrusted to it and must:

(a) ...;

(b) ensure that *scheme property* in registered form is, as soon as practicable, registered in the name of the *depositary*, its nominee or a *person* retained by it under ~~COLL 6.6.15R(1)~~ COLL 6.6.15R(4) (Committees and delegation);

...

...

(3) ...

(4) Where the *authorised fund* is a *UCITS scheme*, this rule applies to the *scheme's depositary* to the extent the provisions are consistent with the requirements of the *UCITS level 2 regulation*.

(5) Where the *authorised fund* is a *non-UCITS retail scheme*, this rule applies to the *scheme's depositary* to the extent the provisions are consistent with the requirements of the *AIFMD level 2 regulation*.

[Note: Articles 12 to 14 of the *UCITS level 2 regulation* and articles 88 to 90 of the *AIFMD level 2 regulation* make provision relating to custody and safekeeping of *scheme property*. The *AIFMD level 2 regulation* does not apply to the *depositary* of a *non-UCITS retail scheme* managed by a *small authorised UK AIFM*.]

...

## 8 Qualified investor schemes

...

### 8.5 Powers and responsibilities

...

Duties of the depositary



8.5.4 R ...

- (4) This rule applies to the *scheme's depositary* to the extent the provisions are consistent with the requirements of the *AIFMD level 2 regulation*.

[Note: Articles 88 to 90 of the *AIFMD level 2 regulation* make provision relating to custody and safekeeping of *scheme property*. The *AIFMD level 2 regulation* does not apply to the *depositary* of a *qualified investor scheme* managed by a *small authorised UK AIFM*.]

...

#### Property Authorised Investment Funds

8.5.12A R (1) The *authorised fund manager* of a *property authorised investment fund* must take reasonable steps to ensure that no *body corporate* holds more than 10% of the net asset value of that fund (the “maximum allowable”).

(1A) For the purposes of (1), a *body corporate* shall not be treated as holding more than the maximum allowable to the extent that:

- (a) the *body corporate* holds *units* in a *unit trust scheme* which holds *shares* in the *property authorised investment fund*; and
- (b) the *trustees* of the *unit trust scheme* are chargeable, in the *United Kingdom*, either to income tax or to corporation tax in their capacity as *trustees* of that *unit trust scheme*.

...

...

## 9 Recognised schemes

...

### 9.3 Section 272 recognised schemes

...

Preparation of a key information document in accordance with the PRIIPs regulation

9.3.4 ...

#### Annual certificate of compliance

9.3.5 D (1) An *operator* of a *scheme* recognised under section 272 of the *Act* must provide a certificate to the *FCA* in writing that:

- (a) sets out what steps it has taken to inform itself of any changes to the regulatory requirements for the relevant type of comparable authorised *scheme* taking effect during the most recent financial year of the *scheme*; and
  - (b) explains whether, and if so how, any such changes, together with any changes to the *scheme* that have occurred during this period, may affect the *scheme*'s ability to satisfy the requirements referred to in section 272(1)(d) of the *Act*.
- (2) The certificate must be provided to the *FCA* no later than:
- (a) one month following the publication of the *annual report and accounts* of the *scheme*; or
  - (b) if the publication of the *annual report and accounts* of the *scheme* is delayed, one month after the last day on which the publication of the *annual report and accounts* of the *scheme* was due.
- (3) The certificate must be signed by an authorised signatory of the *operator*.
- (4) The certificate may apply to multiple *sub-funds* in an *umbrella* that are recognised under section 272 of the *Act*, if the names of each relevant *sub-fund* and of the *umbrella* are clearly stated.
- (5) The certificate must be delivered to the *FCA* by:
- (a) sending a copy by electronic mail addressed to [recognisedcis@fca.org.uk](mailto:recognisedcis@fca.org.uk), including the subject line: "S.277A Certificate – [insert full name(s) of scheme]"; or
  - (b) by *post* to: Financial Conduct Authority, attn. S.277A Certificates, Fund Authorisations Team, Asset Management Department, Wholesale Supervision, 12 Endeavour Square, London E20 1JN, United Kingdom.

- 9.3.6      G      An operator of a *scheme* recognised under section 272 of the *Act* need not provide a certificate under *COLL* 9.3.5D if it has already sent the required information to the *FCA* within the last 12 *months* as the result of:
- (1) a requirement relating to an application for recognition of the *scheme* under section 274(2)(c) of the *Act*;
  - (2) a direction relating to a proposed alteration of the *scheme* or to a change to the *operator*, *trustee* or *depository* under section 277(5)(b) of the *Act*; or
  - (3) a previous certificate being provided under section 277A of the *Act*.

- 9.3.7 G The operator of a scheme recognised under section 272 of the Act should seek advice from professionals with appropriate qualifications or professional knowledge, such as a qualified solicitor, chartered accountant or compliance consultant, before submitting the certificate to the FCA under COLL 9.3.5D.

...

## TP 1 Transitional Provisions

### TP 1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
<b><u>Amendments made by the Alternative Investment Fund Managers Directive and Authorised Funds (Miscellaneous Amendments) Instrument 2019</u></b>					
50	<u>COLL 9.3.5D</u>	<u>D</u>	<u>COLL 9.3.5D applies in relation to the first date on which the annual report and accounts is (or is due to be) published on or after [date directions come into force].</u>	<u>From [date directions come into force].</u>	<u>[date directions come into force]</u>

...

## Sch 2 Notification requirements

...

Sch 2.2G 1 Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
--------------------	-----------------------	--------------------------	---------------	--------------

...				
<i>COLL 9.3.1D</i>	Application under section 272 of the <i>Act</i>	Details	Intention to market <i>scheme</i> in the <i>UK</i>	Up to 6 months before commencing marketing
<u><i>COLL 9.3.5D</i></u>	<u>Annual certificate of compliance for a <i>scheme</i> recognised under section 272 of the <i>Act</i></u>	<u>Details in <i>COLL 9.3.5D(1)</i></u>	<u>Date on which the <i>annual report and accounts</i> of the <i>scheme</i> is (or is due to be) published (see <i>COLL 9.3.5D(2)</i>).</u>	<u>One month</u>
...				

## Annex B

### Amendments to the Supervision manual (SUP)

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

The form at SUP 15 Annex 6AR (AIFMD new fund under management notification) is amended as follows:

#### Filling in the form

...

4. Submit the form by email to [AIFMDMaterialChange@fca.org.uk](mailto:AIFMDMaterialChange@fca.org.uk)

Alternatively you may post the application to the FCA at:

AIFMD Material Change  
~~Fund Authorisation and Supervision Team~~ **Fund Authorisations Team**  
**Asset Management Department, Wholesale Supervision**  
**The Financial Conduct Authority**  
**~~25 The North Colonnade~~ 12 Endeavour Square**  
**~~Canary Wharf~~**  
**LONDON**  
**~~E14 5HS~~ E20 1JN**

...

# 2

## Schedule of AIFs

...

### 2.3 Will the new AIF(s) that you are notifying be subject to any of the following UK permissions/regimes? Please follow the relevant link(s) for guidance on your obligations under these regimes.

- ☐ AIFMD management passport ▶ <http://www.fca.org.uk/markets>  
<https://www.fca.org.uk/firms/aifmd/uk-aifm/passporting>
- ☐ AIFMD marketing ▶ <http://www.fca.org.uk/markets>  
<https://www.fca.org.uk/firms/aifmd/uk-aifm/passporting>  
<https://www.fca.org.uk/firms/nppr>
- ☐ Authorised AIF ▶ <http://www.fca.org.uk/firms>  
<https://www.fca.org.uk/firms/authorised-recognised-funds/apply-fund-authorisation>
- ☐ Prospectus directive Regulation ▶ <http://www.fca.org.uk/your-fca/documents/technical-note-supplementary-prospectus>  
<https://www.fca.org.uk/markets/ukla/regulatory-disclosures/eea-prospectus-passports>
- ☐ Listing regime ▶ <https://www.handbook.fca.org.uk/handbook/LR/15/4.html> <https://www.fca.org.uk/markets/ukla>

...

# 5

## Declaration and signature

...

### Data Protection

For the purpose of complying with the General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018, the personal information in this form will be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000, the Alternative Investment Fund Managers Regulations 2013 and other relevant legislation. ~~It will not be disclosed for any other purposes without the permission of the firm concerned.~~

The FCA processes 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 the privacy notice available on our website: [www.fca.org.uk/privacy](http://www.fca.org.uk/privacy).

### Declaration

By submitting this notification:

...

- ✓ I will notify the FCA immediately if there is a significant change to the information given in the notification.

☐ ~~Tick here to confirm you have read and understood this declaration.~~

...

The form at SUP 15 Annex 6CR (AIFMD full-scope UK AIFM material change notification) is amended as follows:

**Reporting of sub-funds**

...

Submit the form by email to [AIFMDMaterialChange@fca.org.uk](mailto:AIFMDMaterialChange@fca.org.uk)

Alternatively you may post the application to the FCA at:

AIFMD-Material Change  
Fund Authorisations and Supervision Team **Fund Authorisations Team**  
**Asset Management Department, Wholesale Supervision**  
**The Financial Conduct Authority**  
**~~25 The North Colonnade~~ 12 Endeavour Square**  
**Canary Wharf**  
**LONDON**  
**~~E14 5HS~~ E20 1JN**

...



## Sections to be completed

### Which sections should you complete?

**Please indicate if an AIF impacted by this change is subject to any of the following UK permissions/regimes. Please follow the relevant link(s) for guidance on reporting a material change for these regimes.**

- |  |  |
|--|--|
| <input type="checkbox"/> AIFMD management passport ▶       | <a href="https://www.fca.org.uk/firms/aifmd/uk-aifm">https://www.fca.org.uk/firms/aifmd/uk-aifm</a><br><a href="https://www.fca.org.uk/firms/aifmd/uk-aifm/passporting">https://www.fca.org.uk/firms/aifmd/uk-aifm/passporting</a>   |
| <input type="checkbox"/> AIFMD marketing ▶                 | <a href="https://www.fca.org.uk/firms/aifmd">https://www.fca.org.uk/firms/aifmd</a><br><a href="https://www.fca.org.uk/firms/aifmd/uk-aifm/passporting">https://www.fca.org.uk/firms/aifmd/uk-aifm/passporting</a><br><a href="https://www.fca.org.uk/firms/nppr">https://www.fca.org.uk/firms/nppr</a>  |
| <input type="checkbox"/> Authorised AIF ▶                  | <a href="https://www.fca.org.uk/firms/authorised-recognised-funds">https://www.fca.org.uk/firms/authorised-recognised-funds</a><br><a href="https://www.fca.org.uk/firms/authorised-recognised-funds/apply-fund-authorisation">https://www.fca.org.uk/firms/authorised-recognised-funds/apply-fund-authorisation</a>                                   |
| <input type="checkbox"/> Prospectus directive Regulation ▶ | <a href="http://www.fca.org.uk/your-fca/documents/technical-note-supplementary-prospectus">http://www.fca.org.uk/your-fca/documents/technical-note-supplementary-prospectus</a><br><a href="https://www.fca.org.uk/markets/ukla/regulatory-disclosures/eea-prospectus-">https://www.fca.org.uk/markets/ukla/regulatory-disclosures/eea-prospectus-</a> |
| <input type="checkbox"/> Listing regime ▶                  | <a href="https://www.handbook.fca.org.uk/handbook/LR/15/4.htm">https://www.handbook.fca.org.uk/handbook/LR/15/4.htm</a><br><del>at</del> <a href="https://www.fca.org.uk/markets/ukla">https://www.fca.org.uk/markets/ukla</a>   |

...

# 3

## AIF details

Complete this section if you are reporting a material change to an AIF.

...

### Section F: Maximum leverage

Complete section F if you have extended the maximum level of leverage you will employ on behalf of the AIF.

		Before change	After change
<b>3-27</b>	<del>What is the maximum leverage as calculated under the gross method?</del>	<del>_____</del>	<del>_____</del>
<b>3-28</b>	<del>What is the maximum leverage as calculated under the commitment method?</del>	<del>_____</del>	<del>_____</del>

If you are unable to answer **yes** to any question below please provide further details in section 2.6 of the form.

3.29	<del>Please confirm that you have set out in the leveraging arrangement, where that arrangement allows the right to reuse collateral or the granting of a guarantee, the extent of that right or guarantee?</del>	<input type="checkbox"/> Yes <input type="checkbox"/> No → Please provide details in section 2.6
Please provide details _____		
3.30	<del>Please confirm that you are able to demonstrate that, in establishing the maximum level of leverage for each calculation method, relevant matters have been taken into account including:</del> <del>(a) the type of AIF</del> <del>(b) the investment strategy of the AIF</del> <del>(c) the sources of leverage of the AIF</del> <del>(d) any other link or relevant relationship with other financial services institutions which could pose systemic risk</del> <del>(e) the need to limit the exposure to any single counterparty</del> <del>(f) the extent to which the leverage is collateralised</del> <del>(g) the asset liability ratio and</del> <del>(h) the scale, nature and extent of the activity of the AIFM on the markets concerned?</del>	<input type="checkbox"/> Yes <input type="checkbox"/> No → Please provide details in section 2.6
Please provide details _____		
3.31	<del>Please confirm that you are able to demonstrate that the maximum level of leverage set for each calculation method for the AIF is reasonable?</del>	<input type="checkbox"/> Yes <input type="checkbox"/> No → Please provide details in section 2.6
3.32	<del>Please confirm that you are able to demonstrate that the firm will comply with the maximum limit according to each calculation method at all times?</del>	<input type="checkbox"/> Yes <input type="checkbox"/> No → Please provide details in section 2.6

~~3.33~~ ☐ I confirm that there are adequate risk management systems in place to appropriately manage all risks relevant to the investment strategies of the AIF being notified and the risks to which this AIF is or may be exposed.

### 3.27 What is the maximum leverage as calculated under the gross method?

Before change	After change
_____	_____

### 3.28 What is the maximum leverage as calculated under the commitment method?

Before change	After change

If you are unable to answer **yes** to any question below, please provide further details at question 2.6 of the form.

**3.29 Have you set out in the leveraging arrangement, where that arrangement allows the right to reuse collateral or the granting of a guarantee, the extent of that right or guarantee?**

☐ Yes

☐ No ▶ Please provide details

--

**3.30 Are you able to demonstrate that, in establishing the maximum level of leverage for each calculation method, relevant matters have been taken into account including:**

**(a) the type of AIF**

**(b) the investment strategy of the AIF**

**(c) the sources of leverage of the AIF**

**(d) any other link or relevant relationship with other financial services institutions which could pose systemic risk**

**(e) the need to limit the exposure to any single counterparty**

**(f) the extent to which the leverage is collateralised**

**(g) the asset-liability ratio and**

**(h) the scale, nature and extent of the activity of the AIFM on the markets concerned?**

☐ Yes

☐ No ▶ Please provide details

--	--

**3.31 Are you able to demonstrate that the maximum level of leverage set for each calculation method for the AIF is reasonable?**

☐ Yes

☐ No ▶ Please provide details at question 2.6

**3.32 Are you able to demonstrate that the firm will comply with the maximum limit according to each calculation method at all times?**

☐ Yes

☐ No ▶ Please provide details in Section 2.6

**3.33 ☐ I confirm that there are adequate risk management systems in place to appropriately manage all risks relevant to the investment strategies of the AIF being notified and the risks to which this AIF is or may be exposed.**

...

# 7 Declaration and signature

...

## Data protection

For the purposes of complying with the General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018, the personal information in this form will be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation. ~~It will not be disclosed for any other purposes without the permission of the firm concerned.~~

The FCA processes 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 the privacy notice available on our website: <https://www.fca.org.uk/privacy>.

## Declaration

By submitting this notification form:

...

- ✓ I will notify the FCA immediately if there is a significant change to the information given in this notification.

☐ ~~Tick here to confirm you have read and understood this declaration.~~

...

The form at SUP 15 Annex 6DR (AIFMD notice of sub-threshold AIFM exceeding AuM limit) is amended as follows:

**Filling in the form**

...

- 6** The form should be submitted by email to [AIFMDFirmSupervisionTriage@fca.org.uk](mailto:AIFMDFirmSupervisionTriage@fca.org.uk)

Alternatively, you can post this application to the FCA at:

**~~Fund Authorisations and Supervision~~ Authorisations Team**  
**~~AIFMD Firm Supervision~~**  
**Asset Management Department, Wholesale Supervision**  
**The Financial Conduct Authority**  
**~~25 The North Colonnade~~ 12 Endeavour Square**  
**~~Canary Wharf~~**  
**LONDON**  
**~~E14 5HS~~ E20 1JN**

...

# 3 Declaration

...

## Data protection

For the purposes of complying with the General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018, the personal information in this form will be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation. ~~It will not be disclosed for any other purposes without the permission of the firm concerned.~~

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## Declaration

...



The form at SUP 15 Annex 6FG (EuSEF and EuVECA management and marketing notifications) is amended as follows:

**Reporting of sub-funds**

...

Submit the form by email to [AIFMDMaterialChange@fca.org.uk](mailto:AIFMDMaterialChange@fca.org.uk)

Alternatively you may post the application to the FCA at:

~~AIFMD Material Change~~  
~~Fund Authorisations and Supervision Team~~ **Fund Authorisations Team**  
**Asset Management Department, Wholesale Supervision**  
**The Financial Conduct Authority**  
~~25 The North Colonnade~~ **12 Endeavour Square**  
~~Canary Wharf~~  
**LONDON**  
~~E14 5HS~~ **E20 1JN**

...

## 2. Alternative investment funds (AIFs) managed by an AIFM

...

**2.1 ~~Please complete the 'EuSEF & EuVECA' tab on the 'Schedule of AIFs' for small registered UK AIFMs with details of all new or amended AIFs being notified.~~**

**Small registered UK AIFM:** If you are a small registered UK AIFM you should complete the 'EuSEF & EuVECA' tab on the 'Schedule of AIFs' for small registered UK AIFMs with details of all new or amended AIFs being notified.

(<https://www.fca.org.uk/publication/forms/aif-schedule-small-registered-aifm.xlsx>)

**Small authorised UK AIFM:** If you are a small authorised UK AIFM you should complete the 'EuSEF & EuVECA' tab on the 'Schedule of AIFs' for small authorised UK AIFMs with details of all new or amended AIFs being notified.

(<https://www.fca.org.uk/publication/forms/aif-schedule-small-authorised-aifm.xlsx>)

**Full-scope UK AIFM:** If you are a full-scope UK AIFM you should complete the 'EuSEF & EuVECA' tab on the 'Schedule of AIFs' for full-scope UK AIFMs with details of all new or amended AIFs being notified. (<https://www.fca.org.uk/publication/forms/aif-schedule-full-scope-aifm.xlsx>)

☐ The schedule of new ~~registered~~ AIFs has been completed and attached.

...

...

**2.4 Small registered UK AIFMs only: Please please confirm that the combined assets of AIFs to which you are, and will be, appointed as AIFM will be within the small AIFM threshold set out in the UK AIFM Regulations 9(1)(a).**

...

### 3. EuSEF designation

Complete this section if your notification concerns a EuSEF fund

...

**3.12 Is the applicant firm a full-scope AIFM?**

- ☐ Yes ▶ Continue to 3.13
- ☐ No ▶ Continue to Section 5

**3.13 You must attach the rules or instruments of incorporation of the qualifying social entrepreneurship fund(s).**

- ☐ Attached

**3.14 Please provide information on the identity of the depositary.**

Give details below as per article 15a(2)(b) of the EuSEF Regulation.

**3.15 Please list those Member States in which the firm has established, or intends to establish, qualifying social entrepreneurship funds.**

Give details below as per article 15a(2)(d) of the EuSEF Regulation.

## 4. EuVECA designation

Complete this section if your notification concerns a EuVECA fund

...

### **4.10 Is the applicant firm a full-scope AIFM?**

- ☐ Yes ▶ Continue to 4.11
- ☐ No ▶ Continue to Section 5

### **4.11 You must attach the rules or instruments of incorporation of the qualifying venture capital fund(s).**

- ☐ Attached

### **4.12 Please provide information on the identity of the depositary.**

Give details below as per article 14a(2)(b) of the EuVECA Regulation.

### **4.13 Please list those Member States in which the firm has established, or intends to establish, qualifying venture capital funds.**

Give details below as per article 14a(2)(d) of the EuVECA Regulation.

## 6. Declaration and signature

...

### **Data protection**

For the purposes of complying with the General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018, the personal information in this form will be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation. ~~It will not be disclosed for any other purposes without the permission of the firm concerned.~~

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...

## **Appendix 3**

# **Minor Handbook amendments to update references to the UK Corporate Governance Code and amendments to DTR to implement ESEF**

**LISTING RULES AND DISCLOSURE GUIDANCE AND TRANSPARENCY RULES  
(MISCELLANEOUS AMENDMENTS No 2) 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 73A (Part 6 Rules);
  - (2) section 89A (Transparency rules);
  - (3) section 89C (Provision of information by issuers of transferable securities);
  - (4) section 89O (Corporate governance rules);
  - (5) section 96 (Obligations of issuers of listed securities);
  - (6) section 137A (The FCA’s general rules);
  - (7) section 137T (General supplementary powers); and
  - (8) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on [date] 2019.

**Amendments to the Handbook**

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

(1)	(2)
Glossary of definitions	Annex A
Code of Conduct sourcebook (COCON)	Annex B
Statements of Principle and Code of Practice for Approved Persons sourcebook (APER)	Annex C
Decision Procedure and Penalties manual (DEPP)	Annex D
Listing Rules sourcebook (LR)	Annex E
Disclosure Guidance and Transparency Rules sourcebook (DTR)	Annex F

**Notes**

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

**Citation**

- F. This instrument may be cited as the Listing Rules and Disclosure Guidance and Transparency Rules (Miscellaneous Amendments No 2) Instrument 2019.

By order of the Board  
[*date*] 2019



**Annex A****Amendments to the Glossary of definitions**

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

Amend the following definition as shown.

<i>UK Corporate Governance Code</i>	the UK Corporate Governance Code published in <del>April 2016</del> <u>July 2018</u> by the Financial Reporting Council, available at: <a href="https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code">https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code</a> .
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## Annex B

### Amendments to the Code of Conduct sourcebook (COCON)

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

### 3 General factors for assessing compliance

#### 3.1 General factors for assessing compliance

...

- 3.1.7 G *UK domestic firms* ~~listed on the London Stock Exchange~~ with a premium listing are subject to the *UK Corporate Governance Code*, whose internal control ~~provisions~~ Provisions are explained in the publication entitled ‘~~Internal Control: Revised Guidance for Directors on the Combined Code (October 2005)~~’ ‘Guidance on Risk Management, Internal Control and Related Financial and Business Reporting (September 2014)’ issued by the Financial Reporting Council. Therefore, *firms* in this category will be subject to that code, as well as to the *rules* in *COCON*. In forming an opinion as to whether a *senior conduct rules staff member* has complied with the *rules* in *COCON*, the *FCA* will give due credit if they followed corresponding ~~provisions~~ Provisions in the *UK Corporate Governance Code* and related guidance.

...

## Annex C

### Amendments to the Statements of Principle and Code of Practice for Approved Persons sourcebook (APER)

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

#### 3 Code of Practice for Approved Persons: general

##### 3.1 Introduction

...

- 3.1.9 G *UK domestic firms with a premium listing ~~of equity shares~~ are subject to the UK Corporate Governance Code, whose internal control ~~provisions~~ Provisions are amplified in the publication entitled ‘Guidance on Risk Management, Internal Control and Related Financial and Business Reporting (September 2014)’ issued by the Financial Reporting Council. Firms regulated by the FCA in this category will be subject to that code as well as to the requirements and standards of the *regulatory system*. In forming an opinion whether *approved persons* have complied with its requirements, the FCA will give due credit for their following corresponding ~~provisions~~ Provisions in the UK Corporate Governance Code and related guidance.*

...

## Annex D

### Amendments to the Decision Procedure and Penalties manual (DEPP)

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

#### 6 Penalties

...

#### 6.2 Deciding when to take action

...

6.2.9-E G When determining under section 66A(5)(d) of the *Act* whether or not an *SMF manager* has taken such steps as a person in their position could reasonably be expected to take to avoid the contravention of a relevant requirement by the *firm* occurring (or continuing), additional considerations to which the *FCA* would expect to have regard include, but are not limited to:

...

- (7) whether the *SMF manager* acted in accordance with their statutory, common law and other legal obligations, including, but not limited to, those set out in the Companies Act 2006, the *Handbook* (including *COCON*), and, if the *firm* ~~was listed on the London Stock Exchange~~ had a *premium listing*, the *UK Corporate Governance Code* and related guidance;

...

...

## Annex E

## Amendments to the Listing Rules sourcebook (LR)

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

## 9 Continuing obligations

...

### 9.8 Annual financial report

~~[Note: LR 9.8 does not apply to a *listed company* with a financial year ending before 30 September 2013, or to a *listed company* with a financial year ending on or after 30 September 2013 whose annual financial report has been made public on or before 13 December 2013. As set out in LR TR 11, a *listed company* with a financial year ending before 30 September 2013, or a *listed company* with a financial year ending on or after 30 September 2013 whose annual financial report has been made public on or before 13 December 2013, must instead comply with the requirements set out in LR App 2.]~~

...

#### Additional information

- 9.8.6 R In the case of a *listed company* incorporated in the *United Kingdom*, the following additional items must be included in its financial report:

...

- (3) statements by the *directors* on:

- (a) the appropriateness of adopting the going concern basis of accounting (containing the information set out in ~~provision C.1.3~~ Provision 30 of the *UK Corporate Governance Code*); and
- (b) their assessment of the prospects of the *company* (containing the information set out in ~~provision C.2.2~~ Provision 31 of the *UK Corporate Governance Code*);

prepared in accordance with the ‘Guidance on Risk Management, Internal Control and Related Financial and Business Reporting’ published by the Financial Reporting Council in September 2014;

...

- (5) a statement of how the *listed company* has applied the ~~Main~~ Principles set out in the *UK Corporate Governance Code*, in a manner

that would enable shareholders to evaluate how the principles have been applied;

...

...

#### Auditors report

9.8.10 R *A listed company* must ensure that the auditors review each of the following before the annual report is published:

...

(2) the parts of the statement required by *LR 9.8.6R(6)* (corporate governance) that relate to ~~the following provisions~~ Provisions 6 and 24 to 29 of the UK Corporate Governance Code;

(a) ~~C.1.1~~;

(b) ~~C.2.1 and C.2.3~~; and

(e) ~~C.3.1 to C.3.8~~.

...

## 15 Closed-Ended Investment Funds: Premium listing

...

### 15.6 Notifications and periodic financial information

...

#### Statement regarding compliance with UK Corporate Governance Code

15.6.6 R ...

(2) *A closed-ended investment fund's* statement required by *LR 9.8.6R(6)* need not include details about ~~the following principles~~ Principles P, Q and R and provisions Provisions 32 to 40 of the UK Corporate Governance Code except to the extent that those ~~principles~~ Principles or ~~provisions~~ Provisions relate specifically to non-executive directors

(a) ~~Principle D.1 (including Code Provisions D.1.1 to D.1.5)~~; and

(b) ~~Principle D.2 (including Code Provisions D.2.1 to D.2.4)~~.

...

## Appendix 1 Relevant definitions

**App 1.1      Relevant definitions**

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

App 1.1.1      ...

...

<i>UK Corporate Governance Code</i>	the UK Corporate Governance Code published in <del>April 2016</del> <u>July 2018</u> by the Financial Reporting Council, available at: <a href="https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code_">https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code_</a>
...	

LR Appendix 2 (Annual Financial Report for certain listed companies) is deleted in its entirety. The text of the appendix is not shown but it is marked [deleted] as shown below.

**Appendix 2      Annual Financial Report for certain listed companies** [deleted]

TR 11 (Transitional Provisions in relation to Annual Financial Report) is deleted in its entirety. The text of the transitional provisions is not shown but the whole of TR 11 is marked [deleted] as shown below.

**TR 11      Transitional Provisions in relation to Annual Financial Report**  
[deleted]

Amend the following as shown.

**TR 13      Transitional Provisions for the UK Corporate Governance Code**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					

4.	LR 9.8.6R(3), LR 9.8.6R(5), LR 9.8.6R(6) and LR 15.6.6R(2)	R	In the case of an annual financial report of a <i>listed company</i> or a <i>closed-ended investment fund</i> incorporated in the <i>United Kingdom</i> for an accounting period ending on or before 16 June 2017, a reference to a Main Principle, principle or provision in the <i>UK Corporate Governance Code</i> must be read as a reference to a Main Principle, principle or provision in the UK Corporate Governance Code published by the Financial Reporting Council in September 2014. <u>[expired]</u>	From 13 September 2017 to 31 December 2017	13 September 2017
5.	LR 9.8.10R	R	In the case of an annual financial report of a <i>listed company</i> or a <i>close-ended investment fund</i> incorporated in the <i>United Kingdom</i> for an accounting period ending on or before 16 June 2017:	From 13 September 2017 to 31 December 2017	13 September 2017



			<p>(1) <del>LR 9.8.10R</del> does not apply; and</p> <p>(2) <del>the listed company or closed-ended investment fund</del> must ensure that the auditors review the following before the annual report is published:</p> <p>(a) <del>LR 9.8.6R(3)</del> (statements by the directors regarding going concern and longer-term viability); and</p> <p>(b) the parts of the statement required by <del>LR 9.8.6R(6)</del> (comply or explain) that relate to C.1.1, C.2.1 and C.2.3, and C.3.1 to C.3.8 of the UK Corporate Governance Code published by the Financial Reporting Council in September 2014.</p> <p>[expired]</p>		
<u>6.</u>	<u>LR 9.8.6R(3)</u>	<u>R</u>	<p>In the case of an <u>annual financial report of a listed company or a closed-ended investment fund incorporated in the United Kingdom for an accounting</u></p>	<p>From [ ] 2019 to [ ] 2020</p>	<p>[ ] 2019</p>

			<p><u>period</u> <u>beginning</u> <u>before 1 January</u> <u>2019:</u></p> <p>(1) <u>LR 9.8.6R(3)</u> <u>does not</u> <u>apply; and</u></p> <p>(2) <u>the annual</u> <u>financial</u> <u>report must</u> <u>include</u> <u>statements by</u> <u>the directors</u> <u>on:</u></p> <p>(a) <u>the</u> <u>appropriateness</u> <u>of adopting the</u> <u>going concern</u> <u>basis of</u> <u>accounting</u> <u>(containing the</u> <u>information set</u> <u>out in provision</u> <u>C.1.3 of the UK</u> <u>Corporate</u> <u>Governance</u> <u>Code published</u> <u>by the Financial</u> <u>Reporting</u> <u>Council in April</u> <u>2016); and</u></p> <p>(b) <u>their</u> <u>assessment of</u> <u>the prospects of</u> <u>the company</u> <u>(containing the</u> <u>information set</u> <u>out in provision</u> <u>C.2.2 of the UK</u> <u>Corporate</u> <u>Governance</u> <u>Code published</u> <u>by the Financial</u> <u>Reporting</u> <u>Council in April</u> <u>2016);</u></p> <p><u>prepared in</u> <u>accordance with</u></p>	
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			the ‘ <u>Guidance on Risk Management, Internal Control and Related Financial and Business Reporting</u> ’ published by the <u>Financial Reporting Council in September 2014.</u>		
<u>7.</u>	<u>LR 9.8.6R(5)</u>	<u>R</u>	<p>In the case of an <u>annual financial report of a <i>listed company</i> or a <i>closed-ended investment fund</i> for an accounting period beginning before 1 January 2019:</u></p> <p>(1) <u>LR 9.8.6R(5) does not apply; and</u></p> <p>(2) <u>the annual financial report must include a statement of how the <i>listed company</i> has applied the <u>Main Principles set out in the UK Corporate Governance Code published by the Financial Reporting</u></u></p>	From [ ] 2019 to [ ] 2020	[ ] 2019

			<u>Council in April 2016, in a manner that would enable shareholders to evaluate how the principles have been applied.</u>		
<u>8.</u>	<u>LR 9.8.6R (6)</u>	<u>R</u>	<p><u>In the case of an annual financial report of a <i>listed company</i> or a <i>closed-ended investment fund</i> for an accounting period beginning before 1 January 2019:</u></p> <p>(1) <u>LR 9.8.6R(6) does not apply; and</u></p> <p>(2) <u>the annual financial report must include a statement as to whether the <i>listed company</i> has:</u></p> <p>(a) <u>complied throughout the accounting period with all relevant provisions set out in the UK Corporate Governance Code published by the Financial</u></p>	<u>From [ ] 2019 to [ ] 2020</u>	<u>[ ] 2019</u>

			<p><u>Reporting Council in April 2016;</u></p> <p><u>(b) not complied throughout the accounting period with all relevant provisions set out in the UK Corporate Governance Code published by the Financial Reporting Council in April 2016 and if so, setting out:</u></p> <p><u>(i) those provisions, if any, it has not complied with;</u></p> <p><u>(ii) in the case of provisions whose requirements are of a continuing nature, the period within which, if any, it did not comply with some or all of those provisions; and</u></p> <p><u>(iii) the company's reasons for non-compliance.</u></p>		
<u>9.</u>	<u>LR 9.8.10R</u>	<u>R</u>	<p><u>In the case of an annual financial report of a <i>listed company</i> or a <i>closed-ended investment fund</i> for an accounting period</u></p>	<p><u>From [ ] 2019 to [ ] 2020</u></p>	<p><u>[ ] 2019</u></p>

			<p><u>beginning before 1 January 2019:</u></p> <p>(1) <u>LR 9.8.10R does not apply; and</u></p> <p>(2) <u>the listed company must ensure that the auditors review each of the following before the annual report is published:</u></p> <p>(a) <u>LR 9.8.6R</u></p> <p>(3) <u>(statements by the directors regarding going concern and longer-term viability); and</u></p> <p>(b) <u>the parts of the statement required by LR 9.8.6R(6) (corporate governance) that relate to the following provisions of the UK Corporate Governance Code published by the Financial Reporting Council in April 2016:</u></p> <p>(i) <u>C.1.1;</u></p> <p>(ii) <u>C.2.1 and C.2.3; and</u></p> <p>(iii) <u>C.3.1 to C.3.8.</u></p>	
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<u>10.</u>	<u>LR</u> <u>15.6.6R(2)</u>	<u>R</u>	<p><u>In the case of an annual financial report of a <i>closed-ended investment fund</i> for an accounting period beginning before 1 January 2019:</u></p> <p><u>(1) <i>LR</i> 15.6.6R(2) does not apply; and</u></p> <p><u>(2) a <i>closed-ended investment fund's</i> statement required by <i>LR</i> 9.8.6R (6) need not include details about the following principles and provisions of the UK Corporate Governance Code published by the Financial Reporting Council in April 2016 except to the extent that those principles or provisions relate specifically to non-</u></p>	<u>From [ ] 2019 to [ ] 2020</u>	<u>[ ] 2019</u>
------------	--------------------------------	----------	---	----------------------------------	-----------------

			<u>executive directors:</u>  <u>(a) Principle D.1 (including Code Provisions D.1.1 to D.1.5): and</u>  <u>(b) Principle D.2 (including Code Provisions D.2.1 to D.2.4).</u>		
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## Annex F

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

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

**4 Periodic Financial Reporting****4.1 Annual financial report**

...

