FINANCIAL CONDUCT AUTHORITY

Quarterly Consultation
No 30

Consultation Paper
CP20/23
December 2020

How to respond

The Financial Conduct Authority invites comments on this Consultation Paper.

Comments should reach us by 4 February 2021 for Chapters 3, 4, 5, 7 and 8, and 4 January 2021 for Chapter 6.

The FCA and the Prudential Regulation Authority (PRA) invites comments on Chapter 2 of this Consultation Paper, which should reach us by 4 February 2021. Any comments received on Chapter 2 will be shared with the PRA for joint consideration.

Comments may be sent by electronic submission using the form on the FCA's website at fca.org.uk/cp20-23-response-form.

Alternatively, please send comments in writing to:

Chapter 2: Jasdeep Sangha, Governance and Professionalism, Telephone: 020 7066 8521

Chapter 3: Tom Bramhill, Pensions and Funds Policy, Telephone: 020 7066 0327

Chapter 4: Tom Bramhill, Pensions and Funds Policy, Telephone: 020 7066 0327

Chapter 5: Hugh-David Hutcheson, Prudential Policy, Telephone: 020 7066 6938

Chapter 6: Kelly Dulieu, Authorisations, Telephone: 020 7066 1188

Chapter 7: Johan Ahipeaud, Consumer Distribution Policy, Telephone: 020 7066 2466

Chapter 8: Paul Willis, Markets Policy, Telephone: 020 7066 4862

If you are responding in writing to several chapters please send your comments to Ayesha Dayaji in the Brexit Policy and Handbook Team, who will pass your responses on as appropriate.

All responses should be sent to:
Financial Conduct Authority,
12 Endeavour Square, London, E20 1JN

Telephone: 020 7066 0575
Email: cp20-23@fca.org.uk

How to navigate this document

- returns you to the contents list
- takes you to helpful abbreviations
- takes you to the previous page
- takes you to the next page
- prints document
- email and share document

Contents

1 Overview

Chapter No	Proposed changes to Handbook	Consultation Closing Period
2	To clarify our expectations for temporary, long-term absences	Two months
3	To remove references to collective investment schemes being able to issue bearer certificates, in line with draft Government legislation banning the use of bearer certificates	Two months
4	To amend the rules in COBS 4.5.12R to COBS 4.5.15R to narrow the scope of their application to communications which could influence a retail investor's investment decision	Two months
5	To make changes to the minimum levels of professional indemnity insurance (PII) cover to align our rules with the revised limits as published in Commission Delegated Regulation (EU) 2019/1935 amending the Insurance Distribution Directive (IDD)	Two months
6	To make changes to the cancellation form in SUP 6 Annex 6 to improve the cancellation application process	One month
7	To Transpose Article 1(16) of the Bank Recovery and Resolution Directive II ((EU) 2019/879) into FCA rules	Two months
8	This Chapter does not propose changes to our Handbook, and instead seeks views from interested stakeholders about whether the Global Precious Metals Code meets our Codes Recognition Criteria	Two months

2 Clarifying our expectations for temporary, long-term absences

Introduction

2.1 This chapter is a joint consultation by the FCA and the PRA. Although the FCA and PRA have considered the proposals independently of one another and in accordance with their statutory objectives, we have decided to consult jointly in order to avoid unnecessary duplication. Unless otherwise stated, where this chapter uses 'we', 'our' or 'us', it means both the FCA and the PRA.

2.2 We propose to clarify our expectations for firms notifying us of when a Senior Manager takes temporary leave for longer than 12 weeks (long-term leave), for example in cases of parental leave and where the length of absence is not known. The FCA is also proposing to make these changes in relation to approved persons at appointed representatives in SUP 10A, but not with regards to statements of responsibilities as these don't apply to approved persons at appointed representatives.

2.3 We have received feedback that it would be helpful for us to clarify the status of Senior Managers on long-term leave and the notifications we require to ensure firms comply with our rules.

2.4 Our rules and guidance are not currently sufficiently clear on whether individuals can retain regulatory approval during long-term leave, or whether firms can hold open approved roles for an individual on leave. Firms may be approaching temporary absences for Senior Managers differently, which could cause inconsistencies and confusion for firms and approved persons.

2.5 We recognise that there may be a variety of reasons for Senior Managers to be temporarily absent from their roles, for example due to sick leave or parental leave, and that in some cases it may be difficult for firms to know exactly how long the absence may last. The proposals included in this chapter seek to clarify our expectations and ensure that a consistent approach is taken.

Summary of proposals

2.6 We propose to clarify our expectations through new rules and guidance in the FCA's Handbook and the PRA's Rulebook and updated supervisory statements (SS) 28/15 `Strengthening individual accountability in banking' and SS35/15 `Strengthening individual accountability in insurance'. In cases where an individual who performs a Senior Management Function (SMF) is temporarily absent from their role, and the firm intends to keep the role open for that individual to return to in the future, the firm will not need to notify the FCA (and, where applicable, the PRA) that the individual's approval should be removed. Firms should still ensure that where the individual taking long-term leave is carrying out an FCA (or PRA) required function, another individual is

appointed to perform that required function during the interim period. The proposed amendments to FCA rules and guidance are included in Appendix 2; changes to the PRA rules and SS are set out in the Annex of Appendix 2.

2.7 This does not affect cases where a firm is aware that the individual will not be returning to their role. In these cases, firms should continue to notify the FCA and, where applicable, the PRA, that the individual's approval should be removed using Form C (Notice of ceasing to perform controlled functions including senior management functions) or Form E (Internal transfer of an approved person) as appropriate.

2.8 In instances where the absence is temporary and the individual is expected to return to their role, the proposed FCA rules and guidance and PRA's rules and SS make clear that firms would not need to notify us that the individual is no longer performing the SMF by submitting a Form C. Firms would also not be required to seek re-approval for the individual once they have returned to their role.

2.9 Instead, we are proposing to require firms to notify us that the individual is on long-term leave via Form D (Changes to personal information/application details and conduct breaches/disciplinary action related to conduct). We are proposing to amend Form D to include an additional field for firms to notify us that the relevant individual is taking leave or returning from that leave. Firms will also be asked to provide the effective date for the change. Our proposed amendments to Form D are set out in the relevant Appendix.

2.10 Putting in place this process should reduce inconsistencies in the approach taken by firms to notify us of an individual's long-term leave. For example, some firms are submitting Form C to notify us that the absent individual has ceased performing their SMF, only to reapply for approval once that individual returns from leave. Our proposal that firms use the amended Form D is easier and quicker than this approach.

2.11 Where it becomes clear that the individual would not be returning to their role, and so ceases to perform the same SMF, we expect firms to follow the existing process and notify us of this via Form C.

2.12 Under section 62A of the Financial Services and Markets Act 2000 (FSMA), a firm must provide the FCA and, where applicable, the PRA, with a revised statement of responsibilities if there has been any significant change in the responsibilities of a Senior Manager. We consider that this applies when they go on a temporary absence and on their return. Therefore, where the temporarily absent individual had been allocated prescribed responsibilities (PRs), firms are expected to follow the existing process for removing PRs from that individual and allocating the PRs to another individual performing a SMF in that firm. This is via Form J (Notification of Significant Changes in Responsibilities of a Person Performing a Senior Management Function). We are not proposing to amend this process.

2.13 These amendments do not impact the individual's record on the Financial Services Register (FS Register). In the case of a Senior Manager taking long-term leave, the FS Register will continue to show the approval to perform the relevant SMF(s).

2.14 An extract of the relevant sections of SS28/15 and SS35/15 with the proposed amended expectations on temporary absences is included in the relevant Appendix.

Q2.1: **Do you agree with our proposals to clarify our expectations for firms managing Senior Manager absences of more than 12 weeks?**

Cost benefit analysis

2.15 Section 138I and 138J of FSMA requires the FCA and PRA respectively to perform a cost benefit analysis (CBA) of proposed requirements and to publish the results, unless it is considered the proposal will not give rise to any cost or will give rise to an increase in costs of minimal significance.

2.16 The cost of these changes is expected to be minimal. The changes to Form D have resulted in the addition of one field: 'notification of absence'. We do not expect firms to expend undue time or cost in completing this additional field. Consequently, we have judged there is no need to carry out a quantitative assessment of the costs, as they are expected to be minimal.

2.17 Some firms have been submitting a Form C to remove the approval from an individual taking long-term leave, and then reapplying for approval for the same individual once they return from that leave where it has not been necessary to do so. Our proposed actions to introduce guidance and to set out a process which firms can use to notify us, should reduce the cost for such firms and individuals.

Impact on mutual societies

2.18 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.

FCA's Compatibility statement

2.19 Section 1B of FSMA requires the FCA, when discharging its general functions, as far as is reasonably possible, to act in a way that is compatible with its strategic objective and advance one or more of its operational objectives. The FCA also needs to carry out its 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.

2.20 We are satisfied that the proposed amendments are compatible with our strategic objective and advance our operational objectives under section 1B of FSMA. Our proposals aim to ensure consistency and clarity in the market and to reduce any regulatory burden caused by confusion. The proposed changes will make clear to firms how they can provide accurate and timely information to the FCA and the PRA.

The PRA's statutory obligations

2.21 In carrying out its policy making functions, the PRA is required to comply with several legal obligations. Before making any rules, FSMA requires the PRA to publish a draft of the proposed rules accompanied by:

- a cost benefit analysis;
- an explanation of the PRA's reasons for believing that making the proposed rules is compatible with the PRA's duty to act in a way that advances its general objective,[1] insurance objective[2] (if applicable), and secondary competition objective;[3]
- an explanation of the PRA's reasons for believing that making the proposed rules are compatible with its duty to have regard to the regulatory principles;[4] and
- a statement as to whether the impact of the proposed rules will be significantly different to mutuals than to other persons.[5]

2.22 The Prudential Regulation Committee (PRC) should have regard to aspects of the Government's economic policy as recommended by HM Treasury.[6]

2.23 The PRA is also required by the Equality Act 2010[7] to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services and functions.

Cost benefit analysis

2.24 Please refer to the joint FCA and PRA section for the cost benefit analysis above.

Compatibility with the PRA's objectives

2.25 The PRA considers that the proposals in this chapter are compatible with the PRA's general objectives to promote the safety and soundness of PRA-authorised persons and policyholder protection by assisting firms in meeting the PRA's requirements through clearer rules, in a way that reduces the burden upon affected firms. The PRA considers that the proposals do not have an adverse impact on effective competition.

Regulatory principles

2.26 In developing the proposals in this chapter, the PRA has had regard to the regulatory principles. In particular, the proposals in this consultation will help support regulatory activities to be carried out in a transparent and proportionate manner. The PRA will do this by providing clear rules and expectations on how firms should approach the temporary absences for Senior Managers and avoiding unnecessary re-authorisation when the Senior Manager returns to their post.

Impact on mutuals

2.27 Please refer to the joint FCA and PRA section for the impact on mutual societies above.

1 Section 2B of FSMA.
2 Section 2C of FSMA.
3 Section 2H(1) of FSMA.
4 Sections 2H(2) and 3B of FSMA.
5 Section 138K of FSMA.
6 Section 30B of the Bank of England Act 1998.
7 Section 149.

HM Treasury recommendation letter

2.28 HM Treasury has made recommendations to the PRC on aspects of the Government's economic policy to which the PRC should have regard when considering how to advance the PRA's objectives and apply the regulatory principles. The PRA considers the aspect most relevant to the proposals is transparency. This has been set out in its analysis in general terms above.

Equality and diversity

2.29 Please refer to the joint FCA and PRA section on equality and diversity below.

Equality and diversity

2.30 In line with the responsibilities under the Equality Act, we have considered the equality and diversity issues that may arise from the proposals in this chapter. The proposals to make clear our expectations with regards to long-term leave seek to promote equality of opportunity between people who share a protected characteristic and those who do not.

2.31 As our rules do not currently set out guidance on our expectations with regards to long-term leave, firms may be carrying out a range of actions to address temporary absences. Some firms may be applying to remove regulatory approval from individuals performing a SMF who are about to take long-term leave. This may particularly impact certain groups with protected characteristics that are more likely to take temporary absence, for example individuals who are taking parental leave or sick-related leave.

2.32 By setting out guidance which makes clear that individuals performing a SMF who are taking long-term leave can retain their regulatory approval, we are ensuring that these groups of individuals are not disproportionately impacted as a result of their protected characteristics.

2.33 Overall, we consider that our proposals will better support groups with certain protected characteristics under the Equality Act 2010.

2.34 We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations.

Next steps

2.35 This consultation closes after the end of the transition period set out in the EU (Withdrawal Agreement) Act 2020. The proposals set out in this CP have therefore been designed for the context that the UK is no longer bound by EU law. The PRA and the FCA will keep the policy under review to assess whether any changes would be required due to changes in the UK regulatory framework after the end of the transition period, including those arising once any new arrangements with the EU take effect.

3 Abolition of bearer certificates in collective investment schemes

Introduction

3.1 A bearer certificate is a form of unregistered unit or share. A certificate for a certain number of units or shares is issued which does not name a specific holder, so whoever has custody of it has the right to the income and capital value of the units or shares which it represents. Bearer certificates could be exploited to facilitate money laundering or tax evasion and it is no longer considered appropriate to issue them. In order to bring the UK into line with international standards, the Government has decided to remove any remaining provisions in UK legislation that allow the issue and holding of bearer certificates.

3.2 Historically, it was possible for most companies and collective investment schemes (CIS), including authorised unit trusts (AUTs) and open-ended investment companies (OEICs), to issue units or shares represented by bearer certificates. Very few UK-authorised CIS ever made use of them and we are not aware of any that do so now. In 2016, we made rule changes in our Handbook so AUTs could no longer issue them, and in June 2017 the Government changed the OEIC Regulations so that no new OEIC could issue them. However, the 2017 Government change did not apply to OEICs that were already authorised at that time.

3.3 We are proposing Handbook changes to remove any remaining provisions concerning CIS bearer certificates.

Summary of proposals

3.4 The Government has laid draft regulations in Parliament that will prohibit all CIS domiciled in the UK from issuing bearer certificates and will require them to convert or redeem such certificates within 12 months. If the regulations are approved by Parliament and made they will impact OEICs authorised before June 2017 as well as all unregulated CIS, such as unauthorised unit trusts.

3.5 We have reviewed the Handbook, in particular the Collective Investment Schemes sourcebook (COLL), to identify any remaining references to CIS issuing bearer certificates, which we now propose to delete. We also propose to introduce a transitional provision to allow any OEIC that still issues shares with bearer certificates to redeem them or convert them to registered shares within the 12-month period allowed by the Government regulations, ending on 1 January 2022.

3.6 Although we do not regulate what kinds of units or shares an unregulated CIS may issue, we propose to add guidance in the Conduct of Business sourcebook (COBS 18.5 and COBS 18.5A) and the Investment Funds sourcebook (FUND 3.2) explaining that the issue of bearer certificates is no longer permitted by law.

Q3.1: **Do you have any comments on our proposals concerning UK collective investment schemes?**

Overseas funds

3.7 The Government regulations do not apply to CIS domiciled outside the UK. We expect that member states of the EU and other jurisdictions will amend their national laws and regulations to prohibit the use of bearer certificates, if they have not already done so. We propose a transitional provision in COLL to exempt EEA UCITS that are operating under the temporary marketing permissions regime from having to cancel bearer certificates, unless asked to do so by the holder. The operator of such EEA UCITS must continue to provide facilities in the UK for that purpose.