Reporting format

- 4.1.14     R     The annual financial report must be prepared using the single electronic reporting format specified in Commission Delegated Regulation (EU) 2018/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format as amended from time to time.

[Note: article 4(7) of the TD]

...

**7 Corporate governance****7.1 Audit committees**

...

- 7.1.7     G     In the *FCA*'s view, compliance with ~~provisions A.1.2, C.3.1, C.3.2, C.3.3 and C.3.8~~ Provisions 14, 24, 25 and 26 of the *UK Corporate Governance Code* and following the statement of good practice set out in paragraph 63 of the 'Guidance on Board Effectiveness' published by the Financial Reporting Council in July 2018 will result in compliance with *DTR* 7.1.1R to ~~*DTR* 7.1.5R~~ *7.1.3R* and with *DTR* 7.1.5R except as regards disclosing how the body which carries out the functions required by *DTR* 7.1.3R is composed.

**7.2 Corporate governance statements**

...

- 7.2.8     G     In the *FCA*'s view, the information specified in ~~provisions A.1.1, A.1.2, B.2.4, C.3.3, C.3.8 and D.2.1~~ Provisions 14, 20, 23, 26, 35 and 41 of the *UK Corporate Governance Code* and paragraph 63 of the 'Guidance on Board Effectiveness' published by the Financial Reporting Council in July 2018 will satisfy the requirements of *DTR* 7.2.7R, except as regards a description

of the composition of the *issuer's* administrative, management and supervisory bodies and their committees.

...

## TP 1 Disclosure and transparency rules

### DTR Sourcebook –Transitional Provisions

(1)	(2) Material to which the Transitional Provision applies	(3)	(4) Transitional Provision	(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...					
27	<i>DTR 1B.1.3R</i> and <i>DTR 7.1</i>	R	<p><del>(1) <i>DTR 1B.1.3R</i> and <i>DTR 7.1</i> do not apply to an <i>issuer</i> in respect of a financial year beginning before 17 June 2016.</del></p> <p><del>(2) In respect of a financial year beginning before 17 June 2016 an <i>issuer</i> must instead comply with the requirements in <i>DTR App 1</i> for that financial year unless it is an <i>issuer</i> listed in <i>DTR App 1.1.4</i>.</del></p> <p>[expired]</p>	From 17 June 2016 to 30 September 2018	17 June 2016
...					
<u>32</u>	<u><i>DTR 4.1.14R</i></u>	<u>R</u>	<u><i>DTR 4.1.14R</i> applies in relation to a financial year of an <i>issuer</i> beginning on or after 1 January 2020.</u>	From [ ] 2019	[ ] 2019
<u>33</u>	<u><i>DTR 7.1.7G</i></u>	<u>R</u>	<p>Where an <i>issuer</i> has an accounting period beginning before 1 January 2019:</p> <p>(1) <u><i>DTR 7.1.7G</i> does not apply; and</u></p>	From [ ] 2019 to [ ] 2020	[ ] 2019

			(2) <u>in the FCA's view, compliance with provisions A.1.2, C.3.1, C.3.2, C.3.3 and C.3.8 of the UK Corporate Governance Code published by the Financial Reporting Council in April 2016 will result in compliance with DTR 7.1.1R to DTR 7.1.5R.</u>		
<u>34</u>	<u>DTR 7.2.4G</u>	<u>R</u>	<u>Where an issuer has an accounting period beginning before 1 January 2019, the reference to the UK Corporate Governance Code is to be read as a reference to the UK Corporate Governance Code published by the Financial Reporting Council in April 2016.</u>	<u>From [ ] 2019 to [ ] 2020</u>	<u>[ ] 2019</u>
<u>35</u>	<u>DTR 7.2.8G</u>	<u>R</u>	<u>Where an issuer has an accounting period beginning before 1 January 2019:</u> <u>(1) DTR 7.2.8G does not apply; and</u> <u>(2) in the FCA's view, the information specified in provisions A.1.1, A.1.2, B.2.4, C.3.3, C.3.8 and D.2.1 of the UK Corporate Governance Code published by the Financial Reporting Council in April 2016 will satisfy the requirements of DTR 7.2.7R.</u>	<u>From [ ] 2019 to [ ] 2020</u>	<u>[ ] 2019</u>

DTR Appendix 1 (Audit Committees for certain issuers) is deleted in its entirety. The text of the appendix is not shown but it is marked [deleted] as shown below.

**Appendix 1    Audit Committees for certain issuers [deleted]**

## **Appendix 4**

# **Implementing the amendments to the European Market Infrastructure Regulation (EMIR) brought in by REFIT**

**OVER THE COUNTER DERIVATIVES, CENTRAL COUNTERPARTIES AND  
TRADE REPOSITORIES) (No 3) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) the power in section 139A of the Financial Services and Markets Act 2000 (“the Act”) (Power of the FCA to give guidance); and
  - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making provisions referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

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

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with the Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No 3) Instrument 2019.

By order of the Board  
[*date*]

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

Amend the following definitions as shown.

<i>EMIR</i>	Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories, sometimes referred to as the “European Markets Infrastructure Regulation” <u>as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019.</u>
<i>OTC derivatives, CCPs and trade repositories regulation</i>	the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 <u>as amended by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (Amendment) Regulations 2019.</u>

## Annex B

### Amendments to the Supervision manual (SUP)

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

#### 15A      Application and notifications under EMIR

##### 15A.1    Application and notifications under EMIR

15A.1.1    G    Where a *person* intends to rely on article 4(2), 4a(2), 10(2) or 89(2) of *EMIR* for an exemption from the clearing obligation set out in article 4(1) or 10(1) of *EMIR*, the *person* should make their application or notification to the *FCA* in such manner, and by providing such information, as the *FCA* directs or requires.

15A.1.2    G    Where a *person* ~~makes notification~~ notifies the *FCA* in respect of the obligation set out in ~~article 10(1)(a) of *EMIR*~~ in:

(1)    point (a) of the second subparagraph of article 4a(1);

(2)    the fourth subparagraph of article 9(1); or

(3)    point (a) of the second subparagraph of article 10(1),

the ~~*person* should make the notification to the *FCA*~~ should be made in such manner, and by providing such information, as the *FCA* directs or requires.

...



## Appendix 5

### Further Brexit-related changes to Handbook & BTS following extension of Article 50

**EXITING THE EUROPEAN UNION: HANDBOOK (AMENDMENTS)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018;
  - (2) the following provisions of the Financial Services and Markets Act 2000 (“the Act”) including as applied by paragraph 3 of Schedule 6 to the Payment Services Regulations 2017 (SI 2017/752) (“the PSRs”) and paragraph 2A of Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99) (“the EMRs”):
    - (a) section 137A (the FCA’s general rules);
    - (b) section 137C (FCA general rules: cost of credit and duration of credit agreements);
    - (c) section 137R (Financial promotion rules);
    - (d) section 137T (General supplementary powers); and
    - (e) section 139A (Power of the FCA to give guidance);
  - (3) regulation 120 (Guidance) of the PSRs;
  - (4) regulation 60 (Guidance) of the EMRs;
  - (5) the relevant powers and related provisions used to make the Exiting the European Union: Glossary (Amendments) Instrument 2019 (FCA 2019/19);
  - (6) the relevant powers and related provisions referred to in schedule 4 to the General Provisions of the FCA Handbook; and
  - (7) the powers of direction, guidance and related provisions in or under the following provisions of the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019 (SI 2019/542):
    - (a) regulation 30 (Statement of policy);
    - (b) regulation 32 (Powers to issue guidance);
    - (c) regulation 36 (Application of Part 11 of the Act (information gathering and investigations)); and
    - (d) regulation 37 (Application of Part 26 of the Act (notices)).
- B. The rule-making provisions referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

## Commencement

- C. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018, save for:
- (1) Part 1 of Annex A – Amendments to the Glossary of definitions, which comes into force on 25 October 2019 [Note: the date Part 2 of the Annex to the Fees (Miscellaneous Amendments) (No [14]) 2019 (FCA 2019/XX)];
  - (2) Part 1 of Annex C – Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC), which comes into force on 9 December 2019 or on exit day as defined in the European Union (Withdrawal) Act 2018, whichever date is later;
  - (3) Part 2 of Annex D – Amendments to the General Provisions (GEN), which comes into force on 12 November 2019;
  - (4) Part 3 of Annex D – Amendments to the General Provisions (GEN), which comes into force on 18 December 2019;
  - (5) Part 2 of Annex G – Amendments to the Banking: Conduct of Business sourcebook (BCOBS), which comes into force on 18 December 2019; and
  - (6) Annex L – Amendments to the Consumer Credit sourcebook (CONC), which comes into force as follows:
    - (a) Part 1 on 12 November 2019;
    - (b) Part 2 on 18 December 2019; and
    - (c) Parts 3 and 4 on 6 April 2020.

## Amendments to the Handbook

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

(1)	(2)
Glossary	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
General Provisions (GEN)	Annex D
Conduct of Business sourcebook (COBS)	Annex E
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex F
Banking: Conduct of Business sourcebook (BCOBS)	Annex G
Product Intervention and Product Governance sourcebook (PROD)	Annex H
Supervision manual (SUP)	Annex I
Decision Procedure and Penalties manual (DEPP)	Annex J

Collective Investment Schemes sourcebook (COLL)	Annex K
Consumer Credit sourcebook (CONC)	Annex L
Regulated Covered Bonds sourcebook (RCB)	Annex M
Listing Rules sourcebook (LR)	Annex N
Prospectus Regulation Rules sourcebook (PRR)	Annex O
Disclosure Guidance and Transparency Rules sourcebook (DTR)	Annex P

- E. The Financial Conduct Authority confirms and remakes in the Glossary of definitions the defined expressions relating to any UK legislation which has been amended further to section 8 of the European Union (Withdrawal) Act 2018.

### **Amendments to material outside the Handbook**

- F. The Enforcement Guide (EG) is amended in accordance with Annex Q to this instrument.
- G. The Perimeter Guidance manual (PERG) is amended in accordance with Annex R to this instrument.

### **Notes**

- H. In this instrument, notes shown as “Note:” are intended for the convenience of the reader but do not form part of the legislative text.

### **Revocation**

- I. The Prospectus Regulation Rules Instrument 2019 in PS 19/12 ‘Changes to align the FCA Handbook with the EU Prospectus Regulations: feedback to CP19/6’ deleted the provisions of the Prospectus Rules sourcebook. Annex B of the Exiting the European Union: Listing, Prospectus and Disclosure Sourcebooks (Amendments) Instrument 2019 (FCA 2019/26) made changes to that sourcebook. Annex B of that instrument is replaced by Annex O (Prospectus Regulation Rules sourcebook (PRR)) to this instrument.

### **Citation**

- J. This instrument may be cited as the Exiting the European Union Handbook (Amendments) Instrument 2019.

By order of the Board  
[date]

### **Editor’s notes:**

- (1) The amendments in this instrument are based on text of the Handbook (including Handbook material consulted on but not yet made by the Board) in force or expected

to be in force on 31 December 2019. The text in this instrument may need to be amended at the time of the final instrument if there are further changes to the Handbook material.

- (2) The text in the instrument takes account of the European Union Exit Instruments made in March 2019 and the FCA Handbook instruments set out in Annex 1 of the of the accompanying Quarterly Consultation Paper, not all of which have been made by the Board. The text is reflected as if all the provisions are made.
- (3) The text in this instrument may need to be amended at the time of the final instrument if there are further changes to the content of the statutory instruments set out in Annex 1 of the of the accompanying Quarterly Consultation Paper.

## Annex A

### Amendments to the Glossary

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

#### Part 1: Comes into force on 25 October 2019

The definition of “exit day” in the Exiting the European Union: Glossary (Amendments) Instrument 2019 (FCA 2019/19) is deleted and replaced with the definition below. The text is not underlined.

[*Editor’s note:* This text amends the definition of exit day in the Exiting the European Union: Glossary (Amendments) Instrument 2019 (FCA 2019/19) to update it in accordance with the European Union (Withdrawal) Act 2018. The coming into force date of the definition is brought forward to 25 October 2019 as certain FEES rules which come into force on that date refer to this definition.]

<i>exit day</i>	exit day (in accordance with section 20 of the European Union (Withdrawal) Act 2018) has the meaning given in regulations made under that section.
-----------------	--

#### Part 2: Comes into force on exit day as defined in the European Union (Withdrawal) Act 2018

<i>EU Prospectus Regulation</i>	The EU version of Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.
<i>PR</i>	the Prospectus Rules sourcebook.
<i>SFTR (EU Exit) Regulations</i>	the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019 (SI 2019/542)
<i>TD Equivalence Decision</i>	the <i>UK</i> version of Commission Decision (EC) No 2008/961 of 12 December 2008 on the use by third countries’ issuers of securities of certain third country’s national accounting standards and International Financial Reporting Standards to prepare their consolidated financial statements, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .

Amend the following definitions as shown. Underlining indicates new text and striking through indicates deleted text.

<i>appointed representative Directory person</i>	(3) ...
	(4) <del>A person does not fall within paragraph (2)(a)(i) if they are an EEA registered tied agent. [deleted]</del>
<i>EEA SMCR firm</i>	(a) ...
	(b) any other <i>SMCR firm</i> that is a <del>TP firm</del> <u>an EEA PTV firm</u> .
<i>ESMA guidelines on risk factors</i>	guidelines drafted pursuant to article 16(4) of the <u>EU Prospectus Regulation</u> on the specificity, materiality and presentation of risks factors across categories depending on their nature.
<i>ESMA PR Prospectus Questions and Answers</i>	the Questions and Answers on the <u>EU Prospectus Regulation</u> published by <i>ESMA</i> (ESMA/2019/ESMA31-62-1258).
<i>firm</i>	...  (11) (in <i>PRIN 2</i> ) includes an <i>electronic money institution</i> , <del>an EEA electronic money institution</del> , a <i>payment institution</i> , <u>and</u> a <i>registered account information service provider</i> <del>and an EEA registered account information service provider</del> .
<i>Home State regulator</i>	...  (7) <del>in relation to an EEA authorised payment institution or an EEA registered account information service provider, the competent authority designated in accordance with article 22 of the Payment Services Directive as being responsible for the authorisation or registration and prudential supervision of that EEA authorised payment institution or EEA registered account information service provider. [deleted]</del>  (8) <del>in relation to an EEA authorised electronic money institution, the competent authority designated in accordance with article 3 of the Electronic Money Directive as being responsible for the authorisation and prudential supervision of that EEA authorised electronic money institution. [deleted]</del>
<i>insurance special purpose vehicle</i>	an <i>undertaking</i> whether incorporated or not, which has received authorisation in accordance with the <i>UK</i> provisions which implemented article 211(1) or (3) of the <i>Solvency II Directive</i> and:  (a) which assumes risks from an <del>insurer or a regulated insurance entity</del> <u>insurance undertaking or a reinsurance undertaking</u> ; and

	...
<i>MiFID authorisation and management body change notification ITS</i>	<u>the UK version of</u> Commission Implementing Regulation 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms, <u>which is part of UK law by virtue of the EUWA.</u>
<i>PR Regulation</i>	<u>the UK version of</u> Regulation number 2019/980 of the European Commission, <u>which is part of UK law by virtue of the EUWA.</u>
<i>regulatory system</i>	<p>(1) ...</p> <p>(2) in <i>PRIN</i> and in <i>BCOBS</i> in addition to (1), the arrangements for regulating <i>payment service providers</i> and <i>electronic money issuers</i> in or under the <i>Payment Services Regulations</i> and <i>Electronic Money Regulations</i>, including conditions of authorisation or registration set out in those regulations, the <i>Principles</i> and other <i>rules</i>, codes and guidance, including any relevant <del>directly applicable</del> provisions of a <del>Directive or Regulation</del> <u>an onshored regulation.</u></p>
<i>securities financing transaction</i>	<p>(1) ...</p> <p>(1A) (in <i>COLL</i>, <i>DEPP</i>, <i>EG</i>, <i>FEES</i> and <i>FUND</i>) a transaction defined in article 3(11) of the <i>Securities Financing Transactions Regulation</i> as follows:</p> <p>...</p>
<i>SRD asset manager</i>	<p>(1) an <i>investment firm</i> that provides <i>portfolio management</i> services to investors;</p> <p>(2) an <i>AIFM</i> that is not a <i>small AIFM</i>; or</p> <p>(3) the <i>operator</i> of a <u>UK UCITS</u>.</p> <p>[Note: article 1(2)(f) of <i>SRD</i>]</p>
<i>SRD institutional investor</i>	<p>(1) <u>(a)</u> an undertaking carrying out activities:</p> <p style="padding-left: 40px;">(i) of life assurance within the meaning of points (a), (b) and (c) of article 2(3) of Directive 2009/138/EC of the European Parliament and of the Council, <del>and</del> <u>; or</u></p> <p style="padding-left: 40px;">(ii) of reinsurance as defined in point (7) of article 13 of that Directive, provided that those activities cover life-insurance obligations; and</p>



which is would not be excluded pursuant to that Directive;

(b) References to Directive 2009/138/EC in (a)(i) and (ii) are to that Directive as implemented immediately before *exit day* in the law of the *United Kingdom* or any part of the *United Kingdom*; or

(2) an institution for occupational retirement provision falling within the scope of the law of the *United Kingdom* or any part of the *United Kingdom* which was relied on immediately before *exit day* to implement Directive (EU) 2016/2341 of the European Parliament and of the Council, ~~in accordance with article 2 thereof, unless a Member State has chosen not to apply that Directive in whole or in parts to that institution in accordance with article 5 of that Directive.~~

*trade repository*

a legal person that centrally collects and maintains the records of derivatives or *securities financing transactions*.

The Exiting the European Union: Glossary (Amendments) Instrument 2019 (FCA 2019/19) and the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) (PS19/12 ‘Changes to align the FCA Handbook with the EU Prospectus Regulations: feedback to CP19/6’) made amendments to the glossary definitions below. The text below takes account of the changes made by both these instruments. Further onshoring changes, to the consolidated text of the two instruments, are not indicated by underlining or strikethrough.

Replace the following definitions, and or parts of definitions, made by the Exiting the European Union: Glossary (Amendments) Instrument 2019 (FCA 2019/19) and the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) with the text below. The text in this section is not underlined.

*PD Regulation* the Prospectus Directive Regulation (No 2004/809/EC).

*prospectus* (1) (in *LR* and *PRR*, *FEES* and *FUND 3* (Requirements for managers of alternative investment funds)) a *prospectus* required under the *Prospectus Regulation*.

(2) ...

*Prospectus RTS Regulation* the *UK* version of Commission Delegated Regulation (EU) No 2019/979, which is part of *UK* law by virtue of the *EUWA*.

*public international body* (in *LR* and *DTR*) the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the Council of Europe Development Bank, the European Atomic Energy Community,

the European Bank for Reconstruction and Development, the European Company for the Financing of Railroad Stock, the *EU*, the European Investment Bank, the Inter-American Development Bank, the International Bank for Reconstruction and Development, the International Finance Corporation, the International Monetary Fund and the Nordic Investment Bank.

*small and  
medium-sized  
enterprise or SME*

- (1) ...
- (2) [deleted]
- (3) (in *IFPRU*) has the meaning in article 4(1)(128D) of the *UK CRR*.

[*Editor's note:* The amendments to the definition of 'third party prospectus' include references to legislation which remain subject to change, pending approval of the Prospectus (Amendment Etc.) (EU Exit) Regulations 2019 by Parliament.]

*third party  
prospectus*

a communication made by a *firm* if the communication is a prospectus that:

- (a) has been approved by the *FCA* in accordance with Part 6 of the *Act* and the *firm* is not responsible under the *Prospectus Rules* for the information given in the prospectus; or
- (b) is to be treated under regulation 73 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 as if it had been approved by the *FCA* and the *firm* is not responsible under the *Prospectus Directive* for the information given in the prospectus; or
- (c) is to be treated under regulation 74 of the of the Prospectus (Amendment etc.) (EU Exit) Regulations 2019 as if it had been approved by the *FCA* and the firm is not responsible under the *EU Prospectus Regulation* for the information given in the prospectus.

[Note: recital 73 to the *MiFID Org Regulation*]

The Exiting the European Union: Glossary (Amendments) Instrument 2019 made amendments to the following definition, coming into force at exit day. This definition has since been deleted by the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) (PS19/12 'Changes to align the FCA Handbook with the EU Prospectus Regulations: feedback to CP19/6'). The following definition made by the Exiting the European Union: Glossary (Amendments) Instrument 2019 (FCA 2019/19) is deleted:

*qualified investor*

The Exiting the European Union: Glossary (Amendments) Instrument 2019 deleted the following definitions, coming into force at exit day. These definitions have since been amended by the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) (PS19/12 ‘Changes to align the FCA Handbook with the EU Prospectus Regulations: feedback to CP19/6’). The following definitions remain deleted as made by the Exiting the European Union: Glossary (Amendments) Instrument 2019 (FCA 2019/19):

*Home State*

*Host State*

The Exiting the European Union: Glossary (Amendments) Instrument 2019 added the following definitions, coming into force at exit day. In light of amendments since made by the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) these definitions are now redundant and so are deleted as made by the Exiting the European Union: Glossary (Amendments) Instrument 2019 (FCA 2019/19). The text is not shown struck through.

<i>Prospectus RTS Regulation 1</i>	the <i>UK</i> version of Commission Delegated Regulation (EU) No 382/2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>Prospectus RTS Regulation 2</i>	the <i>UK</i> version of Commission Delegated Regulation (EU) 2016/301 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .

## Annex B

### Amendments to Principles for Businesses (PRIN)

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

#### 3 Rules about application

##### 3.1 Who?

...

3.1.1A R *PRIN* also applies:

...

- (2) ~~with the exception of *Principle 4*, and only in so far as responsibility for the matter in question is not reserved by the *Payment Services Directive*, *Electronic Money Directive* or other *EU* instrument to the *person's Home State regulator*, to an *EEA authorised electronic money institution*, an *EEA authorised payment institution* and an *EEA registered account information service provider*. [deleted]~~

...

##### 3.3 Where?

Territorial application of the Principles

...

3.3.3 R *PRIN* 3.3.1R applies to *electronic money institutions*, ~~*EEA authorised electronic institutions*~~, *payment institutions*; and *registered account information service providers* ~~and *EEA registered account information service providers*~~ as if the references to a *firm* were references to a *person* within that description, and references to an *appointed representative* were to an *agent* of such a *person* within the meaning of the *Payment Services Regulations*.

## Annex C

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

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

**Part 1: Comes into force on 9 December 2019 or on exit day as defined in the European Union (Withdrawal) Act 2018, whichever date is later.**

#### 1 Annex 1 Detailed application of SYSC

...

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 <sub>2</sub> and third country firms
...	...	...	...	...
SYSC 4.3.1R	...	...	...	...
SYSC 4.3.2R	Not applicable	Rule	Not applicable	Guidance <u>but</u> applies as a rule to an <i>operator of an electronic system in relation to lending</i>
SYSC 4.3.2AG	Not applicable	Not applicable	Not applicable	Guidance ( <u>but not applicable to an operator of an</u>

				<i>electronic system in relation to lending</i> <sup>2</sup>
...	...	...	...	...

...

## 6 Compliance, internal audit and financial crime

### 6.1 Compliance

...

- 6.1.2 R A *firm* that is a *management company* or an *operator of an electronic system in relation to lending* must, taking into account the nature, scale and complexity of its business, and the nature and range of financial services and activities undertaken in the course of that business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the *firm* to comply with its obligations under the *regulatory system*, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the *FCA* to exercise its powers effectively under the *regulatory system* ~~and, in respect of a *management company*,~~.

...

## Part 2: Comes into force on exit day as defined in the European Union (Withdrawal) Act 2018

### 3 Systems and controls

...

#### 3.4 SRD requirements

Application

...

- 3.4.3 G The defined term *regulated market* has an extended meaning for the purposes of this section. The definition includes certain markets situated outside the ~~EEA~~ UK.

[*Editor's note:* The Exiting the European Union: High Level Standards (Amendments) Instrument 2019 (FCA 2019/20) and the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) made amendments to SYSC 18.6.4G. The text below takes account of the changes

made by both these instruments. Further onshoring changes, to the consolidated text of the two instruments, are not indicated by underlining or strikethrough. References to legislation remain subject to change, pending approval of the Prospectus (Amendment Etc.) (EU Exit) Regulations 2019 by Parliament.]

Replace relevant provisions and add new sub-sections within SYSC 18.6.4G with the text below. The text is not underlined.

## **18 Whistleblowing**

...

### **18.6 Whistleblowing obligations under MiFID and other EU legislation**

...

#### Whistleblowing obligations under other EU legislation

18.6.4 G In addition to obligations under the *MiFID* regime, similar whistleblowing obligations apply to miscellaneous persons subject to regulation by the *FCA* under the following non-exhaustive list of legislation:

...

- (3) the *UK* provisions which implemented article 99d(5) of the *UCITS Directive* (see *SYSC* 4.1.1ER in respect of *UK UCITS management companies*, and *COLL* 6.6B.30R in respect of *depositaries*);
- (4) article 24(3) of the *securities financing transactions regulation*; and
- (5) section 97A of the *Act*, as regards obligations under the *Prospectus Regulation*, the *PR Regulation*, and the *Prospectus RTS Regulation*.

...

## Annex D

### Amendments to the General Provisions (GEN)

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

#### Part 1: Comes into force on exit day as defined in the European Union (Withdrawal) Act 2018

## 2 Interpreting the Handbook

...

### 2.2 Interpreting the Handbook

Purpose

2.2.36 G (1) ...

...

- (9) In relation to persons with *temporary EMI authorisation*, *temporary PI authorisation* and *temporary RAISP authorisation*, the specified directions, *rules* and *guidance* in *FEES* 4A, 7C and 13A apply to them. In addition, in relation to those *persons*, *rules* and *guidance* in *DISP*, ~~and~~ *SUP*, *PRIN* and *BCOBS* apply to them as they apply to ~~persons~~ electronic money institutions, payment institutions and registered account information service providers that are authorised or registered in the *UK*.

...

#### Part 2: Comes into force on 12 November 2019

## 2 Interpreting the Handbook

...

### 2.2 Interpreting the Handbook

...

Guidance applying while a firm has temporary permission

2.2.35 R ...



Additional rules and guidance applying to a TP firm coming into force after exit day

- 2.2.35A    G    A *TP firm* should refer to the sourcebook chapters listed in the table below, which identify the *rules* and *guidance* in their sourcebooks that came into force after exit day and in respect of which special provision has been made to apply them to *TP firms* as if they were *UK firms*.

<u>CONC 16</u>
----------------

...

**Part 3: Comes into force on 18 December 2019**

**2            Interpreting the Handbook**

...

**2.2          Interpreting the Handbook**

...

Guidance applying while a firm has temporary permission

- 2.2.35    R    ...

Additional rules and guidance applying while a firm has temporary permission

- 2.2.35A    G    A *TP firm* should refer to the sourcebook chapters listed in the table below, which identify the *rules* and *guidance* in their sourcebooks that came into force after *exit day* and in respect of which special provision has been made to apply them to *TP firms* as if they were *UK firms*.

<u>BCOBS 9</u>
----------------

CONC 16
---------

[*Editor's note:* The Exiting the European Union: Business Standards Sourcebooks (Amendments) Instrument 2019 (FCA 2019/23) and the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) made amendments to COBS 14.3.3R. The text below takes account of the changes made by both these instruments. Further onshoring changes, to the consolidated text of the two instruments, are not indicated by underlining or strikethrough.]

## Annex E

### Amendments to the Conduct of Business sourcebook (COBS)

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

#### 1 Application and purpose

...

#### 1 Application (see COBS 1.1.2R)

Annex

1

...

#### Part 3: Guidance

...		
<b>11.</b>	<b>SRD: effect on territorial scope</b> <u>[deleted]</u>	
<del>11.1</del>	<del>G</del>	<del>SRD includes a number of requirements on SRD asset managers. These requirements are implemented in COBS 2.2B.</del>
<del>11.2</del>	<del>G</del>	<del>SRD provides that the EEA State competent to regulate these requirements is the Home State as defined in the applicable sector-specific legislation. COBS 2.2B therefore applies where a UK firm carries on activities from an establishment in the United Kingdom or another EEA State, as set out in COBS 2.2B.4R.</del>
	<b>[Note: article 1(2)(a) of SRD]</b>	

#### 2 Conduct of business obligations

...

#### 2.2B SRD requirements

...

Application: What?

...

- 2.2B.3 G The defined term *regulated market* has an extended meaning for the purposes of this section. The definition includes certain markets situated outside the ~~EEA~~ United Kingdom.

Application: Where?

- 2.2B.4 R (1) This section applies in relation to activities carried on by a *firm* from an establishment in the *United Kingdom*.
- (2) ~~This section also applies in relation to activities carried on by a UK firm from an establishment in another EEA State. [deleted]~~

...

Replace COBS 14.3.3R as made by the Exiting the European Union: Business Standards Sourcebooks (Amendments) Instrument 2019 (FCA 2019/23) and the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) with the text below. The text is not underlined.

## 14 Providing product information to clients

...

### 14.3 Information about designated investments (non-MiFID provisions)

...

- 14.3.3 R If a *firm* provides a *retail client* with information about a *designated investment* that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with the *Prospectus Regulation*, that *firm* must inform the *retail client* where that prospectus is made available to the public.

...

Amend the following text as shown.

## 18 Specialist regimes

...

### 18.5A Full-scope UK AIFMs and incoming EEA AIFM branches

...

Application or modification of general COBS rules

18.5A.3 R A *firm* when it is carrying on *AIFM investment management functions*:

- (1) must comply with the *COBS rules* specified in the table, as modified by this section; and
- (2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

Chapter, section, rule	Full-scope UK AIFM	<del>Incoming EEA AIFM branch</del>
...		
2.1.4R (AIFMs best interest rule)	...	
2.2B (SRD requirements)	Applies	<del>Does not apply</del>
...		

...

## 22 Restrictions on the distribution of certain complex investment products

...

### 22.5 Restrictions on the retail marketing, distribution and sale of contracts for differences and similar speculative investments

Application

22.5.1 R (1) Subject to ~~(2)~~, *COBS 22.5.1AR*, and *COBS 22.5.1BG* ~~and~~ *COBS 22.5.1CR* this section applies to:

...

- (2) ~~This section does not apply to the marketing, distribution or sale of *restricted speculative investments* to a *retail client* in another *EEA State* to the extent that those activities are subject to stricter requirements imposed under article 42 of *MiFIR* by the *competent authority* of that *EEA State*. [deleted]~~

...

- 22.5.1C R ~~The *rules* in this section do not apply to the sale and distribution of *restricted options* by an *EEA MiFID investment firm* (EEAMIF) in circumstances where:~~
- (1) ~~the EEAMIF has not marketed, nor caused to be marketed, the *restricted option* in the *United Kingdom*; and~~
- (2) ~~the *retail client* is in the *United Kingdom* and has approached the EEAMIF at their own exclusive initiative. [deleted]~~

- 22.5.2 G ~~The *rule* in *COBS 22.5.1R(2)* means that a *firm* does not need to comply with the *rules* in this section to the extent that the marketing, distribution or sale by that *firm* is subject to a stricter requirement in the *retail client's* state. For instance:~~
- (1) ~~Where a *firm* sells a *restricted speculative investment* to a *retail client* in an *EEA State* (A) and A has imposed stricter margin requirements for *retail clients* than those in this section, but the remainder of the requirements imposed by A are the same or less strict than those in this section, then the *firm* should comply with the stricter margin requirements imposed by A but should still comply with the remainder of the *rules* in this section. [deleted]~~

...

## Annex F

## Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

### 1 Application and purpose

...

### 1.2 General application: who? what?

...

Application of MCOB where agreements are facilitated by a P2P platform

1.2.22 R ...

- (5) *MCOB 1.2.22R(4) does not apply where ~~non~~the provision in question is one which applied immediately before exit day and a failure to secure compliance with the provision would be have been incompatible with EU law at that time.*

1.2.23 G (1) The purpose of *MCOB 1.2.22R(3)* to *MCOB 1.22.R(5)* is to avoid imposing overlapping requirements on the *P2P platform operator* facilitating a home financing arrangement and any *firms* who may participate in that arrangement as finance providers, to the extent that ~~is~~ was compatible with *EU law immediately before exit day*, in particular the *MCD* and the *Distance Marketing Directive*. ...

...

...

### 15 P2P home finance activities

...

### 15.5 MCOB provisions disapplied from P2P platform operators

...

15.5.3 G ~~*A regulated mortgage contract (including a MCD regulated mortgage contract) where the lender does not act by way of business is not within the scope of the MCD. [deleted]*~~

## Annex G

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

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

#### Part 1: Comes into force on exit day as defined in the European Union (Withdrawal) Act 2018

## 1 Application

### 1.1 General application

The general application rule

...

Application to payment services and electronic money

- 1.1.1A R In addition to the general application rule, Chapter 2 of *BCOBS* applies to a *firm* (other than a *credit union*), an *electronic money institution*, ~~an EEA authorised electronic institution~~, a *payment institution*, and a *registered account information service provider* ~~and an EEA registered account information service provider~~ with respect to the provision of *payment services* or issuance or redemption of *electronic money* carried on from an establishment maintained by it or its *agent* in the *United Kingdom* and activities connected with those activities. These *persons* are referred to collectively in Chapters 1 and 2 of *BCOBS* as “providers”.

...

## 2 Communications and financial promotions

### 2.1 Purpose and application: Who and what?

- 2.1.1 G *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. *Principle 7* requires a *firm* to pay due regard to the information needs of its *clients* and communicate information to them in a way which is clear, fair and not misleading. *Principles 6* and *7* also apply to an *electronic money institution*, ~~an EEA authorised electronic money institution~~, a *payment institution*, and a *registered account information service provider* ~~and an EEA registered account information service provider~~ with respect to provision of *payment services* and the issuance of *electronic money*. This chapter reinforces these requirements by requiring a *firm* and these other providers to pay regard to the information needs of *banking customers*, *payment service customers* and *electronic money customers* when communicating with, or making a *financial promotion* or a *payment service* or *electronic money*

*promotion* to, them and to communicate information in a way that is clear, fair and not misleading.

## **Part 2: Comes into force on 18 December 2019**

After BCOBS 8 (Tools for personal current account customers) insert the following new chapter. The text is not underlined.

### **9 Application of rules in BCOBS to firms with temporary permission**

#### **9.1 Application of rules in BCOBS to firms with temporary permission**

- 9.1.1 G (1) The purpose of this chapter is to make specific provision that certain provisions in *BCOBS* are intended to apply to *TP firms* as if they were *UK firms* notwithstanding the fact that those provisions came into force after *exit day*. This modifies the general position set out in *GEN 2.2.26R*.
- (2) The specific application of the provisions listed in this chapter is in addition to those provisions in *BCOBS* that apply to *TP firms* in accordance with the general *rules* and *guidance* set out in *GEN 2.2.26R* to *GEN 2.2.39G*.
- 9.1.2 R The following *rules* and *guidance* in *BCOBS* apply to *TP firms* as set out in those provisions:

<i>BCOBS 1.1.4R</i> and <i>BCOBS 1.1.15R</i> , as modified by FCA 2018/52
<i>BCOBS 2.2.6G</i>
<i>BCOBS 2.2B</i>
<i>BCOBS 2.3.10R</i> and <i>2.3.11G</i>
<i>BCOBS 4.4</i>
<i>BCOBS 8</i>



## Annex H

### Amendments to the Product Intervention and Product Governance sourcebook (PROD)

In this Annex, underlining indicates new text.

#### 3      **Product Governance: MiFID**

...

#### 3.2    **Manufacture of products**

...

Manufacture by more than one firm

...

- 3.2.7    R    Where *firms* collaborate, including with entities which are not authorised and supervised in accordance with UK provisions implementing MiFID or *third country investment firms*, to create, develop, issue and/or design a *financial instrument*, they must outline their mutual responsibilities in a written agreement.

[**Note:** article 9(8) of the *MiFID Delegated Directive*]

## Annex I

### Amendments to the Supervision manual (SUP)

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

[*Editor's note:* Since we made amendments to SUP 16.1.2G below in instrument FCA 2019/11 (Reporting of Information about Directory Persons (Dual-Regulated Firms) Instrument 2019), the provision was amended by another instrument (FCA 2019/24). While this renumbering does not create deficiencies between the two instruments, we are here showing the provision as it will look at exit day, without mark-up, for the avoidance of doubt.]

#### **16            Reporting requirements**

##### **16.1        Application**

...

- |        |   |   |
|--------|---|---|
| 16.1.2 | G | <p>(1)    Subject to (2), the only category of <i>firm</i> to which no section of this chapter applies is an <i>ICVC</i>.</p> <p>(2)    [deleted]</p> <p>(3)    [deleted]</p> |
|--------|---|---|

## Annex J

## Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

## 2 Statutory notices and the allocation of decision making

...

### 2.5 Provision for certain categories of decision

...

- 2.5.18 G Some of the distinguishing features of notices given under enactments other than the *Act* are as follows:

...

(9) *Securities Financing Transactions Regulation* (as amended by the *SFTR (EU Exit) Regulations*): where the *FCA* is exercising its powers to refuse an application for registration of a *trade repository* under article 7 of the *Securities Financing Transactions Regulation* or to refuse an application made by a *trade repository* to withdraw its registration under article 10(3), it must give a written notice in accordance with article 10a(6). In these circumstances the decision to give a written notice under article 10a(6) will be taken by *FCA* staff under *executive procedures*.

Where the *FCA* is exercising its powers to withdraw the registration of a *trade repository* on the *FCA*'s own initiative under article 10(1) or 10(2), it must give a written notice in accordance with article 10a(6)(b). In these circumstances, the decision to give a written notice under article 10a(6)(b) will be taken by the *RDC*.

Upon receipt of a written notice under article 10 the *trade repository* may decide to seek a review or to refer the matter directly to the *Tribunal* under article 10b.

If the *trade repository* decides to seek a review of the decision set out in the article 10 notice, they can make representations to the *RDC*. If the *RDC* decides to maintain the original decision, the *trade repository* may refer the *RDC*'s decision to do so to the *Tribunal*.

...

## 2 Warning notices and decision notices under the Act and certain other enactments

Annex  
1G

...

<b>Securitisation (Amendment) (EU Exit) Regulations</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
<b><u>SFTR (EU Exit) Regulations</u></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Regulations 26(1)(a) and 27(1)(a)</u>	<u>when the FCA is proposing or deciding to publish a statement under regulation 28</u>		<u>RDC</u>
<u>Regulations 26(1)(b) and 27(1)(b)</u>	<u>when the FCA is proposing or deciding to impose a financial penalty under regulation 29</u>		<u>RDC</u>

## 2 Supervisory notices

Annex

2G

...

<b>Securitisation (Amendment) (EU Exit) Regulations</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
<b><u>Securities Financing Transactions Regulation</u></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Article 10a(6)(a) and 10a(11)(a)</u>	<u>when the FCA is exercising its power under article 7 of the Securities Financing Transactions Regulation to refuse an application for registration of a trade repository</u>		<u>RDC or executive procedures (see DEPP 2.5.18G(9))</u>

<u>Article 10a(6)(b) and 10a(11)(b)</u>	<u>when the <i>FCA</i> is exercising its power to withdraw the registration of a <i>trade repository</i> on its own initiative under article 10(1) or 10(2)</u>		<u><i>RDC</i></u> <u>(see <i>DEPP</i> 2.5.18G(9))</u>
<u>Article 10a(6)(c) and 10a(11)(c)</u>	<u>when the <i>FCA</i> is exercising its power to refuse an application made by a <i>trade repository</i> to withdraw its registration under article 10(3)</u>		<u><i>RDC</i> or <i>executive procedures</i></u> <u>(see <i>DEPP</i> 2.5.18G(9))</u>

...

#### Sch 4 Powers Exercised

...

4.2G

The following additional powers and related provisions have been exercised by the *FCA* to make the statements of policy in *DEPP*:

...

Regulation 79 (Application of Part 26 of the Act (notices) of the *Trade Repositories (EU Exit) Regulations*, as applied by regulation 15 of the *Securitisation (Amendment) (EU Exit) Regulations*

Regulation 30 (Statement of policy) of the *SFTR (EU Exit) Regulations*

Regulation 32 (Powers to issue guidance) of the *SFTR (EU Exit) Regulations*

Regulation 36 (Application of Part 11 of the Act (information gathering and investigations)) of the *SFTR (EU Exit) Regulations*

Regulation 37 (Application of Part 26 of the Act (notices)) of the *SFTR (EU Exit) Regulations*

## Annex K

### Amendments to the Collective Investment Schemes sourcebook (COLL)

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

#### 6            **Operating duties and responsibilities**

...

#### 6.6        **Powers and duties of the scheme, the authorised fund manager, and the depositary**

...

Application of assessment of value and independent director rules

6.6.19      R      *COLL 6.6.20R to COLL 6.6.26G apply to:*

- (1)      *an authorised fund manager (other than ~~an EEA UCITS management company or an EEA AIFM~~ one which is managing an authorised fund under a temporary permission) of an AUT, ACS, or ICVC; and*
- (2)      *a ~~UK UCITS management company~~ providing collective portfolio management services for an ~~EEA UCITS scheme~~ from a ~~branch in another EEA State~~ or under the freedom to provide cross border services. [deleted]*

...

#### 8            **Qualified investor schemes**

...

#### 8.5        **Powers and responsibilities**

...

Application of assessment of value and independent director rules

8.5.16      R      *COLL 8.5.17R to COLL 8.5.22R apply to an authorised fund manager (other than ~~an EEA AIFM~~ one which is managing an authorised fund under a temporary permission) of an AUT, ACS, or ICVC.*

...

## Annex L

### Amendments to the Consumer Credit sourcebook (CONC)

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

#### Part 1: Comes into force on 12 November 2019

After CONC 15 (Agreements secured on land) insert the following new chapter. The text is not underlined.

#### **16 Application of rules in CONC to firms with temporary permission**

##### **16.1 Application of rules in CONC to firms with temporary permission**

- 16.1.1 G (1) The purpose of this chapter is to make specific provision that certain provisions in *CONC* are intended to apply to *TP firms* as if they were *UK firms* notwithstanding the fact that those provisions came into force after *exit day*. This modifies the general position set out in *GEN 2.2.26R*.
- (2) The specific application of the provisions listed in this chapter is in addition to those provisions in *CONC* that apply to *TP firms* in accordance with the general *rules* and *guidance* set out in *GEN 2.2.26R* to *GEN 2.2.39G*.
- 16.1.2 R The following *rules* and *guidance* in *CONC* apply to *TP firms* as set out in those provisions:

<i>CONC 6.7.16BR</i>
<i>CONC TP 8(2) and (3)</i>

#### Part 2: Comes into force on 18 December 2019

#### **16 Application of rules in CONC to firms with temporary permission**

##### **16.1 Application of rules in CONC to firms with temporary permission**

...

- 16.1.2 R The following *rules* and *guidance* in *CONC* apply to *TP firms* as set out in those provisions:

<u>CONC 3.3.12G</u>
<u>CONC 3.5.14G</u>
<u>CONC 4.7.3G</u>
<u>CONC 5D</u>
CONC 6.7.16BR
<u>CONC 6.7.41R and CONC 6.7.42G</u>
CONC TP 8(2) and <del>(3)</del> to (5)

### Part 3: Comes into force on 6 April 2020

#### 16 Application of rules in CONC to firms with temporary permission

##### 16.1 Application of rules in CONC to firms with temporary permission

...

- 16.1.2 R The following *rules* and *guidance* in *CONC* apply to *TP firms* as set out in those provisions:

<u>CONC 3.1.8G, as modified by FCA 2019/71</u>
CONC 3.3.12G
<u>CONC 3.5.5R to CONC 3.5.9AG, as modified by FCA 2019/71</u>
CONC 3.5.14G
CONC 4.7.3G
<u>CONC 5C</u>
CONC 5D
CONC 6.7.16BR
CONC 6.7.41R and CONC 6.7.42G
CONC TP 8(2) to (5)

### Part 4: Comes into force on 6 April 2020



[*Editor's note:* the drafting in Part 4 of this Annex takes into account the instrument consulted on in CP19/18 'Overdraft Pricing Remedies and Competition Remedies' (June 2018) as though it had been made.]

## **16 Application of rules in CONC to firms with temporary permission**

### **16.1 Application of rules in CONC to firms with temporary permission**

...

- 16.1.2 R The following *rules* and *guidance* in *CONC* apply to *TP firms* as set out in those provisions:

<i>CONC</i> 3.3.12G
<i>CONC</i> 3.5.5R to <i>CONC</i> 3.5.9AG, as modified by FCA 2019/71
<i>CONC</i> 3.5.14G
<i>CONC</i> 4.7.3G
<i>CONC</i> 5C
<i>CONC</i> 5D
<i>CONC</i> 6.7.16BR
<i>CONC</i> 6.7.41R and <i>CONC</i> 6.7.42G
<i>CONC</i> TP 8(2) to <del>(5)</del> (8)

[*Editor's note:* The Exiting the European Union: Specialists Sourcebooks (Amendments) Instrument 2019 (FCA 2019/25) and the Prospectus Regulation Rules Instrument 2019 (FCA CP 19/18) (PS19/12 'Changes to align the FCA Handbook with the EU Prospectus Regulations: feedback to CP19/6') made amendments to RCB 1.1.9G(1). The text below takes account of the changes made by both these instruments. Further onshoring changes, to the consolidated text of the two instruments, are not indicated by underlining or strikethrough. References to legislation remain subject to change, pending approval of the Prospectus (Amendment Etc.) (EU Exit) Regulations 2019 by Parliament.]

## **Annex M**

### **Amendments to the Regulated Covered Bonds sourcebook (RCB)**

Replace RCB 1.1.9G(1) made by the Exiting the European Union: Specialists Sourcebooks Instrument 2019 (FCA 2019/25) and the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) with the text below. The text is not underlined.

## **1 Introduction**

### **1.1 Introduction to sourcebook**

...

- 1.1.9     G     (1)     *Issuers* which are subject to an obligation to publish a prospectus under the *Prospectus Regulation* are required by Chapter II of the *PR Regulation* to disclose risk factors. These requirements are set out in *PRR 2.3.1UK* and *PRR App 2.1.1UK*, where there is a link to the relevant Annexes of the *PR Regulation*.

...

[*Editor's note:* The Exiting the European Union: Listings, Prospectus and Disclosure Sourcebooks (Amendments) Instrument 2019 (FCA 2019/26) and the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) (PS19/12 'Changes to align the FCA Handbook with the EU Prospectus Regulations: feedback to CP19/6') made amendments to LR 2.2.10R, LR 4.1.1R, LR 4.2.2R, LR 4.3.5R, LR 4.4.2R and LR Appendix 1. The text below takes account of the changes made by both of these instruments.]

## Annex N

### Amendments to the Listing Rules sourcebook (LR)

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

Replace LR 2.2.10R, LR 4.1.1R, LR 4.2.2R and LR 4.4.2R, or part of the text as shown, made by the Exiting the European Union: Listings, Prospectus and Disclosure Sourcebooks (Amendments) Instrument 2019 (FCA 2019/26) and the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) with the text of the relevant provisions as shown below. The text is not marked up.

## 2 Requirements for listing: All securities

### 2.2 Requirements for all securities

...

#### Prospectus

- 2.2.10 R (1) This *rule* applies if:
- (a) a *prospectus* must be approved and published for the *securities*; or
  - (b) the *applicant* is permitted and elects to draw up a *prospectus* for the *securities*.
- (2) To be *listed*, a *prospectus* must have been approved by the *FCA* and published in relation to the *securities*.

...

## 4 Listing particulars for professional securities market and certain other securities: All securities

### 4.1 Application and Purpose

#### Application

- 4.1.1 R This chapter applies to an *issuer* that has applied for the *admission* of:
- ...
- (2) any other *specialist securities* for which a *prospectus* is not required under the *Act* or the *Prospectus Regulation*.

...

## 4.2 Contents and format of listing particulars

...

### Summary

- 4.2.2 R (1) The *listing particulars* must contain a *summary* that complies with the requirements in article 7 of the *Prospectus Regulation*, *PRR* 4.1.2R and Chapter I of the *Prospectus RTS Regulation* (as if those requirements applied to the *listing particulars*).

...

...

Delete LR 4.3.5R made by the Exiting the European Union: Listings, Prospectus and Disclosure Sourcebooks (Amendments) Instrument 2019 (FCA 2019/26). This is replaced by LR 4.3.5R made by the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) and LR 4.3.5R should be read as made by FCA 2019/80, below.

## 4.3 Approval and publication of listing particulars

...

### Filing and publication of listing particulars etc

- 4.3.5 R An *issuer* must ensure that after *listing particulars* or *supplementary listing particulars* are approved by the *FCA*, the *listing particulars* or *supplementary listing particulars* are filed and published as if the relevant requirements in *PRR* 3.2, article 21 of the *Prospectus Regulation*, the *PR Regulation* and the *Prospectus RTS Regulation* applied to them.

## 4.4 Miscellaneous

### Supplementary listing particulars

...

- 4.4.2 R An *issuer* must ensure that after *supplementary listing particulars* are approved by the *FCA*, the *supplementary listing particulars* are filed and published as if the requirements in *PRR 3.2*, article 21 of the *Prospectus Regulation*, the *PR Regulation* and the *Prospectus RTS Regulation* applied to them.

...

## 8 Sponsors: Premium listing

...

### 8.4 Role of a sponsor: transactions

New applicants: procedure

- 8.4.3 R A *sponsor* must:
- (1) submit a completed Sponsor's Declaration on an Application for Listing to the *FCA* ~~either:~~
    - (a) on the day the *FCA* is to consider the application for approval of the *prospectus* and prior to the time the *prospectus* is approved; ~~or~~
    - (b) ~~at a time agreed with the FCA, if the FCA is not approving the prospectus;~~
  - ...
  - (4) submit a letter to the *FCA* setting out how the *applicant* satisfies the criteria in *LR 2* (Requirements for listing - all securities), *LR 6* (Additional requirements for premium listing (commercial company)) and, if applicable, *LR 15*, *LR 16* or *LR 21*, no later than when the first draft of the *prospectus* or *listing particulars* is submitted (~~or, if the FCA is not approving a prospectus, at a time to be agreed with the FCA~~).

...

Further issues: procedure

- 8.4.9 R A *sponsor* must:
- (1) submit a completed Sponsor's Declaration on an Application for Listing to the *FCA* ~~either:~~
    - (a) on the day the *FCA* is to consider the application for approval of the *prospectus* and prior to the time the *prospectus* is approved;

- (b) at a time agreed with the ~~FCA~~ if the ~~FCA~~ did not approve the *prospectus* or if it is determining whether a document is an *equivalent document*;

...

...

## 9 Continuing obligations

...

### 9.2 Requirements with continuing application

...

Compliance with the disclosure requirements, transparency rules and corporate governance rules

...

9.2.6C R A *listed company* that is not already required to comply with:

- (1) ~~DTR 7.3 (Related party transactions); or~~
- (2) ~~requirements imposed by another EEA State that correspond to DTR 7.3;~~

must comply with *DTR 7.3* as if it were an *issuer* to which *DTR 7.3* applies, subject to the modifications set out in *LR 9.2.6DR*.

9.2.6D R For the purposes of *LR 9.2.6CR*, *DTR 7.3* is modified as follows:

- (1) *DTR 7.3.2R* must be read as if the words “has the meaning in UK-adopted IFRS” are replaced by:

“has the meaning:

- (a) in UK-adopted IFRS; or
- (b) where the *listed company* prepares annual consolidated financial statements in accordance with accounting standards which have been determined to be equivalent to UK-adopted IFRS by the European Commission in accordance with Commission Regulation (EC) No. 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council and which are set out in the TD Equivalence Decision,

- (i) in UK-adopted IFRS, or
- (ii) in the equivalent accounting standards in accordance with which its annual consolidated financial statements are prepared;

at the choice of the *listed company*.”

...

...

## 14 Standard listing (shares)

...

### 14.3 Continuing obligations

...

Compliance with the transparency rules and corporate governance rules

...

14.3.25 R A company with a *standard listing* of equity shares (other than an *open-ended investment company*) that is not already required to comply with:

- (1) *DTR 7.3* (Related party transactions); ~~or~~
- (2) ~~requirements imposed by another EEA State that correspond to *DTR 7.3*;~~

must comply with *DTR 7.3* as if it were an *issuer* to which *DTR 7.3* applies, subject to the modifications set out in *LR 14.3.26R*.

14.3.26 R For the purposes of *LR 14.3.25R*, *DTR 7.3* is modified as follows:

- (1) *DTR 7.3.2R* must be read as if the words “has the meaning in UK-adopted IFRS” are replaced by:  
“has the meaning:
  - (a) in UK-adopted IFRS; or
  - (b) where the *listed company* prepares annual consolidated financial statements in accordance with accounting standards which have been determined to be equivalent to UK-adopted IFRS by the European Commission in accordance with Commission Regulation (EC) No. 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and

~~2004/109/EC of the European Parliament and of the Council and which are set out in the *TD Equivalence Decision*,~~

- (i) in UK-adopted IFRS, or
- (ii) in the equivalent accounting standards in accordance with which its annual consolidated financial statements are prepared;

at the choice of the *listed company*.”

...

...

## **21 Sovereign Controlled Commercial Companies: Premium listing**

...

### **21.8 Continuing obligations: Certificates representing shares**

...

Additional requirements: compliance with the disclosure requirements, transparency rules and corporate governance rules

...

21.8.17A R A *listed company* that is not already required to comply with:

- ~~(1) DTR 7.3 (Related party transactions); or~~
- ~~(2) requirements imposed by another EEA State that correspond to DTR 7.3;~~

must comply with *DTR 7.3* as if it were an *issuer* to which *DTR 7.3* applies, subject to the modifications set out in *LR 21.8.17BR*.

21.8.17B R For the purposes of *LR 21.8.17AR*, *DTR 7.3* is modified as follows:

- (1) *DTR 7.3.2R* must be read as if the words “has the meaning in UK-adopted IFRS” are replaced by:

“has the meaning:

- (a) in UK-adopted IFRS; or
- (b) where the *listed company* prepares annual consolidated financial statements in accordance with accounting standards which have been determined to be equivalent to UK-adopted IFRS by the European Commission in accordance with Commission Regulation (EC) No.



~~1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council and which are set out in the *TD Equivalence Decision*,~~

- (i) in UK-adopted IFRS, or
- (ii) in the equivalent accounting standards in accordance with which its annual consolidated financial statements are prepared;

at the choice of the *listed company*.”

...

...

## Appendix 1

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

### App 1.1

### Relevant definitions

#### 1.1.1

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

...

Insert the following new definitions in the appropriate alphabetical positions.  
The text is not underlined.

*Prospectus RTS  
Regulation*

the *UK* version of Commission Delegated Regulation (EU) 2019/979, which is part of *UK* law by virtue of the *EUWA*.

*TD Equivalence Decision*

the *UK* version of Commission Decision (EC) No 2008/961 of 12 December 2008 on the use by third countries’ issuers of securities of certain third country’s national accounting standards and International Financial Reporting Standards to prepare their consolidated financial statements, which is part of *UK* law by virtue of the *EUWA*.

Amend the following definition as shown. Underlining indicates new text.

*PR Regulation*

the UK version of Regulation number 2019/980 of the European Commission, which is part of UK law by virtue of the EUWA.

Replace the following definition, and or parts of the definition, made by The Exiting the European Union: Glossary (Amendments) Instrument 2019 (FCA 2019/19) and the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) with the text below. The text in this section is not underlined.

*Prospectus Regulation*

the UK version of Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, which is part of UK law by virtue of the EUWA.

Delete the definition ‘prospectus’ in LR Appendix 1 (relevant definitions) made by the Exiting the European Union: Glossary (Amendments) Instrument 2019 (FCA 2019/19). This is replaced by the definition ‘prospectus’ made by the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) as follows. The text is not underlined.

*prospectus*

a prospectus required under the *Prospectus Regulation*.

The Exiting the European Union: Glossary (Amendments) Instrument 2019 deleted the following definitions, coming into force at exit day. These definitions have since been amended by the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) (PS19/12 ‘Changes to align the FCA Handbook with the EU Prospectus Regulations: feedback to CP19/6’). The following definitions listed in LR Appendix 1 (relevant definitions) remain deleted as made by the Exiting the European Union: Glossary (Amendments) Instrument 2019 (FCA 2019/19).

*Home Member State or Home State*

~~(as defined in section 102C of the Act) in relation to an issuer of transferable securities, the EEA State which is the "home Member State" for the purposes of the Prospectus Regulation (which is to be determined in accordance with article 2(m) of that regulation). [deleted]~~

*Host Member State or Host State*

~~(as defined in article 2(n) of the Prospectus Regulation) the State where an offer of securities to the public is made or admission to trading is sought, when different from the home Member State. [deleted]~~

The Exiting the European Union: Glossary (Amendments) Instrument 2019 inserted the following definition, coming into force at exit day. This definition is now to be deleted as follows.

*Prospectus RTS  
Regulation 2*

~~the UK version of Commission Delegated Regulation (EU) 2016/301 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004, which is part of UK law by virtue of the EUWA. [deleted]~~

The Exiting the European Union: Listings, Prospectus and Disclosure Sourcebooks (Amendments) Instrument 2019 (FCA 2019/26) inserted a new transitional provision into LR TR 14 titled ‘Transitional Provisions for a prospectus approved by an EEA State before exit day’. Since this time, the Listing and Disclosure Sourcebooks (Shareholders Rights Directive) Instrument 2019 also inserted a new transitional provision into LR TR 14. The transitional provision inserted by FCA 2019/26 has therefore been renumbered to LR TR 15 and amended as shown below. Underlining indicates new text and striking through indicates deleted text.

**TR 14**                      **Transitional Provisions for a prospectus approved by an EEA State**  
**TR 15**                      **before exit day**

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the Transitional Provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook Provision: coming into force
1.	<del>LR 2.2.1R</del> <u>LR 2.2.10R,</u> <u>LR 3.3.2R,</u> <u>LR 3.3.6R,</u> <u>LR 3.4.4R,</u> <u>LR 6.2.1R,</u> <u>LR 6.2.2G,</u> <u>LR 6.7.1R,</u> <u>LR 6.12.2G,</u> <u>LR 8.2.1R,</u> <u>LR 8.4.1R,</u> <u>LR</u> <u>8.4.3R(3),</u> <u>LR</u> <u>8.4.8R,</u> and <u>LR</u> <u>8.4.9R(3),</u>	R	For the purposes of these rules references to a <i>prospectus</i> include:  (1) a prospectus referred to under regulation 73 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019;  (2) a prospectus referred to under regulation 74 of The Prospectus (Amendment etc.)	<u>For LR 3.3.6R,</u> <u>a period of six</u> <u>years</u> <u>following exit</u> <u>day.</u>  <u>For LR</u> <u>13.1.3R, LR</u> <u>13.4.1R and</u> <u>LR 13.6.1R, an</u> <u>indefinite</u> <u>period of time.</u>  <u>For all other</u> <u>provisions, For</u>	<u>Exit day</u>

	<u>LR 9.2.18R,</u> <u>LR 13.1.3R,</u> <u>LR 13.4.1R,</u> <u>LR 13.6.1R</u> <u>LR</u> <u>21.6.14R</u> <u>and LR</u> <u>21.8.27R.</u>		<u>(EU Exit) Regulations 2019;</u> <u>and</u>  <u>(3) a prospectus approved by</u> <u>the FCA before exit day.</u>	12 months following <i>exit</i> <i>day.</i>	
<u>2.</u>	<u>LR 3.4.7R</u>	<u>R</u>	For the purposes of this rule, references to a <i>base prospectus</i> include:  (1) a prospectus referred to under regulation 73 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019;  (2) a prospectus referred to under regulation 74 of The Prospectus (Amendment etc.) (EU Exit) Regulations 2019; and  (3) a base prospectus approved by the FCA before <i>exit day.</i>	For 12 months following <i>exit</i> <i>day</i>	<i>Exit day</i>
<u>3.</u>	<u>LR</u> <u>8.4.3R(1)</u>	<u>R</u>	For a prospectus referred to under:  (1) regulation 73 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019; or  (2) regulation 74 of The Prospectus (Amendment etc.) (EU Exit) Regulations 2019,	For 12 months following <i>exit</i> <i>day</i>	<i>Exit day</i>

			<u>a sponsor must submit a completed Sponsor's Declaration on an Application for Listing to the FCA at a time to be agreed with the FCA.</u>		
<u>4.</u>	<u>LR</u> <u>8.4.3R(4)</u>	<u>R</u>	<p><u>For a prospectus referred to under:</u></p> <p><u>(1) regulation 73 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019; or</u></p> <p><u>(2) regulation 74 of The Prospectus (Amendment etc.) (EU Exit) Regulations 2019,</u></p> <p><u>the letter referred to in LR 8.4.3R(4) must be submitted to the FCA at a time to be agreed with the FCA.</u></p>	<u>For 12 months following exit day</u>	<u>Exit day</u>
<u>5.</u>	<u>LR</u> <u>8.4.9R(1)</u>	<u>R</u>	<p><u>For a prospectus referred to under:</u></p> <p><u>(1) regulation 73 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019; or</u></p> <p><u>(2) regulation 74 of The Prospectus (Amendment etc.) (EU Exit) Regulations 2019,</u></p> <p><u>a sponsor must submit a completed Sponsor's Declaration on an Application</u></p>	<u>For 12 months following exit day</u>	<u>Exit day</u>

			<u>for Listing to the <i>FCA</i> at a time to be agreed with the <i>FCA</i>.</u>		
--	--	--	--	--	--

[*Editor's note:* References to the Act, onshored EU legislation (including copy-out of such legislation) and the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 in this annex to be confirmed once the Prospectus (Amendment Etc.) (EU Exit) Regulations 2019 has been approved by Parliament.]

## Annex O

### Amendments to the Prospectus Regulation Rules sourcebook (PRR)

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

#### 1 Preliminary

##### 1.1 Preliminary

###### Application

- 1.1.1 R (1) The *rules and guidance* in this sourcebook, except for the *rules and guidance* in PRR 4.1, only apply ~~(subject to paragraph (2))~~ in relation to:
- (a) an *offer*, or a request for *admission to trading* of *transferable securities*, in respect of which article 3 of the *Prospectus Regulation* applies (other than an exempt *offer* under section 86 of the *Act* or article 1 of the *Prospectus Regulation*) ~~and in relation to which the United Kingdom is the Home State;~~
  - (b) an *offer*, or a request for *admission to trading* of *transferable securities*, where under article 4 of the *Prospectus Regulation* a *person* has elected to have a *prospectus* in relation to the *transferable securities* ~~and in relation to which the United Kingdom is the Home State;~~ and
  - (c) an *offer*, or a request for *admission to trading* of *transferable securities*, not referred to in paragraphs (a) or (b), ~~in relation to which the United Kingdom is the Home State.~~
- (2) ~~The rules falling within paragraph (1) also apply in relation to an offer, or a request for admission to trading of transferable securities, where another competent authority of an EEA State has transferred the function of approving the prospectus to the FCA.~~  
[deleted]

...

###### Provisions concerning the prospectus regime

- 1.1.5 G The *FCA* considers that the following documents are relevant to the *prospectus* regime:

...

[**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering ‘Alternative Performance Measures’. See <https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf> ESMA Guidelines on Alternative Performance Measures, 5 October 2015(ESMA/2015/1415)]

...

## 1.2 Requirement for a prospectus and exemptions

Requirement for a prospectus

- 1.2.1 ~~EU~~ UK Article 3(1) and (3) of the *Prospectus Regulation* provides for when a *prospectus* will be required:

Article 3

### **Subject matter, scope and exemptions Obligation to publish a prospectus and exemption**

1. Without prejudice to Article 1(4), securities shall only be offered to the public in the ~~Union~~ United Kingdom after prior publication of a prospectus in accordance with this Regulation.

...

3. Without prejudice to Article 1(5), securities shall only be admitted to trading on a regulated market situated or operating within the ~~Union~~ United Kingdom after prior publication of a prospectus in accordance with this Regulation.

Securities to which the Prospectus Regulation does not apply

- 1.2.2 ~~EU~~ UK Article 1(2) and (3) of the *Prospectus Regulation* provides that certain *transferable securities* are out of scope of the *Prospectus Regulation*:

Article 1

### **Subject matter, scope and exemptions**

...

2. This Regulation shall not apply to the following types of securities:

...

- (b) non-equity securities issued by ~~— a Member State or by one of a Member State’s regional or local authorities, by public international bodies of which one or more Member States are~~



~~members, by the European Central Bank or by the central banks of the Member States~~

(i) the government of any country or territory,

(ii) a local or regional authority of any country or territory,

(iii) a public international body of which any state is a member,

(iv) the European Central Bank or the central bank of any state;

(c) shares in the capital of central banks of ~~the Member States~~  
any state;

(d) securities unconditionally and irrevocably guaranteed by a ~~Member State or by one of a Member State's regional or local authorities~~ the government or a local or regional authority of any country or territory;

(e) securities issued by associations with legal status or non-profit-making bodies, recognised by a ~~Member State~~ state, for the purposes of obtaining the funding necessary to achieve their non-profit-making objectives;

...

...

Exempt securities – offers of securities to the public

1.2.3 ~~EU~~ UK Article 1(4) of the *Prospectus Regulation* provides that certain *offers of transferable securities* to the public are exempt from the obligation to publish a *prospectus*:

Article 1

### **Subject matter, scope and exemptions**

...

4. The obligation to publish a prospectus set out in Article 3(1) shall not apply to any of the following types of offers of securities to the public:

...

(b) an offer of securities addressed to fewer than 150 natural or legal persons ~~per Member State~~ in the United Kingdom, other than qualified investors;

...

- (j) non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the ~~Union~~ United Kingdom for the securities offered is less than EUR 75 000 000 per credit institution calculated over a period of 12 months, provided that those securities:

...

Exempt securities – admission to trading on a regulated market

- 1.2.4 EU Article 1(5) of the *Prospectus Regulation* provides that *admission to trading* of the following types of *transferable securities* is exempt from the obligation to publish a *prospectus*:

UK

Article 1

### **Subject matter, scope and exemptions**

...

5. The obligation to publish a prospectus set out in Article 3(3) shall not apply to the admission to trading on a regulated market of any of the following:

...