3.8 A non-UK CIS that is granted individual recognition under section 272 of the Financial Services and Markets Act 2000 (FSMA) must offer adequate protection to UK investors, having regard to the rules applying to comparable UK-authorised funds, and the arrangements for its constitution and management must be adequate. We consider that once it becomes unlawful for UK CIS to make bearer certificates available to UK investors, it would no longer be appropriate or compatible with the adequate protection standard to continue to allow s.272-recognised funds to do so.

3.9 We propose a new transitional provision explaining that operators of s.272-recognised schemes should enable UK investors to cancel or exchange any remaining bearer certificates by 1 January 2022. The operator must continue to provide UK facilities for that purpose. Failure to comply with this measure is likely to result in the scheme no longer meeting the requirements for recognition under s.272.

Q3.2: **Do you have any comments on our proposals for EEA UCITS in the temporary marketing permissions regime?**

Q3.3: **Do you agree with our proposals for schemes individually recognised under s.272?**

Cost benefit analysis

3.10 Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) unless, in accordance with section 138L, we believe that there will be no increase in costs or that the increase will be of minimal significance. Section 138I also requires us to publish an estimate of costs and benefits unless these cannot be reasonably estimated or it is not reasonably practicable to estimate them.

3.11 We believe, based on previous regulatory initiatives concerning bearer certificates and information received from relevant trade associations, that there are currently no authorised funds or CIS recognised under s.272 that have issued such certificates to UK-based investors. Consequently, we believe that there will be no costs to the managers or operators of such funds in complying with the rule changes.

3.12 In the event that any OEIC or individually recognised CIS is affected by the change, the transitional period should enable it to make the necessary changes in a timely way and that any costs it incurs will be of minimal significance.

Q3.4: Are you aware of any OEIC or s.272-recognised CIS that continues to issue bearer certificates in the UK? If so, what costs will the OEIC or CIS incur in ceasing to issue them?

Compatibility statement

3.13 When consulting on new rules, we are required by section 138I(2) FSMA to explain why we believe that making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B FSMA. We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.

3.14 These proposals advance the consumer protection objective by ensuring that UK investors cannot buy or hold unit and shares that are not registered in their own name or the name of their chosen intermediary. Registration of ownership reduces the risk of fraud or loss, and enables authorised persons to meet their obligations under anti-money laundering legislation to identify the sources of money received and the destinations of payments made.

3.15 The proposals also advance the market integrity objective by ensuring that the United Kingdom applies internationally-agreed standards aimed at reducing the risk of its financial system being exploited for the purposes of financial crime and tax evasion.

Impact on mutual societies

3.16 The proposed rules and guidance do not apply to mutual societies.

Equality and diversity

3.17 Having considered the equality and diversity issues that may arise from the proposed amendments in this chapter, we do not think they will 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. However, we welcome comments on any equality and diversity issues respondents believe may arise. We will review our assessment prior to publishing final rules.

4 Proposal to amend the scope of COBS 4.5.12R to COBS 4.5.15R

Introduction

4.1 We introduced various rules and guidance following the completion of our asset management market study (AMMS). Among the changes we introduced in policy statement PS19/4, were rules in COBS 4.5 requiring authorised fund managers to include an explanation of the choice of benchmark used in any communication about an authorised fund.

4.2 Since we introduced these rules in May 2019, some industry participants have highlighted various types of administrative customer communications for which they think the rules are unduly burdensome and far-reaching. We have been presented with several examples of purely administrative communications, such as contract notes, and agree that it was not our original policy intention for these types of communications to be captured by the rules.

4.3 We therefore propose to make changes to the Handbook to narrow the scope of the communications to which these rules will apply.

Summary of proposals

4.4 We are proposing to amend the scope of the rules in COBS 4.5.12R to COBS 4.5.15R. When we originally consulted on these rules in consultation paper CP18/9, we commented that investors would benefit from more precise and consistent use of fund benchmarks to enable them to better assess the performance of their fund. We observed that fund managers' use of benchmarks was not always consistent across different communications relating to the same fund. As such, the policy intention behind the original rules was to improve investor information to enable them to make better informed investment decisions.

4.5 However, we have received feedback from industry participants that the scope of the existing rules is too broad and captures communications where the inclusion of benchmark information is unnecessary, and in some cases unduly burdensome, particularly for communications of a purely administrative nature. We have been presented with various examples where participants felt that additional disclosures required by the rules were potentially unnecessary. One example of such a communication was a contract note confirming that an investor's purchase or sale of units in a fund had been completed.

4.6 We are therefore consulting on a new rule, in the Conduct of Business sourcebook, COBS 4.5.11AR, which sets out how the subsequent rules apply, as well as two minor changes to COBS 4.5.12R and COBS 4.5.13R reflecting their narrower application. COBS 4.5.11AR limits the requirement to include a description of a fund's benchmark,

so that it would only apply to communications that could influence a retail client's investment decisions. We are also proposing to introduce guidance in COBS 4.5.11BG to clarify that we would not normally expect the rules to apply to communications that are purely administrative in nature and do not refer in any way to the aims, benefits or risks of investing. We think that these changes will narrow the scope sufficiently without excluding communications where the provision of benchmark information remains important to investors.

How this will affect consumers

4.7 If we proceed with the proposed changes, investors and potential investors in funds will receive fewer communications containing information about a fund's benchmark. The communications that continue to contain benchmark information should be more appropriate and will help investors to make better informed investment decisions. Removing the benchmark information from administrative-type documents will not lead to consumer harm, and in some instances, may help to remove over-communication and potentially prevent confusion where the inclusion of benchmark information sits oddly with the rest of the information being communicated.

How this will affect firms

4.8 If we proceed with the proposed changes, firms will need to include information about a fund's benchmark in fewer communications with investors. This will reduce the operational burden that the rules currently place on firms.

Q4.1: **Do you agree that application of the existing rules in COBS 4.5.12R to COBS 4.5.15R is too broad?**

Q4.2: **Do you agree that the proposed changes will lead to the appropriate level of benchmark disclosure for investors in funds? If not, why not?**

Cost benefit analysis

4.9 Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) unless, in accordance with section 138L, we believe that there will be no increase in costs or that the increase will be of minimal significance. Section 138I also requires us to publish an estimate of costs and benefits unless these cannot be reasonably estimated or it is not reasonably practicable to estimate them.

4.10 We think that our proposed changes will either result in no cost increases or increases of minimal significance to firms. Some firms may choose to remove the benchmark wording that they have included in purely administrative communications, although no one is obliged to do so. The costs associated with this are likely to be incurred by firms once and will not be recurring. This means that over the longer-term, the costs faced by firms should reduce as fewer documents will be required to include the additional wording.

4.11 We think that consumers will benefit from these proposals as communications containing benchmark information should be more appropriate and will help them to make better informed investment decisions. The proposals may help to reduce over-communication, and will potentially prevent confusion where the inclusion of benchmark information sits oddly with the rest of the information being communicated.

Q4.3: **Do you agree with our assessment of the costs and benefits of the proposals?**

Compatibility statement

4.12 When consulting on new rules, we are required by section 138I(2) FSMA to explain why we believe that making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and we must have regard to the regulatory principles in section 3B FSMA. We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.

4.13 These proposals advance the consumer protection objective by ensuring that UK investors receive clear and helpful information to make better-informed decisions. The proposals will also advance the consumer protection objective by reducing potential confusion caused by over-communication.

4.14 We have had regard to the regulatory principles in section 3B FSMA and consider the most relevant to be in section 3B(1)(b). In broad terms, this is the principle that a burden which is imposed on a person should be proportionate to the benefits which are expected to result from the imposition of the burden. We consider that by amending the application of the rules as described above the burden on firms when producing purely administrative communications will be reduced without excluding communications where the provision of benchmark information remains important to investors.

Impact on mutual societies

4.15 The proposed rules and guidance do not apply to mutual societies.

Equality and diversity

4.16 Having considered the equality and diversity issues that may arise from the proposed amendments in this chapter, we do not think they will 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. However, we welcome comments on any equality and diversity issues respondents believe may arise. We will review our assessment prior to publishing final rules.

Q4.4: **Do you agree with our assessment of the equality and diversity issues arising from the proposals?**

5 Changes to the minimum levels of professional indemnity insurance cover

Introduction

5.1 We propose to amend certain provisions in the Handbook that reference the Insurance Distribution Directive (IDD) minimum levels (limits of indemnity) of professional indemnity insurance (PII) cover. These changes are necessary to ensure that they are in line with IDD revised minimum levels of PII cover and that the minimum levels move in step with increases in consumer inflation. Ensuring firms hold appropriate PII is important to protect both consumers and firms, by providing a source other than a firm's capital from which redress liabilities may be met.

5.2 In recognising how important PII is, we recognise that some firms have faced increasing costs and complexity in securing PII cover in recent years. In our recent Call for Input: The Consumer Investments Market, we signalled our desire to discuss the type and amount of PII advisers are required to have. In contrast, in this chapter, we focus only on the specific and limited set of changes we are scheduled to make to increase minimum levels of PII cover. We would encourage firms to respond to the Call for Input by 15 December 2020 with any relevant information or wider concerns that they may have about our approach to PII more generally.

Summary of proposals

5.3 Article 10 of the IDD requires insurance and reinsurance intermediaries to hold PII or some other comparable guarantee against liability arising from professional negligence. Our implementation of the IDD, and its predecessor the Insurance Mediation Directive (IMD), meant revisions were made to parts of the Handbook to reflect the EU directive requirements.

5.4 Firms within the scope of the IDD are required to hold minimum levels of PII cover and these limits are reviewed periodically by the European Insurance and Occupational Pensions Authority (EIOPA) and revised by the EU Commission via regulatory technical standards. The latest review of these limits, as part of the 5-year review cycle, was concluded towards the end of 2019. Commission Delegated Regulation (EU) 2019/1935 (the "Regulation") amending the base euro amounts for PII, was published in the Official Journal of the EU on 22 November 2019.

5.5 The minimum limits of indemnity for the IDD have been amended as follows:

- for a single claim against the firm, the limit has been increased from €1,250,000 to €1,300,380; and
- the total aggregate of claims against a firm, the limit has increased from €1,850,000 to €1,924,560.

5.6 The benefit of adjusting the PII limits is to ensure that consumers will not see the real value of any claims above the indemnity limits being eroded by inflation over time. This is important given that the prices paid for products and any subsequent compensation made to consumers will be based on market prices which incorporate the impact of inflation. As the UK remains subject to EU obligations until the end of 2020, we need to amend references to these limits in the Handbook that are derived from the IDD in accordance with the Regulation. The revised limits should have been applied from 12 June 2020, but we delayed our consultation on these changes to avoid adding additional regulatory costs while firms were dealing with challenges arising from the Covid-19 pandemic.

5.7 References to the IDD minimum limits of indemnity for PII cover appear in three prudential sourcebooks:

1. Chapter 3 of the Prudential Sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU 3);
2. Chapter 9 of the Interim Prudential Sourcebook for Investment Firms (IPRU-INV 9); and
3. Chapter 13 of the Interim Prudential Sourcebook for Investment Firms (IPRU-INV 13).

5.8 The instrument in Appendix 5 identifies the specific provisions we propose to amend so that the minimum limits of indemnity for PII are increased in line with inflation.

5.9 We recognise that higher limits of indemnity could lead to higher premiums for some firms. However, this would only be the case if the limit of indemnity under a firm's existing PII policy was below the revised limit of indemnity and the firm needed to secure a higher limit of indemnity to meet the revised minimum levels. Moreover, some insurers only offer PII cover at limits of indemnity in certain increments and firms with existing PII policies may already have limits above the revised minimum levels.

5.10 This increase will potentially benefit some firms, as the revised limits are intended to provide greater protection against the inflationary impact upon the potential liabilities arising from claims that firms may face. Consumers will also benefit as firms should be in a better position to pay redress liabilities where appropriate.

Q5.1: Do you agree with the proposed changes to the minimum levels of professional indemnity insurance (PII) cover?

Cost benefit analysis

5.11 We do not consider the proposed changes to the minimum limits of indemnity warrants a detailed cost and benefit analysis. While the UK remains subject to EU obligations until the end of 2020, we are required to amend references to these limits in the Handbook that are derived from the IDD in accordance with the Regulation. All firms within the scope of the IDD would be affected by the proposed changes to the minimum levels of PII cover. Without access to insurers' underwriting standards, rating schedules and their risk appetite it is difficult to ascertain the precise impact that the change in the limits may have in terms of the cost of PII for firms. Nevertheless, we expect that the impact to be limited for several reasons:

1. **Required limits already tend to be higher**

   For all insurance and reinsurance intermediaries subject to MIPRU 3, our requirements consider the firm's annual income to determine the minimum limit of indemnity that would be required. Hence, for many firms the minimum level of PII cover would be above the revised IDD limits.

2. **Represents only a minor change in the minimum limits of indemnity**

   Changes to the existing minimum limits represent only a marginal change in the limits to reflect changes to the European index of consumer prices. With respect to the aggregate limit of the indemnity, it represents an increase of €74,560 or approximately 4%. In the case of a single claim, it represents an increase of €50,380 or approximately 4%.

3. **PII purchased by firms generally above minimum limits**

   Most firms purchase PII cover above the required minimum limits of indemnity as they seek an appropriate level of cover to provide protection against claims that firms may face based upon their activities and commensurate with their risk profile.

4. **Exchange rate buffer**

   In most cases, firms purchase PII cover where the limits of indemnity are denominated in sterling. Firms are required to ensure that the cover is sufficient to meet the base euro amount in accordance with the IDD derived minimum levels. Therefore, firms would purchase PII cover with a limit of indemnity that is higher than the required equivalent euro amount to reflect exchange rate fluctuations. By factoring in exchange rate movements, firms are likely to have PII in place that is already above the revised minimum limits in accordance with the Regulation.

5.12 Amending the minimum levels of PII cover in accordance with the Regulation is expected to bring benefits as firms will have greater insurance protection for their activities where it could expose the firm to liabilities. Consumers will benefit as firms will be in a better position to pay redress liabilities where appropriate.

Compatibility statement

5.13 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. Our strategic objective is to ensure that the relevant markets work well. To advance our strategic objective we have three operational objectives. These are to secure an appropriate degree of protection for consumers, to protect and enhance the integrity of the UK financial system, and to promote effective competition in the interests of consumers.

5.14 The proposed changes set out in this chapter are primarily intended to advance the consumer protection objective and ensure that the relevant markets function well.

Equality and diversity

5.15 Having considered the equality and diversity issues that may arise from the proposed amendments in this chapter, we do not think they will 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. However, we welcome comments on any equality and diversity issues respondents believe may arise. We will review our assessment prior to publishing final rules.

6 Cancellation of permission application form in SUP 6 Annex 6

Introduction

6.1 This chapter proposes amendments to the Cancellation of permission application form in SUP 6 Annex 6. These changes will ensure the form is aligned to the Connect online version. We are also proposing some additional questions to minimise the need to go back to the applicant for further information.

6.2 The changes will be of interest to firms seeking to apply for cancellation or for firms that help when financial firms enter liquidation.

6.3 The updated form can be found in Appendix 6.

Summary of proposals

6.4 In summary, the proposed form amendments include the following:

1. Re-formatting of the form;
2. Re-ordering of the form to align it to the Connect form where possible;
3. Additional questions that are captured in the Connect online form but not the paper form;
4. Additional questions that will be added to the handbook version and the Connect online form;
5. Removal of the Pensions and FSAVC pension questions; and
6. Updated Declaration to align it to the Connect online form.

6.5 The new additional questions are aimed primarily at Consumer Credit, Investment and Home Finance firms but other changes will apply to all firms. Adding these additional questions to the application form should reduce the need to go back to the applicant (as long as complete answers are given) and could speed up the cancellation process.