- (j) securities already admitted to trading on another regulated market, on the following conditions:

...

- (v) that the person seeking the admission of a security to trading on a regulated market under the exemption set out in this point (j) makes available to the public ~~in the Member State of the regulated market where admission to trading is sought~~, in accordance with the arrangements set out in Article 21(2), a document the content of which complies with Article 7, except that the maximum length set out in Article 7(3) shall be extended by two additional sides of A4-sized paper, drawn up in a language accepted by the competent authority ~~of the Member State of the regulated market where admission is sought~~; and

...

The requirement that the resulting shares represent, over a period of 12 months, less than 20% of the number of shares of the same class already admitted to trading on the same regulated market as referred

to in point (b) of the first subparagraph shall not apply in any of the following cases:

...

- (c) where the shares qualify as Common Equity Tier 1 items as laid down in Article 26 of [the ~~EU~~ UK CRR] of an institution as defined in point (3) of Article 4(1) of that Regulation and result from the conversion of Additional Tier 1 instruments issued by that institution due to the occurrence of a trigger event as laid down in point (a) of Article 54(1) of that Regulation;

...

- 1.2.5 ~~EU~~ UK Article 1(6) provides as follows in relation to exemptions:

...

Voluntary prospectus

- 1.2.6 ~~EU~~ UK Article 4 of the *Prospectus Regulation* provides for when a *prospectus* may be drawn up on a voluntary basis:

Article 4

#### **Voluntary prospectus**

...

2. Such voluntarily drawn up prospectus approved by the competent authority ~~of the home Member State, as determined in accordance with point (m) of Article 2,~~ shall entail all the rights and obligations provided for a prospectus required under this Regulation and shall be subject to all provisions of this Regulation, under the supervision of that competent authority.

Prospectus for resale of transferable securities

- 1.2.7 ~~EU~~ UK Article 5 of the *Prospectus Regulation* provides for when an additional *prospectus* is, and is not, required in case of a subsequent resale of *transferable securities*:

...

## **2 Drawing up the prospectus**

### **2.1 General contents of prospectus**

General contents of prospectus

- 2.1.1 ~~EU~~ Article 6(1) and (2) of the *Prospectus Regulation* provides for the general contents of a *prospectus*:

...

Summary

- 2.1.2 ~~EU~~ Article 7(1) (first sub-paragraph) and (2) of the *Prospectus Regulation* provides:

...

When a summary is not required

- 2.1.3 ~~EU~~ Article 7(1) (second sub-paragraph) of the *Prospectus Regulation* provides:

...

Contents of summary

- 2.1.4 ~~EU~~ Article 7(3) to (12) of the *Prospectus Regulation* provides for how the contents of the *summary* are to be determined:

Article 7

### **The prospectus summary**

...

5. The section referred to in point (a) of paragraph 4 shall contain:

...

It shall contain the following warnings:

...

- (d) ~~where a claim relating to the information contained in a prospectus is brought before a court, the plaintiff investor might, under national law, have to bear the costs of translating the prospectus before the legal proceedings are initiated;~~

...

...

7. The section referred to in point (c) of paragraph 4 shall contain the following information:

- (a) under a sub-section entitled ‘What are the main features of the securities?’, a brief description of the securities being offered to the public and/or admitted to trading on a regulated market including at least:

...

- (iv) the relative seniority of the securities in the issuer’s capital structure in the event of insolvency, including, where applicable, information on the level of subordination of the securities and the potential impact on the investment in the event of a resolution under the UK law which implemented [the *RRD*];

...

...

Where a key information document is required to be prepared under [the *PRIIPs Regulation*], the issuer, the offeror or the person asking for admission to trading on a regulated market may substitute the content set out in this paragraph with the information set out in points (c) to (i) of Article 8(3) of [the *PRIIPs Regulation*]. ~~Where [the *PRIIPs Regulation*] applies, each Member State acting as a home Member State for the purpose of this Regulation may require issuers, offerors or persons asking for admission to trading on a regulated market to substitute the content set out in this paragraph with the information set out in points (c) to (i) of Article 8(3) of [the *PRIIPs Regulation*] in the prospectuses approved by its competent authority.~~

...

...

- ~~12. Where a key information document is required to be prepared for securities offered to the public under [the *PRIIPs Regulation*] and a home Member State requires the issuer, the offeror or the person asking for admission to trading on a regulated market to substitute the content of the key information document in accordance with the second sentence of the second subparagraph of paragraph 7 of this Article, the persons advising on or selling the securities on behalf of the issuer, the offeror or the person asking for admission to trading on a regulated market shall be deemed to have fulfilled, during the offer period, the obligation to provide the key information document in accordance with Article 13 of [the *PRIIPs Regulation*], provided that they instead provide the investors concerned with the summary of the prospectus under the timing and conditions set out in Articles 13 and 14 of that Regulation.~~

- 2.1.5 ~~EU~~  
~~UK~~ Chapter I of the *Prospectus RTS Regulation* sets out the content and format of presentation of the key financial information referred to in Article 7(6)(b) and (7)(c)(iii) of the *Prospectus Regulation*:

...

[~~Note: Annexes I to VI of the *Prospectus RTS Regulation*, see [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2019.166.01.0001.01.ENG&toc=OJ.L.:2019:166:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.166.01.0001.01.ENG&toc=OJ.L.:2019:166:TOC) ]~~

#### Language of the summary

- 2.1.6 EU Article 27(4) of the *Prospectus Regulation* provides as follows in relation to the language of the *summary*:

#### Article 27

#### Use of language

...

4. The final terms and the summary of the individual issue shall be drawn up in the same language as the language of the approved base prospectus.

~~When, in accordance with Article 25(4), the final terms are communicated to the competent authority of the host Member State or, if there is more than one host Member State, to the competent authorities of the host Member States, the following language rules shall apply to the final terms and the summary annexed thereto:~~

- (a) the summary of the individual issue annexed to the final terms shall be available in the official language or at least one of the official languages of the host Member State, or in another language accepted by the competent authority of the host Member State in accordance with the second subparagraph of paragraph 2 or the second subparagraph of paragraph 3, as applicable;
- (b) where the base prospectus is to be translated pursuant to paragraph 2 or 3, as applicable, the final terms and the summary of the individual issue annexed thereto, shall be subject to the same translation requirements as the base prospectus.

~~[Note: PRR 4.1 sets out the rules about the language in which the prospectus must be drawn up.]~~

~~[Note: Under article 27(2) and (3) of the *Prospectus Regulation* the competent authority of each *Host State* shall require that the *summary* is translated into its official language. The *FCA* as competent authority of a~~

~~Host State requires a summary to be translated into English under PRR 4.1.4R.] [deleted]~~

## 2.2 Format of prospectus

Format of prospectus

- 2.2.1 ~~EU~~ Article 6(3) of the *Prospectus Regulation* provides for how a *prospectus* may be drawn up:

...

Prospectuses consisting of separate documents

- 2.2.2 ~~EU~~ Article 10 of the *Prospectus Regulation* provides for drawing up a *prospectus* consisting of separate documents:

~~UK~~

Article 10

### Prospectuses consisting of separate documents

1. An issuer that has already had a registration document approved by a ~~the~~ competent authority shall be required to draw up only the securities note and the summary, where applicable, when securities are offered to the public or admitted to trading on a regulated market. In that case, the securities note and the summary shall be subject to a separate approval.

...

...

Base prospectus

- 2.2.3 ~~EU~~ Article 8 of the *Prospectus Regulation* provides for the content of the *base prospectus*:

~~UK~~

Article 8

### The base prospectus

...

5. Where the final terms are neither included in the base prospectus, nor in a supplement, the issuer shall make them available to the public in accordance with the arrangements set out in Article 21 and file them with the competent authority of the home Member State, as soon as practicable upon offering securities to the public and, where possible, before the beginning of the offer of securities to the public or admission to trading on a regulated market.

...

...

- 2.2.4 EU Chapter III of the *PR Regulation* provides for the format of a *prospectus*:  
UK

Article 24

### Format of a prospectus

...

4. ~~Where a universal registration document is used for the purposes of Article 9(12) of [the *Prospectus Regulation*], the information contained in that universal registration document shall be presented in accordance with Commission Delegated Regulation (EU) 2019/815.~~
5. Where the order of the information referred to in point (d) of paragraph 1 and in point (c) of paragraph 2 is different from the order in which that information is presented in the Annexes to this Regulation, the competent authorities authority may request to provide a list of cross references indicating the items of those Annexes to which that information corresponds.

...

...

Article 25

### Format of a base prospectus

...

5. ~~Where a universal registration document is used for the purposes of Article 9(12) of [the *Prospectus Regulation*], the information contained in that universal registration document shall be presented in accordance with Delegated Regulation (EU) 2019/815.~~
6. Where the order of the information referred to in point (d) of paragraphs 1 and 2 is different from the order in which that information is presented in the Annexes to this Regulation, the competent authorities authority may request to provide a list of cross references indicating the items of those Annexes to which that information corresponds.

...

...

## 2.3 Minimum information requirements



## Minimum information

- 2.3.1 ~~EU~~ Chapter II of the *PR Regulation* provides for the minimum information to be included in a *prospectus*:

...

### Section 3

#### Additional information to be included in the prospectus

...

#### Article 23a

#### **Historical financial information**

1. In relation to any financial year beginning on or before the day on which exit day falls, issuers established in the United Kingdom must present their historical financial information in accordance with—
  - (a) International Financial Reporting Standards adopted pursuant to Regulation (EC) No 1606/2002 as it applies in the European Union;
  - (b) if those standards are not applicable, UK accounting standards.
2. In relation to any financial year beginning on or before the day on which exit day falls, issuers established in an EEA State must present their historical financial information in accordance with—
  - (a) International Financial Reporting Standards adopted pursuant to Regulation (EC) No 1606/2002 as it applies in the European Union; or
  - (b) if not applicable, national accounting standards of that EEA State.
3. In relation to any financial year beginning on or before the day on which exit day falls, issuers established outside the United Kingdom and the EEA States must present their historical financial information in accordance with one of the following accounting standards—
  - (a) International Financial Reporting Standards adopted pursuant to Regulation (EC) No 1606/2002 as it applies in the European Union;
  - (b) International Financial Reporting Standards provided that the notes to the audited financial statements that form part of the

historical financial information contain an explicit and unreserved statement that these financial statements comply with International Financial Reporting Standards in accordance with IAS 1 Presentation of Financial Statements;

- (c) Generally Accepted Accounting Principles of Japan;
  - (d) Generally Accepted Accounting Principles of the United States of America.
  - (e) Generally Accepted Accounting Principles of the People's Republic of China;
  - (f) Generally Accepted Accounting Principles of Canada;
  - (g) Generally Accepted Accounting Principles of the Republic of Korea.
4. In relation to a financial year beginning after the day on which exit day falls, issuers established in the United Kingdom, must present their historical financial information in accordance with—
- (a) [UK-adopted IFRS]; or
  - (b) if those standards are not applicable, UK accounting standards.
5. In relation to a financial year beginning after the day on which exit day falls, issuers established in a country outside the United Kingdom must present their historical financial information in accordance with—
- (a) [UK-adopted IFRS];
  - (b) one of the accounting standards referred to in Article 23a(3); or
  - (c) national accounting standards of a country that are equivalent to UK-adopted international accounting standards in accordance with a determination made by the Treasury in regulations under Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to [the PD] and [the Transparency Directive].
6. For an issuer established in a country outside the United Kingdom, if such financial information is not prepared in accordance with the required standards, the financial statements must be restated in compliance with [UK-adopted IFRS].

[**Note:** PRR App 2 contains a link to the Annexes to the *PR Regulation*.]

Final offer price and amount of securities not included in prospectus

- 2.3.2    EU    Article 17 of the *Prospectus Regulation* provides for where the final offer price and amount of *transferable securities* are not included in the *prospectus*:

Article 17

#### **Final offer price and amount of securities**

...

2.        The final offer price and amount of securities shall be filed with the competent authority ~~of the home Member State~~ and made available to the public in accordance with the arrangements set out in Article 21(2).

Risk factors

- 2.3.3    EU    Article 16(1) to (3) of the *Prospectus Regulation* provides for the format and content of the risk factors to be included in a *prospectus*:

Article 16

#### **Risk factors**

...

2.        Risk factors shall also include those resulting from the level of subordination of a security and the impact on the expected size or timing of payments to holders of the securities in the event of bankruptcy, or any other similar procedure, including, where relevant, the insolvency of a credit institution or its resolution or restructuring in accordance with the UK law which implemented [RRD].

...

4.        ~~In order to encourage appropriate and focused disclosure of risk factors, ESMA shall develop guidelines to assist competent authorities in their review of the specificity and materiality of risk factors and of the presentation of risk factors across categories depending on their nature.~~

[**Note:** *ESMA guidelines on risk factors* drafted pursuant to article 16(4) of the EU Prospectus Regulation.]

Hyperlinks

- 2.3.4 ~~EU~~ Article 10(1) of the *Prospectus RTS Regulation* addresses hyperlinks within  
UK *prospectuses*:

...

## 2.4 Universal registration document

Universal registration document

- 2.4.1 ~~EU~~ Article 9(1) to (13) of the *Prospectus Regulation* provides:  
UK

Article 9

### The universal registration document

...

2. Any issuer that chooses to draw up a universal registration document every financial year shall submit it for approval to the competent authority of its home Member State in accordance with the procedure set out in Article 20(2) and (4).

...

~~Where the issuer referred to in the second subparagraph of this paragraph requests the notification of its universal registration document pursuant to Article 26, it shall submit its universal registration document for approval, including any amendments thereto which were previously filed.~~

3. Issuers which, prior to 21 July 2019, have had a registration document, drawn up in accordance with Annex I to [the *PD Regulation*], approved by a the competent authority for at least two consecutive financial years and have thereafter filed, in accordance with Article 12(3) of [the *PD*], or got approved such a registration document every year, shall be allowed to file a universal registration document without prior approval in accordance with the second subparagraph of paragraph 2 of this Article from 21 July 2019. This paragraph does not apply in relation to a registration document forming part of a prospectus deemed to be approved by the competent authority in accordance with regulation 73 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019.

...

5. ~~The universal registration document shall comply with the language requirements laid down in Article 27.~~

...

11. An issuer fulfilling the conditions set out in the first or second subparagraph of paragraph 2 or in paragraph 3 of this Article shall have the status of frequent issuer and shall benefit from the faster approval process in accordance with Article 20(6), provided that:
- (a) upon the filing or submission for approval of each universal registration document, the issuer provides written confirmation to the competent authority that, to the best of its knowledge, all regulated information which it was required to disclose under the UK law which implemented [the Transparency Directive], if applicable, and under ~~the Market Abuse Regulation~~ Regulation (EU) No 596/2014 has been filed and published in accordance with those acts over the last 18 months or over the period since the obligation to disclose regulated information commenced, whichever is the shorter; and
- ...
12. Where the universal registration document filed with or approved by the competent authority is made public at the latest four months after the end of the financial year, and contains the information required to be disclosed in the annual financial report referred to in ~~Article 4 of [the Transparency Directive]~~ [DTR 4.1], the issuer shall be deemed to have fulfilled its obligation to publish the annual financial report required under that Article.
- Where the universal registration document, or an amendment thereto, is filed or approved by the competent authority and made public at the latest three months after the end of the first six months of the financial year, and contains the information required to be disclosed in the half-yearly financial report referred to in ~~Article 5 of [the Transparency Directive]~~ [DTR 4.2], the issuer shall be deemed to have fulfilled its obligation to publish the half-yearly financial report required under that Article.
- ...
- ~~13. Paragraph 12 shall only apply where the home Member State of the issuer for the purposes of this Regulation is also the home Member State for the purposes of [the Transparency Directive], and where the language of the universal registration document fulfils the conditions set out in Article 20 of that Directive.~~

#### Minimum information

- 2.4.2 ~~EU~~ UK Article 3 of the *PR Regulation* provides for the minimum information to be included in a *universal registration document*. Article 3 is reproduced in *PRR 2.3.1*~~EU~~UK.

## 2.5 Simplified prospectus regime for secondary issuances

## Simplified prospectus

- 2.5.1 ~~EU~~ UK Article 14(1) of the *Prospectus Regulation* provides:

...

- 2.5.2 ~~EU~~ UK Article 14(2) of the *Prospectus Regulation* provides for the content of a simplified *prospectus*:

...

2. By way of derogation from Article 6(1), and without prejudice to Article 18(1), the simplified prospectus shall contain the relevant reduced information which is necessary to enable investors to understand:

...

The information contained in the simplified prospectus shall be written and presented in an easily analysable, concise and comprehensible form and shall enable investors to make an informed investment decision. ~~It shall also take into account the regulated information that has already been disclosed to the public pursuant to [the *Transparency Directive*], where applicable, and [the *Market Abuse Regulation*].~~

It shall also take account the regulated information that has already been disclosed to the public pursuant to—

- (i) provisions of the law of the United Kingdom relied on at the time of the disclosure in question to implement [the *Transparency Directive*], where applicable, in relation to disclosures made before exit day,
- (ii) the UK law which implemented [the *Transparency Directive*], where applicable, in relation to disclosures after exit day, and
- (iii) Regulation (EU) No 596/2014.

## Reduced information in a simplified prospectus

- 2.5.3 ~~EU~~ UK Articles 4, 9, 13 and 17 of the *PR Regulation* specify the reduced information to be included in a simplified *prospectus*. These are reproduced in *PRR 2.3.1*~~EU~~UK.

## 2.6 ~~EU~~ UK Growth prospectus

- 2.6.1 ~~EU~~ UK Growth prospectus

~~EU~~ Article 15(1) of the *Prospectus Regulation* provides:  
UK

Article 15

### ~~EU~~ UK Growth prospectus

1. The following persons may choose to draw up ~~an EU~~ a UK Growth prospectus under the proportionate disclosure regime set out in this Article in the case of an offer of securities to the public provided that they have no securities admitted to trading on a regulated market:

...

- (c) issuers, other than those referred to in points (a) and (b), where the offer of securities to the public is of a total consideration in the ~~Union~~ United Kingdom that does not exceed EUR 20 000 000 calculated over a period of 12 months, and provided that such issuers have no securities traded on an MTF and have an average number of employees during the previous financial year of up to 499;

...

~~An EU~~ A UK Growth prospectus under the proportionate disclosure regime shall be a document of a standardised format, written in a simple language and which is easy for issuers to complete. It shall consist of a specific summary based on Article 7, a specific registration document and a specific securities note. The information in the ~~UK~~EU Growth prospectus shall be presented in a standardised sequence in accordance with the ~~delegated act~~ regulations referred to in paragraph 2.

Reduced information in an ~~EU~~ UK Growth prospectus

- 2.6.2 ~~EU~~ Chapter IV of the *PR Regulation* specifies the reduced information to be included in an ~~EU~~ UK Growth *prospectus*:

Article 28

### ~~EU~~ UK Growth registration document for equity securities

...

Article 29

### ~~EU~~ UK Growth registration document for non-equity securities

...

## Article 30

**~~EU~~ UK Growth securities note for equity securities**

...

## Article 31

**~~EU~~ UK Growth securities note for non-equity securities**

...

## Article 32

**Format of the ~~EU~~ UK Growth prospectus**

1. ~~An EU~~ A UK Growth prospectus that is drawn up as a single document shall be composed of the following elements in the following order:

...

- (d) where the ~~EU~~ UK Growth prospectus is drawn up in the form of a base prospectus, a general description of the offering programme;

...

2. Where ~~an EU~~ a UK Growth prospectus is drawn up as separate documents, the ~~EU~~ UK Growth registration document and the ~~EU~~ UK Growth securities note shall contain the following elements in the following order:

- (a) ~~EU~~ UK Growth registration document:

...

- (iii) any other information referred to in Annex 24 or 25 to this Regulation that, depending on the type of securities, is to be included in the ~~EU~~ UK Growth registration document following the order of the sections set out in those Annexes.

- (b) ~~EU~~ UK Growth securities note:

...

- (iv) any other information referred to in Annex 26 or 27 to this Regulation that, depending on the type of securities, is to be included in the ~~EU~~ UK Growth securities note following the order of the sections set out in those Annexes.



3. ~~An EU~~ A UK Growth prospectus drawn up either as a single document or as separate documents may take the form of a base prospectus.

...

#### Article 33

#### **Specific summary for the ~~EU~~ UK Growth prospectus**

1. The specific summary for the ~~EU~~ UK Growth prospectus shall provide the key information that investors need to understand the nature and the risks of the issuer, of the guarantor and of the securities that are being offered.
- ...
3. The specific summary shall be consistent with the other parts of the ~~EU~~ UK Growth prospectus.
- ...
6. The specific summary shall not contain cross-references to other parts of the ~~EU~~ UK Growth prospectus or incorporate information by reference.
- ...
9. Where securities are also subject to Regulation (EU) No 1286/2014 of the European Parliament and of the Council, the competent authority ~~of the home Member State~~ may require the SMEs, the issuers and offerors referred to in Article 15(1) of [the *Prospectus Regulation*] to substitute the information referred to in section 3 of Annex 23 to this Regulation with the information set out in points (c) to (i) of Article 8(3) of Regulation (EU) No 1286/2014.
10. Where the substitution referred to in paragraph 9 is not required by the competent authority ~~of the home Member State~~, the SMEs, the issuers and offerors referred to in Article 15(1) of [the *Prospectus Regulation*] may substitute the information referred to in section 3 of Annex 23 to this Regulation with the information set out in points (c) to (i) of Article 8(3) of Regulation (EU) No 1286/2014.

...

#### Article 34

#### **Supplements to the specific summary for the ~~EU~~ UK Growth prospectus**

Where the specific summary of ~~an EU~~ a UK Growth prospectus is to be supplemented in accordance with Article 23 of [the *Prospectus*

*Regulation*], the new information shall be integrated in the specific summary of that ~~EU~~ UK Growth prospectus in a way that enables investors to easily identify the changes. The new information shall be integrated in the specific summary of the ~~EU~~ UK Growth prospectus either by producing a new specific summary or by supplementing the original specific summary.

## 2.7 Incorporation by reference

Incorporation by reference

- 2.7.1 ~~EU~~ UK Article 19(1) to (3) of the *Prospectus Regulation* provides for how information may be incorporated by reference in a *prospectus*:

Article 19

### Incorporation by reference

1. Information may be incorporated by reference in a prospectus where it has been previously or simultaneously published electronically, drawn up in a language fulfilling the requirements of Article 27 as it had effect immediately before [exit day] where the information was published before [exit day], and where it is contained in one of the following documents:
  - (a) ~~documents which have been approved by a competent authority, or filed with it, in accordance with this Regulation or [the PD];~~ a document which has—
    - (i) before [exit day], been approved by or filed with a competent authority (as defined in this Regulation as it had effect immediately before [exit day]) in accordance with this Regulation (as it had effect immediately before [exit day]), or a competent authority (as defined in [the PD]) in accordance with that Directive; or
    - (ii) on or after [exit day], been approved by or filed with the competent authority in accordance with this Regulation or the UK law implementing [the PD];
  - ...
  - (j) annual reports or any disclosure of information required under— ~~Articles 22 and 23 of [AIFMD];~~
    - provisions of the law of the United Kingdom relied on at the time of the disclosure in question to implement Articles 22 and 23 of [AIFMD], in relation to disclosures made before [exit day].
    - the UK law which implemented Articles 22 and 23 of [AIFMD], in relation to disclosures after [exit day].

...

...

## 2.8 Omission of information

### Omission of information

- 2.8.1 ~~EU~~ Article 18(1) to (3) of the *Prospectus Regulation* provides for the  
UK circumstances in which certain information may be omitted from the  
*prospectus*:

#### Article 18

#### Omission of information

1. The competent authority ~~of the home Member State~~ may authorise the omission from the prospectus, or constituent parts thereof, of certain information to be included therein, where it considers that any of the following conditions is met:

...

~~The competent authority shall submit a report to ESMA on a yearly basis regarding the information the omission of which it has authorised.~~

...

3. Where securities are guaranteed by a ~~Member State~~ state, an issuer, an offeror or a person asking for admission to trading on a regulated market, when drawing up a prospectus in accordance with Article 4, shall be entitled to omit information pertaining to that ~~Member State~~ state.

...

## 3 Approval and publication of prospectus

### 3.1 Approval of prospectus

#### Criteria for scrutiny and approval of prospectus

- 3.1.1 ~~EU~~ Chapter V of the *PR Regulation* sets out requirements regarding scrutiny  
UK and approval of the *prospectus* and review of the *universal registration document*:

...

#### Article 36

### **Criteria for the scrutiny of the completeness of the information contained in the prospectus**

1. For the purposes of scrutinising the completeness of the information in a draft prospectus, ~~the competent authorities~~ authority shall consider all of the following:

...

2. For the purposes of point (b) of paragraph 1, ~~the competent authorities~~ authority may require the issuer to include, modify or remove information from a draft prospectus, taking into account the following:

...

#### Article 37

### **Criteria for the scrutiny of the comprehensibility of the information contained in the prospectus**

1. For the purposes of scrutinising the comprehensibility of the information in a draft prospectus, ~~the competent authorities~~ authority shall consider all of the following:

...

However, ~~the competent authorities~~ authority shall not be required to consider points (g), (h) and (i) where a draft prospectus is to be used exclusively for the purposes of admission to trading on a regulated market of non-equity securities for which a summary is not required by Article 7 of [the *Prospectus Regulation*].

2. For the purposes of the first paragraph, ~~the competent authorities~~ authority may, on a case-by-case basis and in addition to the information referred to in Article 7 of [the *Prospectus Regulation*] and Article 33 of this Regulation, require that certain information provided in the draft prospectus be included in the summary.

...

#### Article 39

### **Scrutiny of the information contained in the prospectus of specialist issuers**

~~Competent authorities~~ The competent authority may require additional information to be included in the prospectus based on the activities of the specialist issuers falling under one of the categories set out in Annex 29.

...

## Article 41

**Proportionate approach in the scrutiny of draft prospectuses and review of the universal registration document**

1. Where a first draft of a prospectus that is submitted to ~~a~~ the competent authority is substantially similar to a prospectus that the ~~same~~ competent authority has already approved, and where that draft prospectus highlights all changes made to that approved prospectus, the competent authority shall only be required to apply the criteria laid down in Articles 36, 37 and 38 to scrutinise those changes and any other information affected by them.
2. For the purposes of scrutinizing a universal registration document filed without prior approval that has already been reviewed, or an amendment to such a document, ~~the competent authorities~~ authority shall only be required to apply the criteria laid down in Article 36, 37 and 38 to those parts of the universal registration document or the amendment that have not been reviewed.
3. ~~Where a first draft of a prospectus that incorporates information by reference to a document that has been approved in accordance with [the *Prospectus Regulation*] or in accordance with the national provisions transposing [the *PD*], competent authorities shall only be required to apply the criteria laid down in Article 38 of this Regulation to scrutinise that information.~~  
Where a first draft of a prospectus that incorporates information by reference to a document that has been approved—  
(a) before [exit day] in accordance with [the *EU Prospectus Regulation*] or in accordance with the UK law which implemented [the *PD*] by a competent authority (as defined in [the *EU Prospectus Regulation*] as it had effect immediately before [exit day]); or  
(b) on or after [exit day], by the competent authority in accordance with [the *Prospectus Regulation*],  
the competent authority shall only be required to apply the criteria laid down in Article 38 of this Regulation to scrutinise that information.
4. When applying paragraphs 1, 2 or 3, ~~the competent authorities~~ authority shall request the issuer, offeror or person asking for admission to trading on a regulated market to confirm that all information in the final draft of the prospectus or universal registration document is up-to-date and contains all the information referred to in the Annexes to this Regulation applicable to that prospectus or universal registration document.

...

## Article 42

**Submission of an application for approval of a draft prospectus or filing of a universal registration document or of amendments thereto**

...

2. The following information shall also be submitted to the competent authority in searchable electronic format via electronic means:

...

(e) ~~any request to the competent authority to make a notification as referred to in Article 25(1) of [the *Prospectus Regulation*];~~

(f) ~~any request to the competent authority to make a notification as referred to in Article 26(2) of [the *Prospectus Regulation*];~~

...

(h) a confirmation that, to the best of the knowledge of the issuer, all regulated information which was required to be disclosed under ~~the national provisions transposing Directive 2004/109/EC of the European Parliament and of the Council~~ the UK law which implemented [the *Transparency Directive*], where applicable, and under ~~[the *Market Abuse Regulation*]~~ Regulation (EU) No 596/2014 of the European Parliament and of the Council, has been filed and published in accordance with those acts over the last 18 months or over the period since the obligation to disclose that regulated information commenced, whichever is the shorter, where the issuer is submitting for approval a draft universal registration document or filing a universal registration document without prior approval and seeks to obtain the status of frequent issuer;

...

...

## Article 43

**Changes to a draft prospectus during the approval procedure**

1. Each version of the draft prospectus submitted after the first draft prospectus shall highlight all changes made to the preceding draft and shall be accompanied by an unmarked draft. ~~Competent authorities~~ The competent authority shall accept marked extracts of the preceding draft prospectus where only limited changes have been made.

2. Where ~~the competent authorities~~ authority, in accordance with Article 45(2) of this Regulation, have notified the issuer, offeror or person asking for admission to trading on a regulated market that the draft prospectus does not meet the standards of completeness, comprehensibility and consistency as referred to in Article 20(4) of [the *Prospectus Regulation*], the subsequently submitted draft of the prospectus shall be accompanied by an explanation as to how the outstanding issues notified by ~~the competent authorities~~ authority have been addressed.

...

#### Article 45

#### **Acknowledgment of the receipt of an application for approval of a draft prospectus, or of the filing of a universal registration document or of an amendment thereto, and processing of an application for approval of a draft prospectus**

1. ~~Competent authorities~~ The competent authority shall acknowledge receipt of the initial application for approval of a draft prospectus or of the filing of a universal registration document as referred to in the second subparagraph of Article 9(2) of [the *Prospectus Regulation*], or of an amendment to that universal registration document in writing and by electronic means as soon as possible and no later than by close of business on the second working day following the receipt of the application or filing.

...

2. Where the draft prospectus does not meet the standards of completeness, comprehensibility and consistency necessary for its approval or where changes or supplementary information are needed, ~~the competent authorities~~ authority shall inform the issuer, offeror or person asking for admission to trading on a regulated market thereof in writing and by electronic means.

Where the universal registration document referred to in the second subparagraph of Article 9(2) of [the *Prospectus Regulation*], or an amendment to that universal registration document, does not meet the standards of completeness, comprehensibility and consistency or where amendments or supplementary information are needed, ~~the competent authorities~~ authority shall inform the issuer thereof in writing and by electronic means. Where the shortcoming must be addressed without undue delay, as required by the third subparagraph of Article 9(9) of [the *Prospectus Regulation*], the competent authority shall inform the issuer thereof.

...

Time limits for approval of prospectus

- 3.1.2    ~~EU~~    Article 20(2) to (6) of the *Prospectus Regulation* sets out the time limits for the approval of a *prospectus*:  
           UK

Article 20

### Scrutiny and approval of the prospectus

...

2.        ...

~~The competent authority shall notify ESMA of the approval of the prospectus and any supplement thereto as soon as possible and in any event by no later than the end of the first working day after that approval is notified to the issuer, the offeror or the person asking for admission to trading on a regulated market.~~

...

6.        By way of derogation from paragraphs 2 and 4, the time limits set out in the first subparagraph of paragraph 2 and paragraph 4 shall be reduced to five working days for a prospectus consisting of separate documents drawn up by frequent issuers referred to in Article 9(11); ~~including frequent issuers using the notification procedure provided for in Article 26.~~ The frequent issuer shall inform the competent authority at least five working days before the date envisaged for the submission of an application for approval.

...

...

### Timeframe for submission

- 3.1.6    R        (1)        The *applicant* must submit to the *FCA* by the date specified in paragraph (2):

(a)

(i)        a completed Form A<sub>2</sub>; ~~and~~

(ii)       ~~a completed Publication Form;~~

[**Note:** Article 42(2)(j) of the *PR Regulation*. ~~These forms are~~ This form is available on the *FCA* website, see

<https://www.fca.org.uk/markets/ukla/forms> .]

...

...

(3)        The *applicant* must submit the final version of the draft *prospectus* and the additional information set out in article 44 of the *PR*



*Regulation* to the *FCA* before midday on the day on which approval is required to be granted.

[**Note:** Article 44 of the *PR Regulation* is reproduced for the convenience of readers in *PRR* 3.1.1 ~~EU~~ UK.]

...

#### Request for certificate of approval

- 3.1.8 G ~~If an applicant wishes the *FCA* to provide a certificate of approval to another competent authority at the time the prospectus is approved, it should note the requirements set out in article 25 of the *Prospectus Regulation*. As provided by article 25 of the *Prospectus Regulation*, a request may still be submitted to the *FCA* after the *prospectus* has been approved (*PRR* 5.2.3 G provides guidance for making such a request).~~  
[deleted]

...

#### Prospectus not to be published until approved

- 3.1.10 ~~EU~~ UK Article 20(1) of the *Prospectus Regulation* provides:

#### Article 20

#### Scrutiny and approval of the prospectus

1. A prospectus shall not be published unless the relevant competent authority has approved it, or all of its constituent parts in accordance with Article 10.

...

#### Transfer to another competent authority

- 3.1.12 EU ~~Article 20(8) of the *Prospectus Regulation* provides for the transfer of approval of the *prospectus* to another *EEA State*:~~

#### Article 20

#### Scrutiny and approval of the prospectus

...

8. ~~On request of the issuer, the offeror or the person asking for admission to trading on a regulated market, the competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State, subject to prior notification to ESMA and the agreement of that competent authority. The competent authority of the home Member~~

~~State shall transfer the documentation filed, together with its decision to grant the transfer, in electronic format, to the competent authority of the other Member State on the date of its decision. Such a transfer shall be notified to the issuer, the offeror or the person asking for admission to trading on a regulated market within three working days from the date of the decision taken by the competent authority of the home Member State. The time limits set out in the first subparagraph of paragraph 2 and paragraph 3 shall apply from the date the decision was taken by the competent authority of the home Member State. Article 28(4) of Regulation (EU) No 1095/2010 shall not apply to the transfer of the approval of the prospectus in accordance with this paragraph. Upon completion of the transfer of the approval, the competent authority to whom the approval of the prospectus has been transferred shall be deemed to be the competent authority of the home Member State for that prospectus for the purposes of this Regulation.~~

[deleted]

- 3.1.13 R (1) ~~A person seeking to have the function of approving a *prospectus* transferred to the competent authority of another *EEA State* must make a written request to the *FCA* at least 10 *working days* before the date the transfer is sought. [deleted]~~
- (2) ~~The request must:~~
- ~~(a) set out the reasons for the proposed transfer;~~
  - ~~(b) state the name of the competent authority to whom the transfer is sought; and~~
  - ~~(c) include a copy of the draft *prospectus*. [deleted]~~

#### Service of Notice Regulations

- 3.1.14 G Regulation 7 of the Financial Services and Markets Act 2000 (Service of Notice Regulations) 2001 (SI 2001/1420) contains provisions relating to the possible methods of serving documents on the *FCA*. Regulation 7 does not apply to the submission of a draft *prospectus* or *listing particulars* to the *FCA* for approval because of the provisions set out in *PRR 3.1.1*~~EU~~ UK.

### 3.2 Publication of prospectus

#### Publication

- 3.2.1 ~~EU~~ UK Article 21(1) of the *Prospectus Regulation* provides for the publication of the *prospectus*:

...

#### Method of publishing

- 3.2.2 ~~EU~~ UK Article 21(2) to (4) of the *Prospectus Regulation* provides for the methods by which the *prospectus* is to be published:

...

Other publication requirements

- 3.2.3 ~~EU~~ UK Article 21(7) to (11) of the *Prospectus Regulation* provides for further requirements for publication:

Article 21

### **Publication of the prospectus**

...

7. All prospectuses approved shall remain publicly available in electronic form for at least 10 years after their publication on the websites referred to in ~~paragraphs 2 and 6~~ paragraph 2.

...

...

10. The text and the format of the prospectus, and any supplement to the prospectus made available to the public, shall at all times be identical to the original version approved by the competent authority ~~of the home Member State~~.
11. A copy of the prospectus on a durable medium shall be delivered to any potential investor, upon request and free of charge, by the issuer, the offeror, the person asking for admission to trading on a regulated market or the financial intermediaries placing or selling the securities. In the event that a potential investor makes a specific demand for a paper copy, the issuer, the offeror, the person asking for admission to trading on a regulated market or a financial intermediary placing or selling the securities shall deliver a printed version of the prospectus. Delivery shall be limited to jurisdictions in which the offer of securities to the public is made ~~or where the admission to trading on a regulated market is taking place under this Regulation~~.

Publication on website

- 3.2.4 ~~EU~~ UK Article 10(2) of the *Prospectus RTS Regulation* provides that:

Article 10

### **Publication of the prospectus**

...

2. Where a prospectus is published in accordance with Article 21(2) of [the *Prospectus Regulation*], measures shall be taken on websites used for the publication of the prospectus to avoid targeting residents of ~~Member States~~ or third countries other than those where the securities are offered to the public.

Publication by the ~~competent authority~~ FCA

- 3.2.5 ~~EU~~ UK Article 21(5) (first sub-paragraph) of the *Prospectus Regulation* sets out the publication requirements applicable to the *FCA* as the competent authority:

Article 21

### **Publication of the prospectus**

...

5. The competent authority ~~of the home Member State~~ shall publish on its website all the prospectuses approved or at least the list of prospectuses approved, including a hyperlink to the dedicated website sections referred to in paragraph 3 of this Article ~~as well as an identification of the host Member State or States where prospectuses are notified in accordance with Article 25~~. The published list, including the hyperlinks, shall be kept up-to-date and each item shall remain on the website at least for the period referred to in paragraph 7 of this Article.

...

### **Issuers required to submit data**

- 3.2.7 R (1) ~~An issuer must provide to the FCA any information that the FCA requires in order to comply with its obligations to provide information to ESMA under article 21(5) of the Prospectus Regulation or any regulatory technical standards adopted under article 21(12) of that regulation.~~
- ~~[Note: Annex VII (Machine Readable Data) of the Prospectus RTS Regulation, see [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2019.166.01.0001.01.ENG&to e=OJ.L:2019:166:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.166.01.0001.01.ENG&to e=OJ.L:2019:166:TOC)] [deleted]~~
- (2) ~~The issuer must provide the information referred to in paragraph (1) to the FCA as soon as possible and~~
- ~~(a) for information relating to a prospectus, before the prospectus is approved by the FCA;~~
  - ~~(b) for information relating to all other documents, no later than when the relevant document is submitted to the FCA.~~
- ~~[deleted]~~

- 3.2.8 R The ~~issuer~~ must submit the information referred to ~~PRR 3.2.7R~~ using electronic means and the format made available by the ~~FCA~~.
- ~~[Note: Information on the required data and format of submission can be found on the Markets section of the FCA website.]~~
- ~~[deleted]~~

### 3.3 Advertisements

#### Advertisements

- 3.3.1 ~~EU~~ Article 22(1) to (5) of the *Prospectus Regulation* provides for requirements applicable to *advertisements*:
- ...

- 3.3.2 ~~EU~~ Chapter IV of the *Prospectus RTS Regulation* provides that:
- ...

#### Article 14

#### Required content

1. Advertisements disseminated to potential retail investors shall include the following elements:
  - ...
  - (b) a statement that the approval of the prospectus should not be understood as an endorsement of the securities offered or admitted to trading on a regulated market where the advertisement contains a reference to a prospectus approved by ~~a competent authority~~ the FCA;
  - (c) a recommendation that potential investors read the prospectus before making an investment decision in order to fully understand the potential risks and rewards associated with the decision to invest in the securities where the advertisement contains a reference to a prospectus approved by ~~a competent authority~~ the FCA;
  - (d) the comprehension alert required pursuant to point (b) of Article 8(3) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council<sup>12</sup> where:
    - (i) the advertisement relates to complex securities other than the financial instruments referred to in ~~points (i), (ii) and (vi) of Article 25(4)(a) of Directive~~

2014/65/EU of the European Parliament and of the Council[*COBS 10A.4.1R(2)(a), (b) and (d)*] and;

...

...

#### Article 17

#### **Procedure for the cooperation between competent authorities**

1. ~~Where the competent authority of a Member State in which an advertisement is disseminated believes that the content of that advertisement is inconsistent with the information in the prospectus, it may request the assistance of the competent authority of the home Member State. Where requested, the competent authority in which the advertisement is disseminated shall communicate the following to the competent authority of the home Member State:~~
  - (a) ~~its reasons for believing that the content of the advertisement is inconsistent with the information in the prospectus;~~
  - (b) ~~the relevant advertisement and, where necessary, a translation of the advertisement in the language of the prospectus or in a language customary in the sphere of international finance.~~
2. ~~The competent authority of the home Member State shall transmit to the competent authority in which the advertisement is disseminated as soon as possible the results of its assessment of the consistency of the advertisement with the information in the prospectus.~~

### 3.4 Supplementary prospectus

#### Supplementary prospectus

- 3.4.1 ~~EU~~ Article 23(1) to (6) of the *Prospectus Regulation* provides for requirements applicable to *supplementary prospectuses*:

#### Article 23

#### **Supplements to the prospectus**

1. ...  
Such a supplement shall be approved in the same way as a prospectus in a maximum of five working days and published in accordance with at least the same arrangements as were applied when the original prospectus was published in accordance with Article 21. The summary, ~~and any translations thereof~~, shall also be supplemented, where necessary, to take into account the new information included in the supplement.

...

- 3.4.2 ~~EU~~ UK Chapter V of the *Prospectus RTS Regulation* provides for further requirements applicable to *supplementary prospectuses*:

Article 18

### **Publication of a supplement to the prospectus**

1. A supplement to the prospectus shall be published where:

...

- (e) ~~third parties make a new takeover bid as defined in Article 2(1)(a) of Directive 2004/25/EC of the European Parliament and of the Council paragraph 20(1) of Schedule 1C of the Companies Act 2006~~ or the result of any takeover bid becomes available in respect of any of the following type of securities:

...

...

- (g) ~~an issuer is seeking admission to trading on at least one additional regulated market in at least one additional Member State or is intending to make an offer of securities to the public in at least one additional Member State that is not mentioned in the prospectus;~~

...

## **4 Use of languages and third country issuers**

### **4.1 Use of languages**

#### **Language**

- 4.1.1 ~~EU~~ ~~Article 27 of the *Prospectus Regulation* provides:~~

~~Article 27~~

#### **~~Use of language~~**

- ~~1. Where an offer of securities to the public is made or admission to trading on a regulated market is sought only in the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority of the home Member State.~~
- ~~2. Where an offer of securities to the public is made or admission to trading on a regulated market is sought in one or more Member States excluding the home Member State, the prospectus shall be~~

~~drawn up either in a language accepted by the competent authorities of those Member States or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market.~~

~~The competent authority of each host Member State shall require that the summary referred to in Article 7 be available in its official language, or at least one of its official languages, or in another language accepted by the competent authority of that Member State, but it shall not require the translation of any other part of the prospectus.~~

~~For the purpose of the scrutiny and approval by the competent authority of the home Member State, the prospectus shall be drawn up either in a language accepted by that authority or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market.~~

- ~~3. Where an offer of securities to the public is made or an admission to trading on a regulated market is sought in more than one Member State including the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority of the home Member State, and shall also be made available either in a language accepted by the competent authorities of each host Member State or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror, or the person asking for admission to trading on a regulated market.~~

~~The competent authority of each host Member State shall require that the summary referred to in Article 7 be available in its official language or at least one of its official languages, or in another language accepted by the competent authority of that Member State, but it shall not require the translation of any other part of the prospectus.~~

- ~~4. The final terms and the summary of the individual issue shall be drawn up in the same language as the language of the approved base prospectus.~~

~~When, in accordance with Article 25(4), the final terms are communicated to the competent authority of the host Member State or, if there is more than one host Member State, to the competent authorities of the host Member States, the following language rules shall apply to the final terms and the summary annexed thereto:~~

- ~~(a) the summary of the individual issue annexed to the final terms shall be available in the official language or at least one of the official languages of the host Member State, or in another language accepted by the competent authority of the host Member State in accordance with the second subparagraph of~~



~~paragraph 2 or the second subparagraph of paragraph 3, as applicable;~~

- ~~(b) where the base prospectus is to be translated pursuant to paragraph 2 or 3, as applicable, the final terms and the summary of the individual issue annexed thereto, shall be subject to the same translation requirements as the base prospectus.~~

5. ~~Where a prospectus relates to the admission to trading on a regulated market of non-equity securities and admission to trading on a regulated market is sought in one or more Member States, the prospectus shall be drawn up either in a language accepted by the competent authorities of the home and host Member States or in a language customary in the sphere of international finance, at the choice of the issuer, the offeror or the person asking for admission to trading on a regulated market, provided that either:~~

- ~~(a) such securities are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading such securities; or~~
- ~~(b) such securities have a denomination per unit of at least EUR 100 000.~~

[deleted]

English language

- 4.1.2 R ~~For the purposes of article 27 of the *Prospectus Regulation*, English is the language accepted by the *FCA* where the *United Kingdom* is a *Home State* or *Host State*. A prospectus must be drawn up in English.~~

Language customary in the sphere of international finance

- 4.1.3 G ~~The *FCA* will consider a language to be customary in the sphere of international finance if documents in that language are accepted for scrutiny and filing in at least three international capital markets in each of the following:~~

- ~~(1) Europe;~~
- ~~(2) Asia; and~~
- ~~(3) the Americas.~~

[deleted]

Summary to be translated into English

- 4.1.4 R ~~If:~~

- (1) ~~an offer is made or admission to trading is requested in the United Kingdom;~~
  - (2) ~~a prospectus relating to the transferable securities has been approved by the competent authority of another EEA State and the prospectus contains a summary; and~~
  - (3) ~~the prospectus is drawn up in a language other than English;~~
- ~~the offeror must ensure that the summary is translated into English.~~
- ~~[Note: Article 27(2) and (3) of the Prospectus Regulation]~~
- ~~[deleted]~~

## 4.2 Third country issuers

Approval of prospectus drawn up in accordance with the Prospectus Regulation

- 4.2.1 ~~EU~~ UK Article 28 of the *Prospectus Regulation* provides:

Article 28

### **Offer of securities to the public or admission to trading on a regulated market made under a prospectus drawn up in accordance with this Regulation**

Where a third country issuer intends to offer securities to the public in the ~~Union~~ United Kingdom or to seek admission to trading of securities on a regulated market established in the ~~Union~~ United Kingdom under a prospectus drawn up in accordance with this Regulation, it shall obtain approval of its prospectus, in accordance with Article 20, from the competent authority ~~of its home Member State~~.

Once a prospectus is approved in accordance with the first subparagraph, it shall entail all the rights and obligations provided for a prospectus under this Regulation and the prospectus and the third country issuer shall be subject to all of the provisions of this Regulation under the supervision of the competent authority ~~of the home Member State~~.

Approval of prospectus drawn up in accordance with third country laws

- 4.2.2 ~~EU~~ UK Article 29 (1) and (2) of the *Prospectus Regulation* provides:

Article 29

### **Offer of securities to the public or admission to trading on a regulated market made under a prospectus drawn up in accordance with the laws of a third country**

1. The competent authority ~~of the home Member State of a third country issuer~~ may approve a prospectus for an offer of securities to the public or for admission to trading on a regulated market, drawn up in accordance with, and which is subject to, the national laws of the third country issuer, provided that:

...

- (b) the competent authority ~~of the home Member State~~ has concluded cooperation arrangements with the relevant supervisory authorities of the third country issuer in accordance with Article 30.

2. ~~In the case of an offer to the public or admission to trading on a regulated market of securities issued by a third country issuer, in a Member State other than the home Member State, the requirements set out in Articles 24, 25 and 27 shall apply.~~

## 5 Other provisions

### 5.1 Validity of prospectus

Validity of prospectus

- 5.1.1 ~~EU~~ Article 12 of the *Prospectus Regulation* provides for the validity of a ~~UK~~ *prospectus, registration document or a universal registration document:*

...

PRR 5.2 (Certificate of approval) is deleted in its entirety. The deleted text is not shown but the section is marked deleted, as shown below.

### 5.2 Certificate of approval [deleted]

Amend the following as shown.

### 5.3 Persons responsible for a prospectus

~~Rules only apply if UK is Home State~~

- 5.3.1 R ~~The rules in this section only apply in respect of a *prospectus* if the *United Kingdom* is the *Home State* for the *issuer* in relation to the *transferable securities* to which the *prospectus* relates.~~

[deleted]

...

## 5.4 Miscellaneous

Information to be disclosed to all investors to whom offer addressed

- 5.4.1 ~~EU~~ Article 22(5) of the *Prospectus Regulation* provides:  
UK

...

...

Calculation of amounts not denominated in euros

- 5.4.3 R For the purposes of ~~articles~~ article 7(1) ~~and 27(5)~~ of the *Prospectus Regulation*, a reference to an amount denominated in euros is also a reference to an equivalent amount.

...

## PRR Appendix 1

### PRR App 1.1 Relevant definitions

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

...	...
<i>EEA State</i>	( <del>in accordance with Schedule 1 to the Interpretation Act 1978</del> ), in relation to any time:
	(a) a state which at that time is a member State; or
	(b) any other state which is at that time a party to the EEA agreement.
	[ <b>Note:</b> Current non member State parties to the EEA agreement are Norway, Iceland and Lichtenstein. Where the context requires, references to an EEA State include references to Gibraltar as appropriate.]
...	...
<i>ESMA guidelines on risk factors</i>	guidelines drafted pursuant to article 16(4) of the <u>EU</u> <i>Prospectus Regulation</i> on the specificity, materiality and presentation of risks factors across categories depending on their nature.
...	...

<i>ESMA PR Prospectus Questions and Answers</i>	the Questions and Answers on the <u>EU Prospectus Regulation</u> published by ESMA (ESMA/2019/ESMA31-62-1258).
...	...
<u>EU Prospectus Regulation</u>	<u>the EU version of Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.</u>
...	...
<i>Home State</i>	<del>in relation to an issuer of transferable securities, the EEA State which is the “home Member State” for the purposes of the Prospectus Regulation (which is to be determined in accordance with article 2(m) of that regulation).</del>
<i>Host State</i>	<del>(as defined in Article 2(n) of the Prospectus Regulation) the EEA State where an offer of securities to the public is made or admission to trading on a regulated market is sought, where different from the home Member State.</del>
...	...
<u>PR</u>	<u>the Prospectus Rules sourcebook.</u>
<i>PR Regulation</i>	<u>the UK version of Regulation number 2019/980 of the European Commission, which is part of UK law by virtue of the EUWA.</u>
<i>PRIIPs Regulation</i>	<u>the UK version of Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), which is part of UK law by virtue of the EUWA.</u> <a href="http://data.europa.eu/eli/reg/2014/1286/oj">http://data.europa.eu/eli/reg/2014/1286/oj</a>
...	...
<i>Prospectus Regulation</i>	<u>the UK version of Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, which is part of UK law by virtue of the EUWA.</u>
<i>Prospectus RTS Regulation</i>	<u>the UK version of Commission Delegated Regulation (EU) 2019/979, which is part of UK law by virtue of the EUWA.</u>
...	...

<i>transferable security</i>	(as defined in section 102A of the <i>Act</i> ) anything which is a transferable security for the purposes of <del><i>MiFID</i></del> <i>MiFIR</i> , other than money-market instruments for the purposes of <del>that directive</del> <i>MiFIR</i> which have a maturity of less than 12 months.
	[ <b>Note:</b> In the <i>Prospectus Regulation</i> and <i>PR Regulation</i> , the term “security” rather than “transferable security” is used.]

## PRR Appendix 2

### PRR 2.1 Disclosure Annexes

App 2.1.1EU UK	Annexes 1 to 29 to the <i>PR Regulation</i> can be accessed at this link :- <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.166.01.0026.01.ENG&amp;toc=OJ:L:2019:166:TOC">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.166.01.0026.01.ENG&amp;toc=OJ:L:2019:166:TOC</a>
	[PLACEHOLDER: LINK TO UK LEGISLATION TO BE INCLUDED WHEN AVAILABLE.]

## TP 1 Transitional Provisions for prospectuses approved before 21 July 2019

### TP 1.1R

(1)	(2)	(3)	(4)		(5)	(6)
	Material to which the Transitional Provision applies		Transitional Provision		Transitional Provision: dates in force	Handbook Provision: coming into force
1	All of <i>PR</i>	R	<i>PR</i> shall continue to apply to any <i>prospectus</i> approved under <i>PR</i> before 21 July 2019 until the earlier of:		From 21 July 2019	
			(a)	the end of its validity under <i>PR</i> 5.1; or		
			(b)	21 July 2020.		

<u>2</u>	<u>PR 1 to 5</u>	<u>R</u>	For the purposes of these rules references to a <u>prospectus</u> include a prospectus referred to under regulation 73 of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019.	From <u>exit day</u> until 21 July 2020	<u>Exit day</u>
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## Annex P

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

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

#### 1B Introduction (Corporate governance)

...

#### 1B.1 Application and purpose (Corporate governance)

...

Purpose: Related party transactions

- 1B.1.9 G The original purpose of the requirements in *DTR 7.3* ~~is~~ was to implement parts of the *Shareholder Rights Directive* which require companies to have safeguards that apply to material transactions with related parties.

...

#### 7 Corporate governance

...

#### 7.3 Related party transactions

...

Definition of related party

- 7.3.2 R In *DTR*, a “*related party*” has the meaning in *UK-adopted IFRS*.

[**Note:** article 2(h) of the *Shareholder Rights Directive*]

...

...

#### 7 The related party tests

Annex

1

...

#### Figures used to classify assets and profits



9R ...

- (3) (a) The figures of the *issuer* must be adjusted to take account of transactions completed during the period to which the figures referred to in (1) or (2) relate, and subsequent completed transactions which the *issuer* would have been required to notify to a ~~RIS~~ under *LR* 10.4 or *LR* 10.5 if the *issuer* had a *premium listing*, provided that for such subsequent completed transactions the figures for the transactions are reasonably available to the *issuer*.

...

...

...

## TP 1 Disclosure and transparency rules

### Transitional Provisions

(1)	(2) Material to which the Transitional Provision applies	(3)	(4) Transitional Provision		(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...						
31	<i>DTR</i> 7.3 and <i>DTR</i> 7 Annex 1	...				
<del>31</del> <u>32</u>	<i>DTR</i> 4.1.6R	R	...			
<del>32</del> <u>33</u>	<i>DTR</i> 4.1.7R(4)	R	...			
<del>33</del> <u>34</u>	<i>DTR</i> 4.2.4R(1)	R	...			
<del>34</del> <u>35</u>	<i>DTR</i> 4.2.10R(4)	R	...			
<del>35</del> <u>36</u>	<i>DTR</i> 1B.1.3R	R	...			

	(1) and <i>DTR 7.1</i>					
--	---------------------------	--	--	--	--	--

[*Editor's note:* The Exiting the European Union: Regulatory Guides (Amendments) Instrument 2019 (FCA 2019/27) and the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) (PS19/12 'Changes to align the FCA Handbook with the EU Prospectus Regulations: feedback to CP19/6') made amendments to EG 7.2.1, App 2.1.9 and App 3.1.3. The text below takes account of the changes made by both these instruments. Further onshoring changes, to the consolidated text of the two instruments, are not indicated by underlining or strikethrough. References to legislation remain subject to change, pending approval of the Prospectus (Amendment Etc.) (EU Exit) Regulations 2019 by Parliament.]

## Annex Q

### Amendments to the Enforcement Guide (EG)

Replace EG 7.2.1, App 2.1.9 and App 3.1.3 or parts of the text as shown, made by The Exiting the European Union: Regulatory Guides (Amendments) Instrument 2019 (FCA 2019/27) and the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) with the corresponding provisions below. The text is not underlined.

#### 7 Financial penalties and other disciplinary sanctions

...

##### 7.2 Alternatives to sanctions

7.2.1 The *FCA* also has measures available to it where it considers it is appropriate to take protective or remedial action. These include:

...

(5) where there are reasonable grounds for suspecting that a provision of Part VI of the *Act*, a provision contained in the *prospectus rules*, or any other provision made in accordance with the *Prospectus Regulation* has been infringed, the *FCA* may:

- (a) suspend, restrict or prohibit the offer to the public of transferable securities as set out in section 87K of the *Act*; or
- (b) suspend, restrict or prohibit admission of transferable securities to trading on a regulated market or a trading facility as set out in sections 87L and 87LA of the *Act*;

...

...

Insert the following new section, EG 19.41, after EG 19.40 (Trade Repositories (EU Exit) Regulations). The text is not underlined.

## 19.41 Securities Financing Transactions Regulation

19.41.1 Supervisory and enforcement functions in respect of *trade repositories* under the *Securities Financing Transactions Regulation* were transferred from *ESMA* to the *FCA* through the *SFTR (EU Exit) Regulations* on exit day.

19.41.2 The *FCA*'s approach to enforcing under the *Securities Financing Transactions Regulation* and the *SFTR (EU Exit) Regulations* will mirror our general approach to enforcing the *Act*, as set out in *EG*. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the *person* who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.

### Conduct of investigations under the Securities Financing Transactions Regulation and the SFTR (EU Exit) Regulations

19.41.3 The *SFTR (EU Exit) Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *Securities Financing Transactions Regulation*, the *SFTR (EU Exit) Regulations* and the *TRATP Regulations*.

19.41.4 The *FCA* will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the *SFTR (EU Exit) Regulations* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FCA* expects to carry out a scoping visit early in the enforcement process in most cases. The *FCA*'s policy in non-criminal investigations under the *SFTR (EU Exit) Regulations* is to use powers to compel the provision of information in the same way as we would during an investigation under the *Act*.

### Decision making under the Securities Financing Transactions Regulation

19.41.5 The decision-making procedures for those decisions under the *Securities Financing Transactions Regulation* and *SFTR (EU Exit) Regulations* requiring the giving of a *warning notice*, *decision notice* or *supervisory notice* are dealt with within *DEPP*.

19.41.6 The *SFTR (EU Exit) Regulations* require the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to certain material as set out in section 394 of the *Act*, as applied by the *SFTR (EU Exit) Regulations*.

### Imposition of penalties under SFTR (EU Exit) Regulations

- 19.41.7 When determining whether to take action to impose a penalty or to issue a public censure under the *SFTR (EU Exit) Regulations*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP* 6.2 and *DEPP* 6.4. The *FCA*'s policy in relation to determining the level of a financial penalty includes having regard, where relevant, to *DEPP* 6.5, *DEPP* 6.5A, *DEPP* 6.5B and *DEPP* 6.5D.
- 19.41.8 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving non-criminal breaches of the *Securities Financing Transactions Regulation* and the *SFTR (EU Exit) Regulations* to assist us to exercise our functions under the *Securities Financing Transactions Regulation* and the *SFTR (EU Exit) Regulations* in the most efficient and economical way. See *DEPP* 5, *DEPP* 6.7 and *EG* 5 for further information on the settlement process and the *settlement discount scheme*.
- 19.41.9 The *FCA* will apply the approach to publicity that is outlined in *EG* 6, read in the light of regulation 37 of the *SFTR (EU Exit) Regulations*.
- Statement of policy in section 169(7) interviews (as implemented by the *SFTR (EU Exit) Regulations*)
- 19.41.10 The *SFTR (EU Exit) Regulations* apply section 169 of the *Act* which requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the *SFTR (EU Exit) Regulations*, the *FCA* will follow the procedures described in *DEPP* 7.

...

## **Appendix 2 Guidelines on investigation of cases of interest or concern to the Financial Conduct Authority and other prosecuting and investigating agencies**

### **Appendix 2.1 Purpose, status and application of the guidelines**

...

Indicators for deciding which agency should take action

Appendix 2.1.9 The following are indicators of whether action by the *FCA* or one of the other agencies is more appropriate. They are not listed in any particular order or ranked according to priority. No single feature of the case should be considered in isolation, but rather the whole case should be considered in the round.

(a) Tending towards action by the *FCA*

...

Where the suspected conduct in question would be best dealt with by:

...

proceedings for breaches of the *Prospectus Regulation* actionable under Part VI of the *Act*, of *Part 6 rules* or the *Prospectus Rules*.

...

**Appendix 3**      **Appendix to the guidelines on investigation of cases of interest or concern to the financial conduct authority and other prosecuting and investigating agencies**

**App 3.1**      **The FCA**

...

App 3.1.3      Under the 2000 Act the *FCA* has powers to investigate concerns including:

...

suspected contraventions of the *Prospectus Regulation*, the *PR Regulation*, the *Prospectus RTS Regulation* and suspected breaches of Part VI of the *Act*, of *Part 6 rules* or the *prospectus rules*.

...

[*Editor's note:* The Exiting the European Union: Regulatory Guides (Amendments) Instrument 2019 (FCA 2019/27) and the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) (PS19/12 'Changes to align the FCA Handbook with the EU Prospectus Regulations: feedback to CP19/6') made amendments to PERG 8.21.20G, 8.37.1G and 8.37.15G. The text below takes account of the changes made by both these instruments. Further onshoring changes, to the consolidated text of the two instruments, are not indicated by underlining or strikethrough. References to legislation remain subject to change, pending approval of the Prospectus (Amendment Etc.) (EU Exit) Regulations 2019 by Parliament.]

## Annex R

### Amendments to the Perimeter Guidance Manual (PERG)

Replace PERG 8.21.20G, 8.37.1G and 8.37.15G, or parts of those provisions, and the heading before PERG 8.37.15G made by the Exiting the European Union: Regulatory Guides (Amendments) Instrument 2019 (FCA 2019/27) and the Prospectus Regulation Rules Instrument 2019 (FCA 2019/80) with the text below. The text is not underlined.

#### 8 Financial promotion and related activities

...

#### 8.21 Company statements, announcements and briefings

...

Article 70: Promotions included in listing particulars, etc

8.21.20 G Article 70 applies to a *non-real time financial promotion* included in:

...

(3) a prospectus or supplementary prospectus approved in line with *Prospectus Rules* – including part of such a prospectus or supplementary prospectus; or

(4) any other document required or permitted to be published by *listing rules* or *Prospectus Rules*.

Article 70 also applies to a *non-real time financial promotion* comprising the final terms of an offer or the final offer price or amount of *securities* which will be offered to the public and that complies with articles 8(1), 8(4), 8(5), 8(10), 17 and 21(2) of the *Prospectus Regulation*.

...

#### 8.37 AIFMD Marketing

...

#### Introduction and purpose

8.37.1 G ...

(2) The purpose of this section is to give *guidance* on:

...

(f) the interaction between the marketing of an *AIF* and the *Prospectus Regulation* (see *PERG* 8.37.15G);

...



[*Editor's Note:* This draft instrument supplements rather than replaces the near-final version of the instrument titled “Exiting The European Union: SMCR and APR (Amendments) (Solo-Regulated Firms) Instrument 2019” included in PS19/5: Brexit Policy Statement.]

## **EXITING THE EUROPEAN UNION: SMCR AND APR (AMENDMENTS) (No 2) 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 59 (Approval for particular arrangements);
  - (2) section 59AB(1) (Specifying functions as controlled functions: transitional provision);
  - (3) section 60 (Applications for approval);
  - (4) section 60A (Vetting candidates by authorised persons);
  - (5) section 61 (Determination of applications);
  - (6) section 62A (Changes to responsibilities of senior managers);
  - (7) section 63ZA (Variation of senior manager’s approval at request of authorised person);
  - (8) section 63ZD (Statement of policy relating to conditional approval and variation);
  - (9) section 63C (Statement of policy);
  - (10) section 63E (Certification of employees by authorised persons);
  - (11) section 63F (Issuing of certificates);
  - (12) section 64A (Rules of conduct);
  - (13) section 64C (Requirements for authorised persons to notify regulator of disciplinary action);
  - (14) section 69 (Statement of policy);
  - (15) section 137A (The FCA’s general rules);
  - (16) section 137T (General supplementary powers); and
  - (17) section 138D (Action for damages);
  - (18) section 139A (Power of the FCA to give guidance).
  - (19) section 395 (The FCA’s and PRA’s procedures);
  - (20) paragraph 23 of Schedule 1ZA (Fees); and
  - (21) regulations 5 and 6 of the Bank of England and Financial Services Act 2016 (Commencement No. 6 and Transitional Provisions) Regulations 2019.
- 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 exit day as defined in the European Union (Withdrawal) Act 2018 (“Exit Day”), except as follows:

Annex	Date comes into force
-------	-----------------------

Part 2 of Annex A	9 December 2019
Part 2 of Annex B	9 December 2019 or Exit Day, whichever date is the later
Part 3 of Annex B	9 December 2019

### **Amendments to the Handbook**

- D. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

### **Modifications to the Exiting the European Union: SMCR and APR (Amendments) Instrument 2019**

- F. It is confirmed that:
- (1) the deletion of a provision of the Handbook made by the Individual Accountability (FCA-Authorised Firms) Instrument 2019 takes effect even if that provision was amended by the Exiting the European Union: SMCR and APR (Amendments) Instrument 2019 or is amended by this instrument;
  - (2) in particular, if Exit Day is on or after 9 December 2019, an amendment to a provision of the Handbook made by the Exiting the European Union: SMCR and APR (Amendments) Instrument 2019 or this instrument has no effect if the provision was deleted by the Individual Accountability (FCA-Authorised Firms) Instrument 2019;
  - (3) the deletion of a provision of the Handbook by the Exiting the European Union: SMCR and APR (Amendments) Instrument 2019 or by this instrument remains effective even if it is amended by the Individual Accountability (FCA-Authorised Firms) Instrument 2019; and
  - (4) if the Individual Accountability (FCA-Authorised Firms) Instrument 2019 and the Exiting the European Union: SMCR and APR (Amendments) Instrument 2019 make the same amendment to or deletion of a provision of the Handbook, that amendment or deletion comes into force on the earlier of the two commencement dates specified by those instruments.

*[Editor's Note:*

- (1) The provisions of the Handbook affected by F(1) and (2) are SYSC 22.1.5R, SUP 10A.1.18R, SUP 10A.8.5G, SUP 10A.14.4AG and SUP 10A.14.9AG.
- (2) The provision of the Handbook affected by F(3) is SYSC 23 Annex 1 3.4R.
- (3) The provisions of the Handbook that are affected by F(4) are the entry for SYSC 4.4.1AR in Table A of Part 3 of SYSC 1 Annex 1 (Tables summarising the application of the common platform requirements to different types of firm), the introduction to the answer to question 12 in SYSC 4.4.6G, SUP 10A.1.21G and SUP 10A.8.2R(1).]

- G. The day on which the amendments to the Handbook made by Part 2 of Annex E of the Exiting the European Union: SMCR and APR (Amendments) Instrument 2019

(Amendments to the Supervision manual (SUP)) comes into force is amended to be the date falling six months after Exit Day.

**Citation**

- H. This instrument may be cited as the Exiting the European Union: SMCR and APR (Amendments) (No 2) 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.

#### **Part 1: Comes into force on exit day as defined in the European Union (Withdrawal) Act 2018**

##### **23 Senior managers and certification regime: Introduction and classification**

...

##### **23 Definition of SMCR firm and different types of SMCR firms** **Annex 1**

...

Part Three: Definition of exempt firm

...

3.4 R ~~An incoming ECA provider acting as such is an exempt firm.~~ [deleted]

...

#### **Part 2: Comes into force on 9 December 2019**

##### **23 Senior managers and certification regime: Introduction and classification**

...

##### **23 Definition of SMCR firm and different types of SMCR firms** **Annex 1**

Part One: Flow diagram and other basic provisions

...