Q6.6: Do you have any comments on the proposed amendments to the Cancellation of permission application form in SUP 6 Annex 6?

Cost benefit analysis

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

of minimal significance. This proposal will not affect the time taken to complete the application as we would ask for these details after the application has been submitted. The proposed changes will not have an impact on mutual societies.

Compatibility statement

6.7 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 our operational objectives.

6.8 These proposals are intended to increase the effectiveness of the Cancellation application form to allow us to consider applications more efficiently. It will help us understand from the outset, amongst other things, how the cancelling firm has considered consumers and how their business will be closed and, if applicable, transferred appropriately. It should also allow us greater insight into the reasons that firms cancel, highlighting trends and issues that could then be taken into account in proactive work with regulated firms at different stages of their lifecycle.

Equality and diversity

6.9 Having considered the equality and diversity issues that may arise from the proposed amendments in this chapter, we do not think they will 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. The proposed changes will enable the applicant firms to provide the information we need to assess the application for Cancellation from the outset. We do not foresee that any group of firms will experience a negative impact of these changes being made. However, we welcome comments on any equality and diversity issues respondents believe may arise. We will review our assessment prior to publishing final rules.

7 Transposing Article 1(16) of the Bank Recovery and Resolution Directive II ((EU) 2019/879) into FCA rules.

Introduction

7.1 The Bank Recovery and Resolution Directive II ((EU) 2019/879) (BRRD II) amends the 2014 Bank Recovery and Resolution Directive (2014/59/EU) (BRRD). BRRD II entered into force on 27 June 2019 with an implementation deadline of 28 December 2020.

7.2 The UK left the EU on 31 January 2020 with a Withdrawal Agreement. However, the UK has entered into a transition period which operates until 31 December 2020 (also known as Implementation Period Completion Day (IPCD)). During the transition period, EU law continues to apply in the UK. We are working with the government to transpose into UK law all new EU legislation that takes effect before the end of the transition period, including BRRDII.

7.3 Her Majesty's Treasury (the Treasury) will transpose BRRD II through secondary legislation and have set out their approach in the response to their consultation which closed on 11 August 2020. In their response, the Treasury confirmed that the FCA will transpose Article 1(16) of BRRD II into FCA rules.

7.4 The Treasury's response document also explains that some of the requirements in BRRD II will come into effect on 28 December 2020, but then cease to have effect in the UK from 1 January 2021. To help regulated firms understand how the requirements will affect them, we intend to provide further information on the FCA website about the extent to which they may be relevant (for a temporary period, at least) to our regulated firms, ahead of 28 December 2020.

7.5 This CP sets out our proposed approach to the transposition of Article 1(16). This inserts new Article 44a to the BRRD and places restrictions on the sale of subordinated eligible liabilities (SELs) to retail clients. We expect to publish the final rules in Q2/3 2021 and for them to come into force in Q3/4 2021. These new rules will apply to SELs issued on or after the date the new rules take effect.

Summary of proposals

Scope

7.6 For the purposes of implementing Article 44a BRRDII, we have made the new rules applicable to all firms (including those subject to the temporary permissions regime or the financial services contracts regime).

7.7 The European Commission published a notice relating to the interpretation of certain legal provisions of the revised bank resolution framework in June 2020. This notice set out the Commission's view that "sellers" for the purposes of Article 44a BRRDII included:

- Investment firms in the meaning of Article 4(1)(1) MiFID
- Credit institutions
- UCITS management companies
- AIFM that provide investment services or perform investment activities which lead to the transfer to retail clients of a SELs

7.8 We agree that all these entities are likely to be sellers, but note that the language of BRRD II does not restrict its applicability solely to those entities. We have therefore chosen to ensure it is applicable more widely.

Q7.1: Do you agree with our interpretation of 'sellers' in relation to Article 44a BRRDII?

Proposals

7.9 Subordinated eligible liabilities is an umbrella term for instruments classified as total loss-absorbing capacity (TLAC) and minimum requirement for own funds and eligible liabilities (MREL). Subordinated liabilities were introduced to build a solvency buffer capable of absorbing the losses of a financial institution in case it enters resolution.

7.10 For the purposes of transposing the requirements set out in Article 44a into FCA rules, we have used the term "restricted eligible liabilities" to refer to subordinated eligible liabilities.

7.11 Article 1(16) of BRRDII introduces restrictions on the sale of SELs to retail clients and sets out certain conditions that sellers will need to meet:

- Sellers must perform a suitability test, in accordance with Article 25(2) of the Markets in Financial Instruments Directive II (MiFID II), and be satisfied that the liabilities are suitable for the retail client. The seller must then document this suitability.
- Sellers must also ensure, if the retail client's financial instrument portfolio does not exceed EUR 500,000 at the time of the purchase, that the client does not invest an aggregate amount exceeding 10% of the portfolio in eligible liabilities, and that the initial investment in these liabilities is at least EUR 10,000.

7.12 Our rules in the Conduct of Business sourcebook, COBS 9A.2, apply suitability requirements to MiFID and insurance-based investment products. Therefore, in order to transpose the suitability requirements under Article 1 (16) of BRRDII, we are proposing to apply our rules in COBS 9A.2 to non-advised sales of SELs. We believe applying our rules in this way achieves the objectives required in transposing Article 1 (16) of BRRDII.

7.13 In line with the directive requirement, we are also proposing to apply the rules set out in COBS 9A.3 and require that Sellers document the outcomes of the suitability assessments in relation to the sale of SELs to retail investors.

Q7.2: Do you agree with the proposal to apply COBS 9A.2 rules on suitability requirements and COBS 9A.3 on documenting suitability assessments to sales of SELs?

7.14 In line with the directive requirement, we will introduce new rules that will require Sellers to ensure that if the retail investor has a financial instrument portfolio not exceeding EUR 500,000 at the time of the purchase, that the client does not invest an aggregate amount exceeding 10% of the portfolio in SELs, and that investment in these SELs is at least EUR 10,000.

Q7.3: Do you agree with our proposals to restrict retail investors from investing more than 10% of their portfolio in SELs and require a minimum investment amount of EUR 10,000 when retail investors are purchasing SELs?

Areas of discretion

7.15 Article 44a allows for three areas of discretion when transposing. We have opted not to take up any of these discretions. Our reasons for not taking up these discretions are explained in the following sections.

Discretion 1: Extending suitability tests to own funds and bail-inable liabilities

7.16 Article 44a allows us to extend the suitability tests and restrictions set out in our proposals to sellers of other instruments qualifying as own funds or bail-inable liabilities.

7.17 We currently have no information to suggest own funds and bail-inable liabilities are a source of harm to retail investors.

7.18 However, we will continue to monitor the market and we will consider extending restrictions to own funds and bail-inable liabilities where these products pose a material risk to consumers.

Q7.4: Do you agree with our proposal not extend our proposals on the sale of SELs to own funds and bail-inable liabilities?

Discretion 2: Setting a minimum investment denomination of EUR 50,000

7.19 Article 44a allows us to set a minimum investment denomination of EUR 50,000 or more as an alternative to (rather than in addition to) the restrictions set out in our proposals. We have opted not to take up this discretion.

7.20 We believe our proposals offer greater protection to retail investors by placing responsibility on Sellers in the form of suitability assessments. As a first requirement, suitability assessments should help reduce the number of retail investors accessing SELs where these may not be products which are appropriate for their needs.

7.21 We are proposing that retail investors can invest no more than 10% of their portfolio in SELs. We are also imposing a minimum EUR 10,000 investment for SELs. Together, our proposals will effectively ban the sale SELs to retail investors with assets less than EUR 100,000.

7.22 Additionally, our proposals mean that retail investors will not be able to slowly build up their holding of SELs. For example, a retail investor with EUR 150,000 assets could only invest a maximum of EUR 15,000 in SELs. Assuming an initial investment on the part of this investor of EUR 15,000, no additional purchases could be made until their assets were valued at 250k. In this example, investment at any point below 250k wouldn't work

because of the requirement to purchase in EUR 10,000 increments and at a maximum of 10% asset value.

7.23 We are also concerned that raising the minimum denomination could lead to more potential for harm to retail investors. For example, under this discretion, a retail investor with EUR 150,000 assets could purchase 3 units of SELs at the EUR 50,000 minimum, representing 100% of their total assets. Such a scenario should not be possible under our proposals.

Q7.5: **Do you agree with our proposal not to act on this discretion of raising the minimum investment denomination to EUR 50,000 or more, in place of the other restrictions?**

Discretion 3: Applying only a minimum investment amount of EUR 10,000 depending on the size of the SEL market

7.24 Where the total asset value of SELs is lower than EUR 50 billion, Article 44a allows the option of requiring only that the initial investment amount invested in one or more liabilities is at least EUR 10,000, and not applying the other restrictions.

7.25 We believe this area of discretion is not applicable to the UK as it is designed for smaller and less liquid markets.

7.26 Our assessment and that of the Treasury and the Bank of England suggests the market for SELs in the UK exceeds the EUR 50 billion cap for which this discretion can be exercised.

Q7.6: **Do you agree with our assessment that this area of discretion is not applicable to the UK?**

7.27 We would welcome views on whether our proposed approach and rules to transpose Article 44a BRRDII gives rise to any practical or operational difficulties for Sellers.

Q7.7: **Do you have any comments on practical and operational difficulties that may arise from our proposed approach and rules?**

Cost benefit analysis

7.28 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 an analysis of the benefits' that will arise if the proposed rules are made. It also requires us to include estimates of those costs and those benefits, unless these cannot reasonably be estimated or it is not reasonably practicable to produce an estimate.

Direct costs

7.29 The Treasury ran a public consultation on the transposition of BRRDII, including Article 44a, in June-August 2020. The Treasury also conducted an impact assessment, and

the net impact of the Directive on business is considered to be less than £5m. In relation to Article 44(a), discussions that have taken place with industry suggested that there will be no measurable increase in funding costs for UK firms as a result of introducing these restrictions through FCA rules.

7.30 There may be some ordinary retail investors who lose access to SELs as a result of these proposals. Were this to significantly reduce the number of buyers of SELs, there may be a reduction in capital raising for Sellers. We do not regard this as a significant risk, however, as there is little evidence that SELs are being sold directly to retail investors in significant quantities.

7.31 We expect the main costs firms will face from our proposals to be in relation to training staff on suitability requirements and record-keeping if they wish to sell SELs to retail customers.

7.32 There will be training costs for firms to train staff in relation to suitability tests. However, firms are already subject to the client's best interest rule (COBS 2.1.1R) as well as the suitability (COBS 9A) and appropriateness (COBS 10A) rules. Therefore, we estimate low marginal costs in relation to training staff.

7.33 Firms are already subject to record-keeping requirements in SYSC, and in COBS in relation to suitability assessments. Therefore, we estimate low marginal costs to meeting the record-keeping requirements set out as part of our rules.

7.34 Sellers may also face indirect costs if they are required to make changes to literature.

Benefits

7.35 The main benefit that we anticipate arise for retail investors. These benefits relate to the avoidance of potential capital losses for those consumers for whom the instruments are unlikely to be suitable, particularly consumers of limited means for whom capital losses could cause particularly serious detriment.

7.36 Capital losses described in paragraph 32 do not amount to detriment for retail investors who understand the risks and are willing and able to accept the possible loss of capital that may come from investing in SELs.

Q7.8: Do you agree with our cost-benefit analysis?

Impact on mutual societies

7.37 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.

7.38 We are satisfied that the impact of our proposals on mutual societies, such as building societies, are not significantly different to that on other authorised persons.

Compatibility statement

7.39 Our proposals are principally designed to advance our objectives of securing an appropriate degree of consumer protection and also help advance our integrity objective.

7.40 We consider that our proposals secure an appropriate degree of consumer protection by preventing the distribution of certain investments to consumers for whom they are unlikely to be suitable. The proposals help advance our integrity objective by helping remove impediments to the resolution.

Equality and diversity

7.41 Having considered the equality and diversity issues that may arise from the proposed amendments in this chapter, we do not think they will 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. However, we welcome comments on any equality and diversity issues respondents believe may arise. We will review our assessment prior to publishing final rules.

8 FCA recognition of the Global Precious Metals Code

Introduction

8.1 We have established a process and criteria for recognising industry codes for unregulated financial markets and activities. 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 the us to have their codes formally recognised.

8.2 We are seeking views on whether or not we should recognise the Global Precious Metals Code (the GPMC) which we consider meets our recognition criteria.

8.3 We have provided guidance in our Handbook (see DEPP 6.2.1G(4A)) that behaviour that is in line with an FCA recognised industry code will tend to indicate compliance, in carrying on unregulated activities, with applicable FCA rules. Those are rules that reference proper standards of market conduct such as Principle 5 (market conduct), and for individuals subject to the individual conduct rules under COCON rule 5 of those rules (see COCON 2.1.5R). Following a recognised code will be one way, but not the only way, to discharge that obligation and may be applied proportionately to the activities undertaken.

Summary of proposals

Global Precious Metals Code

8.4 We are consulting on whether the Global Precious Metals Code meets our recognition criteria, and whether we should recognise the GPMC.

8.5 The GPMC was produced by the London Bullion Market Association (LBMA), supported by market participants on the LBMA's Precious Metals Code Working Group.

8.6 The GPMC responds to recommendations in the Fair and Effective Markets Review (FEMR) for common global high-level standards for trading practices across fixed income, currency and commodity markets. The GPMC has replaced the Annex on dealings in bullion in the Non-Investment Products (NIPs) Code in the UK.

8.7 The GPMC promotes a robust, fair, liquid, open, and appropriately transparent market. It enables a diverse set of market participants, supported by resilient infrastructure, to effectively transact at competitive prices. The market should reflect available market information, and activity should conform to acceptable standards of behaviour.

8.8 The GPMC applies to all market participants that engage in the precious metals markets, including sell-side and buy-side entities, providers of electronic trading platforms, and other entities providing brokerage, execution and settlement services.

8.9 The GPMC consists of four leading principles: ethics, governance, information sharing, and business conduct. The GPMC illustrates examples of conduct that it aims to encourage and reinforce, and outlines examples of conduct that should be avoided.

8.10 Our analysis of the GPMC against the recognition criteria is set out in Table 1.

Table 1: Analysis of Global Precious Metals Code against FCA Code Recognition Criteria

8.11

Recognition Criteria	FCA Assessment
Advances the FCA strategic objective of ensuring that the relevant markets function well and advances one or more of FCA operational objectives.	The GPMC sets out best practice to support a fair, transparent, and effective market in precious metals. It will apply to all members of the LBMA, which covers a significant proportion of precious metals market activity. Setting out clearly the expected trading practices should support the integrity of this market and provide protection to both market participants and their clients, through knowledge of the structure and behaviours of the market.
Focuses on market activities and issues not already covered by binding regulatory rules	The GPMC is principles-based, and focuses on market activities within the precious metals market. The issues it addresses relate to the way in which client and proprietary business is traded in this market. In applying to precious metals market, the GPMC applies to an asset class that is outside the FCA's regulatory perimeter. These activities are not covered by binding regulatory rules, except where precious metals activity is part of the business of an FCA regulated firm. The GPMC is intended to complement existing regulation, as would apply to regulated market participants. The GPMC specifically states that it does not impose legal or regulatory obligations nor is it a substitute for regulation. Nor is it intended to bind the discretion of regulatory authorities or the application of relevant laws.
Represents an effort to define, set or raise standards	The GPMC has been developed to provide a common set of guidelines to promote the integrity of the precious metals market. The Code raises the standards from the previous NIPs Code, as well as giving the material on precious metals greater prominence. The GPMC advises of the need for each member of the LBMA to apply its requirements as appropriate to that member's business activities, whilst noting this does not mean different standards for different institutions. In its approach, the GPMC is not intended to be an operational manual, but to be a reference for market participants on how business is conducted in this market.
Has been subject to scrutiny allowing for alternative views to be expressed and considered	The LBMA engaged with a wide range of stakeholders in the precious metals market to produce the GPMC. Feedback from stakeholders to the LBMA emphasised the importance of alignment with the previously published Global FX Code, whilst adapting the GPMC to reflect distinct practices in the precious metals markets.

Is publicly available and free for all parties who wish to use it	The GMPC is publicly available on the LBMA website: www.lbma.org.uk/downloads/PMC2018.pdf There is no charge for downloading a copy of the GMPC, and there is no requirement for registration or other provision of personal/ corporate data to the LBMA. The LBMA offers paid-for training on the GPMC to its members and other market participants who wish to conduct training on the GPMC in more depth.
Does not condone any practices the FCA has previously objected to, or which the FCA would expect not to condone.	No, the GPMC does not conflict with previous FCA requirements or expectations for this market.
Aims to be widely supported, clear, practical and unambiguous articulation of the proper standard of market conduct	The GPMC was written by members of the LBMA, and after finalisation has become a mandatory element of LBMA membership. As such, it has wide support across the firms participating in the precious metals market. The GPMC has been based on the Global FX Code with amendments in language which are appropriate to the precious metals markets, using specific terminology where relevant. The precious metals market is predominantly a principal-based spot market. In these characteristics, and in many of its participants, the precious metals market is very similar to the FX market to which the Global FX Code applies. The GPMC has also adopted a more plain English style in setting out derived material, including in the Glossary of Terms. It includes an additional Annex of definitions to explain terms specific to the precious metals market. The GPMC contains guidance on good practice that addresses areas of misconduct which had been previously observed in the FX markets. This is supported by illustrative examples of good and bad practice, modified to make them relevant to the precious metals market. The use of the GPMC is not limited to those products over which the LBMA has oversight of the markets, nor to market participants who are LBMA members. The LBMA welcomes any other market participant who wishes to sign a statement of commitment to comply with the GPMC. The use of the GPMC is not limited to the UK, and the LBMA is open to implementation in other jurisdictions.
Aims to set standards broadly comparable to those that exist in other financial markets	The GPMC has been produced from the source material of the Global FX Code, adapted and added to as appropriate to include the specifics of terminology and practice used in the precious metals market. The Global FX Code on which the GPMC is based had previously been recognised by the FCA as complying with the FCA's standards for code recognition, and has been widely adopted by market participants. In particular, market participants such as investment banks who are active in both FX and precious metals markets would be expected to set comparable levels of for compliance with both relevant codes within their organisations.
Aims to encapsulate proper standards of market conduct among knowledgeable, experienced and reasonable market participants	The GPMC was drafted, discussed and agreed by experienced and knowledgeable market practitioners from the LBMA's Precious Metals Code Working Group. The Code was endorsed, prior to publication, by the LBMA Board which is comprised of representatives of companies across the range of LBMA members, supplemented with non-executive directors. The LBMA Board is chaired by an independent non-executive director.

Q8.1: **Do you have any comments on our analysis that the Global Precious Metals Code meets the FCA's recognition criteria?**

Q8.2: **Do you think the Global Precious Metals Code should be recognised by the FCA?**

Q8.3: **If you do not think the FCA should recognise the Global Precious Metals Code please explain why.**

Cost benefit analysis

8.12 The FCA is not required to conduct a cost benefit analysis in respect of consultation on the proposals to recognise industry codes of conduct.

Compatibility statement

8.13 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.

8.14 We consider the proposal to recognise the Global Precious Metals Code is compatible with the FCA's strategic objective of ensuring that the relevant markets function well. This is because the GPMC raises existing standards of conduct within the relevant market. The FCA's Codes Recognition Criteria provides a framework to formally recognise industry codes covering certain unregulated activities. The purpose of this policy is to encourage take up of conduct standards in unregulated markets that support our statutory objectives. We also consider that our proposals advance the FCA's operational objectives for securing an appropriate degree of protection for consumers, and for protecting and enhancing the integrity of the UK financial system.

Equality and diversity

8.15 Having considered the equality and diversity issues that may arise from the proposals in this chapter, we do not think they will 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. However, we welcome comments on any equality and diversity issues respondents believe may arise.

Annex 1
Abbreviations used in this paper

AIFM	Alternative Investment Fund Managers
AMMS	Asset management market study
BIPRU	Prudential Sourcebook for BIPRU firms
BRRD	Bank Recovery and Resolution Directive
BRRD II	Bank Recovery and Resolution Directive II
CBA	Cost benefit analysis
CIS	Collective investment scheme
COBS	Conduct of Business Sourcebook
COCON	Code of Conduct sourcebook
COLL	Collective Investment Schemes sourcebook
CP	Consultation paper
CRD	Capital Requirements Directive
DEPP	Decision Procedure and Penalties Manual
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
FCA	Financial Conduct Authority
FEMR	Fair and Effective Markets Review
FS Register	Financial Services Register
FSAVC	Free standing additional voluntary contributions
FSMA	Financial Services and Markets Act 2000
FUND	Investment Funds sourcebook
GPMC	Global Precious Metals Code

IDD	Insurance Distribution Directive
IFPRU	Prudential Sourcebook for Investment Firms
IMD	Insurance Mediation Directive
IPRU-INV	Interim Prudential Sourcebook for Investment Firms
LBMA	London Bullion Market Association
MiFID II	Markets in Financial Instruments Directive II
MIPRU	Prudential Sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries
MREL	Minimum requirement for own funds and eligible liabilities
NIPs	Non-Investment Products
OEIC	Open-ended investment company
PII	Professional indemnity insurance
PR	Prescribed Responsibility
PRA	Prudential Regulation Authority
PS	Policy Statement
SELs	Subordinated eligible liabilities
SM&CR	Senior Managers & Certification Regime
SMF	Senior Management Function
TLAC	Total loss-absorbing capacity
UCITS	Undertaking for collective investment in transferable securities
UCITs	Undertakings for the Collective Investment in Transferable Securities
Withdrawal Act	European Union (Withdrawal Agreement) Act 2020

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

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

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

Appendix 1
List of questions

Q2.1: Do you agree with our proposals to clarify our expectations for firms managing Senior Manager absences of more than 12 weeks?

Q3.1: Do you have any comments on our proposals concerning UK collective investment schemes?

Q3.2: Do you have any comments on our proposals for EEA UCITS in the temporary marketing permissions regime?

Q3.3: Do you agree with our proposals for schemes individually recognised under s.272?

Q3.4: Are you aware of any OEIC or s.272-recognised CIS that continues to issue bearer certificates in the UK? If so, what costs will the OEIC or CIS incur in ceasing to issue them?

Q4.1: Do you agree that application of the existing rules in COBS 4.5.12R to COBS 4.5.15R is too broad?

Q4.2: Do you agree that the proposed changes will lead to the appropriate level of benchmark disclosure for investors in funds? If not, why not?

Q4.3: Do you agree with our assessment of the costs and benefits of the proposals?

Q4.4: Do you agree with our assessment of the equality and diversity issues arising from the proposals?

Q5.1: Do you agree with the proposed changes to the minimum levels of professional indemnity insurance (PII) cover?

Q6.6: Do you have any comments on the proposed amendments to the Cancellation of permission application form in SUP 6 Annex 6?

Q7.1: Do you agree with our interpretation of 'sellers' in relation to Article 44a BRRDII?

Q7.2: Do you agree with the proposal to apply COBS 9A rules on suitability requirements and COBS 9.5 on documenting suitability assessments to sales of SELs?

Q7.3: Do you agree with our proposals restrict retail investors from investing more than 10% of their portfolio in SELs and requiring a minimum investment amount of EUR 10,000 when purchasing SELs?

Q7.4: Do you agree with our proposal not extend our proposals on the sale of SELs to own funds and bail-inable liabilities?

Q7.5: Do you agree with our proposal not to act on this discretion of raising the minimum investment denomination to EUR 50,000?

Q7.6: Do you agree with our assessment that this area of discretion is not applicable to the UK?

Q 7.7: Do you have any comments on practical and operational difficulties that may arise from our proposed approach and rules?

Q7.8: Do you agree with our cost-benefit analysis?

Q8.1: Do you have any comments on our analysis that the Global Precious Metals Code meets the FCA's recognition criteria?

Q8.2: Do you think the Global Precious Metals Code should be recognised by the FCA?

Q8.3: If you do not think the FCA should recognise the Global Precious Metals Code please explain why.

Appendix 2
Draft Handbook text
Clarifying our expectations for temporary, long-term absences

INDIVIDUAL ACCOUNTABILITY (MISCELLANEOUS AMENDMENTS) INSTRUMENT 2021

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of:

(1) the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(a) section 59 (Approval for particular arrangements);
(b) section 60 (Applications for approval);
(c) section 62A (Changes in responsibilities of senior managers);
(d) section 137A (The FCA's general rules);
(e) section 137T (General supplementary powers);
(f) section 139A (Power of the FCA to give guidance); and
(g) section 347 (The record of authorised persons etc).

(2) the other rule and guidance-making powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions sourcebook (GEN) of the FCA's Handbook.

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

Commencement

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

Amendments to the Handbook

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

Citation

E. This instrument may be cited as the Individual Accountability (Miscellaneous Amendments) Instrument 2021.

By order of the Board
[*date*]

Annex

Amendments to the Supervision manual (SUP)

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

10A FCA Approved Persons

…

10A.14 Changes to an FCA-approved person's details

…

Moving within a firm

…

10A.14.4	D	(1)	A *firm* must use Form E where an *approved person* is both permanently ceasing to perform one or more *controlled functions* and needs to be approved in relation to one or more *FCA controlled functions* within the same *firm* or *group*.
		…	
10A.14.4AB	G	(1)	A *firm* should only use a Form E when the *candidate* is ceasing to perform a *controlled function* in a way that means that the *candidate* will cease to be approved for that *controlled function*.
		(2)	See *SUP* 10A.14.8AG to *SUP* 10A.14.8DG for the difference between temporarily ceasing to perform a *controlled function* (which means that approval for the performance of that *controlled function* continues) and permanently ceasing to perform a *controlled function* (which means that approval for the performance of that *controlled function* lapses).
		(3)	(1) and (2) are the reason that *SUP* 10A.14.4D refers to permanently ceasing to perform a *controlled function*.

…

Ceasing to perform an FCA-controlled function

10A.14.8	R	(1)	A *firm* must submit to the *FCA* a completed Form C (*SUP* 10C Annex 5R) no later than ten business days after an *FCA-approved person* permanently ceases to perform an *FCA controlled function*.

…

10A.14.8A G Permanently ceasing to perform an *FCA controlled function* means that *person* no longer has approval to perform that function. Permanent cessation does not mean that *person* cannot return to perform that function, rather that if they do they will need fresh approval.

10A.14.8B G Examples of when an *FCA-approved person* will have permanently ceased to perform an *FCA controlled function*, include moving within a *firm* (see *SUP* 10A.14.1G to *SUP* 10A.14.5G), moving between *firms* (see *SUP* 10A.14.6G), resignation, dismissal, retirement, and death.

10A.14.8C G In cases of temporary absence (for example sick leave or parental leave) where the *firm* is keeping the same role open for an *FCA-approved person*, approval to perform the relevant *FCA controlled function* will continue and therefore the *firm* will not be required to submit a Form C. See *SUP* 10A.14.8HG for *guidance* on interim appointments.

10A.14.8D G As a result, an *FCA-approved person* who returns to perform the same *FCA controlled function* following such a temporary absence will not need fresh approval.

10A.14.8E R (1) If an *FCA-approved person* has been absent for more than 12 weeks the *firm* must notify the *FCA* on Form D (*SUP* 10C Annex 6R) within seven *business days* of the end of the 12-week period.

(2) It must also notify the *FCA* on Form D (*SUP* 10C Annex 6R) within seven *business days* of their return.

10A.14.8F G Where a *firm* is aware that an *FCA-approved person* will be absent for more than 12 weeks that *firm* can notify the *FCA* prior to the end of the 12-week period.

10A.14.8G G The duty to notify in *SUP* 10A.14.17R continues to apply during a temporary absence.

10A.14.8H G (1) Where an *FCA-approved person* is temporarily absent (see *SUP* 10A.14.8CG) a *firm* may decide to appoint another *person* to perform that *FCA-controlled function* during the interim period.

(2) Unless *SUP* 10A.5.6R (The 12-week rule) applies, the *firm* will be required to make a fresh application for the performance of

the *FCA-controlled function* by a *person* who has been appointed for the interim period (see *SUP* 10A.13 (Application for approval and withdrawing an application for approval) for details).

(3) It will be required to notify the *FCA* under *SUP* 10A.14.8R when the *person* who was appointed for the interim period gives up the role on the return of the *person* who was temporarily absent.

…

10A.14.12 G A *firm* is responsible for notifying the *FCA* if any *FCA-approved person* has permanently ceased to perform an *FCA controlled function* under an arrangement entered into by its *appointed representative* or former *appointed representative* or where any such *FCA-approved person* is temporarily absent.

…

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

…

10C.9 Minimising overlap with the PRA approved persons regime

…

The main rule

10C.9.8 R A *person* (referred to as 'A' in this *rule*) is not performing an *FCA governing function* (referred to as the 'particular' *FCA governing function* in this *rule*) in relation to a *PRA-authorised person* (referred to as 'B' in this *rule*), at a particular time, if:

…

(5) A started to perform the potential *FCA governing function* at, or around the time of, the *PRA* approval in (1) and has continued to perform it up to the time in question (ignoring any occasions on which A has temporarily ceased to perform that function because, for example, of holidays or illness).

…

10C.9.9 G Table: Examples of how the need for dual FCA and PRA approval in relation to PRA-authorised persons is reduced

Example	Whether FCA approval required	Whether PRA approval required	Comments
…			
(10) A is appointed chief risk officer and an executive director. A goes on temporary sick leave. A takes up their old job when A comes back.	No, neither on A's first appointment nor when A comes back from sick leave.	Yes, on A's first appointment.	*SUP* 10C.9.8R still applies on A's return because A does not ~~stop performing either~~ cease to have approval for the *PRA's* chief risk function or permanently cease to perform what would otherwise have been the *executive director function* just because A goes on temporary sick leave.
…			

…

10C.10 Application for approval and withdrawing an application for approval

…

How to apply for approval

…

10C.10.9 D (1) A *firm* must use Form E (*SUP* 10C Annex 7D) where an *approved person*:

(a) is both permanently ceasing to perform one or more *controlled functions*; and

…

…

10C.10.10 G …

10C.10.10A G (1) A *firm* should only use a Form E (SUP 10C Annex 7D) when the *candidate* is ceasing to perform a *controlled function* in a way that means that the *candidate* will cease to be approved for that *controlled function*.

(2) See *SUP* 10C.14.5AG to *SUP* 10C.14.5DG for the difference between temporarily ceasing to perform a *controlled function* (which means that approval for the performance of that *controlled function* continues) and permanently ceasing to perform a *controlled function* (which means that approval for the performance of that *controlled function* lapses).

(3) (1) and (2) are the reason that *SUP* 10C.10.9D refers to permanently ceasing to perform a *controlled function*.

…

10C.11 Statements of Responsibilities

…

Revised statements of responsibilities: Meaning of significant change

10C.11.6 G …

(6B) Where an *FCA-approved SMF manager* goes on a temporary absence of longer than 12 weeks and on their return from that absence (see *SUP* 10C.14.5CG).