1.3 R (1) A Gibraltar-based firm (as defined in *GEN 2.3* (General saving of the Handbook for Gibraltar)) is treated as an *EEA PTV firm* for the purposes of deciding into which category of *SMCR firm* it falls. In particular, it is to be treated as an *EEA SMCR firm*.

(2) (1) is without prejudice to the generality of *GEN 2.3*.

- 1.4 R A reference in this Annex to a *firm* having *permission* to carry on a particular *regulated activity* but no other *regulated activity* includes that ~~1.3~~ *firm* also having *permission* for *agreeing to carry on a regulated activity* in respect of that first *regulated activity*.

...

**Conditional amendment:**

If exit day (as defined in the European Union (Withdrawal) Act 2018) is after 9 December 2019, SYSC 23 Annex 1 1.3R is amended so that it appears as follows until exit day:

- 1.3 R [Not used]

## Annex B

### Amendments to the Supervision manual (SUP)

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

#### Part 1: Comes into force on exit day as defined in the European Union (Withdrawal) Act 2018

#### 10A FCA Approved Persons

##### 10A.1 Application

...

##### Claims management exclusions

10A.1.28 R For the purposes of *SUP* 10A.1.13R, *SUP* 10A.1.18R, *SUP* 10A.6.23R (Partner function (CF4)) and *SUP* 10A.6.31R (Small friendly society function (CF6)), a *regulated claims management activity* is treated as an *unregulated activity*.

...

10A.1.32 G *SUP* 10A.1.28R to *SUP* 10A.1.30R are not relevant to a *firm* which has *permission* to carry on only *regulated claims management activities* because *SUP* 10A.1.1R excludes it from this chapter altogether.

[*Editor's Note:* If exit day (as defined in the European Union (Withdrawal) Act 2018) is after 9 December 2019, *SUP* 10A.1.32G will be blank when the amendment below comes into force as *SUP* 10A.1.32G will have been deleted.]

##### Gibraltar firms

10A.1.33A R (1) A Gibraltar-based firm (as defined in *GEN* 2.3 (General saving of the Handbook for Gibraltar)) is treated as an *EEA PTV firm* for the purposes of deciding into which categories of *firm* in this chapter it falls.

~~10A.1.28~~

(2) (1) is without prejudice to the generality of *GEN* 2.3.

...

#### 10A.14 Changes to an FCA-approved person's details

##### Moving within a firm

...

- 10A.14.4AA G (1) The *MiFID authorisation and management body change notification ITS* requires that a *person* applying to be a *MiFID investment firm* (except a *credit institution*) notify the *appropriate regulator* of information about members of its *management body* by filling in the template set out in Annex II of the appropriate part of the *MiFID authorisation and management body change notification ITS*.

...

- 10A.14.4B D Where:
- (1) there is a change to a member of the *management body* or *person* who directs the business of a *MiFID investment firm* (except a *credit institution*) that the *firm* must notify to the *appropriate regulator* under Annex III of the appropriate part of the *MiFID authorisation and management body change notification ITS*;

...

...

Ceasing to perform an FCA controlled function

...

- 10A.14.9A G (1) The *MiFID authorisation and management body change notification ITS* requires that a *MiFID investment firm* (except a *credit institution*) submit the information in Annex III of the appropriate part of the *MiFID authorisation and management body change notification ITS* on the Annex III template referred to in *SUP* 10A.14.4AG where there is a change to a member of the *management body* or a *person* who effectively directs the business.

...

...

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

...

### 10C.10 Application for approval and withdrawing an application for approval

...

How to apply for approval

...

10C.10.9AA G (1) The *MiFID authorisation and management body change notification ITS* requires that a *person* applying to be a *MiFID investment firm* (except a *credit institution*) should notify the *appropriate regulator* of information about members of its *management body* by filling in the template set out in Annex II of the appropriate part of the *MiFID authorisation and management body change notification ITS*.

...

10C.10.9B D Where:

- (1) there is a change to a member of the *management body* or *person* who directs the business of a *MiFID investment firm* (except a *credit institution*) that the *firm* must notify to the *appropriate regulator* under Annex III of the appropriate part of the *MiFID authorisation and management body change notification ITS*; and

...

...

## 10C.14 Changes to an FCA-approved person's details

...

Ceasing to perform an FCA-designated senior management function

...

10C.14.6A G (1) The *MiFID authorisation and management body change notification ITS* requires that a *MiFID investment firm* (except a *credit institution*) submit the information in Annex III of the appropriate part of the *MiFID authorisation and management body change notification ITS* on the Annex III template referred to in SUP 10C.10.9AG where there is a change to a member of the *management body* or a *person* who effectively directs the business.

...

**Part 2: Comes into force on 9 December 2019 or on exit day as defined in the European Union (Withdrawal) Act 2018, whichever date is the later.**

## 15 Notifications to the FCA

...



**15.16 Notification of changes in the management body**

...

## Purpose

15.16.2 G The purpose of this section is:

- (1) to set out material related to the requirement in Part 1 (FCA) of the *MiFID authorisation and management body change notification ITS* for a *MIFID investment firm* to notify the *FCA* of changes to its *management body*;

...

15.16.3 G Article 5 of Part 1 (FCA) of the *MiFID authorisation and management body change notification ITS* says that a *MIFID investment firm* should:

- (1) ...
- (2) make the notification using the template in Part 1 of Annex III of the *MiFID authorisation and management body change notification ITS*.

## Supplemental requirement for MIFID investment firms

15.16.4 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 Part 1 (FCA) of Annex III of the *MiFID authorisation and management body change notification ITS*;

...

## Requirement for MIFID optional exemption firms

15.16.5 R A *MiFID optional exemption firm* must (subject to SUP 15.16.6R) comply with article 5 of Part 1 (FCA) of the *MiFID authorisation and management body change notification ITS* and SUP 15.16.4R as if it were a *MIFID investment firm*.

...

## Method of submission

15.16.8 R (1) A *firm* must make a notification:

- (a) under SUP 15.16.4R or SUP 15.16.5R; or

- (b) of a change in its *management body* under the template in Part 1 (FCA) of Annex III of the MiFID authorisation and management body change notification ITS;

by submitting the notification online at [fca.org.uk](http://fca.org.uk) using the *FCA's* and *PRA's online notification and application system*.

...

### Part 3: Comes into force on 9 December 2019

#### 10A FCA Approved Persons

##### 10A.1 Application

...

##### Gibraltar firms

- 10A.1.33A R (1) A Gibraltar-based firm (as defined in *GEN 2.3* (General saving of the Handbook for Gibraltar)) is treated as an *EEA PTV firm* for the purposes of deciding into which categories of *firm* in this chapter it falls.
- (2) (1) is without prejudice to the generality of *GEN 2.3*.

##### Obligations on firms

- ~~10A.1.33~~ G (1) The requirements in this chapter about notifications and applications are addressed to *firms*. Where this chapter applies in relation to an *appointed representative*, this means it applies to the *appointed representative's principal*.
- 10A.1.34 (2) If an *appointed representative* has more than one *principal*, the requirements in (1) are addressed to the *authorised approved person employer* of the *approved person* in question.

...

#### Conditional amendment:

If exit day (as defined in the European Union (Withdrawal) Act 2018) is after 9 December 2019, *SUP 10A.1.33AR* is amended so that it appears as follows until exit day:

10A.1.33A R [Not used]

**TECHNICAL STANDARDS (PAYMENT SERVICES DIRECTIVE) (EU EXIT) (No 2)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Revocations**

- F. The FCA revokes the following EU Regulations:
1. COMMISSION IMPLEMENTING REGULATION (EU) 2019/410 of 29 November 2018 laying down implementing technical standards with regard to the details and structure of the information to be notified, in the field of payment services, by competent authorities to the European Banking Authority pursuant to Directive (EU) 2015/2366 of the European Parliament and of the Council.
  2. COMMISSION DELEGATED REGULATION (EU) 2019/411 of 29 November 2018 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards setting technical requirements

on development, operation and maintenance of the electronic central register within the field of payment services and on access to the information contained therein.

**Commencement**

- G. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018.

**Citation**

- H. This instrument may be cited as the Technical Standards (Payment Services Directive) (EU Exit) (No. 2) Instrument 2019.

By order of the Board  
[date] 2019

**TECHNICAL STANDARDS (PROSPECTUS REGULATION) (EU EXIT)  
INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being an appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Revocation**

- F. The Technical Standards (Prospectus Directive) (EU Exit) Instrument 2019 is revoked.

**Modifications**

- G. The following EU Regulation is amended in accordance with Annex A of this instrument.

(1)	(2)
Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301	Annex A

### Commencement

- H. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018.

### Citation

- I. This instrument may be cited as the Technical Standards (Prospectus Regulation) (EU Exit) Instrument 2019.

By order of the Board

[date]

[*Editor's Note:* References to Regulation (EU) 2017/1129 and Delegated Regulation 2019/980 in this Annex to be confirmed once the Prospectus (Amendment Etc.) (EU Exit) Regulations 2019 has been approved by Parliament.]

## **Annex A**

**COMMISSION DELEGATED REGULATION (EU) No 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) No 382/2014 and Commission Delegated Regulation (EU) 2016/301**

~~(Text with EEA relevance)~~

...

### **CHAPTER II**

#### **PUBLICATION OF THE PROSPECTUS**

##### **Article 10**

##### **Publication of the prospectus**

...

2. Where a prospectus is published in accordance with Article 21(2) of Regulation (EU) 2017/1129, measures shall be taken on websites used for the publication of the prospectus to avoid targeting residents of ~~Member States or~~ third countries other than those where the securities are offered to the public.

...

### **CHAPTER III**

#### **MACHINE READABLE DATA FOR THE CLASSIFICATION OF PROSPECTUSES**

##### **Article 11**

##### **Data for classification of prospectuses**

~~When providing ESMA with an electronic copy of an approved prospectus, including any supplements thereto and final terms where applicable, the competent authority shall also provide to ESMA with the relevant accompanying data for the classification of prospectuses in accordance with the tables set out in Annex VII to this Regulation.~~

##### **Article 12**

##### **Practical arrangements to ensure the machine readability of the data**

~~The competent authority shall provide the accompanying data referred to in Article 11 in a common XML format and in accordance with the format and standards set out in the tables in Annex VII.~~

...

## Article 14

**Required content**

1. Advertisements disseminated to potential retail investors shall include the following elements:

...

- (b) a statement that the approval of the prospectus should not be understood as an endorsement of the securities offered or admitted to trading on a regulated market where the advertisement contains a reference to a prospectus approved by ~~a competent authority~~ the FCA;
- (c) a recommendation that potential investors read the prospectus before making an investment decision in order to fully understand the potential risks and rewards associated with the decision to invest in the securities where the advertisement contains a reference to a prospectus approved by ~~a competent authority~~ the FCA;
- (d) the comprehension alert required pursuant to point (b) of Article 8(3) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council (6) where:
  - (i) the advertisement relates to complex securities other than the financial instruments referred to in ~~points (i), (ii) and (vi) of Article 25(4)(a) of Directive 2014/65/EU of the European Parliament and of the Council~~ (7) sub-paragraphs (a), (b) and (d) of rule 10A.4.1(2) of the Conduct of Business sourcebook and;
  - (ii) the comprehension alert is, or will be, included in the summary of the prospectus.

...

## Article 17

**Procedure for the cooperation between competent authorities**

1. ~~Where the competent authority of a Member State in which an advertisement is disseminated believes that the content of that advertisement is inconsistent with the information in the prospectus, it may request the assistance of the competent authority of the home Member State. Where requested, the competent authority in which the advertisement is disseminated shall communicate the following to the competent authority of the home Member State:~~
  - (a) ~~its reasons for believing that the content of the advertisement is inconsistent with the information in the prospectus;~~
  - (b) ~~the relevant advertisement and, where necessary, a translation of the advertisement in the language of the prospectus or in a language customary in the sphere of international finance.~~
2. ~~The competent authority of the home Member State shall transmit to the competent authority in which the advertisement is disseminated as soon as possible the results of~~



~~its assessment of the consistency of the advertisement with the information in the prospectus.~~

## CHAPTER V SUPPLEMENTS TO THE PROSPECTUS

### Article 18

#### Publication of a supplement to the prospectus

1. A supplement to the prospectus shall be published where:
  - ...
  - (e) ~~third parties make a new takeover bid as defined in Article 2(1)(a) of Directive 2004/25/EC of the European Parliament and of the Council (8) paragraph 20(1) of Schedule 1C to the Companies Act 2006 or the result of any takeover bid becomes available in respect of any of the following type of securities:~~
  - ...
  - (g) ~~an issuer is seeking admission to trading on at least one additional regulated market in at least one additional Member State or is intending to make an offer of securities to the public in at least one additional Member State that is not mentioned in the prospectus;~~

## CHAPTER VI TECHNICAL ARRANGEMENTS FOR THE FUNCTIONING OF THE NOTIFICATION PORTAL

### Article 19

#### Upload of documents and accompanying data

~~When uploading any documents referred to in Article 25(6) of Regulation (EU) 2017/1129 into the notification portal, the competent authority shall ensure those documents are in a searchable electronic format that cannot be modified and are accompanied by the data relating to those documents as specified in the tables of Annex VII to this Regulation in a common XML format.~~

### Article 20

#### Processing and notification of documents and accompanying data

1. ~~ESMA shall ensure that the notification portal automatically processes and checks all uploaded documents and accompanying data and notifies the uploading competent authority of whether the upload was successful and whether the upload contained any error.~~
2. ~~ESMA shall ensure that the notification portal sends notifications of uploaded documents and accompanying data to the relevant competent authorities.~~

### Article 21

**Download of documents and accompanying data**

**CHAPTER VII**

**FINAL PROVISIONS**

Article 22

**Repeal**

~~Delegated Regulation (EU) No 382/2014 is repealed.~~

~~Delegated Regulation (EU) 2016/301 is repealed.~~

Article 23

**Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**ANNEX VII**

**MACHINE-READABLE DATA TO BE PROVIDED TO ESMA**

[Annex VII (Machine-Readable Data to be provided to ESMA) is deleted. The deleted text is not shown.]

...

**TECHNICAL STANDARDS (SECURITIES FINANCING TRANSACTIONS  
REGULATION) (EU EXIT) (No. 1) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being an appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Revocation**

- F. The following EU Regulation is revoked:

Commission Implementing Regulation (EU) 2019/365 of 13 December 2018 laying down implementing technical standards with regard to the procedures and forms for exchange of information on sanctions, measures and investigations in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council.

## Modifications

- G. The following EU Regulations are amended in accordance with Annex A - D of this instrument.

(1)	(2)
COMMISSION DELEGATED REGULATION (EU) 2019/357 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on access to details of securities financing transactions (SFTs) held in trade repositories	Annex A
COMMISSION DELEGATED REGULATION (EU) 2019/358 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on the collection, verification, aggregation, comparison and publication of data on securities financing transactions (SFTs) by trade repositories	Annex B
COMMISSION DELEGATED REGULATION (EU) 2019/359 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration and extension of registration as a trade repository	Annex C
COMMISSION IMPLEMENTING REGULATION (EU) 2019/364 of 13 December 2018 laying down implementing technical standards with regard to the format of applications for registration and extension of registration of trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council	Annex D

## Commencement

- H. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018.

## Citation

- I. This instrument may be cited as the Technical Standards (Securities Financing Transactions Regulation) (EU Exit) (No. 1) Instrument 2019.

By order of the Board  
[date]

## Annex A

### COMMISSION DELEGATED REGULATION (EU) 2019/357 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on access to details of securities financing transactions (SFTs) held in trade repositories

(~~Text with EEA relevance~~)

...

#### Article -1

#### **Interpretation**

Where a term is defined in Regulation 2015/2365/EU, as amended by The Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019, that definition shall apply for the purposes of this Regulation.

...

#### Article 2

#### **Single access**

A trade repository shall provide the entities that have several responsibilities or mandates under Article 12(2) of Regulation (EU) 2015/2365 with a single access to the details of all SFTs covered by those responsibilities and mandates.

#### Article 3

#### **Access to details of SFTs in accordance with the mandate and specific needs of each authority concerned**

1. A trade repository shall provide ~~ESMA the FCA~~ with access to all details of all SFTs to exercise its supervisory competences in accordance with its responsibilities and mandates.
2. A trade repository shall provide the ~~EBA, EIOPA and ESRB Prudential Regulation Authority, the Pensions Regulator and the Bank of England~~ with access to all details of all SFTs.
3. ~~A trade repository shall provide an authority supervising trading venues with access to the details of all SFTs executed on those trading venues.~~
4. ~~A trade repository shall provide a member of the ESCB whose Member State's currency is the euro and the ECB with access to the details of all SFTs:~~
  - (a) ~~where the securities lent or borrowed or provided as collateral were issued by or offered on behalf of an entity established within a Member State whose currency is the euro;~~
  - (b) ~~where the securities lent or borrowed or provided as collateral are sovereign debt of a Member State whose currency is the euro;~~
  - (c) ~~where the currency lent or borrowed or provided as collateral is the euro.~~

5. ~~A trade repository shall provide a member of the ESCB whose Member State's currency is not the euro with access to the details of all SFTs:~~
  - ~~(a) where the securities lent or borrowed or provided as collateral were issued by or offered on behalf of an entity established within the Member State of that ESCB member;~~
  - ~~(b) where the securities lent or borrowed or provided as collateral are sovereign debt of the Member State of that ESCB member;~~
  - ~~(c) where the currency lent or borrowed or provided as collateral is the currency issued by that ESCB member.~~
6. ~~A trade repository shall provide an authority listed in Article 12(2) of Regulation (EU) 2015/2365, that monitors systemic risks to financial stability in the euro area, with access to the details of all SFTs concluded on trading venues, or by counterparties that fall under the responsibilities and mandates of that authority when monitoring systemic risks to financial stability in the euro area. A trade repository shall also provide that authority with access to the details of the SFTs of all branches of counterparties established in a third country that operate in a Member State whose currency is the euro.~~
7. ~~A trade repository shall provide an authority listed in Article 12(2) of Regulation (EU) 2015/2365, that monitors systemic risks to financial stability and whose Member State's currency is not the euro, with access to the details of all SFTs concluded on trading venues, or by counterparties that fall under the responsibilities and mandates of that authority when monitoring systemic risks to financial stability in a Member State whose currency is not the euro. A trade repository shall also provide that authority with access to the details of all SFTs of all branches of counterparties established in a third country that operate in that authority's Member State.~~
8. ~~A trade repository shall provide the ECB, in carrying out its tasks within the single supervisory mechanism under Council Regulation (EU) No 1024/2013, with access to the details of all SFTs concluded by any counterparty which, within the single supervisory mechanism, is subject to the ECB's supervision pursuant to Regulation (EU) No 1024/2013.~~
9. A trade repository shall provide an authority of a third country in respect of which an implementing act pursuant to Article 19(1) of Regulation (EU) 2015/2365 has been adopted regulations pursuant to Article 19(1) have been prescribed by the Treasury with access to the details of all SFTs under the third country authority's mandate and responsibilities in line with the provisions of the aforementioned implementing act regulations. A trade repository shall provide an authority designated pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council the Panel on Takeovers and Mergers with access to the details of all SFTs for which the security lent or borrowed or provided as collateral is a security issued by a company that meets one or more of the following conditions:
  - (a) the company is admitted to trading on a regulated market established within the Member State of that authority United Kingdom and the takeover bids on the securities of that company fall under that authority's supervisory responsibilities and mandates;
  - (b) the company has its registered office or head office in the Member State of that authority United Kingdom and the takeover bids on the securities of that company fall under that authority's supervisory responsibilities and mandates;

- (c) the company is an offeror as defined in ~~Article 2(1)(e) of Directive 2004/25/EC~~ section 991(1) of the Companies Act 2006 for the companies referred to in points (a) or (b) and the consideration it offers includes securities.
10. ~~A trade repository shall provide an authority as referred to in Article 12(2)(i) of Regulation (EU) 2015/2365 with access to the details of all SFTs representing transactions, or relating to markets, securities lent or borrowed or provided as collateral, benchmarks used as references and counterparties that fall under the supervisory responsibilities and mandates of that authority. A trade repository shall also provide that authority with access to the details of the SFTs of all branches of counterparties established in a third country that operate in the authority's Member State.~~
11. ~~A trade repository shall provide the Agency for the Cooperation of Energy Regulators (ACER) with access to the details of all SFTs where the commodity lent or borrowed or provided as collateral is energy.~~
12. ~~A trade repository shall provide a resolution authority as referred to in Article 12(2)(k) of Regulation (EU) 2015/2365 with access to the details of all SFTs concluded by:~~
- ~~(a) a counterparty that falls under the responsibilities and mandates of that authority;~~
  - ~~(b) a branch of a counterparty established in a third country that operates in the Member State of that resolution authority and falls under its responsibilities and mandates.~~
13. ~~A trade repository shall provide the Single Resolution Board with access to the details of all SFTs concluded by any counterparty that falls under the scope of Regulation (EU) No 806/2014.~~
14. ~~A trade repository shall provide a competent authority listed in Article 12(2)(m) of Regulation (EU) 2015/2365 with access to the details of all SFTs concluded by:~~
- ~~(a) a counterparty that falls under the responsibilities and mandates of that authority;~~
  - ~~(b) a branch of a counterparty established in a third country that operates in the Member State of that competent authority and falls under its responsibilities and mandates.~~
15. ~~A trade repository shall provide an authority supervising a central counterparty (CCP) and the member of the ESCB overseeing that CCP with access to the details of all SFTs cleared or concluded by that CCP.~~

#### Article 4

#### Setting up of the access to details of SFTs

...

2. A trade repository shall prepare a form to be used by the entities listed in Article 12(2) of Regulation (EU) 2015/2365 when submitting a request for setting up access to details of SFT details. That form shall contain the following entries:
- (a) the name of the entity;
  - (b) the contact person at the entity;

- (c) ~~the entity's legal responsibilities and mandates;~~
- (d) a list of authorised users of the requested details of SFTs;
- (e) credentials for a secure SSH FTP connection;
- (f) any other technical information relevant to the entity's access to details of SFTs;
- 
- (g) ~~whether the entity is competent for counterparties in its Member State, the euro area or the Union;~~
- (h) ~~the types of counterparties for which the entity is competent as per the classification in Table 1 of Annex I to Implementing Regulation (EU) 2019/363;~~
- (i) ~~the types of SFT that are supervised by the entity;~~
- (j) ~~all Member States where the issuer of securities that were borrowed or lent or provided as collateral is supervised by the entity, if any;~~
- (k) ~~all Member States where the commodities that were borrowed or lent or provided as collateral are supervised by the entity, if any;~~
- (l) ~~the trading venues that are supervised by the entity, if any;~~
- (m) ~~the CCPs that are supervised or overseen by the entity, if any;~~
- (n) ~~the currency that is issued by the entity, if any;~~
- (o) ~~the benchmarks used in the Union, the administrator of which the entity is competent for, if any.~~

...

## Article 6

### Entry into force

...

~~It shall be binding in its entirety and directly applicable in all Member States.~~

...



**Annex B**

**COMMISSION DELEGATED REGULATION (EU) 2019/358 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on the collection, verification, aggregation, comparison and publication of data on securities financing transactions (SFTs) by trade repositories**

~~(Text with EEA relevance)~~

...

Article -1

**Interpretation**

Where a term is defined in Regulation 2015/2365/EU, as amended by The Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019, that definition shall apply for the purposes of this Regulation.

...

Article 8

**Entry into force**

...

~~It shall be binding in its entirety and directly applicable in all Member States.~~

...

...

## Annex II

Table 1

## Public data

Table A. Aggregation

Date	TR	Aggregation Type	Venue type	Location of reporting counterparty	Location of the other counterparty	Reconciliation	Type of SFT	Cleared	Collateral transfer method	Index used as reference	Aggregate amount lent	Aggregate Number of transactions	Aggregate value of collateral
20161007	<del>EU</del> <del>UK</del> TR	Reported	XXXX	<del>EEA</del> UK	<del>EEA</del> UK	Dual-sided, loan reconciled, collateral not reconciled	Repo	Yes	TTCA		...		...
...	...	Outstanding	XOFF	Non- <del>EEA</del> UK	Non- <del>EEA</del> UK	Dual-sided, loan reconciled, collateral reconciled	BSB/SBB	No	SICA		...		...
...	...	...	EEA MIC	...	...	Single-sided EEA, loan reconciled, collateral reconciled	Securities or commodities lending and borrowing	...	SIUR		...		...
...	...	...	Non-EEA MIC	...	...	...	Margin lending	...			...		...
...	...	...	...	...	...	...	...	...	...	...	...	...	...

## Annex C

**COMMISSION DELEGATED REGULATION (EU) 2019/359 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration and extension of registration as a trade repository**

~~(Text with EEA relevance)~~

...

Article -1

**Interpretation**

Where a term is defined in Regulation 2015/2365/EU, as amended by The Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019, that definition shall apply for the purposes of this Regulation.

Article 1

**Identification, legal status and types of securities financing transactions**

1. For the purposes of Article 5(5)(a) of Regulation (EU) 2015/2365, the application for registration as a trade repository shall contain the following information:
  - (a) the corporate name of the applicant and legal address within the ~~Union~~ United Kingdom;
  - (b) an excerpt from the relevant commercial or court register, or other forms of certified evidence of the place of incorporation and scope of business activity of the applicant, valid at the application date;
  - (c) information on the types of securities financing transactions for which the applicant wishes to be registered;
  - (d) information on whether the applicant is authorised or registered by a competent authority in the ~~Member State where it is established~~ United Kingdom, and in such case, the name of the authority and any reference number related to the authorisation or registration;
  - (e) the articles of incorporation and, where relevant, other statutory documentation stating that the applicant is to conduct trade repository services;
  - (f) the minutes from the meeting where the applicant's Board approved the application;
  - (g) the name and contact details of the person(s) responsible for compliance, or any other staff involved in compliance assessments for the applicant;
  - (h) the programme of operations, including indications of the location of the main business activities;
  - (i) the identification of any subsidiaries and, where relevant, the group structure;

- (j) any service, other than the trade repository function, that the applicant provides or intends to provide; and
  - (k) any information on any pending judicial, administrative, arbitration or any other litigation proceedings irrespective of their type, that the applicant may be party to, particularly as regards tax and insolvency matters and where significant financial or reputational costs may be incurred, or any non-pending proceedings, that may still have any material impact on trade repository costs.
2. Upon request by ~~ESMA~~ the FCA, the applicants shall also provide additional information during the examination of the application for registration where such information is needed for the assessment of the applicants' capacity to comply with the requirements set out in Chapter III of Regulation (EU) 2015/2365 and for ~~ESMA~~ the FCA to duly interpret and analyse the documentation to be submitted or already submitted.
  3. Where an applicant considers that a requirement of this Regulation is not applicable to it, it shall clearly indicate that requirement in its application and also provide an explanation why such requirement does not apply.

## Article 2

### Policies and procedures

Where information regarding policies and procedures is provided as part of an application, an applicant shall ensure that the application contains the following items:

- (a) an indication that the Board approves the policies, that the senior management approves the procedures and that the senior management is responsible for the implementation and maintenance of the policies and procedures;
- (b) a description of how the communication of policies and procedures within the applicant is organised, how compliance with the policies is ensured and monitored on a day to day basis, and the person or persons responsible for compliance in that regard;
- (c) any records indicating that employed and dedicated staff are aware of the policies and procedures;
- (d) a description of the measures to adopt in the event of a breach of policies and procedures; and
- (e) an indication of the procedure for reporting to ~~ESMA~~ the FCA any material breach of policies or procedures which may result in a breach of the conditions for initial registration.

...

## Article 9

### Senior management and members of the Board

An application for registration as a trade repository shall contain the following information in respect of each member of the senior management and each member of the Board:

- (a) a copy of the curriculum vitae;

- (b) detailed information on the knowledge and experience in IT management, operations and development;
- (c) details regarding any criminal convictions in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement, in particular in the form of an official certificate if available ~~within the relevant Member State~~;
- (d) a self-declaration of good repute in relation to the provision of a financial or data service, where each member of the senior management and the Board states whether they:
  - (i) have been convicted of any criminal offence in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement;
  - (ii) have been subject to an adverse decision in any proceedings of a disciplinary nature brought by a regulatory authority or government bodies or agencies or are the subject of any such proceedings which are not concluded;
  - (iii) have been subject to an adverse judicial finding in civil proceedings before a court in connection with the provision of financial or data services, or for impropriety or fraud in the management of a business;
  - (iv) have been part of the board or senior management of an undertaking whose registration or authorisation was withdrawn by a regulatory body;
  - (v) have been refused the right to carry on activities which require registration or authorisation by a regulatory body;
  - (vi) have been part of the board or senior management of an undertaking which has gone into insolvency or liquidation while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;
  - (vii) have been part of the board or senior management of an undertaking which was subject to an adverse decision or penalty by a regulatory body;
  - (viii) have been otherwise fined, suspended, disqualified, or been subject to any other sanction in relation to fraud, embezzlement or in connection with the provision of financial or data services, by a government, regulatory or professional body;
  - (ix) have been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of misconduct or malpractice;
- (e) a declaration of any potential conflicts of interests that the senior management and the members of the board may have in performing their duties and how these conflicts are managed.

...

## Article 12

### **Financial reports and business plans**

1. An application for registration as a trade repository shall contain the following financial and business information about the applicant:
  - (a) a complete set of financial statements, prepared in conformity with UK-adopted international accounting standards ~~adopted in accordance with Article 3 of~~

Regulation (EC) No 1606/2002 of the European Parliament and of the Council as defined in section 474(1) of the Companies Act 2006;

- (b) where the financial statements of the applicant are subject to statutory audit within the meaning given in Article 2(1) of the Directive 2006/43/EC of the European Parliament and of the Council at section 1210 of the Companies Act 2006, the financial reports shall include the audit report on the annual and consolidated financial statements;
  - (c) if the applicant is audited, the name and the national registration number of the external auditor.
2. An application for registration as a trade repository shall contain a financial business plan contemplating different business scenarios for the trade repository services over a minimum three years' reference period and including the following additional information:
    - (a) the expected level of reporting activity in number of transactions;
    - (b) the relevant fixed and variable costs identified with respect to the provision of repository services under Regulation (EU) 2015/2365;
    - (c) positive and negative variations of at least 20 % from the base activity scenario identified.
  3. Where the historical financial information referred to in paragraph 1 is not available, an application for registration as a trade repository shall contain the following information about the applicant:
    - (a) the pro-forma statement demonstrating proper resources and expected business status in six months after registration is granted;
    - (b) an interim financial report where the financial statements are not yet available for the requested period of time;
    - (c) a statement of financial position, such as a balance sheet, income statement, changes in equity and of cash flows and notes comprising a summary of accounting policies and other explanatory notes.
  4. An application for registration as a trade repository shall contain the audited annual financial statements of any parent undertaking for the three financial years preceding the date of the application.
  5. An application for registration as a trade repository shall also contain the following financial information about the applicant:
    - (a) an indication of any future plans for the establishment of subsidiaries and their location;
    - (b) a description of the business activities which the applicant plans to carry out, specifying the activities of any subsidiaries or branches.
- ...

## Article 14

### **Confidentiality**

1. An application for registration as a trade repository shall contain the internal policies, procedures and mechanisms preventing any use of information maintained in the prospective trade repository:
  - (a) for illegitimate purposes;
  - (b) for disclosure of confidential information;
  - (c) not permitted for commercial use.
2. The internal policies, procedures and mechanisms shall include the internal procedures on the staff permissions for using passwords to access the data, specifying the staff purpose, the scope of data being viewed and any restrictions on the use of data, as well as detailed information on any mechanisms and controls in place to effectively manage potential cyber-risks and to protect the data maintained from cyber-attacks.
3. Applicants shall provide ~~ESMA~~ the FCA with information on the processes to keep a log identifying each staff member accessing the data, the time of access, the nature of data accessed and the purpose.

...

### Article 25

#### **Payment of fees**

An application for registration as a trade repository shall include proof of payment of the relevant registration fees ~~established in Commission Delegated Regulation (EU) 2019/360~~.

...

### Article 27

#### **Verification of the accuracy and completeness of the application**

1. Any information submitted to ~~ESMA~~ the FCA during the registration process shall be accompanied by a letter signed by a member of the Board of the trade repository and of the senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission.
2. The information shall also be accompanied, where relevant, with the relevant corporate legal documentation certifying the accuracy of the data.

### Article 28

#### **Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## Annex D

### COMMISSION IMPLEMENTING REGULATION (EU) 2019/364 of 13 December 2018 laying down implementing technical standards with regard to the format of applications for registration and extension of registration of trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council

~~(Text with EEA relevance)~~

...

#### Article -1

#### **Interpretation**

Where a term is defined in Regulation 2015/2365/EU, as amended by The Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019, that definition shall apply for the purposes of this Regulation.

#### Article 1

#### **Format of the application for registration and extension of registration**

1. An application for registration or extension of registration shall be submitted in the format set out in the Annex.
2. The trade repository shall give a unique reference number to each document it submits and shall clearly identify which specific requirement in Delegated Regulation (EU) 2019/359 the document refers to.
3. An application for registration or extension of registration shall clearly indicate the reasons why information referring to a certain requirement is not submitted.
4. An application for registration or extension of registration shall be submitted in a durable medium ~~as defined in Article 2(1)(m) of Directive 2009/65/EC~~. meaning paper or any instrument which enables the recipient to store information addressed personally to him or her in a way accessible for future reference and for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored. In particular, this covers floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored, but it excludes internet sites, unless such sites meet the criteria specified in the first sentence of this paragraph. For the purposes of this term, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the firm and the client is, or is to be, carried on if there is evidence that the client has regular access to the internet. The provision by the client of an e-mail address for the purposes of the carrying on of that business is sufficient.

#### Article 2

#### **Entry into force**

...



~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**TECHNICAL STANDARDS (SECURITIES FINANCING TRANSACTIONS  
REGULATION) (EU EXIT) (No 2) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being an appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA and the Bank of England are the appropriate regulators for the EU Regulations under Securities Financing Transactions Regulations that are specified in Part 5 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. In accordance with regulation 3(2)(b) of the Regulations, the Bank of England has given consent to the modifications in Annexes A - B of this instrument.
- E. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- F. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Modifications**

- G. The FCA thereafter amends the following EU Regulations in accordance with Annexes A - B of this instrument.

(1)	(2)
COMMISSION DELEGATED REGULATION (EU) 2019/356 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of securities financing transactions (SFTs) to be reported to trade repositories	Annex A
COMMISSION IMPLEMENTING REGULATION (EU) 2019/363 of 13 December 2018 laying down implementing technical standards with regard to the format and frequency of reports on the details of securities financing transactions (SFTs) to trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) No 1247/2012 with regard to the use of reporting codes in the reporting of derivative contracts	Annex B

### Commencement

- H. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018.

### Citation

- I. This instrument may be cited as the Technical Standards (Securities Financing Transactions Regulation) (EU Exit) (No 2) Instrument 2019.

By order of the Board  
[date]

## Annex A

**COMMISSION DELEGATED REGULATION (EU) 2019/356 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of securities financing transactions (SFTs) to be reported to trade repositories**

...

~~(Text with EEA relevance)~~Article -1**Interpretation**

Where a term is defined in Regulation 2015/2365/EU, as amended by The Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019, that definition shall apply for the purposes of this Regulation.

...

## Article 5

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**ANNEX**

Table 1

**Counterparty data**

No	Field	Details to be reported	Repo	BSB	SL	ML
1	Reporting timestamp	Date and time of submission of the report to the trade repository.	Y	Y	Y	Y
2	Report submitting entity	Unique code identifying the entity which submits the report. Where the submission of the report has been delegated to a third party or to the other counterparty, a unique code identifying that entity.	Y	Y	Y	Y
3	Reporting counterparty	Unique code identifying the reporting counterparty.	Y	Y	Y	Y
4	Nature of the reporting counterparty	Indication of whether the reporting counterparty is a financial or non-financial counterparty.	Y	Y	Y	Y
5	Sector of the reporting counterparty	One or more codes that classify the nature of the reporting counterparty's business activities. Where the reporting counterparty is a financial counterparty, all relevant codes included in the taxonomy for financial counterparties and applying to that counterparty. Where the reporting counterparty is a non-financial counterparty, all relevant codes included in the taxonomy for non-financial counterparties and applying to that counterparty.	Y	Y	Y	Y

		Where more than one activity is reported, the codes shall be specified in order of the relative importance of the corresponding activities.				
6	Additional sector classification	Where the reporting counterparty is a <del>UK UCITS, an Undertaking for Collective Investment in Transferable Securities (UCITS)</del> or Alternative Investment Fund (AIF), a code that determines whether it is an Exchange-Traded Fund (ETF) or a Money Market Fund (MMF) Where the reporting counterparty is an Alternative Investment Fund (AIF) or a non-financial counterparty undertaking financial and insurance activities or real estate activities, a code that determines whether it is a Real Estate Investment Trust (REIT)	Y	Y	Y	Y
7	Branch of the reporting counterparty	Where the reporting counterparty concludes an SFT through a branch office, the code identifying the branch.	Y	Y	Y	Y
8	Branch of the other counterparty	Where the other counterparty concludes an SFT through a branch office, the code identifying the branch.	Y	Y	Y	Y
9	Counterparty side	Indication of whether the reporting counterparty is a collateral provider or a collateral taker in accordance with Article 4 of the Commission Implementing Regulation (EU) 2019/363	Y	Y	Y	Y
10	Entity responsible for the report	Where a financial counterparty is responsible for reporting on behalf of the other counterparty in accordance with Article 4(3) of Regulation (EU) No 2365/2015 of the Parliament and of the Council, the unique code identifying that financial counterparty. Where a management company ( <u>within the definition in section 237(2) of the FSMA</u> ) is responsible for reporting on behalf of <del>an Undertaking for Collective Investment in Transferable Securities (a UK UCITS)</del> ( <u>within the definition in section 237(3) of the FSMA</u> ) in accordance with Article 4(3) of that Regulation the unique code identifying that management company. Where an Alternative Investment Fund Manager (AIFM) ( <u>within the definition in regulation 4 of the Alternative Investment Fund Managers Regulations 2013</u> ) is responsible for reporting on behalf of an Alternative Investment Fund (AIF) ( <u>within the definition in regulation 3 of those Regulations</u> ) in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that AIFM.	Y	Y	Y	Y
...						

...

Table 3  
Margin data

No	Field	Details to be reported	Repo	BSB	SL	ML
1	Reporting timestamp	Date and time of submission of the report to the trade repository.	Y	Y	Y	N

2	Event date	Date on which the reportable event relating to the SFT and captured by the report took place. In the case of action types 'Valuation update', 'Collateral update', 'Reuse update', 'Margin update', the date for which the information contained in the report is provided.	Y	Y	Y	N
3	Report submitting entity	Unique code identifying the entity which submits the report. In the case where the submission of the report has been delegated to a third party or to the other counterparty, the unique code identifying that entity.	Y	Y	Y	N
4	Reporting Counterparty	Unique code identifying the reporting counterparty.	Y	Y	Y	N
5	Entity responsible for the report	Where a financial counterparty is responsible for reporting on behalf of the other counterparty in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that financial counterparty. Where a management company ( <u>within the definition in section 237(2) of the FSMA</u> ) is responsible for reporting on behalf of <del>an Undertaking for Collective Investment in Transferable Securities (a UK UCITS)</del> ( <u>within the definition in section 237(3) of the FSMA</u> ) in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that management company. Where an Alternative Investment Fund Manager (AIFM) ( <u>within the definition in regulation 4 of the Alternative Investment Fund Managers Regulations 2013</u> ) is responsible for reporting on behalf of an Alternative Investment Fund (AIF) ( <u>within the definition in regulation 3 of those Regulations</u> ) in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that AIFM.	Y	Y	Y	Y
...						

...						
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Table 4

**Re-use, cash reinvestment and funding sources data**

No	Field	Details to be reported	Repo	BSB	SL	ML
1	Reporting timestamp	Date and time of submission of the report to the trade repository.	Y	Y	Y	Y

2	Event date	Date on which the reportable event relating to the SFT and captured by the report took place. In the case of action types 'Valuation update', 'Collateral update', 'Reuse update', 'Margin update', the date for which the information contained in the report is provided.	Y	Y	Y	Y
3	Report submitting entity	Unique code identifying the entity which submits the report. In the case where the submission of the report has been delegated to a third party or to the other counterparty, the unique code identifying that entity.	Y	Y	Y	Y
4	Reporting counterparty	Unique code identifying the reporting counterparty.	Y	Y	Y	Y
5	Entity responsible for the report	<p>Where a financial counterparty is responsible for reporting on behalf of the other counterparty in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that financial counterparty.</p> <p>Where a management company (<u>within the definition in section 237(2) of the FSMA</u>) is responsible for reporting on behalf of <del>an Undertaking for Collective Investment in Transferable Securities (a UK UCITS)</del> (<u>within the definition in section 237(3) of the FSMA</u>) in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that management company.</p> <p>Where an Alternative Investment Fund Manager (AIFM) (<u>within the definition in regulation 4 of the Alternative Investment Fund Managers Regulations 2013</u>) is responsible for reporting on behalf of an Alternative Investment Fund (AIF) (<u>within the definition in regulation 3 of those Regulations</u>) in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that AIFM.</p>	Y	Y	Y	Y

Field 6 shall be repeated and completed for each collateral component.

6	Type of collateral component	Indication of the type of collateral component.	Y	Y	Y	Y
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Fields 7, 8, 9 and 10 shall be repeated and completed for each security.

7	Collateral component	Identification of the security used as collateral.	Y	Y	Y	Y
8	Value of reused collateral	Total value of the collateral reused when it can be calculated at SFT transaction level.	Y	Y	Y	Y
9	Estimated reuse of collateral	When the actual value of reused collateral is unknown or cannot be calculated, an estimate of the value of reuse at individual financial instrument level shall be calculated as laid down in the FSB report 'Transforming Shadow Banking into Resilient Market- based Finance, Non-Cash Collateral Re-Use: Measure and Metrics' of 25 January 2017.	Y	Y	Y	Y

10	Reused collateral currency	Currency of the actual or estimated value of the collateral reused.	Y	Y	Y	Y
11	Reinvestment rate	Average interest rate received from a cash collateral reinvestment made by the lender.	N	N	Y	N

Fields 12, 13 and 14 shall be repeated and completed for each investment where cash collateral has been re-invested and in respect of each currency.

12	Type of re-invested cash investment	Type of re-investment.	N	N	Y	N
13	Re-invested cash amount	Amount of the re-invested cash in a given currency.	N	N	Y	N
14	Re-invested cash currency	Currency of the re-invested cash.	N	N	Y	N

In the case of margin lending transactions, the counterparty shall repeat and complete fields 15, 16 and 17 for each funding source and shall provide the information in these fields at entity level.

15	Funding sources	Funding sources used to finance margin loans.	N	N	N	Y
16	Market value of the funding sources	Market value of funding sources referred to in field 15.	N	N	N	Y
17	Funding sources currency	Currency of the market value of the funding sources.	N	N	N	Y
18	Action type	<p>The report shall contain one of the following action types:</p> <p>(a) a new reuse balance shall be identified as 'New';</p> <p>(b) a modification of the details of the reuse shall be identified as 'Reuse update';</p> <p>(c) a cancellation of a wrongly submitted entire report shall be identified as 'Error';</p> <p>(d) a correction of data fields that were submitted incorrectly in a previous report shall be identified as 'Correction'.</p>	Y	Y	Y	Y



## Annex B

**COMMISSION IMPLEMENTING REGULATION (EU) 2019/363 of 13 December 2018 laying down implementing technical standards with regard to the format and frequency of reports on the details of securities financing transactions (SFTs) to trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) No 1247/2012 with regard to the use of reporting codes in the reporting of derivative contracts**

~~(Text with EEA relevance)~~

...

### Article -1

#### **Interpretation**

Where a term is defined in Regulation 2015/2365/EU, as amended by The Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019, that definition shall apply for the purposes of this Regulation.

### Article 1

#### **Data standards and formats for SFT reports**

The details of an SFT in a report to be submitted pursuant to Article 4(1) of Regulation (EU) 2015/2365 shall be provided in accordance with the standards and formats specified in Tables 1 to 5 of Annex I. That report shall be provided in a common electronic and machine-readable form and in a common XML template in accordance with the ISO 20022 methodology.

...

### Article 6

#### **Amendments to Implementing Regulation (EU) No 1247/2012**

Implementing Regulation (EU) No 1247/2012 is amended as follows:

- (1) Article 4 is amended as follows:
  - (a) paragraph 7 is replaced by the following:
 

‘The derivative shall be classified in Field 4 of Table 2 of the Annex using an ISO 10692 Classification of Financial Instrument (CFI) code.’;
  - (b) paragraphs 8 and 9 are deleted.
- (2) In Article 4a, paragraph 1 is replaced by the following:
 

‘1. A report shall be identified through a unique trade identifier agreed by the counterparties.’;
- (3) The Annex is replaced by the text set out in Annex II to this Regulation.

### Article 7

#### **Entry into force**

...

This Regulation shall be binding in its entirety and directly applicable in all Member States.

...

## ANNEX I

### Formats to be used for reports on the details of securities financing transactions, as referred to in

#### Article 4(1) and (5) of Regulation (EU) 2015/2365

Table 1

#### Counterparty Data

No	Field	Format
1	Reporting timestamp	ISO 8601 date in the format and Coordinated Universal Time (UTC) time format, i.e. YYYY-MM-DDThh:mm:ssZ
2	Report submitting entity	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
3	Reporting counterparty	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
4	Nature of the reporting counterparty	‘F’ - Financial counterparty ‘N’ - Non-financial counterparty
5	Sector of the reporting counterparty	<p>Taxonomy for Financial Counterparties:</p> <p>‘CDTI’ - Credit institution <del>authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council or Council Regulation (EU) No 1024/2013 or a third country entity which would require authorisation or registration in accordance with that legislative act</del> which is a CRR firm (within the definition in Article 4(1)(2A) of the Capital Requirements Regulation) or a third country entity that would be such an entity if its registered office or, if it has no registered office, its head office, were in the United Kingdom.</p> <p>‘INVF’ - Investment firm <del>authorized in accordance with Directive 2014/65/EU of the European Parliament and of the Council</del></p> <p><u>within the meaning given in Article 2(1A) of the MIFIR which:</u></p> <ul style="list-style-type: none"> <li>(i) <u>has its registered office or head office in the United Kingdom;</u></li> <li>(ii) <u>has permission under Part 4A of the FSMA to carry on regulated activities relating to investment services and activities (as defined in Article 2(1)(2) of the MIFIR) in the United Kingdom;</u></li> <li>(iii) <u>would require authorisation under Directive 2014/65/EU (as it had effect immediately before exit day) if it had its registered office (or if it does not have a registered office, its head offices) in an EEA state;</u></li> <li>(iv) <u>is not a firm which has permission under Part 4A of the FSMA to carry on regulated activities as an exempt investment firm, within the meaning of regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;</u></li> </ul>

		<p>or a third-country entity <del>which would require authorisation or registration in accordance with that legislative act that would be such an entity if its registered office or head office were in the United Kingdom.</del></p> <p>‘INUN’ - Insurance undertaking <del>authorized in accordance with Directive 2009/138/EC of the European Parliament and of the Council (Solvency II) as defined in section 417 of the FSMA,</del> or a third-country entity <del>which would require authorisation or registration in accordance with that legislative act that would be such an entity if it had its head office in the United Kingdom.</del></p> <p>‘AIFD’ - AIF (within the definition in regulation 3 of the Alternative Investment Fund Managers Regulations 2013) managed by AIFMs (within the definition in regulation 4 of those Regulations) authorized or registered in accordance with <del>Directive 2011/61/EU of the European Parliament and of the Council those Regulations,</del> or a third- country entity which would require authorisation or registration in accordance with that legislative act but for the fact that it is a third country entity.</p> <p>‘ORPI’ - Institution for occupational retirement provision <del>authorized or registered in accordance with Directive 2003/41/EC of the European Parliament and of the Council or within the meaning of section 1(1) of the Pension Schemes Act 1993</del> or a third-country entity which would <del>require authorisation or registration in accordance with that legislative act</del> <u>come within that definition if its main administration were in the United Kingdom.</u></p> <p>‘CCPS’ - Central counterparty authorized in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council or a third-country entity which would require authorisation or registration in accordance with that legislative act</p> <p>‘REIN’ - Reinsurance undertaking <u>as defined in section 417 of the FSMA</u> <del>authorized in accordance with Solvency II</del> or a third-country entity which would <del>require authorisation or registration in accordance with that legislative act</del> <u>come within that definition if it had its head office in the United Kingdom.</u></p> <p>‘CSDS’ - Central securities depository authorized in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council <sup>(8)</sup> or a third-country entity which would require authorisation or registration in accordance with that legislative act</p> <p>‘UCIT’ – <u>UK UCITS (within the definition in section 237(3) of the FSMA)</u> and its management company (within the definition in section 237(2) of the FSMA), authorized in accordance with Directive 2009/65/EC of the European Parliament and of the Council or a third- country entity which would require authorisation or registration in accordance with that legislative act <u>if its management company were established in the United Kingdom.</u></p>
...		

...

## ANNEX II

The Annex to Implementing Regulation (EU) No 1247/2012 is replaced by the text below.

### ANNEX

#### Table 1

#### Counterparty Data

	Field	Format
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	Parties to the contract	
1	Reporting timestamp	ISO 8601 date in the format and Coordinated Universal Time (UTC) time format YYYY-MM-DDThh:mm:ssZ
2	Reporting Counterparty ID	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
3	Type of ID of the other Counterparty	'LEI' for ISO 17442 Legal Entity Identifier (LEI) 'CLC' for Client code
4	ID of the other Counterparty	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code. Client code (up to 50 alphanumeric digits).
5	Country of the other Counterparty	ISO 3166 – 2 character country code
6	Corporate sector of the reporting counterparty	<p>Taxonomy for Financial Counterparties:</p> <p><del>A = Assurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council</del></p> <p><del>C = Credit institution which is a CRR firm (within the definition in Article 4(1)(2A) of the Capital Requirements Regulation) authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council</del></p> <p>F = Investment firm within the meaning given in Article 2(1A) of the MIFIR which:</p> <ul style="list-style-type: none"> <li>(v) <u>has its registered office or head office in the United Kingdom;</u></li> <li>(vi) <u>has permission under Part 4A of the FSMA to carry on regulated activities relating to investment services and activities (as defined in Article 2(1)(2) of the MIFIR) in the United Kingdom;</u></li> <li>(vii) <u>would require authorisation under Directive 2014/65/EU (as it had effect immediately before exit day) if it had its registered office (or if it does not have a registered office, its head offices) in an EEA state; and</u></li> <li>(viii) <u>is not a firm which has permission under Part 4A of the FSMA to carry on regulated activities as an exempt investment firm, within the meaning of regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017; authorised in accordance with Directive 2004/39/EC of the European Parliament and of the Council</u></li> </ul> <p><del>I = Insurance undertaking authorised in accordance with Directive 2009/138/EC as defined in section 417 of the FSMA</del></p> <p><del>L = AIF (within the definition in regulation 3 of the Alternative Investment Fund Managers Regulations 2013) Alternative investment fund managed by Alternative Investment Fund Managers (AIFMs) (within the definition in regulation 4 of those Regulations) authorised or registered in accordance with those Regulations</del></p> <p><del>O = Institution for occupational retirement provision within the meaning of s1(1) of the Pensions Schemes Act 1993 within the meaning of Article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council</del></p> <p><del>R = Reinsurance undertaking as defined in section 417 of the FSMA authorised in accordance with Directive 2009/138/EC</del></p> <p><del>U = Undertakings for the Collective Investment in Transferable Securities (UCITS) UK UCITS (within the definition in section 237(3) of the FSMA) and its management</del></p>

		<p>company <del>(within the definition in section 237(2) of the FSMA), authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council</del></p> <p>Taxonomy for Non-Financial Counterparties. The following categories correspond to the main sections of Statistical classification of economic activities in the European Community (NACE) as defined in Regulation (EC) No 1893/2006 of the European Parliament and of the Council <u>(as it had effect immediately before exit day)</u></p> <p>1 = Agriculture, forestry and fishing</p> <p>2 = Mining and quarrying</p> <p>3 = Manufacturing</p> <p>4 = Electricity, gas, steam and air conditioning supply</p>
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## TECHNICAL STANDARDS (SECURITISATION REGULATION) (EU EXIT) INSTRUMENT 2019

### Powers exercised

- A. The Financial Conduct Authority (“the FCA”), being an appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3 of the Regulations.

### Pre-conditions to making

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

### Interpretation

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

### Modifications

- F. The following EU Regulation is amended in accordance with Annex A of this instrument.

(1)	(2)
COMMISSION DELEGATED REGULATION (EU) 2019/885 of 5 February 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying information to be provided to a competent authority in an application for authorisation of a third party assessing STS compliance	A

### **Commencement**

G. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018.

### **Citation**

H. This instrument may be cited as the Technical Standards (Securitisation Regulation) (EU Exit) Instrument 2019.

By order of the Board  
[*date*]

## Annex A

**COMMISSION DELEGATED REGULATION (EU) 2019/885 of 5 February 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying information to be provided to a competent authority in an application for authorisation of a third party assessing STS compliance**

~~(Text with EEA relevance)~~

...

### Article 1

#### Identification of the third party

1. An application for authorisation as referred to in Article 28(4) of Regulation (EU) 2017/2402 shall contain the following information, to the extent relevant:
  - (a) the corporate name of the third party and its legal form;
  - (b) the third party's Legal Entity Identifier (LEI) or, where not available, another identifier required by ~~the applicable national~~ UK law;
  - (c) the third party's legal address as well as the addresses of any of its offices whether within the ~~Union~~ UK or in a third country;
  - (d) the Uniform Resource Locator (URL) of the third party's website;
  - (e) an excerpt from a relevant commercial or court register, or another form of certified evidence, valid at the date of application, confirming the place of incorporation and the scope of business activity of the third party;
  - (f) the articles of incorporation of the third party, or other statutory documentation, stating that the third party is to assess the compliance of securitisations against the criteria provided for in Articles 19 to 22 or Articles 23 to 26 of Regulation (EU) 2017/2402 ('STS compliance');
  - (g) the most recent annual financial statements of the third party, including individual and consolidated financial statements, where available, and where the financial statements of the third party are subject to a statutory audit ~~defined in Article 2(1) of Directive 2006/43/EC of the European Parliament and of the Council~~ as required by UK law, the audit report on these financial statements;
  - (h) the name, title, address, email address and the telephone number(s) of the contact person for the purposes of the application;
  - (i) ~~the list of Member States in which the third party intends to provide STS compliance services;~~
  - (j) the list of types of securitisation for which the third party intends to provide STS compliance services, distinguishing between non ABCP securitisations and ABCP securitisations/programmes;



- (k) a description of any services, other than providing STS compliance services, that the third party provides or intends to provide;
  - (l) a list of parties to whom the third party provides (or intends to provide) advisory, audit or equivalent services.
2. An application for authorisation shall include the following documentation as attachments:
- (a) a list containing the name and business address of each person or entity that holds 10% or more of the third party's capital or 10% or more of its voting rights, or the holding of which makes it possible to exercise a significant influence over the third party, together with:
    - (i) the percentage of the capital and voting rights held, and, where applicable, a description of the arrangements enabling the person or entity to exercise a significant influence over the third party's management;
    - (ii) the nature of the business activities of the persons and entities referred to in point (a);
  - (b) a list containing the name and business address of any entity in which a person or entity referred to in point (a) holds 20% or more of the capital or voting rights and a description of that entity's activities.
  - (c) a completed copy of the table set out in Annex 1.
3. Where the third party has a parent undertaking, the application referred to in paragraph 1 shall state whether the immediate parent undertaking or ultimate parent undertaking is authorised, registered or subject to supervision, and where this is the case, state any associated reference number and the name of the responsible supervisory authority.
4. Where the third party has subsidiaries or branches, the application for authorisation shall identify the names and business addresses of those subsidiaries or branches and shall describe the areas of business activities of each subsidiary or branch.
5. An application for authorisation shall include a chart showing the ownership links between the third party, its parent undertaking and ultimate parent undertaking, its subsidiaries and affiliates, and any other persons and entities associated with or connected with a network as defined in point 7 of Article 2 of Directive 2006/43/EC as that definition had effect immediately before exit day except that the reference in that definition to “a statutory auditor or an audit firm” shall be read as a reference to any person or any other entity, regardless of its legal form, whether established in the UK or in a third country, that is empowered by applicable law to carry out statutory audits of annual financial statements or consolidated financial statements in so far as required under applicable law. The chart shall identify the undertakings by their full name, the LEI or, where not available, another identifier required in accordance with ~~the applicable national~~ UK law, legal form and business address.

...

## Article 6

**Operational safeguards and internal processes to assess STS compliance**

1. The application referred to in Article 1 shall include a detailed summary of any policies, procedures and manuals on the controls and operational safeguards established to ensure the independence of the third party's assessment of STS compliance and the integrity of its assessment.
2. The application referred to in Article 1 shall contain any information that demonstrates that the third party has established operational safeguards and internal processes to enable it to properly assess STS compliance, including the following:
  - (a) the number of staff, calculated on a full-time equivalent basis, disaggregated into types of positions within the third party;
  - (b) details on the policies and procedures established by the third party regarding:
    - (i) the independence of individual staff members;
    - (ii) the termination of employment contracts, including any measures to ensure the independence and integrity of the STS assessment process associated with the termination of the employment, including policies and procedures related to negotiating future employment contracts with other undertakings for staff directly involved in the STS assessment;
    - (iii) the qualification requirements for staff directly involved in providing STS compliance activities, distinguished by position type;
    - (iv) training and development policies for staff directly involved in the provision of STS compliance services;
    - (v) the performance evaluation and compensation policies of staff directly involved in STS compliance services;
  - (c) a description of any measures established by the third party to mitigate the risk of over-reliance on any individual staff members for providing STS compliance services;
  - (d) the following information where the third party relies, in any STS assessment, on outsourcing or external experts:
    - (i) details on any policies and procedures with regards to the outsourcing of activities and the engagement of external experts;
    - (ii) a description of any outsourcing arrangements entered into or envisaged by the third party, accompanied by a copy of the contracts governing those outsourcing arrangements;
    - (iii) a description of the services to be provided by the external expert, including the scope of those services and the conditions under which those services should be rendered;
    - (iv) a detailed explanation of how the third party intends to identify, manage and monitor any risks posed by outsourcing and a description of the safeguards put in place to ensure independence of the STS assessment process;
  - (e) a description of any measures to be used in the event of a breach of any of the policies or procedures referred to in point (b) of paragraph 2 and point (i) of point (d) of paragraph 2;

- (f) a description of any policies on the reporting to the ~~competent authority~~ FCA of any material breach of the policies or procedures referred to in point (b) of paragraph 2 and point (i) of point (d) of paragraph 2 or any other fact, event or circumstance which is likely to amount to a breach of the conditions of the authorisation of the third party;
  - (g) a description of any arrangements established to ensure that the relevant persons are aware of the policies and procedures referred to in point (b) of paragraphs 2 and point (i) of point (d) of paragraph 2, and a description of any arrangement relating to the monitoring, review and updating of those policies and procedures.
3. The application referred to in Article 1 shall contain the following for each securitisation type for which the third party intends to provide STS compliance services:
- (a) a description of the STS assessment methodology to be applied, including any procedures and methodology for the quality assurance of that assessment;
  - (b) a template of the STS verification report to be provided to the originator, sponsor or the SSPE.

## Article 7

### Format of the application

1. A third party shall allocate a unique reference number to each document it submits to the ~~competent authority~~ FCA as part of its application.
2. A third party shall include a substantiated explanation in its application for any requirement of this Regulation considered non-applicable.
3. The application referred to in Article 1 shall be accompanied by a letter signed by a member of the third party's management body confirming that:
  - (a) the submitted information is accurate and complete to the best of his or her knowledge, as of the date of the submission of the application;
  - (b) the applicant is neither a regulated entity as defined in point (4) of Article 2 of Directive 2002/87/EC, nor a credit rating agency as defined in ~~point (b) of~~ Article 3(1) of Regulation (EC) No 1060/2009.

## Article 8

### Entry into force

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## TECHNICAL STANDARDS (FOURTH MONEY LAUNDERING DIRECTIVE) (EU EXIT) INSTRUMENT 2019

### Powers exercised

- A. The Financial Conduct Authority (“the FCA”), being an appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3 of the Regulations.

### Pre-conditions to making

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

### Interpretation

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

### Modifications

- F. The following EU Regulation is amended in accordance with Annex A of this instrument.

(1)	(2)
COMMISSION DELEGATED REGULATION (EU) 2019/758 of 31 January 2019 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries	A

### **Commencement**

G. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018.

### **Citation**

H. This instrument may be cited as the Technical Standards (Fourth Money Laundering Directive) (EU Exit) Instrument 2019.

By order of the Board  
[*date*]

## Annex A

**COMMISSION DELEGATED REGULATION (EU) 2019/758 of 31 January 2019 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries**

~~(Text with EEA relevance)~~

...

### Article -1

#### **Interpretation**

1. Where a term is defined in Directive 2015/849 that definition shall apply for the purposes of this Regulation except where (2) applies.
  
2. Where a term is defined in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, as amended by the Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2019, that definition shall apply for the purposes of this Regulation.

### Article 1

#### **Subject matter and scope**

This Regulation lays down a set of additional measures, including minimum action, that credit institutions and financial institutions must take to effectively handle the money laundering and terrorist financing risk where a third country's law does not permit the implementation of group-wide policies and procedures as referred to in ~~Article 45(1) and (3) of Directive (EU) 2015/849~~ Regulation 20(1) and 20(3) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 at the level of branches or ~~majority-owned subsidiaries~~ subsidiary undertakings that are part of the group and established in the third country.

### Article 2

#### **General obligations for each third country**

For each third country where they have established a branch or they are a ~~majority owner of a subsidiary parent undertaking of a subsidiary undertaking~~, credit institutions and financial institutions shall at least:

- (a) assess the money laundering and terrorist financing risk to their group, record that assessment, keep it up to date and retain it in order to be able to share it with their competent authority in the United Kingdom;

- (b) ensure that the risk referred to in point (a) is reflected appropriately in their group-wide anti-money laundering and countering the financing of terrorism policies and procedures;
- (c) obtain senior management approval at group-level for the risk assessment referred to in point (a) and for the group-wide anti-money laundering and countering the financing of terrorism policies and procedures referred to in point (b);
- (d) provide targeted training to relevant staff members in the third country to enable them to identify money laundering and terrorist financing risk indicators, and ensure that the training is effective.

### Article 3

#### Individual risk assessments

1. Where the third country's law prohibits or restricts the application of policies and procedures that are necessary to identify and assess adequately the money laundering and terrorist financing risk associated with a business relationship or occasional transaction due to restrictions on access to relevant customer and beneficial ownership information or restrictions on the use of such information for customer due diligence purposes, credit institutions or financial institutions shall at least:
  - (a) inform ~~the~~ their competent authority in the United Kingdom ~~of the home Member State~~ without undue delay and in any case no later than 28 calendar days after identifying the third country of the following:
    - (i) the name of the third country concerned;
    - (ii) how the implementation of the third country's law prohibits or restricts the application of policies and procedures that are necessary to identify and assess the money laundering and terrorist financing risk associated with a customer;
  - (b) ensure that their branches or ~~majority-owned subsidiaries~~ subsidiary undertakings that are established in the third country determine whether consent from their customers and, where applicable, their customers' beneficial owners, can be used to legally overcome restrictions or prohibitions referred to in point (a)(ii);
  - (c) ensure that their branches or ~~majority-owned subsidiaries~~ subsidiary undertakings that are established in the third country require their customers and, where applicable, their customers' beneficial owners, to give consent to overcome restrictions or prohibitions referred to in point (a)(ii) to the extent that this is compatible with the third country's law.
2. Where the consent referred to in point (c) of paragraph 1 is not feasible, credit institutions and financial institutions shall take additional measures as well as their standard anti-money laundering and countering the financing of terrorism measures, to manage the money laundering and terrorist financing.

Those additional measures shall include the additional measure set out in point (c) of Article 8 and one or more of the measures set out in points (a), (b), (d), (e) and (f) of that Article.

Where a credit institution or financial institution cannot effectively manage the money laundering and terrorist financing risk by applying the measures referred to in paragraphs 1 and 2, it shall:

- (a) ensure that the branch or ~~majority-owned~~ subsidiary undertaking terminates the business relationship;
  - (b) ensure that the branch or ~~majority-owned~~ subsidiary undertaking does not carry out the occasional transaction;
  - (c) close down some or all of the operations provided by their branch and ~~majority-owned~~ subsidiary undertaking established in the third country.
3. Credit institutions and financial institutions shall determine the extent of the additional measures referred to in paragraphs 2 and 3 on a risk-sensitive basis and be able to demonstrate to their competent authority in the United Kingdom that the extent of additional measures is appropriate in view of the money laundering and terrorist financing risk.

#### Article 4

##### **Customer data sharing and processing**

1. Where a third country's law prohibits or restricts the sharing or processing of customer data for anti-money laundering and countering the financing of terrorism purposes within the group, credit institutions and financial institution shall at least:
- (a) inform ~~the their~~ competent authority in the United Kingdom ~~of the home Member State~~ without undue delay and in any case no later than 28 days after identifying the third country of the following:
    - (i) the name of the third country concerned;
    - (ii) how the implementation of the third country's law prohibits or restricts the sharing or processing of customer data for anti-money laundering and countering the financing of terrorism purposes;
  - (b) ensure that their branches or ~~majority-owned subsidiaries~~ subsidiary undertakings that are established in the third country determine whether consent from their customers and, where applicable, their customers' beneficial owners, can be used to legally overcome restrictions or prohibitions referred to in point (a)(ii);
  - (c) ensure that their branches or ~~majority-owned subsidiaries~~ subsidiary undertakings that are established in the third country require their customers and, where applicable, their customers' beneficial owners, to provide consent to overcome restrictions or prohibitions referred to in point (a)(ii) to the extent that this is compatible with the third country's law.
2. In cases where consent referred to in point (c) of paragraph 1 is not feasible, credit institutions and financial institutions shall take additional measures as well as their standard anti-money laundering and countering the financing of terrorism measures to manage risk. These additional measures shall include the additional measure set out in point (a) of Article 8 or the additional measure set out in point (c) of that Article. Where the money laundering and terrorist financing risk is sufficient to require further



additional measures, credit and financial institutions shall apply one or more of the remaining additional measures set out in points (a) to (c) of Article 8.

3. Where a credit institution or financial institution cannot effectively manage the money laundering and terrorist financing risk by applying the measures referred to in paragraphs 1 and 2, it shall close down some or all of the operations provided by their branch and ~~majority-owned subsidiary~~ subsidiary undertaking established in the third country.
4. Credit institutions and financial institutions shall determine the extent of the additional measures referred to in paragraphs 2 and 3 on a risk-sensitive basis and be able to demonstrate to their competent authority in the United Kingdom that the extent of additional measures is appropriate in view of the risk of money laundering and terrorist financing.

## Article 5

### Disclosure of information related to suspicious transactions

1. Where the third country's law prohibits or restricts the sharing of information referred to in Article 33(1) of Directive (EU) 2015/849 by branches and ~~majority-owned subsidiaries~~ subsidiary undertakings established in the third country with other entities in their group, credit institutions and financial institutions shall at least:
  - (a) inform ~~the their~~ competent authority ~~of the home Member State~~ in the United Kingdom without undue delay and in any case no later than 28 days after identifying the third country of the following:
    - (i) the name of the third country concerned;
    - (ii) how the implementation of the third country's law prohibits or restricts the sharing or processing of the content of information referred to in Article 33(1) of Directive (EU) 2015/849 identified by a branch and ~~majority-owned subsidiary~~ subsidiary undertaking established in a third country with other entities in their group;
  - (b) require the branch or ~~majority-owned subsidiary~~ subsidiary undertaking to provide relevant information to the credit institution's or financial institution's senior management so that it is able to assess the money laundering and terrorist financing risk associated with the operation of such a branch or ~~majority-owned subsidiary~~ subsidiary undertaking and the impact this has on the group, such as:
    - (i) the number of suspicious transactions reported within a set period;
    - (ii) aggregated statistical data providing an overview of the circumstances that gave rise to suspicion.
2. Credit institutions and financial institutions shall take additional measures as well as their standard anti-money laundering and countering the financing of terrorism measures and the measures referred to in paragraph 1 to manage risk. Those additional measures shall include one or more of the additional measures set out in points (a) to (c) and (g) to (i) of Article 8.
3. Where credit institutions and financial institutions cannot effectively manage the money laundering and terrorist financing risk by applying the measures referred to in paragraphs 1 and 2, they shall close down some or all of the

operations provided by their branch and ~~majority-owned subsidiary~~ subsidiary undertaking established in the third country.

4. Credit institutions and financial institutions shall determine the extent of the additional measures referred to in paragraphs 2 and 3 on a risk-sensitive basis and be able to demonstrate to their competent authority in the United Kingdom that the extent of additional measures is appropriate in view of the risk of money laundering and terrorist financing.

## Article 6

### **Transfer of customer data to ~~Member States~~ the United Kingdom**

Where the third country's law prohibits or restricts the transfer of data related to customers of a branch and ~~majority-owned subsidiary~~ subsidiary undertaking established in a third country to a ~~Member State~~ the United Kingdom for the purpose of supervision for anti-money laundering and countering the financing of terrorism, credit institutions and financial institutions shall at least:

- (a) inform ~~the~~ their competent authority of ~~the home Member State~~ in the United Kingdom without undue delay and in any case no later than 28 calendar days after identifying the third country of the following:
  - (i) the name of the third country concerned;
  - (ii) how the implementation of the third country's law prohibits or restricts the transfer of data related to customers for the purpose of supervision for anti-money laundering and countering the financing of terrorism;
- (b) carry out enhanced reviews, including, where this is commensurate with the money laundering and terrorist financing risk associated with the operation of the branch or ~~majority-owned subsidiary~~ subsidiary undertaking established in the third country, onsite checks or independent audits, to be satisfied that the branch or ~~majority-owned subsidiary~~ subsidiary undertaking effectively implements group-wide policies and procedures and that it adequately identifies, assesses and manages the money laundering and terrorist financing risks;
- (c) provide the findings of the reviews referred to in point (b) to ~~the~~ their competent authority of ~~the home Member State~~ in the United Kingdom upon request;
- (d) require the branch or ~~majority-owned subsidiary~~ subsidiary undertaking established in the third country to regularly to provide relevant information to the credit institution's or financial institution's senior management, including at least the following:
  - (i) the number of high risk customers and aggregated statistical data providing an overview of the reasons why customers have been classified as high risk, such as politically exposed person status;
  - (ii) the number of suspicious transactions identified and reported and aggregated statistical data providing an overview of the circumstances that gave rise to suspicion;
- (e) make the information referred to in point (d) available to ~~the~~ their competent authority of ~~the home Member State~~ in the United Kingdom upon request.

## Article 7

**Record-keeping**

1. Where the third country's law prohibits or restricts the application of record-keeping measures equivalent to those specified in ~~Chapter V of Directive (EU) 2015/849~~ Regulation 40 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, credit institutions and financial institutions shall at least:
  - (a) inform ~~the~~ their competent authority ~~of the home Member State in the United Kingdom~~ without undue delay and in any case no later than 28 days after identifying the third country of the following:
    - (i) the name of the third country concerned;
    - (ii) how the implementation of the third country's law prohibits or restricts the application of record-keeping measures equivalent to those laid down in Directive (EU) 2015/849 the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;
  - (b) establish whether consent from the customer and, where applicable, their beneficial owner, can be used to legally overcome restrictions or prohibitions referred to in point (a)(ii);
  - (c) ensure that their branches or ~~majority-owned subsidiaries~~ subsidiary undertakings that are established in the third country require customers and, where applicable, their customers' beneficial owners, to provide consent to overcome restrictions or prohibitions referred to in point (a)(ii) to the extent that this is compatible with the third country's law.
2. In cases where consent referred to in point (c) of paragraph 1 is not feasible, credit institutions and financial institutions shall take additional measures as well as their standard anti-money laundering and countering the financing of terrorism measures and the measures referred to in paragraph 1 to manage risk. These additional measures shall include one or more of the additional measures set out in points (a) to (c) and (j) of Article 8.
3. Credit and financial institutions shall determine the extent of the additional measures referred to in paragraph 2 on a risk-sensitive basis and be able to demonstrate to their competent authority in the United Kingdom that the extent of additional measures is appropriate in view of the risk of money laundering and terrorist financing.

## Article 8

**Additional measures**

Credit institutions and financial institutions shall take the following additional measures pursuant to Article 3(2), Article 4(2), Article 5(2) and Article 7(2) respectively:

- (a) ensuring that their branches or ~~majority-owned subsidiaries~~ subsidiary undertakings that are established in the third country restrict the nature and type

of financial products and services provided by the branch of ~~majority-owned subsidiary~~ or ~~subsidiary undertaking~~ in the third country to those that present a low money laundering and terrorist financing risk and have a low impact on the group's risk exposure;

- (b) ensuring that other entities of the same group do not rely on customer due diligence measures carried out by a branch or ~~majority-owned subsidiary~~ subsidiary undertaking established in the third country, but instead carry out customer due diligence on any customer of a branch or ~~majority-owned subsidiary~~ subsidiary undertaking established in the third country who wishes to be provided with products or services by those other entities of the same group even if the conditions in ~~Article 28 of Directive (EU) 2015/849~~ Regulation 39(6) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 are met;
- (c) carrying out enhanced reviews, including, where this is commensurate with the money laundering and terrorist financing risk associated with the operation of the branch or ~~majority-owned subsidiary~~ subsidiary undertaking established in the third country, onsite checks or independent audits, to be satisfied that the branch or ~~majority-owned subsidiary~~ subsidiary undertaking effectively identifies, assesses and manages the money laundering and terrorist financing risks;
- (d) ensuring that their branches or ~~majority-owned subsidiaries~~ subsidiary undertakings that are established in the third country seek the approval of the credit institution's or financial institution's senior management for the establishment and maintenance of higher-risk business relationships, or for carrying out a higher risk occasional transaction;
- (e) ensuring that their branches or ~~majority-owned subsidiaries~~ subsidiary undertakings that are established in the third country determine the source and, where applicable, the destination of funds to be used in the business relationship or occasional transaction;
- (f) ensuring that their branches or ~~majority-owned subsidiaries~~ subsidiary undertakings that are established in the third country carry out enhanced ongoing monitoring of the business relationship including enhanced transaction monitoring, until the branches or ~~majority-owned subsidiaries~~ subsidiary undertakings are reasonably satisfied that they understand the money laundering and terrorist financing risk associated with the business relationship;
- (g) ensuring that their branches or ~~majority-owned subsidiaries~~ subsidiary undertakings that are established in the third country share with the credit institution or financial institution underlying suspicious transaction report information that gave rise to the knowledge, suspicion or reasonable grounds to suspect that money laundering and terrorist financing was being attempted or had occurred, such as facts, transactions, circumstances and documents upon which suspicions are based, including personal information to the extent that this is possible under the third country's law;
- (h) carrying out enhanced ongoing monitoring on any customer and, where applicable, beneficial owner of a customer of a branch or ~~majority-owned subsidiary~~ subsidiary undertaking established in the third country who is known

to have been the subject of suspicious transaction reports by other entities of the same group;

- (i) ensuring that their branches or ~~majority-owned subsidiaries~~ subsidiary undertakings that are established in the third country has effective systems and controls in place to identify and report suspicious transactions;
- (j) ensuring that their branches or ~~majority-owned subsidiaries~~ subsidiary undertakings that are established in the third country keep the risk profile and due diligence information related to a customer of a branch or ~~majority-owned subsidiary~~ subsidiary undertaking established in the third country up to date and secure as long as legally possible, and in any case for at least the duration of the business relationship.

## Article 9

### Entry into force

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

**FINANCIAL CONDUCT AUTHORITY TECHNICAL STANDARDS (CAPITAL REQUIREMENTS) (EU EXIT) (NO.2) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (the “Regulations”), having carried out the consultations required by regulation 5 of the Regulations and with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3 of the Regulations.

**Historic division**

- B. The Capital Requirements EU Regulations, as they have effect in domestic law by virtue of section 3 of the Act, were each divided into two identical versions of the same, headed “Part 1 (FCA)” and “Part 2 (PRA)” respectively, by The Technical Standards (Capital Requirements) (EU Exit) (No. 3) Instrument 2019 made by the PRA on 9 April 2019.

**Pre-conditions to making**

- C. As a result of the division in paragraph B, the FCA is the appropriate regulator in relation to Part 1 (FCA) of each of the Capital Requirements EU Regulations.
- D. The FCA proposes to exercise the power in regulation 3 of the Regulations to modify Part 1 (FCA) of each the Capital Requirements EU Regulations.
- E. The FCA has consulted the PRA on the modifications contained in this instrument in accordance with regulation 5 of the Regulations.
- F. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- G. In this instrument –
- (a) “the Act” means the European Union (Withdrawal) Act 2018;
  - (b) “the Capital Requirements EU Regulations” means each of the following EU regulations, as they have effect in domestic law by virtue of section 3 of the Act:
    - (i) Commission Implementing Regulation (EU) 2016/1646 of 13 September 2016 laying down implementing technical standards with regard to main indices and recognised exchanges in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms;

- (ii) Commission Implementing Regulation (EU) 2016/1799 of 7 October 2016 laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for credit risk in accordance with Articles 136(1) and 136(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council; and
- (iii) Commission Implementing Regulation (EU) 2016/1801 of 11 October 2016 on laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for securitisation in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council;
- (c) “exit day” has the meaning given in the Act;
- (d) “the Main Indices and Recognised Exchanges EU Regulation” means Commission Implementing Regulation (EU) 2016/1646 of 13 September 2016 laying down implementing technical standards with regard to main indices and recognised exchanges in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms;
- (e) “the PRA” means the Prudential Regulation Authority; and
- (f) “the Securitisation ECAI Mapping EU Regulation” means Commission Implementing Regulation (EU) 2016/1801 of 11 October 2016 on laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for securitisation in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council.

## **Revocation**

- H. The modifications to Part 1 (FCA) of the Securitisation ECAI Mapping EU Regulation specified in paragraph G of the Financial Conduct Authority Technical Standards (Capital Requirements Directive and Regulation) (EU Exit) Instrument 2019 are revoked.

## **Modifications to Part 1 (FCA) of the Capital Requirements EU Regulations**

- I. The FCA makes the same modifications to Part 1 (FCA) of the Main Indices and Recognised Exchanges EU Regulation as the PRA has made to Part 2 (PRA) of that regulation under the [Technical Standards (Capital Requirements) (EU Exit) (No. 4) Instrument 2019].
- J. The FCA amends Part 1 (FCA) of each of the remaining Capital Requirements EU Regulations in accordance with Annexes A and B of this instrument.

(1)	(2)
Commission Implementing Regulation (EU) 2016/1799 of 7 October 2016 laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for credit risk in accordance with Articles 136(1) and 136(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council	Annex A
Commission Implementing Regulation (EU) 2016/1801 of 11 October 2016 on laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for securitisation in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council	Annex B

**Commencement**

K. This instrument comes into force on exit day.

**Citation**

L. This instrument may be cited as the Financial Conduct Authority Technical Standards (Capital Requirements) (EU Exit) (No.2) Instrument 2019.

**By order of the Board**

*[date]* 2019



## Annex A

**Commission Implementing Regulation (EU) 2016/1799 of 7 October 2016 laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for credit risk in accordance with Articles 136(1) and 136(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council**

...

### **Mapping of credit assessments of external credit assessment institutions for credit risk**

---

In this Annex new text is underlined.

Part 1 (FCA) of Commission Implementing Regulation (EU) No 2016/1799 of 7 October 2016 laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for credit risk in accordance with Articles 136(1) and 136(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council as it forms part of domestic law by virtue of section 3 of the Act and this Instrument, is modified as follows:

...

## ANNEX III

### **Mapping tables for the purposes of Article 16**

...
ARC Ratings S.A. <u>and ARC Ratings (UK) Limited</u>
...
Scope Ratings AG <u>and Scope Ratings UK Limited</u>
...

## Annex B

**Commission Implementing Regulation (EU) 2016/1801 of 11 October 2016 on laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for securitisation in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council**

### Mapping of credit assessments of institutions for securitisation

---

In this Annex new text is underlined.

Part 1 (FCA) of Commission Implementing Regulation (EU) 2016/1801 of 11 October 2016 on laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for securitisation in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council is amended as follows:

...

#### Article 1

##### **Mapping tables under the standardised approach**

The correspondence of the rating categories of each ECAI for securitisation positions subject to the standardised approach with the credit quality steps under the standardised approach set out in Table 1 of Article 251 of Regulation (EU) No 575/2013 (in the version of that Regulation applicable on 31 December 2018, together with any amendments made to such provision by the Capital Requirements (Amendment) (EU Exit) Regulations 2018) is that set out in Annex I to this Regulation.

#### Article 2

##### **Mapping tables under the ratings-based method**

The correspondence of the rating categories of each ECAI for securitisation positions subject to the IRB approach with the credit quality steps set out in Table 4 of Article 261(1) of Regulation (EU) No 575/2013 (in the version applicable on 31 December 2018, together with any amendments made to such provision by the Capital Requirements (Amendment) (EU Exit) Regulations 2018) is that set out in Annex II to this Regulation.

...

## ANNEX I

**Mapping table under the standardised approach as referred to in Article 1**

...
ARC Ratings SA <u>and ARC Ratings (UK) Limited</u>
...
Scope Rating AG <u>and Scope Ratings UK Limited</u>
...

## ANNEX II

**Mapping table under the ratings-based method as referred to in Article 2**

...
ARC Ratings SA <u>and ARC Ratings (UK) Limited</u>
...
Scope Rating AG <u>and Scope Ratings UK Limited</u>
...

## Appendix 6

# Modifications to periodic fees rules for Recognised Overseas Investment Exchanges

**FEES (MISCELLANEOUS AMENDMENTS) (No [14]) INSTRUMENT 2019**

**Powers exercised**

- A. 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 (General rule-making power);
    - (b) section 137T (General supplementary powers);
    - (c) section 139A (Power of the FCA to give guidance);
    - (d) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority); and
  - (2) regulations 206 and 208 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019; and
  - (3) paragraph 7(2)(b) of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

**Commencement**

- C. Part 2 of the Annex to this instrument comes into force on [25 October 2019].
- D. Parts 1 and 3 of the Annex to this instrument come into force on exit day as defined in regulations made under section 20 of the European Union (Withdrawal) Act 2018, immediately after the Fees (Credit Rating Agencies, Trade Repositories and Securitisation Repositories) Instrument 2019 (FCA 2019/21).

**Amendments to the Handbook**

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

**Citation**

- F. This instrument may be cited as the Fees (Miscellaneous Amendments) (No [14]) Instrument 2019.

By order of the Board  
[date]

## Annex

### Amendments to the Fees manual (FEES)

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

#### Part 1

### 3 Application, Notification and Vetting Fees

...

#### 3.2 Obligation to pay fees

...

- 3.2.5 G (1) (a) The appropriate authorisation or registration fee is an integral part of an application for, or an application for a variation of, a *Part 4A permission*, authorisation, registration or variation under the *Payment Services Regulations* or the *Electronic Money Regulations*, registration under article 8(1) of the *MCD Order*, authorisation under regulation 7 of the *DRS Regulations* or verification under regulation 8 of the *DRS Regulations*, or notification or registration under the *AIFMD UK regulation*, registration or certification under the *Credit Rating Agencies Regulation*, registration or recognition under the *European Market Infrastructure Regulation* or the *Securities Financing Transactions Regulation*, or registration under the *Securitisation Regulation*.

...

...

...

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

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	Due date
...	...	...

(zzf) UK-based applicants for registration as a <i>credit rating agency</i> ; a <i>trade repository</i> ; a <i>securitisation repository</i> , or a third country applicant seeking certification as a <i>credit rating agency</i> or recognition as a <i>trade repository</i> .	<p>The fee set out in <i>FEES</i> 3 Annex 13R.</p> <p>Applicants for registration as a <i>trade repository</i> who already hold registration as a <i>securitisation repository</i>, or vice versa, will receive a 50% discount on the relevant application fee.</p> <p><u>Applicants for registration as a <i>trade repository</i> under the <i>SFTR</i> who already hold registration as a <i>trade repository</i> under <i>EMIR</i> or vice versa, will receive a 50% discount on the relevant application fee.</u></p>	On or before the date the application is made.
--	---	--

...

**Part 2****4 Periodic fees**

...

**4 Annex 2AR FCA Fee rates and EEA/Treaty firm modifications for the period from 1 April 2019 to 31 March 2020**

## Part 1

This table shows the tariff rates applicable to each of the fee blocks set out in Part 1 of *FEES* 4 Annex 1AR.

...

Activity group	Fee payable
...	
	€0,000

B. Recognised overseas investment exchanges	<u>Recognised overseas investment exchanges that were EEA market operators immediately before exit day</u>	<p>If a <u>recognised overseas investment exchange</u> was an <u>EEA market operator</u> immediately before <u>exit day</u>, it is not required to pay the above fee in any fee year commencing from 1 April 2018.</p> <p>A <u>recognised overseas investment exchange</u> which was an <u>EEA market operator</u> immediately before <u>exit day</u> will be required [for the <u>fee year</u> in which <u>exit day</u> occurs] to pay the fee according to the formula set out below, following <u>exit day</u>.</p> <p>(The fee payable ÷ 12) multiplied by the number of calendar - <u>months</u> (inclusive) between the calendar <u>month</u> in which <u>exit day</u> occurs and the last calendar month of that <u>fee year</u>.</p>
	<u>Recognised overseas investment exchanges [including those that were EEA market operators immediately before exit day for fee years following the fee year in which exit day occurs]</u>	60,000

### Part 3

#### 4 Annex 16R Periodic fees for credit rating agencies, trade repositories and securitisation repositories in relation to the period from *exit day* to 31 March 2020

This Annex sets out the periodic fees in respect of *credit rating agencies*, *trade repositories* and *securitisation repositories*.

Part 1 – Method for calculating the fee for fee-paying payment service providers



The periodic fee is calculated by identifying the relevant activity group under Part 2 and multiplying the tariff base identified in Part 3 of *FEES* 4 Annex 16R by the appropriate rates in the table at Part 5.

#### Part 2 – Activity groups

Activity group	Fee payer falls into this group if:
J.1	it is a <i>credit rating agency</i> or certified credit rating agency; or
J.2	it is a <i>trade repository</i> or recognised trade repository; or
J.3	it is a <i>securitisation repository</i> .

#### Part 3

This table indicates the tariff base for each fee-block. The tariff base is the means by which the *FCA* measures the amount of business conducted by a *firm*.

J.1 <i>Credit rating agencies</i>	<p><b>APPLICABLE TURNOVER</b></p> <p>This is revenue generated from the <i>credit rating agency</i>'s activities and ancillary services.</p>
J.2 <i>Trade repositories</i>	<p><b>APPLICABLE TURNOVER</b></p> <p>This is the sum of revenues generated from:</p> <p>(a) the core functions of centrally collecting and maintaining records of derivatives <u>and securities financing transactions</u>; and</p> <p>(b) ancillary services that are directly related to centrally collecting and maintaining records of derivatives <u>and securities financing transactions</u>.</p> <p>Ancillary services include:</p> <p>(i) direct provision by the <i>trade repository</i>;</p> <p>(ii) indirect provision by a company within the <i>trade repository</i>'s group; and</p> <p>(iii) where an entity with which the <i>trade repository</i> has concluded an agreement in the context of the trading or post-trading chain or business line to cooperate in the provision of services provides the ancillary services.</p>

	Where a <i>trade repository</i> 's accounts do not distinguish revenue from ancillary services under different activities, it should determine the share each activity represents of the turnover from providing core services and apply that to the composite ancillary revenue figure.
--	--

## Appendix 7

# Changes to reporting requirements in the Supervision manual

## SUPERVISION MANUAL (REPORTING No [11]) INSTRUMENT 2019

### Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 137A (The FCA’s general rules);
    - (b) section 137T (General supplementary powers);
    - (c) section 139A (Power of the FCA to give guidance);
  - (2) the following regulations of the Payment Account Regulations 2015:
    - (a) Regulation 29 (Reporting requirements); and
    - (b) Regulation 40 (Guidance).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

### Commencement

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

### Amendments to the Handbook

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

### Citation

- E. This instrument may be cited as the Supervision Manual (Reporting No [11]) Instrument 2019.

By order of the Board  
[*date*]

## Annex

### Amendments to the Supervision manual (SUP)

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

#### 16 Reporting requirements

...

#### 16.22 Reporting under the Payment Accounts Regulations

...

Frequency and timing of report

16.22.5 D The payment accounts report required by *SUP* 16.22.3D and *SUP* 16.22.4R must be submitted:

- (1) ~~online using the appropriate system accessible from the FCA's website~~ by electronic means made available by the FCA;

...

...

#### 16 Notes for completion of Data Items relating to Consumer Credit activities

**Annex**  
**38BG**

...

#### CCR005 Consumer credit data: Client money and assets

Guide for the completion of individual fields

...		
3A	How much client money (if any) did you hold in excess of five days following receipt?	<p>If a CASS <del>large</del> <i>debt management firm</i>, at any point during the reporting period, held <i>client money</i> for an individual <i>client</i>, relating to a single transaction, in excess of five days of receipt of cleared funds, it should report the aggregate balance of this <i>client money</i> (i.e. the sum of all the amounts that were held longer than five days).</p> <p>A CASS <del>large</del> <i>debt management firm</i> should report '0' if it did not hold <i>client money</i> in</p>

		<p>excess of five days at any point during the reporting period.</p> <p>In accordance with CASS 11, a CASS <del>large</del> <i>debt management firm</i> must pay any <i>client money</i> it receives to creditors as soon as reasonably practicable, save in the circumstances set out in in CASS 11. In the <i>FCA's</i> view the payment to creditors should normally be within five <i>business days</i> of the receipt of cleared funds.</p>
--	--	--

...

## Appendix 8

# Changes to our 'wake-up' pack and annuity information prompt rules

**CONDUCT OF BUSINESS SOURCEBOOK (RETIREMENT OUTCOMES REVIEW)  
(No 2) 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 137A (The FCA’s general rules);
  - (2) section 137T (General supplementary powers); and
  - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 November 2019, immediately after the changes in Part 1 of the Conduct of Business Sourcebook (Retirement Outcomes Review) Instrument 2019 (FCA 2019/4).

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Conduct of Business Sourcebook (COBS) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Conduct of Business Sourcebook (Retirement Outcomes Review) (No 2) Instrument 2019.

By order of the Board  
[date]



## **Annex A**

### **Amendments to the Glossary of definitions**

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

*serious ill-health lump sum* has the meaning in Part 1 of Schedule 29 to the Finance Act 2004.  
[Note: <https://www.legislation.gov.uk/ukpga/2004/12/schedule/29/part/1>]

## Annex B

## Amendments to the Conduct of Business sourcebook (COBS)

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

## 19 Pensions supplementary provisions

...

### 19.4 Open market options

...

19.4.5A R (1) ...

(a) ...

(b) ~~between four to ten weeks before the *client* reaches 55 years of age;~~

between four to ten weeks before the *client* reaches each birthday that is at five year intervals after the *client*'s 50<sup>th</sup> birthday;

(c) ~~at five year intervals after the open market options statement in (b) is sent until the *client*'s pension fund is fully crystallised;~~  
~~[deleted]~~

unless;

(d) the *firm* has given the *client* such a statement in the last 12 months;

(e) the *client*'s pension fund is fully crystallised; or

(f) the *firm* has received a request from the *client* for their pension fund to be paid by way of a *serious ill-health lump sum* and that request has not been rejected.

(2) ...

(d) if the *retail client* requests to access their pension savings for the first time, other than where the *retail client* requests that their pension fund is paid to them by way of a *serious ill-health lump sum*;

unless;

- (e) the *firm* has given the *client* such a statement in the last 12 months; or
- (f) the *firm* has received a request from the *client* for their pension fund to be paid by way of a *serious ill-health lump sum* and that request has not been rejected.

...

- (4) Where a *firm*'s obligation to send an open market options statement is only dis-applied because of a *client*'s request that their pension fund is paid to them by way of a *serious ill-health lump sum* (see COBS 19.4.5AR(1)(f) or COBS 19.4.5AR(2)(f)), but that request is subsequently rejected, a *firm* must send to the *client* an open market options statement within two months of the decision to reject.

...

## 19.9 Pension annuity comparison information

19.9.1 R ...

- (3) a “market-leading *pension annuity* quote” is a quote for a *pension annuity* that:
  - (a) is generated by a *firm* by searching for, obtaining and comparing, *pension annuities* that are available to the *retail client* from across all of the *pension annuity* market using:
    - (i) the same information as the *firm* has used to generate a guaranteed quote; or
    - (ii) answers obtained from the *retail client* which allow the *firm* to determine whether the *client* may be eligible for an enhanced annuity, where the *firm* itself cannot generate an enhanced annuity quote using those answers; and

...

...

### Eligibility for enhanced annuities

- 19.9.6A R (1) When a *firm* generates a market-leading *pension annuity* quote it must ~~ask~~ take reasonable steps to obtain from the *retail client* answers to the questions that are required to determine whether the *client* is eligible for an enhanced annuity.

...

- (4) If the *retail client* refuses to answer a *firm*'s questions that are required to determine whether the *retail client* is eligible for an enhanced annuity, a *firm* must:
- (a) generate a market-leading *pension annuity* quote using the same information that it used to generate its guaranteed quote; and
  - (b) compare the market-leading *pension annuity* quote referred to in (a) with its guaranteed quote.

...

- 19.9.6C    G    (1)    The *guidance* in this section relates to a *firm*'s obligations to provide a market-leading *pension annuity* quote in COBS 19.9.6AR(4).
- (2)    A *firm* in (1) may consider it appropriate to include in the quote provided to the *retail client* a statement that the *client* may have health or lifestyle factors that could mean that they are eligible for a higher income. For example, the wording in the "Did you know?" box in the template in Part 3 of COBS 19 Annex 3R could be adapted to reflect the fact that a *client* has refused to answer questions about their health or lifestyle.

...

- 19.9.15    R    (1)    This *rule* applies to a *firm* ~~where the *firm*:~~
- (a)    ~~asks the *retail client* questions to determine whether the *client* is eligible for an enhanced annuity, and the *retail client* refuses to answer the *firm*'s questions; or~~
  - (b)    requires the *retail client*'s consent to the *firm* generating, on behalf of the *retail client*, a market-leading *pension annuity* quote and that consent is not obtained.
- (2)    A *firm* must take reasonable steps to obtain ~~from a *retail client*'s the answers and/or~~ consent referred to in paragraph (1).
- (3)    Where a *firm* is in (1) (having complied with (2)) this *rule* applies meaning that:
- (a)    COBS 19.9.4R(7), and COBS 19.9.7R and COBS 19.9.6AR(4) do not apply;

...

...

## TP 2      Other Transitional Provisions

(1)	(2)	(3)	(4)		(5)	(6)
	Material to which the transitional provision applies		Transitional provision		Transitional provision: dates in force	Handbook provisions: coming into force
...						
<u>2.8F A</u>	<u>COBS 19.9.6AR(4)</u>	<u>R</u>	(1)	The <i>rule</i> in column (2) does not apply to a <i>firm</i> until 1 January 2020 and is replaced by TP 2.8FAR(2), the <i>guidance</i> in TP 2.8FB and the <i>guidance</i> in TP 2.8FC below.	1 November 2019 to 31 December 2019	1 November 2019
			(2)	Where a <i>retail client</i> refuses to answer questions that would allow a <i>firm</i> to determine whether a <i>pension annuity</i> on an enhanced basis could be available, a <i>firm</i> must:		
			(a)	include information warning the <i>retail client</i> that:		
			(i)	a higher annual income might be obtained; or		
			(ii)	at least the requested annual income might be obtained for a lower purchase price;		
				by searching the open market for a <i>pension annuity</i> ; and		

				(b)	as applicable, use the template in Part 3 or Part 6 of <i>COBS</i> 19 Annex 3R,		
					unless the <i>firm</i> obtains a market leading <i>pension annuity</i> in line with the guidance below in TP 2.8FC.		
<u>2.8F B</u>	<u>COBS 19.9.6AR(4)</u> <u>l</u>	<u>G</u>	<p>A <i>firm</i> in TP 2.8FAR(2) may consider it appropriate to include in the quote provided to the <i>retail client</i> a statement that the <i>client</i> may have health or lifestyle factors that could mean that they are eligible for a higher income.</p> <p>For example, the wording in the “Did you know?” box in the template in Part 3 or Part 6 of <i>COBS</i> 19 Annex 3R could be adapted to reflect the fact that a <i>client</i> has refused to answer questions about their health or lifestyle.</p>			<u>1 November 2019 to 31 December 2019</u>	<u>1 November 2019</u>
<u>2.8F C</u>	<u>COBS 19.9.6AR(4)</u> <u>l</u>	<u>G</u>	<p>Where a <i>retail client</i> refuses to answer a <i>firm</i>’s questions to allow the <i>firm</i> to determine whether the <i>retail client</i> is eligible for an enhanced annuity, the <i>firm</i> is encouraged to generate a market leading <i>pension annuity</i> quote using the same information that it used to generate its guaranteed quote and compare the two.</p>			<u>1 November 2019 to 31 December 2019</u>	<u>1 November 2019</u>

## Appendix 9

# Changes to the Training and Competence sourcebook

**TRAINING AND COMPETENCE SOURCEBOOK (AMENDMENT No 8)  
INSTRUMENT 2019**

**Powers exercised**

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

**Commencement**

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

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Training and Competence sourcebook (TC) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Training and Competence (Amendment No 8) Instrument 2019.

By order of the Board  
*[date]*



## **Annex A**

### **Amendments to the Glossary of definitions**

In this Annex, underlining indicates new text.

Amend the following definition as shown.

<i>accredited body</i>	any of the following bodies recognised by the <i>FCA</i> for the purpose of providing the independent verification required under <i>TC 2.1.27R</i>
	...
(h)	The Pensions Management Institute ( <u>accredited body until 31 May 2019</u> ).

## Annex B

### Amendments to Training and Competence sourcebook (TC)

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

#### App 4.1 Appropriate Qualification tables

...

Extent to which the qualification meets the qualification requirement in relation to RDR activities

App 4.1.1A E ...

(1) ...

(2) where a 'b' appears in the fourth column of the table in Part 2 the qualification will fully meet the qualification requirement until 31 December 2012. On and after 31 December 2012 this must be combined with qualification gap-fill. This gap-fill (see TC App 7.1.1G) constitutes additional structured continuing professional development, which need not be by examination, completed and verified by an *accredited body*.

...

Extent to which the qualification meets the qualification requirement in relation to non-RDR activities

...

App 4.1.1C G ...

#### Part 2: Appropriate Qualifications Tables

Qualification provider	Qualification	Activity Number(s)	Key
...			
Blackburn College - University Centre	Foundation Degree Award in Financial Services ( <u>syllabus in force until 31 October 2017</u> )	4 and 6	a

...			
Chartered Institute for Securities and Investment (CISI) - (Formerly the Securities and Investment Institute (SII); formerly The Securities Association)	...	...	...
	Investment Advice Diploma (where candidate holds 3 modules including the Financial Planning and Advice module)	4 and 6	
	<u>Investment Advice Diploma (where candidate holds 3 modules including Retail Advice and Planning)</u>	<u>4 and 6</u>	
	Investment Advice Diploma (where candidate holds 3 modules including the derivatives module)	3,13	
	...	...	...
Chartered Insurance Institute	...	...	...
	Certificate in Pension Transfer Advice ( <u>meets requirement until 30 September 2020</u> )	11	1
	Certificate in Securities Advice and Dealing	2, 12	a
	<u>CII Level 6 Award in Regulated Pension Transfer Advice / Unit AF7 (only when combined with an RDR compliant qualification for Activities 4 and 6)</u>	<u>11</u>	<u>1</u>
	...		
	<u>Until 30 September 2020, Fellow or Associate including three pensions-related subjects as confirmed by the examining body. From 1 October 2020, only when combined with an RDR compliant qualification for Activities 4 and 6.</u>	11	1
	<u>Until 30 September 2020, G60 paper of Advanced Financial Planning Certificate. From 1 October 2020, only when combined</u>		

	<u>with an RDR compliant qualification for Activities 4 and 6.</u>		
	<u>Until 30 September 2020, Unit AF3 of the Advanced Diploma in Financial Planning. From 1 October 2020, only when combined with an RDR compliant qualification for Activities 4 and 6.</u>		
...			
The London Institute of Banking & Finance (formerly the ifs University College and the ifs School of Finance/Chartered Institute of Bankers)	...		
	Certificate for Financial Advisers and Certificate in Long-term Care Insurance	7	1
	<u>Level 4 Certificate in Long Term Care and Later Life Planning (CertLTCP)</u>	<u>7</u>	<u>1</u>
	Pension Transfers <u>when combined with either a plus Diploma for Financial Advisers (DipFA®) post 2010 exam standards or an RDR compliant qualification for Activities 4 and 6</u>	11	1
...			

We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

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

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

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