…

…

Submitting statements of responsibilities: examples of how the requirements work

…

10.11.19 G

Example	Comments

…	
(16) An *FCA-approved SMF manager* goes on or returns from a temporary absence of longer than 12 weeks.	The firm must submit: (a) Form D (*SUP* 10C Annex 6R); (b) Form J (*SUP* 10C Annex 9D); and (c) an updated *statement of responsibilities* document (*SUP* 10C Annex 10D).
…	

…

10C.14 Changes to an FCA-approved person's details

…

Ceasing to perform an FCA-designated senior management function

10C.14.5 R (1) A *firm* must notify the *FCA* no later than ten *business days* after an *FCA-approved SMF manager* permanently ceases to perform an *FCA-designated senior management function*.

…

10C.14.5A G Permanently ceasing to perform an *FCA-designated senior management function* means that *person* no longer has approval to perform that function. Permanent cessation does not mean that *person* cannot return to perform that function, rather that if they do they will need fresh approval.

10C.14.5B G Examples of when an *FCA-approved SMF manager* will have permanently ceased to perform an *FCA-designated senior management function*, include moving within a *firm* (see *SUP* 10C.14.1G to *SUP* 10C.14.2G), moving between *firms* (see *SUP* 10C.14.3G to *SUP* 10C.14.4G), resignation, dismissal, retirement, and death.

10C.14.5C G In cases of temporary absence (for example sick leave or parental leave) where the *firm* is keeping the same role open for an *FCA-approved SMF manager*, approval to perform the relevant *FCA-designated senior management function* will continue and therefore the *firm* will not be required to submit a Form C (*SUP*

10C Annex 5R). See *SUP* 10C.14.5IG for guidance on interim appointments.

10C.14.5D G As a result, an *FCA-approved SMF manager* who returns to perform the same *FCA-designated senior management function* following such a temporary absence will not need fresh approval.

10C.14.5E R (1) If an *FCA-approved SMF manager* has been absent for more than 12 weeks the *firm* must notify the *FCA* on Form D (*SUP* 10C Annex 6R) within seven *business days* of the end of the 12-week period.

(2) It must also notify the *FCA* on Form D (*SUP* 10C Annex 6R) within seven *business days* of their return.

10C.14.5F G Where a *firm* is aware that an *FCA-approved SMF manager* will be absent for more than 12 weeks that *firm* can notify the *FCA* prior to the end of the 12-week period.

10C.14.5G G The duty to notify in *SUP* 10C.14.18R and the sections of the *Act* listed in *SUP* 10C.14.22R continue to apply during a temporary absence.

10C.14.5H G (1) Under section 62A of the *Act*, a firm must provide the *FCA* with a revised *statement of responsibilities* if there has been any significant change in the responsibilities of an *FCA-approved SMF manager*.

(2) *SUP* 10C.11.6G(6B) explains when a *firm* should submit a revised statement *of responsibilities* for an *FCA-approved SMF manager* who is temporarily absent and that the *firm* should also submit a revised *statement of responsibilities* on their return.

(3) The requirement to submit a revised *statement of responsibilities* is in addition to the requirement to submit a Form D (*SUP* 10C Annex 6R).

10C.14.5I G (1) Where an *FCA-approved SMF manager* is temporarily absent (see *SUP* 10C.14.5CG) a *firm* may decide to appoint another *person* to perform that *FCA-designated senior management function* during the interim period.

(2) Where the *FCA-approved SMF manager* was performing a *FCA required function*, the *firm* will be required to make an interim appointment.

(3) Unless *SUP* 10C.3.13R (The 12-week rule) applies, the *firm* will be required to make a fresh application for the performance of the *FCA-designated senior management function* by the *person* who has been appointed for the interim period (see *SUP* 10C.10 (Application for approval and withdrawing an application for approval). It may be appropriate for the appointment to be time-limited (see *SUP* 10C.12.7G to *SUP* 10C.12.14G (time-limited approvals) for details)).

(4) It will be required to notify the *FCA* under *SUP* 10C.14.5R when the *person* who was appointed for the interim period gives up the role on the return of the *person* who was temporarily absent.

(5) A *firm* should consider what steps it should take in respect of handover procedures in relation to any interim appointment and the return of a *person* who is temporarily absent (see *SYSC* 25.9 (Handover procedures and material)).

…

10C.14.9 G A *firm* is responsible for notifying the *FCA* if any *FCA-approved SMF manager* has permanently ceased to perform an *FCA-designated senior management function* under an arrangement entered into by its contractor or where any such *FCA-approved SMF manager* is temporarily absent.

…

10C Annex 2G Summary of forms and their use in the senior managers regime

10C Annex 2 G

Function	Form	Submission
…		
(6) *Person* permanently ceasing to perform an *FCA-designated senior management function*.	C (unless it should be notified under Form E)	Submitted by the *firm* within ten ~~seven~~ *business days* of *approved person* permanently ceasing to

		perform *controlled function(s)*.
(7) Either: (a) an *FCA-approved SMF* manager's title, name or national insurance number changes; or (b) there is information which may be material to the continuing assessment of an *FCA-approved SMF manager's* fitness and propriety~~.~~; or (c) an *FCA-approved SMF manager* is temporarily absent.	D Form C to be used instead where the *person* is permanently ceasing to perform a *controlled function*.	Submitted by *firm* within seven *business days* of the *firm* becoming aware of the matter or, in the case of (c), within seven *business days* of the end of the 12-week period and on their return.
(8) Firm obliged to notify the *FCA* about an *SMF manager* under: (a) section 63(2A) of the *Act* (Duty to notify regulator of grounds for withdrawal of approval); or (b) [deleted] (c) section 64C of the *Act* (Requirement for relevant authorised persons to notify regulator of disciplinary action).	Form D Form C to be used instead where the *person* is permanently ceasing to perform a *controlled function*.	Submitted by *firm* within seven *business days* of the *firm* becoming aware of the matter. A *firm* should not use Form H as that form only applies to notifications relating to breaches by those who are not *SMF managers*.
…		

BANK OF ENGLAND
PRUDENTIAL REGULATION AUTHORITY

FINANCIAL CONDUCT AUTHORITY

Application number
(for *FCA/PRA* use only)

~~The *FCA* has produced notes which will assist both the *firm* and the *approved person* in answering the questions in this form. Please read these notes, which are available on the *FCA* website at: https://www.handbook.fca.org.uk/handbook/SUP/10C/Annex6.html~~

~~Both the *firm* and the *approved person* will be treated by the *FCA* and *PRA* as having taken these notes into consideration when completing this form.~~ Terms defined in either or both of the *FCA Handbook* or the *PRA Rulebook* are italicised and should be construed accordingly.

Form D Notification - Changes to personal information/application details and conduct breaches/disciplinary action related to conduct

…

2.08	Job title or position	
2.09	Notification of absence/return from absence	
2.~~09~~10	Effective date of change	
2.~~10~~11	Reason for change (not required for 2.09)	

➔ I have supplied further information related to this page in Section 7 YES ☐ NO ☐

…

PRA RULEBOOK: CRR FIRMS, NON CRR FIRMS, SOLVENCY II FIRMS, NON SOLVENCY II FIRMS: SENIOR MANAGERS REGIME APPLICATIONS AND NOTIFICATIONS - TEMPORARY ABSENCE INSTRUMENT 2021

Powers exercised

A. The Prudential Regulation Authority ("PRA") 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 137G (The PRA's general rules);
(2) section 137T (General supplementary powers);
(3) section 59 (Approval for particular arrangements);
(4) section 60 (Applications for approval);
(5) section 62A (Changes to responsibilities of senior managers);
(6) section 64C (Requirement for authorised person to notify regulator of disciplinary action).

B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

Pre-conditions to making

C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

PRA Rulebook: CRR Firms, Non CRR Firms, Solvency Firms, Non Solvency Firms: Senior Managers Regime Applications and Notifications - Temporary Absence Instrument 2021

D. The PRA makes the rules in Annexes to this instrument.

Part	Annex
Senior Managers Regime – Applications and Notifications	A
Insurance - Senior Managers Regime – Applications and Notifications	B
Large Non-Solvency II Firms - Senior Managers Regime – Applications and Notifications	C
Non-Solvency II Firms - Senior Managers Regime – Applications and Notifications	D

Commencement

E. This instrument comes into force on [DATE].

Citation

F. This instrument may be cited as the PRA Rulebook: CRR Firms, Non CRR Firms, Solvency Firms, Non Solvency Firms]: Senior Managers Regime Applications and Notifications - Temporary Absence Instrument 2021.

By order of the Prudential Regulation Committee
[DATE]

Annex A

Amendments to the Senior Managers Regimes – Applications and Notifications Part

In this Annex new text is underlined and deleted text is struck through.

…

5 CEASING TO PERFORM A PRA SENIOR MANAGEMENT FUNCTION

5.1

(1) A *firm* must notify the *PRA* no later than ten *business days* after a *person* permanently ceases to perform a *PRA senior management function*, using:

(a) Form E if a *person* permanently ceases to perform a *PRA senior management function* and the *firm* is also making an application for the same *person* to perform another *PRA senior management function*; and

(b) in all other cases, Form C.

…

6 CHANGE IN DETAILS OR RESPONSIBILITIES RELATING TO PRA APPROVED PERSONS

…

6.1A If a *PRA approved person* has been temporarily absent for more than a 12 week period, the *firm* for which the *person* performs a *PRA senior management function* must notify the *PRA* of:

(1) that absence within seven *business days* of the end of the 12 week period; and

(2) the *PRA approved person*'s return from absence within seven *business days* of the date of their return,

in each case, using Form D.

…

8 FORMS

8.1

…

(5) Form D may be found ~~here~~ here.

…

Annex B

Amendments to the Insurance - Senior Managers Regimes – Applications and Notifications Part

In this Annex new text is underlined and deleted text is struck through.

…

4 CEASING TO PERFORM A PRA SENIOR MANAGEMENT FUNCTION

4.1 A *firm* must notify the *PRA* no later than seven *business days* after a *person* permanently ceases to perform a *PRA senior management function*, using:

(1) Form E if a *person* permanently ceases to perform a *PRA senior management function* and the *firm* is also making an application for the same *person* to perform another *PRA senior management function*; and

(2) in all other cases, Form C.

…

5 CHANGE IN DETAILS RELATING TO PRA SENIOR MANAGEMENT FUNCTION HOLDERS

…

5.1A If a *PRA senior management function holder* has been temporarily absent for more than a 12 week period, the *firm* for which the *person* performs a *PRA senior management function* must notify the *PRA* of:

(1) that absence within seven *business days* of the end of the 12 week period; and

(2) the *PRA senior management function holder*'s return from absence within seven *business days* of the date of their return,

in each case, using Form D.

…

7 FORMS

7.1

…

(5) Form D may be found ~~here~~ here.

…

Annex C

Amendments to the Large Non-Solvency II Firms - Senior Managers Regimes – Applications and Notifications Part

In this Annex new text is underlined and deleted text is struck through.

…

4 CEASING TO PERFORM A PRA SENIOR MANAGEMENT FUNCTION

4.1 A *firm* must notify the *PRA* no later than seven *business days* after a *person* permanently ceases to perform a *PRA senior management function*, using:

(1) Form E if a *person* permanently ceases to perform a *PRA senior management function* and the *firm* is also making an application for the same *person* to perform another *PRA senior management function*; and

(2) in all other cases, Form C.

…

5 CHANGE IN DETAILS RELATING TO PRA SENIOR MANAGEMENT FUNCTION HOLDERS

…

5.1A If a *PRA senior management function holder* has been temporarily absent for more than a 12 week period, the *firm* for which the *person* performs a *PRA senior management function* must notify the *PRA* of:

(1) that absence within seven *business days* of the end of the 12 week period; and

(2) the *PRA senior management function holder*'s return from absence within seven *business days* of the date of their return,

in each case, using Form D.

…

7 FORMS

7.1

…

(5) Form D may be found ~~here~~ here.

…

Annex D

Amendments to the Non-Solvency II Firms - Senior Managers Regimes – Applications and Notifications Part

In this Annex new text is underlined and deleted text is struck through.

…

4 CEASING TO PERFORM A PRA SENIOR MANAGEMENT FUNCTION

4.1 (1) A *firm* must notify the *PRA* no later than seven *business days* after a *person* permanently ceases to perform a *PRA senior management function*, using:

(a) Form E if a *person* permanently ceases to perform a *PRA senior management function* and the *firm* is also making an application for the same *person* to perform another *PRA senior management function*; and

(b) in all other cases, Form C.

…

5 CHANGE IN DETAILS RELATING TO PRA SENIOR MANAGEMENT FUNCTION HOLDERS

…

5.1A If a *PRA senior management function holder* has been temporarily absent for more than a 12 week period, the *firm* for which the *person* performs a *PRA senior management function* must notify the *PRA* of:

(1) that absence within seven *business days* of the end of the 12 week period; and

(2) the *PRA senior management function holder*'s return from absence within seven *business days* of the date of their return,

in each case, using Form D.

…

7 FORMS

7.1

…

(5) Form D may be found ~~here~~ here.

…

Draft amendments to Supervisory Statement 28/15 Strengthening individual accountability in banking

This appendix outlines proposed amendments to SS28/15. Underlining indicates new text.

…

Minimum number of SMFs and proportionality

…

2.9A In accordance with Senior Managers Regime – Applications and Notifications 6, where there is a change in circumstance, the firm must inform the PRA of the change to that person's role.

2.9B Where a firm is keeping open the relevant role for a person (P) while they are on long term leave:

- The PRA does not expect the firm to seek re-approval for P to perform that role on their return.
- The PRA expects the firm to notify us in a Form D that P is on long term leave. The firms will also need to submit a Form J as there will be a significant change in the Statement of Responsibility for P.
- The PRA does not expect to receive such a notification when the person goes on holiday or has a short illness. The PRA does not expect such a notification where the leave is shorter than 12 weeks.
- Another individual can perform that role for the duration of P's leave. This will be necessary where the function is mandatory (see table B above). Subject to the 12 week rule, the interim appointee would need to be approved. Such approval could be on a time-limited basis.
- On P's return, the firm should use Form D and Form J, to update the previous notification. The firm would not need to seek re-approval for P to perform that role, but the obligation for firms to perform a fitness and propriety assessment under section 63(2A) FSMA still applies.
- The obligation in Notifications 11.5 continues during the temporary absence, meaning that the firm must inform the PRA when it becomes aware of information which would reasonably be material to the assessment of the fitness and propriety of P.

2.9C Where a firm is not keeping open the role for P, it will need to submit a Form C to notify the PRA that the individual is no longer performing that function.[1] In such a case, if P does return to the role, they will need to be re-approved.

Sharing an SMF

2.10 In certain circumstances, including but not limited to job-share arrangements, a firm may be allowed to have more than one individual performing a single SMF. However, the PRA expects SMFs to be shared only where appropriate and justified. The individual(s) performing an SMF should be the most senior person(s) responsible for that area of the firm.

…

[1] In accordance with Senior Managers Regime – Applications and Notifications 5.

Draft amendments to Supervisory Statement 35/15 Strengthening individual accountability in insurance

This appendix outlines proposed amendments to SS35/15. Underlining indicates new text.

…

Head of Key Business Area function

…

Long term absence

2.22O In accordance with Insurance - Senior Managers Regime – Applications and Notifications 5 and Large Non-Solvency II Firms - Senior Managers Regime - Applications and Notifications 5 (as applicable), where there is a change in circumstance, the firm must inform the PRA of the change to that person's role.

2.22P Where a firm is keeping open the relevant role for a person (P) while they are on long term leave:

- The PRA does not expect the firm to seek re-approval for P to perform that role on their return.
- The PRA expects the firm to notify us in a Form D that P is on long term leave. The firms will also need to submit a Form J as there will be a significant change in the Statement of Responsibility for P.
- The PRA does not expect to receive such a notification when the person goes on holiday or has a short illness. The PRA does not expect such a notification where the leave is shorter than 12 weeks.
- Another individual can perform that role for the duration of P's leave. This will be necessary where the function is mandatory. Subject to the 12 week rule, the interim appointee would need to be approved. Such approval could be on a time-limited basis.
- On P's return, the firm should use Form D and Form J, to update the previous notification. The firm would not need to seek re-approval for P to perform that role, but the obligation for firms to perform a fitness and propriety assessment under section 63(2A) FSMA still applies.
- The obligation in Notifications 11.5 continues during the temporary absence, meaning that the firm must inform the PRA when it becomes aware of information which would reasonably be material to the assessment of the fitness and propriety of P.

2.22Q Where a firm is not keeping open the role for P, it will need to submit a Form C to notify the PRA that the individual is no longer performing that function.[2] In such a case, if P does return to the role, they will need to be re-approved.

…

[2] In accordance with Insurance - Senior Managers Regime and Large Non-Solvency II Firms - Senior Managers Regime – Applications and Notifications 4.

Appendix 3
Draft Handbook text
Abolition of bearer certificates in collective investment schemes

BEARER CERTIFICATES (COLLECTIVE INVESTMENT SCHEMES) INSTRUMENT 2021

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 137T (General supplementary powers);
(c) section 139A (Power of the FCA to give guidance);
(d) section 247 (Trust scheme rules);
(e) section 248 (Scheme particulars rules);
(f) section 261I (Contractual scheme rules);
(g) section 261J (Contractual scheme particulars rules);
(h) section 283(1) (Facilities and information in UK); and

(2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228);

(3) 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 modules of the FCA Handbook listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Conduct of Business sourcebook (COBS)	Annex A
Collective Investment Schemes sourcebook (COLL)	Annex B
Investment Funds sourcebook (FUND)	Annex C

Notes

E. In the Annex 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

F. This instrument may be cited as the Bearer Certificates (Collective Investment Schemes) Instrument 2021.

By order of the Board
[*date*]

Annex A

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

18 Specialist Regimes

…

18.5 Residual CIS operators and small authorised UK AIFMs

…

Scheme documents for an unauthorised fund

18.5.5 R …

Prohibition on issue of bearer units

18.5.5-A G The effect of section 241A of the *Act* is that no bearer *units* in a *collective investment scheme* may be issued, converted or cancelled from 1 January 2021. However, the Bearer Certificates (Collective Investment Schemes) Regulations 2020 [*SI XXXX*] contain transitional provisions for the conversion of bearer *units* to registered *units* and the cancellation of bearer *units* on or before 1 January 2022.

…

…

18.5A Full-scope UK AIFMs

…

Adequate information

…

18.5A.12 G …

Prohibition on issue of bearer units

18.5A.13 G The effect of section 241A of the *Act* is that no bearer *units* in a *collective investment scheme* may be issued, converted or cancelled from 1 January 2021. However, the Bearer Certificates (Collective Investment Schemes) Regulations 2020 [*SI XXXX*] contain transitional provisions for the conversion of bearer *units* to registered *units* and the cancellation of bearer *units* on or before 1 January 2022.

…

Annex B

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

3 Constitution

…

3.2 The instrument constituting the fund

…

Table: contents of the instrument constituting the fund

3.2.6 R This table belongs to *COLL* 3.2.4R (Matters which must be included in the instrument constituting the fund)

…		
Certificates		
15	~~A statement:~~	
	~~(1)~~	~~for ICVCs, authorising the *issue* of *bearer certificates* if any, and how such *holders* are to identify themselves;~~ ~~and~~
	~~(2)~~	~~authorising the *person* responsible for the *register* to charge for issuing any document recording, or for amending, an entry on the *register*, other than on the *issue* or *sale* of *units*.~~ [deleted]
…		

…

4 Investor Relations

…

4.2 Pre-sale notifications

…

Table: contents of the prospectus

4.2.5 R This table belongs to *COLL* 4.2.2R (Publishing the prospectus).

…		
Characteristics of the units		
5	Information as to:	
	(a)	…
	(b)	~~where the *instrument of incorporation* of an *ICVC* provides for the *issue* of *bearer certificates*, that fact and what procedures will operate for them;~~ [deleted]
	(c)	…
…		

…

4.4 Meetings of unitholders and service of notices

…

Special meaning of unitholder in COLL 4.4

4.4.4 R …

(3) For the purposes of (2), in *COLL* 4.4.6R (Quorum) to *COLL* 4.4.11R (Chairman, adjournments and minutes) "*unitholders"* in relation to those *units* means~~:~~

~~(a)~~ the *persons* entered on the *register* at a time to be determined by the *authorised fund manager* and stated in the notice of the meeting, which must not be more than 48 hours before the time fixed for the meeting~~; or~~.

~~(b) in the case of bearer *shares* in an *ICVC*, *shareholders* of bearer *shares* which were in *issue* at the time applicable under (a).~~

…

Notices to unitholders

4.4.12 R (1) Where this sourcebook requires any notice or *document* to be served upon a *unitholder*, it is duly served:

(a) for *units* held by a registered *unitholder*, if it is:

(i) …; or

(ii) sent by using an electronic medium in accordance with *COLL* 4.4.13R (Other notices)~~; or~~.

(b) ~~for *units* represented by *bearer certificates*, if given in the manner provided for in the *prospectus*.~~ [deleted]

…

…

9 Recognised schemes

…

9.4 Facilities in the United Kingdom

…

~~Bearer certificates and characteristics of units in the scheme~~

~~9.4.4~~ ~~R~~ ~~(1)~~ ~~The *operator* must maintain facilities in the *United Kingdom* at which the *unitholder* of a *bearer certificate* may obtain free of charge:~~

~~(a) payment of dividends; and~~

~~(b) details or copies of any notices which have been given or sent to *participants* in the *scheme*.~~

~~(2)~~ ~~The *operator* must state:~~

~~(a) the nature of the right represented by the *units* in the *scheme*; and~~

~~(b) whether *persons* other than *unitholders* can vote at meetings of *unitholders* and, if so, who those *persons* are.~~ [deleted]

…

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
…					
Amendments made by the Bearer Certificates (Collective Investment Schemes) Instrument 2021					

51	TP 1.1(52) to (53)	R	In TP 1.1(52) and (53), "outstanding bearer share" and "the surrender year" have the meanings given in the Bearer Certificates (Collective Investment Schemes) Regulations 2020.	From [*coming into force of instrument*] 2021 to the end of 1 January 2022	[*coming into force of instrument*] 2021
52	*COLL* 3.2.6R; *COLL* 4.4.4R; and *COLL* 4.4.12R	R	(1) This *rule* applies to an *ICVC* which has one or more *outstanding bearer shares* in *issue* during the *surrender year*. (2) If immediately before 2 January 2021 the *instrument constituting the fund* contained a statement pursuant to *COLL* 3.2.6R setting out how the *holders* of *bearer certificates* are to identify themselves, the arrangements specified in that statement continue to apply to the extent necessary during the *surrender year* subject to: (i) the *OEIC Regulations*; and (ii) any changes to those arrangements made in accordance with the Bearer Certificates (Collective Investment	From [*coming into force of instrument*] 2021 to the end of 1 January 2022	[*coming into force of instrument*] 2021

			Schemes) Regulations 2020, the *OEIC Regulations*, the *rules*, the *instrument constituting the fund* and the *prospectus*.			
			(3) Any procedures identified in the *prospectus* in relation to the operation of *bearer certificates* pursuant to *COLL* 4.2.5R(5) continue to apply to *outstanding bearer shares* during the *surrender year* subject to: (i) the *OEIC Regulations*; and (ii) any changes to that operation made in accordance with the Bearer Certificates (Collective Investment Schemes) Regulations 2020, the *OEIC Regulations*, the *rules*, the *instrument constituting the fund* and the *prospectus*.			
			(4) Subject to the provisions of the Bearer Certificates (Collective Investment Schemes) Regulations 2020 and the *OEIC*			

			Regulations, the amendments made to *COLL* 4.4.4R(3) and *COLL* 4.4.12R(1) are to be disregarded in relation to *outstanding bearer shares* in *issue* during the *surrender year*.		
53	TP (52)	G	The Bearer Certificates (Collective Investment Schemes) Regulations 2020 set out certain requirements relating to the conversion and cancellation of *outstanding bearer shares* during the *surrender year*.	From [*coming into force of instrument*] 2021	[*coming into force of instrument*] 2021
54	TP 1.1(55)R	G	(1) *Schemes* which issue *bearer certificates* create significant risks in relation to money laundering and financial crime. These risks are relevant both to the protection of *participants* in such *schemes* and to the constitution and management arrangements for a *scheme*. (2) Paragraph (3) applies where a *scheme* which is recognised under section 272 of the *Act* either issues or has issued *bearer certificates* to *participants* in the *United Kingdom* that have not been cancelled on or before 1 January 2022. (3) The *FCA* is of the view that a *scheme* within (2) is unlikely to satisfy the	From [*coming into force of instrument*] 2021	[*coming into force of instrument*] 2021

				requirements for recognition set out in section 272 of the *Act* or, alternatively, that it is unlikely to be desirable in the interests of the *participants* in the *scheme* for the *scheme* to continue to be recognised.		
			(4)	Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing requires EU Member States to take measures to prevent the misuse of bearer shares. As such, the *FCA* expects most *schemes* and *sub-funds* which are temporarily recognised under Part 6 of the Collective Investment Schemes (Amendment etc) (EU Exit) Regulations 2019 and the *operators* of such *schemes* or *sub-funds* to be subject to relevant national measures implementing the Directive.		
55	TP 1.1(54)G and *COLL* 9.4.4R which was deleted by the by the	R	(1)	Paragraphs (2) to (4) apply to:	From [*coming into force of instrument*] 2021	[*coming into force of instrument*] 2021

	Bearer Certificates (Collective Investment Schemes) Instrument 2021.		(a) the *operator* of a *scheme* or *sub-fund* temporarily recognised under Part 6 of the Collective Investment Schemes (Amendment etc) (EU Exit) Regulations 2019; and (b) the *operator* of a *scheme* recognised under section 272 of the *Act*. (2) An *operator* within (1) must maintain facilities in the *United Kingdom* at which the *unitholder* of a *bearer certificate* may obtain free of charge: (a) payment of dividends; and (b) details or copies of any notices which have been given or sent to *participants* in the *scheme* or *sub-fund*. (3) The *operator* must state:			

			(a) the nature of the right represented by the *units* in the *scheme* or *sub-fund*; and (b) whether *persons* other than *unitholders* can vote at meetings of *unitholders* and, if so, who those *persons* are. (4) The facilities maintained by the *operator* of the *scheme* or *sub-fund* must also allow a *participant*: (a) to surrender any *bearer certificates* held by the *unitholder* in exchange for registered *units* in the *scheme* or *sub-fund*; and (b) where relevant, to provide the details necessary for an entry to be made in the appropriate register of *participants* for the *scheme* or *sub-fund*.		

Annex C

Amendments to the Investment Funds sourcebook (FUND)

In this Annex, underlining indicates new text.

3 Requirements for alternative investment fund managers

…

3.2 Investor information

…

Subordinate measures

3.2.7 G …

Prohibition on issue of bearer units

3.2.8 G The effect of section 241A of the *Act* is that no bearer *units* in a *collective investment scheme* may be issued, converted or cancelled from 1 January 2021. Similar provision is made by regulation 48 of the *OEIC Regulations* in relation to *ICVCs*. However, the Bearer Certificates (Collective Investment Schemes) Regulations 2020 contain transitional provisions for the conversion of bearer *units* to registered *units* and the cancellation of bearer *units* on or before 1 January 2022.

Appendix 4
Draft Handbook text
Proposal to amend the scope of COBS 4.5.12R to COBS 4.5.15R

CONDUCT OF BUSINESS SOURCEBOOK (COMMUNICATIONS IN RELATION TO AUTHORISED FUND BENCHMARKS) (AMENDMENT) INSTRUMENT 2021

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 137R (Financial promotion rules);
(c) section 137T (General supplementary powers);
(d) section 139A (Power of the FCA to give guidance);
(e) section 247 (Trust scheme rules);
(f) section 248 (Scheme particulars rules);
(g) section 261I (Contractual scheme rules); and
(h) section 261J (Contractual scheme particulars rules);

(2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and

(3) the other powers listed in Schedule 4 (Powers exercised) to the General Provisions of the 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 Conduct of Business sourcebook (COBS) is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Conduct of Business Sourcebook (Communications in relation to Authorised Fund Benchmarks) (Amendment) Instrument 2021.

By order of the Board
[*date*]

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

4 Communicating with clients, including financial promotions

…

4.5 Communicating with retail clients (non-MiFID provisions)

…

Authorised fund managers' communications in relation to benchmarks

4.5.11A R The *rules* in *COBS* 4.5.12R to *COBS* 4.5.15R apply to any communication about an *authorised fund* to which this section applies if it contains information that could influence a *retail client's* decision to subscribe for, redeem or exchange the *units* of an *authorised fund*, to hold, *buy*, *sell*, transfer or otherwise dispose of such *units*, or to offer or agree to do so.

4.5.11B G As a result of *COBS* 4.5.11AR, *COBS* 4.5.12R – 4.5.15R would not normally be expected to apply to administrative communications if they do not refer in any way to the aims, benefits or risks of investing. Examples of such communications might include contract notes that simply set out details of the *unitholder's* purchase or *redemption* of *units*, statements of income distributions or accumulations, and confirmations of a change of *unitholder* registration details.

4.5.12 R Subject to *COBS* 4.5.13R, an *authorised fund manager* must include in any communication about an *authorised fund* to which this ~~section~~ *rule* applies:

(1) …

…

4.5.13 R Where an *authorised fund manager* includes, in any communication about an *authorised fund* to which this ~~section~~ *rule* applies, an indication of past performance for any *authorised fund* it manages, it must (in addition to complying with *COBS* 4.6.2R where applicable):

(1) …

…

…

Appendix 5
Draft Handbook text
Changes to the minimum levels of professional indemnity insurance cover

INSURANCE DISTRIBUTION (PROFESSIONAL INDEMNITY INSURANCE (LIMITS OF INDEMNITY)) INSTRUMENT 2021

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); and
(2) section 137T (General supplementary powers).

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

(1)	(2)
Glossary of definitions	Annex A
Prudential sourcebook for Mortgage and Home Finance firms, and Insurance Intermediaries (MIPRU)	Annex B
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex C

Citation

E. This instrument may be cited as the Insurance Distribution (Professional Indemnity Insurance (Limits of Indemnity)) Instrument 2021.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

limit of indemnity	(in *MIPRU* 3 (~~Professional indemnity insurance~~), *IPRU INV* 9.2 and *IPRU INV* 13.1) the sum available to indemnify a *firm* in respect of each claim made under its professional indemnity insurance.

Annex B

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

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

3 Professional indemnity insurance

…

3.2 Professional indemnity insurance requirements

…

Minimum limits of indemnity: insurance intermediary

3.2.7 R If the *firm* is an *insurance intermediary*, then the minimum *limits of indemnity* per year are:

(1) for a single claim, ~~€1,250,000~~ €1,300,380; and

(2) in aggregate, the higher of:

(a) ~~€1,850,000~~ €1,924,560; and

(b) an amount equivalent to 10% of annual income (this amount being subject to a maximum of £30 million).

[**Note:** articles 10(4) and 10(5) of the *IDD*]

…

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
…	…	…	…	…	…
6	*MIPRU* 3.2.7R	R	The new *limits of indemnity* apply to a professional indemnity policy or a comparable guarantee agreement	[In force date of this instrument] to [one year after in force	[In force date of this instrument]

			commenced, renewed or extended with effect from or after [in force date of this instrument]. Any other existing non-annual arrangements must be aligned with the new *limits of indemnity* before [one year after in force date of this instrument].	date this instrument]	

Annex C

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

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

9 Financial resources requirements for an exempt CAD firm

…

9.2 GENERAL REQUIREMENTS

…

Initial capital and professional indemnity insurance requirements - exempt CAD firms that are also IDD insurance intermediaries

9.2.5 R (1) An *exempt CAD firm* that is also an *IDD insurance intermediary* must comply with the professional indemnity insurance requirements at least equal to those set out in *IPRU-INV* 9.2.4R(1)(b) (except that the minimum *limits of indemnity* are at least EUR ~~1,250,000~~ 1,300,380 for a single claim and EUR ~~1,850,000~~ 1,924,560 in aggregate) and in addition has to have:

…

…

…

13 Financial Resource Requirements for Personal Investment Firms

13.1 APPLICATION, GENERAL REQUIREMENTS AND PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS

…

Limits of indemnity

13.1.10 R If the *firm* is an *IDD insurance intermediary*, whether or not it is also an *exempt CAD firm*, the appropriate minimum *limits of indemnity* per year are no lower than:

(1) EUR ~~1,250,000~~ 1,300,380 for a single claim against the *firm*; and

(2) EUR ~~1,850,000~~ 1,924,560 in the aggregate.

[**Note:** articles 10(4) and 10(5) of the *IDD*]

…

TP 1 Table: Transitional provisions applying to IPRU(INV)

(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
…	…	…	…	…	…
21	*IPRU(INV)* 9.2.5R and *IPRU(INV)* 13.1.10R	R	The new *limits of indemnity* apply to a professional indemnity policy or a comparable guarantee agreement commenced, renewed or extended with effect from or after [in force date of this instrument]. Any other existing non-annual arrangements must be aligned with the new *limits of indemnity* before [one year after in force date of this instrument].	[In force date of this instrument] to [one year after in force date this instrument]	[In force date of this instrument]

Appendix 6
Draft Handbook text
Cancellation of permission application form in SUP 6 Annex 6

SUPERVISION MANUAL (REPORTING No 15) INSTRUMENT 2021

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in section 55U (4) (Applications under this Part) of the Financial Services and Markets Act 2000.

Commencement

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

Amendments to the Handbook

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

Citation

D. This instrument may be cited as the Supervision Manual (Reporting No 15) Instrument 2021.

By order of the Board
[*date*]

Annex

Amendments to the Supervision manual (SUP)

The form at SUP 6 Annex 6D (Cancellation of Part 4A Permission - Application Form) is replaced with the following:

Cancellation of Part 4A Permission (SUP 6 Ann 6D) Application Form

Firm Name

Firm Reference Number

Address

Please note that before completing this form to cancel all of your firm's regulated activities, you may find it helpful to discuss your proposed application with your usual supervisory contact at the FCA/PRA.

If you need further information about completing the application please refer to our guidance document: https://www.fca.org.uk/publication/systems-information/firm-cancel-authorisation-guide.pdf
Insolvency Practitioners please refer to our guidance document before completing this application.

You should ensure that all relevant information and confirmations are included in the form. If not, your application will be delayed whilst we seek the outstanding information and/or confirmations. Ultimately your application will be refused if the outstanding information and/or confirmations are not provided.

For more complex applications e.g. involving banks or insurance companies, we may request some additional information, in which case we will send a separate schedule.

If you want to cancel some but not all of the regulated activities of your firm's permission then you should use the relevant Variation of Permission form to vary your firm's permission. Where a firm may require a long period in which to wind down (run off) its business, it is usually appropriate for the firm to apply to vary its permission before commencing the wind down. Please contact your normal supervisory contact to discuss your options.

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

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

Please complete and send this form to:

The Financial Conduct Authority
Cancellations Team
12 Endeavour Square
London, E20 1JN

and/or

The Prudential Regulation Authority
20 Moorgate
London, EC2R 6DA

1 Application Contact Details

Contact for this application

1.1 Contact for this application

This will be the person we will get in touch with about the application

Title	
First names	
Last name	
Job Title	
Mobile Number	
Email address	
Individual Reference Number (IRN), if applicable	
Address	
Postcode	
Phone number country code	
Phone number	
Fax number country code	
Fax number country code	

2 Cancellation

Are you ready to cancel?

In order for us to process an application to cancel your firm's Part 4A permission i.e. all your firm's regulated activities, we require full and accurate responses to the application questions below. Please note, providing responses to these questions does not guarantee approval.

Before you apply for a cancellation, you should also look at the criteria set out in Chapter 6.4 of the Supervision (SUP) part of the FCA Handbook, particularly those in SUP 6.4.22, and ensure your firm has carried out all of its responsibilities. If you cannot adhere to the criteria set out then you should consider deferring your application and applying when you can demonstrate compliance (https://www.handbook.fca.org.uk/handbook/SUP/6/4.html)

2.1 Please confirm that you have read and understood your responsibilities

☐ Yes

Please note that all regulated activities must cease no later than six months from the date of any approval to cancel Part 4A permissions (See SUP 6.4.3G). Dual regulated firms should review the PRA website on cancellations. If you do not intend to cease regulated activities within the next six months you will not be able to apply at this stage.

2.2 Have you notified all your firm's clients of its intention to cancel its permission and how this will affect them? (See SUP 6.4.11)

☐ Yes

☐ No ▸ Please provide a full explanation in Question 2.8

2.3 Are your firm's fees paid up to date? (See SUP 6.4.22)

☐ Yes

☐ No ▸ Please provide a full explanation in Question 2.8

2.4 Have all your firm's regulatory returns been submitted up to date?

Please note that you must continue to submit your regulatory returns until the FCA has confirmed to you that the firm's permission has been cancelled.

☐ Yes

☐ No ▸ Please provide a full explanation in Question 2.8

2.5 Have you already informed your firm's approved persons of this application for cancellation?

☐ Yes

☐ No ▸ Please provide a full explanation in Question 2.8

2.6 Can you confirm that there are no unsatisfied or undischarged complaints against the firm that have not been fully dealt with in accordance with your firm's complaints procedures? (See SUP 6.4.10 & 22)

☐ Yes

☐ No ▸ Please detail below any unresolved complaints currently being dealt with by your firm and provide a full explanation in Question 2.8.

2.7 Firms applying to cancel but still carrying on regulated activities should cease doing so within the next 6 months. Please confirm that your firm will be a position to do this. If this cannot be confirmed then you should not complete the application at this time (See SUP 6.4.3)

☐ Yes

If you submit your cancellation application to us before 31 March (or before the last day in February, if you are also regulated by the PRA), you will not have to pay the annual fee for the following financial year. If, however, your business continues to operate for 3 months beyond this deadline – that's to say, past 30 June – then you will have to pay the annual fee for the financial year.

2.8 To enable the FCA/PRA to process this application for the cancellation of your firm's Part 4A permission i.e. all of its regulated activities, your firm should have taken the appropriate steps and be able to answer yes to Questions 2.2-2.7. If you cannot then you should consider deferring your application at this time. If you still wish to submit then you MUST provide full narrative and an explanation about any questions where you have answered NO.

Your application

You must be aware that upon submission of this application it could be processed immediately. Therefore, if you enter the effective date of cancellation to be the date of submission, you may not be authorised to carry on any regulated business with immediate effect.

2.9 On behalf of the firm, I hereby apply to cancel the firm's Part 4A permission and declare that:

The firm has ceased or will cease conducting all regulated activities as an authorised person from (dd/mm/yyyy)

☐☐ / ☐☐ / ☐☐☐☐

This must not be more than 6 months in the future.

2.10 What date would you like the cancellation to take effect? (dd/mm/yyyy)

This date can be the same or after the date of submission, but must be after the date the firm ceases all regulated activities as an authorised person.

☐☐ / ☐☐ / ☐☐☐☐

2.11 Please select one of the following reasons for cancellation and follow the instructions

☐ Business transfer	Please answer Questions 2.12 to 2.14 and continue to Question 2.21
☐ Ceasing to trade	Please answer Questions 2.12 to 2.14 and continue to Question 2.21
☐ Ceasing to trade – firm going into administration or liquidation or being dissolved	Please answer Questions 2.12 to 2.14, 2.18 and continue to Question 2.21
☐ Ceasing to carry out regulated activities but continuing in un-regulated activities	Please answer Questions 2.12 to 2.14 and continue to Question 2.21
☐ Firm never carried on regulated activities	Please answer Questions 2.12 to 2.14 and continue to Question 2.21
☐ Proposing to become authorised through a Designated Professional Body	Please answer Questions 2.12 to 2.16 and continue to Question 2.21
☐ The Applicant firm is becoming an Appointed Representative	Please answer Questions 2.12 to 2.14, 2.17 and continue to Question 2.21
☐ Part VII Transfers	Please answer Questions 2.12 to 2.14, 2.19 and continue to Question 2.21
☐ Transfer of Engagements (Mutuals only)	Please answer Questions 2.12 to 2.14 and continue to Question 2.20
☐ Other	Please answer Questions 2.12 to 2.14 and continue to Question 2.21

2.12 Please detail in full below the reasons for cancellation and attach any documentation that will be helpful for the FCA in ascertaining the reason for cancellation.

☐ Attached

2.13 Is there any information, relating to the withdrawal of individual approved persons performing controlled functions, which the FCA / PRA should be made aware?

☐ Yes ▸ Before submitting your cancellation notification, please submit details of this information as part of a Form C – Notice of ceasing to perform controlled functions including senior management functions.

☐ No

2.14 Is the firm aware of any current or potential liabilities now or in the future in respect of its regulated business?

☐ Yes ▸ Give details below

☐ No

Authorisation through a Designated Professional Body

2.15 Please state below the designated professional body you are proposing to become authorised through.

2.16 Please provide any documentation that confirms you are registered with the relevant body?

☐ Attached

Becoming an Appointed Representative

2.17 Have you arranged for a Principal Firm to complete the Appointed Representative form (where applicable)?

Please ensure your Principal Firm has submitted an Appointed Representative application on your behalf prior to submitting this cancellation application.

☐ Yes ▸ Give details below

☐ No ▸ Please note that your firm's application to cancel part 4A permission will not be held for submission of any appointed representative form. It is your and/or the principal firm's duty to arrange for this to be done as soon as possible. Failure to arrange this may result in you and/or your firm not being able to conduct any regulated business following approval of cancellation and until such time as these arrangements have been effected and/or approved by the FCA/PRA.

Firm Reference Number	
Firm Name	
FRN if you are already an AR	

Firms going into administration, liquidation or being dissolved

2.18 Please confirm the name of the Insolvency Practitioner and provide details of what stage the process is currently at.

Part VII Transfer

2.19 Please attach a copy of the evidence of executing the transfer or the scheme document

☐ Attached

Transfer of engagements

2.20 Please attach a copy of the evidence that transfer of engagements has executed

☐ Attached

All firms

2.21 Does the firm hold client money?

☐ No ▸ Continue to Question 2.25

☐ Yes

2.22 Are the client accounts closed?

Client accounts must be closed before we can approve this cancellation application. All client money/client deposits / discharged custody assets and any other property belonging to clients must be repaid or transferred before cancellation can proceed. Please refer to SUP 6.4.22(G).

☐ No

☐ Yes

As per SUP 3.10.4R and SUP 3.10.4A R you must attach a report from your auditor that states whether anything has come to the auditor's attention that causes them to believe that the firm held client money and/or assets during the period covered.

☐ Attached

2.23 Does your firm hold client money for insurance mediation activities only?

☐ No

☐ Yes

2.24 Have you held client money within a non-statutory trust account, or held client money that has exceeded £30,000 within a statutory trust account?

☐ No ▸ You must attach a letter from your accountant that states whether anything has come to the accountant's attention that causes them to believe that the firm held client money during the period covered.

☐ Attached

☐ Yes ▸ As per SUP 3.10.4R and SUP 3.10.4A R, you must attach a report from your auditor that states whether anything has come to the auditor's attention that causes them to believe that the firm held client money and/or assets during the period covered. The relevant format that the auditor's letter must follow is here

☐ Attached

2.25 Does your firm safeguard client assets?

☐ No ▸ Continue to Question 2.26

☐ Yes ▸ As per SUP 3.10.4R and SUP 3.10.4A R, you must attach a report from your auditor that states whether anything has come to the auditor's attention that causes them to believe that the firm held client money and/or assets during the period covered.

☐ Attached

If this auditors report / Accountants letter (whichever is applicable) is not provided this may cause considerable delay to your applicant being completed.

Ceasing to Trade and/or Business Transfer

2.26 Does the firm have Run-off Professional Indemnity Insurance in place?

☐ Yes ▸ Please attach your Professional Indemnity Insurance document ensuring it details the exclusions and endorsements and confirm how long the cover will be in place/renewed for.

☐ No ▸ In line with SUP 6.4.10 and SUP 6.4.22 please specify what arrangements the firm has in place to deal with any liabilities that may fall due, or arise in the future, e.g. customer complaints.

☐ Copy of Professional Indemnity Insurance document attached

2.27 At the time of submission, does the firm have any complaints currently under consideration with the Financial Ombudsman Service?

Please ensure you have checked with the Financial Ombudsman Service prior to submitting this application

☐ No ▸ Continue to Question 2.29

☐ Yes ▸ Please detail below what arrangements have been made to deal with any outstanding or future complaints and any corresponding liabilities that might arise. Please include who will administer these complaints and who will retain legal liability for any associated costs of redress.

2.28 Please attach any contractual or legal documentation which can verify how these complaints will be dealt with in the event that they are upheld.

☐ Attached

2.29 Have any of the firm's assets or intangible assets been transferred, or are they going to be transferred to another entity or entities?

☐ Yes ▸ Please provide a copy of any contractual agreement between your firm and the purchaser and detail the transfer value paid and how that value was determined. Please also detail clearly what is happening to the liabilities of the firm?

☐ Attached

☐ No ▸ Please explain what will happen to the assets and liabilities of the firm below and continue to Section 3.

Transferee Firm(s)

2.30 Is the firm or are the firms to which business is being transferred currently authorised or an Appointed Representative?

☐ No ▸ It must be authorised before the transfer takes place.

☐ Yes ▸ Give details below of the firm(s) to which the business is being transferred. If you intend to transfer business to an appointed representative you will need to provide their principal firms Firm Reference Number and not the FRN of the Appointed Representative.

Firm 1

Firm Reference Number	
Firm Name	
Principal Contact at firm	
Address	

Firm 2

Firm Reference Number	
Firm Name	
Principal Contact at firm	
Firm Name	

Firm 3

Firm Reference Number	
Firm Name	
Principal Contact at firm	
Firm Name	

If you need more space you must use a separate sheet of paper.

If you have used separate sheets of paper you must indicate how many below.

Number of additional sheets	

2.31 What date do you propose to transfer this business or what date is the business being transferred? (dd/mm/yyyy)

The transfer date must be on or before the cancellation effective date.

☐☐ / ☐☐ / ☐☐☐☐

3 Your activities

3.1 Does your firm:

i) have the regulated activity Managing investments, Managing an authorised AIF or Managing an unauthorised AIF?

☐ No

☐ Yes ▸ by signing this form you attest that all investments have been or will be appropriately disseminated or transferred to another appropriately authorised entity by the date of Cancellation.

ii) have the regulated activity Dealing in investments as Principal?

☐ No

☐ Yes ▸ by signing this form you attest that all client investment positions have been or will be closed or transferred to another appropriately authorised entity by the date of Cancellation,

iii) have registration for consumer buy-to-let (CBTL) mortgage business. Is the firm also applying to cancel its CBTL registration?

☐ No

☐ Yes

vi) manage any Collective Investment Schemes?

☐ No

☐ Yes ▸ by signing this applicant, you will be declaring that by the date of cancellation, schemes managed by the firm have been or will be wound up or transferred.

Advising on investments

3.2 Does your firm provide Investment Advice?

☐ No ▸ Continue to Question 3.3

☐ Yes ▸ You must provide details below. This must include what products were advised on, when they were sold, the number of customers to which they were sold to and the values invested as a result.

Lending

3.3 Does your firm have approval for any of the activities involving entering into regulated credit agreements as a lender or exercising the rights and duties of a lender?

☐ No ▸ Continue to Question 3.7

☐ Yes

3.4 Please attach full details of how the applicant has run off its lending activities and/or of the arrangements to transfer any remaining agreements to another regulated lender.

☐ Attached

3.5 Is the firm aware of any current or potential liabilities now or in the future in respect of its regulated activities?

3.6 Provide full details of how the firm has advised or intends to advise its customers about any changes to their accounts. Please also attach copies of any correspondence used

☐ Copies of correspondence attached

Debt Management

3.7 Does your firm have approval as a debt manager?

☐ No ▸ Continue to Question 3.13
☐ Yes

3.8 Please attach full details of how the applicant has run off its debt management activities and/or of the arrangements to transfer any active debt management agreements to another regulated debt manager.

☐ Attached

3.9 You must provide details of what the firm intends to do with its client book. If it is being sold, or assigned, please provide full details of who it is being sold or assigned to.

3.10 How are the consumers creditors' being informed of the change to their client's accounts? Please attach any copies of the correspondence used.

☐ Copies of correspondence attached

3.11 Please explain the process for informing consumers about any changes to their accounts. Please also attach copies of any correspondence used.

☐ Copies of correspondence attached

3.12 Please outline what the firm intends to do, or has done, with any personal data it holds on its customers.

Credit Broking

3.13 Does your firm have approval as a credit broker?

☐ No ▸ Continue to Question 3.16
☐ Yes

3.14 Has the firm taken payment from its customers as a broker / introducer before a suitable credit product for that customer has been found?

☐ No
☐ Yes ▸ Please explain below how the firm will respond to a request for a refund from the customer, given that, if a customer has not entered into a credit agreement within six months of an introduction to a potential source of credit, that customer has a right to request a refund.

3.15 Does the firm have any unsatisfied refund requests from their customers?

Mortgage Lending/third party administrator/Lifetime Mortgage Providers

3.16 Does your firm have approval for any of the activities involving entering into a regulated mortgage contract or administering a regulated mortgage contract?

☐ No ▸ Continue to Section 4
☐ Yes

3.17 Please attach full details of how the applicant has run off its mortgage lending activities and/or of the arrangements to transfer any remaining agreements to another regulated mortgage lender.

☐ Attached

3.18 Please explain the process for informing consumers about any changes to their accounts, including copies of any correspondence used, for example, the notice of assignment.

3.19 If the firm holds, or held, client money please confirm what the firm has done, or intends to do, with the money.

3.20 Please outline what the firm intends to do, or has done, with any personal data it holds on its customers.

4 Supporting Documents

4.1 Please include any other documents you want to provide

Title of the document	Details

Other Information

4.2 If there is anything else the applicant would like to tell us about this application please give details below.

5 Declaration and signatures

It is a criminal offence, knowingly or recklessly, to give the appropriate regulator information that is materially false or misleading (see sections 398 and 400 FSMA). Even if you believe or know that information has been provided to the appropriate regulator before (whether as part of another application or otherwise) or is in the public domain, you must nonetheless disclose it clearly and fully in this form and as part of this application – you should not assume that the appropriate regulator will itself identify such information during the assessment of this application. If there is any doubt about the relevance of information, it should be included.

There will be a delay in processing the application if information is inaccurate or incomplete, and it may call into question the suitability of the applicant and/or lead to the appropriate regulator exercising its powers (including but not limited to taking disciplinary/ Enforcement action). You must notify the appropriate regulator immediately if there is a change to the information in this form and/or if inaccurate information has been provided.

I/We confirm that the information provided in this application is accurate and complete to the best of my/our knowledge. I/We will notify the appropriate regulator immediately if there is a material change to the information provided.

I/We authorise the appropriate regulator to make such enquiries and seek such further information as it thinks appropriate to identify and verify information that it considers relevant to the assessment of this application. These checks may include credit reference checks or information pertaining to fitness and propriety. I/We are aware that the results of these enquiries may be disclosed to the firm/employer/applicant.

I/We agree that the appropriate regulator may, in the course of processing this application, undertake a Police National Computer (PNC) check in respect of any or all of the persons to whom this application relates.

Where the signatory to this application has provided an address and/or email address in connection with the applicant's business, the signatory agrees on behalf of the applicant that the appropriate regulator may use such address and email address as the 'proper address for service' at which to give the applicant a 'relevant document' as those terms are defined in Financial Services and Markets Act 2000 (Service of Notice) Regulations (SI 2001/1420).

I have attached the relevant documents where requested or where marked as 'send later' I have them fully ready and available on request and I have taken all reasonable steps to ensure they are correct.

I confirm that where I have certified that documents are ready they have been prepared to an appropriate standard and are available for immediate inspection by the appropriate regulator.

I understand that the appropriate regulator may require the applicant firm to provide further information or documents at any time.

I confirm that I am authorised to sign this form on behalf of the firm and/or controller(s) and (where applicable) to give each of the confirmations on behalf of the applicant set out in this declaration.

In addition to other regulatory responsibilities, firms and approved persons have a responsibility to disclose to the appropriate regulator matters of which it would reasonably expect to be notified. Failure to notify the appropriate regulator of such information may lead to the appropriate regulator taking disciplinary or other action against the firm and/or individuals.

I am aware that, while advice may be sought from a third party (e.g. legal advice), responsibility for the accuracy of information, as well as the disclosure of relevant information, on the form is ultimately the responsibility of those who sign the application.

☐ Tick here to confirm that the person submitting this Form on behalf of the Firm and (if applicable) the Individual named below - have read and understood the declaration.

This declaration must be signed by the person who is responsible for making this application on behalf of the Applicant. There can be one or two required signatures depending on the number of directors / partners in the firm.

Name of first signatory

Signature

Date (dd/mm/yyyy)

/ /

Name second signatory

Signature

Date (dd/mm/yyyy)

/ /

Appendix 7
Draft Handbook text
Transposing Article 1(16) of the Bank Recovery and Resolution Directive II ((EU) 2019/879) into FCA rules

CONDUCT OF BUSINESS (RESTRICTED ELIGIBLE LIABILITIES) INSTRUMENT 2021

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 137D (product intervention);
(3) section 137T (General supplementary powers);
(4) section 139A (The FCA's power 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 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 (Restricted Eligible Liabilities) Instrument 2021.

By order of the Board
[*date*]

[*Editor's note*: The amendments to the Glossary below have been drafted on the assumption that the draft Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (which amend the Banking Act 2009) will be made and come into force before this instrument comes into force. The amendments below to both the Glossary and the Conduct of Business sourcebook are based on the Handbook as it will appear on 1 January 2021.

Annex A

Amendments to the Glossary of definitions

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

restricted eligible liabilities

means:

(a) *UK eligible liabilities*; or

(b) *RRD eligible liabilities*.

bail-in liabilities

has the meaning in section 3(1) of the Banking Act 2009 which in summary is:

the liabilities and capital instruments of an undertaking that:

(a) do not qualify as *common equity tier 1 instruments*, *additional tier 1 instruments* or *tier 2 instruments* of the undertaking; and

(b) are not excluded liabilities listed in section 48B(8) of the Banking Act 2009.

UK eligible liabilities

means *bail-in liabilities* that a person is required to maintain as a result of:

(a) a direction given by the Bank of England under section 3A(4) of the Banking Act 2009; or

(b) Article 92a or Article 494 of *UK CRR* where the *bail-in liabilities* meet all the conditions referred to in Article 72a of *UK CRR* except the conditions in:

(i) point (b) of Article 72a(1) of *UK CRR*; and

(ii) paragraphs 3 to 5 of Article 72b of *UK CRR*.

RRD eligible liabilities

means "eligible liabilities" as defined in Article 2.1(71a) of *RRD* which meet all the conditions referred to in Article 72a of *EU CRR* except the conditions in:

(a) point (b) of Article 72a(1) of *EU CRR*; and

(b) paragraphs 3 to 5 of Article 72b of *EU CRR*.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

[*Editor's note*: this annex amends provisions made to COBS 9A.2.22 by the Conduct of Business (Speculative Illiquid Securities) Instrument 2019 (FCA 2019/99) which will come into force on 1 July 2021.]

9A Suitability (MiFID and insurance-based investment products provisions)

9A.1 Application and purpose

…

9A.1.1A G *Firms* are reminded that, in addition to the *firms* listed in *COBS* 9A.1.1R, *firms* and *TP firms* to whom *COBS* 22.7 applies are also required to comply with parts of *COBS* 9A when *selling restricted eligible liabilities* (see *COBS* 22.7).

…

9A.2 Assessing suitability: the obligations

…

Investments subject to restrictions on retail distribution: MiFID business and insurance-based investment products

9A.2.22 G (1) …

…

(d) *contingent convertible instruments* and *CoCo funds* are subject to a restriction on sales and on promotions (see *COBS* 22.3)~~.~~; and

(e) [deleted]

(f) *restricted eligible liabilities* are subject to a restriction on sales (see *COBS* 22.7).

…

…

Insert the following new section, COBS 22.7, after COBS 22.6 (Prohibition on the retail marketing, distribution and sale of cryptoasset derivatives and cryptoasset exchange traded notes). The text is not underlined.

[*Editor's note*: *COBS* 22.6 is a new section of the Handbook which will come into force on 6 January 2021.]

22.7 Sale of restricted eligible liabilities to retail clients

Application

22.7.1 R The section applies to:

(1) *Firms*;

(2) *TP firms*; and

(3) Gibraltar-based firms

in relation to the *sale* of *restricted eligible liabilities*.

22.7.2 G In addition to the *persons* listed above, *persons* (including *unauthorised persons*) who benefit from a temporary exemption or exclusion from the *general prohibition* under:

(1) Part 7 of the *EU Exit Passport Regulations*; or

(2) Part 4 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/1361);

are required to comply with the *rules* in this section as a consequence of:

(3) regulation 59 of the *EU Exit Passport Regulations*; or

(4) regulation 19 of the Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019.

22.7.3 R Throughout this section:

(1) References to *firm* include references to a Gibraltar-based firm;

(2) Gibraltar-based firm has the same meaning as in the *Gibraltar Order*.

Restrictions on the sale of restricted eligible liabilities

22.7.4 R (1) Subject to (2) and *COBS* 22.7.6R, a *firm* or *TP firm* must not sell a *restricted eligible liability* to a *retail client* unless, before doing so, it:

(a) has assessed the suitability of the *restricted eligible liability* for the *client* in accordance with the *COBS* provisions specified in *COBS* 22.7.5R(1) as modified by *COBS* 22.7.5R(4);

(b) is satisfied that the *restricted eligible liability* is suitable for the *client*;

(c) has provided the *client* with a report in a durable medium specifying how the proposed *transaction* meets the preferences, objectives and other characteristics of the *client* in accordance with the *COBS* provisions specified in *COBS* 22.7.5R(2) as modified by *COBS* 22.7.5R(4) and (5); and

(d) has complied with *COBS* 22.7.7R.

(2) The prohibition in (1) does not apply to the sale of *restricted eligible liabilities* which were issued before [**the date on which this instrument comes into force**]

[**Note**: (a)-(c), Article 44a(1) of *RRD*]

22.7.5 R (1) The following provisions are specified for the purposes of *COBS* 22.7.4R(1)(a) subject to the modifications in (4):

(a) *COBS* 9A.2.1R;

(b) *COBS* 9A.2.4UK;

(c) *COBS* 9A.2.6UK;

(d) *COBS* 9A.2.7UK;

(e) *COBS* 9A.2.8UK;

(f) *COBS* 9A.2.9UK;

(g) *COBS* 9A.2.11UK;

(h) *COBS* 9A.2.13UK;

(i) *COBS* 9A.2.15UK;

(j) *COBS* 9A.2.21G(1) and (2); and

(k) *COBS* 9A.2.22G.

(2) The following provisions are specified for the purposes of *COBS* 22.7.4R(1)(c) subject to the modifications in (4) and (5):

(a) *COBS* 9A.3.1UK; and

(b) *COBS* 9A.3.3UK; and

(c) *COBS* 9A.3.4G.

(3) The provisions in (1) and (2) apply to a *firm* or *TP firm* which *sells restricted eligible liabilities* irrespective of whether or not it does so as part of the provision to a *retail client* of *investment advice* or *portfolio management*.

(4) Unless the context requires otherwise, the following provisions and terms in the *rules* and *guidance* specified in (1) and (2) are modified as follows:

Provision or term in COBS 9A	**Modification**
investment firm	*firm selling restricted eligible liabilities*
providing *investment advice*	*selling restricted eligible liabilities*
providing *portfolio management*	
providing a *portfolio management service*	
provisions marked "UK" and including a Note ("**Note**")	these provisions apply to *firms* and *TP firms selling restricted eligible liabilities* as if they were *rules*.
recommend investment services or financial instruments	*sell restricted eligible liabilities*
suitability report	includes a report required under *COBS* 22.7.4R(1)(c)

(5) The following provision is modified as shown below.

Rule	**Modification**
COBS 9A.3.3UK	In the first paragraph, the words "the advice given and how the recommendation provided" are deleted and replaced with "how the proposed *sale* of *restricted eligible liabilities*". The second and third paragraphs are deleted.

22.7.6 R Where:

(1) a *firm* or *TP firm* proposes to *sell* a *restricted eligible liability* to a *retail client* as part of the provision of *investment advice* or *portfolio management* services; and

(2) in relation to the proposed sale, it complies with the relevant requirements in relation to assessing suitability and suitability reports in *COBS* 9A.2 and *COBS* 9A.3 respectively

it does not need to comply with the modified version of those requirements as well (i.e. the requirements specified in *COBS* 22.7.5R(1) and (2) as modified by *COBS* 22.7.5R(4) and (5)).

22.7.7 R (1) For the purposes of this *rule*, financial instrument portfolio includes:

(a) cash deposits;

(b) *restricted eligible liabilities* already held by the *client* (irrespective of the issue date); and

(c) *financial instruments* other than those which have been given by the *client* as *collateral*.

[**Note**: Article 44a(4) of *RRD*]

(2) Where the value of the *retail client's* financial instrument portfolio does not at the time of the sale exceed €500,000, the *firm* or *TP firm* may only sell a *restricted eligible liability* to the *client* if it has confirmed, on the basis of information provided by the *client*, that:

(a) the amount which the *client* is investing in *restricted eligible liabilities* is in aggregate no more than 10% of the value of the *client's* financial instrument portfolio; and

(b) the initial amount which the *client* is investing in one or more *restricted eligible liabilities* is at least €10,000.

[Note: Article 44a(2) of *RRD*]

(3) In order to comply with (2), the *firm* or *TP firm* must satisfy itself that the *client* has provided it with accurate information concerning the *client's* financial instrument portfolio.

[**Note**: Article 44a(3) of *RRD*]

Pub ref: 007365

12 Endeavour Square London E20 1JN
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk