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How to respond

The Financial Conduct Authority invites comments on this Consultation Paper. Comments should reach us by 26 September for Chapter 4 and 5, 3 October for Chapter 3, and 10 October for Chapter 2.

Comments may be sent by electronic submission using the form on the FCA's website at (www.fca.org.uk/cp22-17-response-form).

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

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Contents

1 Overview

Chapter No	Proposed changes to Handbook	Consultation Closing Period
2	Changes to the Glossary of definitions, DEPP, COLL and EG to reflect amendments made to the individually recognised overseas collective investment schemes regime under section 272 of FSMA, together with other minor changes to COLL to reflect the UK's withdrawal from the EU	5 weeks
3	Changes to reporting requirements in the Supervision manual	4 weeks
4	Changes to PERG, CONC and MCOB to align with recent changes to the regulatory perimeter in respect of credit agreements entered into with high net worth borrowers	3 weeks
5	Changes to clarify the definition of a 'significant SYSC firm'	3 weeks

2 Changes to the individually recognised overseas schemes regime and other amendments to COLL

Introduction

Gateways for overseas collective investment schemes

2.1 In future, there will be 2 gateways for overseas collective investment schemes to obtain 'recognised' status enabling them to be marketed in the UK. Both regimes are set out in Part 17 of Financial Services and Markets Act 2000 (FSMA).

2.2 One of the gateways is set out in sections 272 to 282C of FSMA (the 's.272 regime'). It is a long-standing regime which involves the Financial Conduct Authority (FCA) making scheme-by-scheme assessments of individual overseas collective investment schemes. If the FCA is satisfied that the tests set out in FSMA have been met, including that adequate protection will be afforded to participants in the scheme (ie, investors), the FCA can declare it a 'recognised scheme'. Recognition enables the scheme to be marketed to the general public in the UK.

2.3 The other gateway – the Overseas Funds Regime (OFR) – is not yet operational. It was introduced via Financial Services Act 2021 (FS Act 2021) as part of the government's post-Brexit commitment to provide a streamlined regime that would avoid the need for overseas funds to be assessed under the s.272 regime where those schemes are eligible to be 'recognised' under the OFR.

2.4 Her Majesty's Treasury amended the s.272 regime in FS Act 2021 to enhance its efficiency, but without changing the fundamental features of the in-depth assessments required for schemes accessing the UK market through this route. This consultation focuses on Handbook changes we need to make in relation to the s.272 regime. We intend to consult on the relevant provisions under the OFR in due course.

s.272 regime-related amendments

2.5 The FS Act 2021 introduced changes to the s.272 regime, including:

- a new power for the FCA to make rules specifying which kinds of proposed alteration to a scheme will count as 'material' and therefore should be notified to us in writing by the scheme's operator in accordance with section 277
- the addition of a power of censure, to enable the FCA to inform investors of any wrongdoing by operators of overseas funds recognised under section 272. Its addition ensures consistency with our power of censure against funds recognised under the OFR, under section 271R

2.6 To reflect these changes in the Handbook, we propose to amend the Collective Investment Schemes sourcebook (COLL), the Decision Procedure and Penalties

manual (DEPP), the Enforcement Guide (EG) and the Glossary of definitions. We would like your feedback on these proposed changes by 10 October 2022. Should we decide to make these changes following consultation, we intend the changes to take effect from 1 January 2023.

2.7 This proposal will be of interest to the operators of overseas collective investment schemes currently recognised, or potentially interested in obtaining recognition, under the s.272 regime, as well as UK firms involved in the promotion of those schemes. Our proposals will also be of interest to UK consumers who are, or who may become, investors in those schemes.

Other amendments

2.8 We are also taking the opportunity to propose minor changes to COLL, where we did not amend the relevant provisions to reflect the UK's withdrawal from the EU. These proposals are relevant to managers of UK authorised funds.

Summary of proposals

Specifying 'material alteration'

2.9 Currently, fund operators are required to notify us of various types of changes made to a scheme recognised under the s.272 regime. This enables us to check whether the change could affect the level of protection given to UK investors. We have the power to revoke the scheme's recognition in certain circumstances, including where we consider that one or more of the requirements for recognition will no longer be satisfied – for example, if we consider that adequate protection will no longer be afforded to investors.

2.10 Section 277(1) of FSMA currently requires the operator to give us prior notice of any proposed alteration to a recognised scheme, which cannot take effect unless it is approved by the FCA or 1 month has expired without the FCA having given notice of refusal. With effect from 1 January 2023, fund operators will need to provide written notice of any proposed alteration to the scheme under section 277(1) of FSMA only if it amounts to a 'material alteration'. The FS Act 2021 gives us the power to make rules defining what is meant by 'material alteration', so that we can ensure such notifications are proportionate and not overly burdensome.

2.11 Whether a change is a material alteration depends on its degree of materiality and the effect it has on the scheme and investors. We would also always need to know if a change was so significant that the essential requirements for recognition set out in s.272 were no longer satisfied. In other cases, the operator would need to determine whether each particular alteration is material or not.

2.12 We propose a new rule in COLL 9.3 (Section 272 recognised schemes) to specify when a proposed alteration to a scheme recognised under the s.272 regime would fall within the scope of being a 'material alteration'. The rule identifies some specific changes which we believe will always be material, including:

- a change to the legal form or name of the scheme, or the composition of its board or governing body

- a change resulting in the restructuring of the scheme or a merger with another scheme
- any alteration to the regulatory status of the scheme or the fund operator, or the trustee or depositary, in its home jurisdiction

2.13 We have also considered that the criteria which we already stipulate in COLL 4.3 should be treated as fundamental and significant changes to UK authorised funds. Based on those criteria, we propose that the following would generally be considered a 'material alteration' to a s.272 scheme:

- a change which alters the purpose, nature or risk profile of the scheme
- any change which may materially prejudice the investors of the scheme, or affect their ability to exercise their rights
- the introduction of any new type of payment, or a material increase in any existing payment, that an investor in the scheme would have to pay out of scheme property

2.14 Those criteria are purposely wide-ranging and an operator will need to determine whether in each case the change requires notification. We propose to provide guidance that includes a non-exhaustive list of examples to help scheme operators determine whether or not an alteration is material.

2.15 This rule and guidance would not apply to changes that already have to be notified to us under paragraphs 3, 3B or 4 of section 277. We also propose new guidance under COLL 9.3 to remind operators of section 272 recognised schemes of their existing notification obligations.

2.16 The proposed rule and guidance are set out in Appendix 2.

Q2.1: Do you agree with our proposed definition of what constitutes a material alteration to a s.272 scheme? Please specify any alterations that you think should be added to, or removed from, the list.

Exercising our power of public censure

2.17 We propose that FCA staff will be able to decide whether to exercise the censure power using 'executive procedures', in line with the definition in our Handbook. This is consistent with DEPP 2.5.12G and DEPP 2.5.13G, which describe the modified procedures applicable to collective investment schemes and certain other cases.

2.18 When deciding whether to revoke recognition, issue a public censure or to do both, the FCA will act proportionately. We propose to make this clear by inserting new guidance in DEPP 6A confirming that the same principles will apply in collective investment scheme cases as when, in other situations, powers to impose suspensions, restrictions, conditions, limitations or disciplinary prohibitions sit alongside powers to impose penalties or public censures.

2.19 We propose to amend the section heading for EG 14.4 so that it includes reference to s.282B. The heading currently reads: 'Exercise of the powers in respect of recognised schemes: sections 279 and 281 of the Act – powers to revoke recognition of schemes recognised under section 272: the FCA's policy'. We consider that the matters addressed in EG 14.4 should extend to circumstances relevant to the exercise of the censure power, with no modification to the individual paragraphs necessary.

2.20 We propose to add the section 282B censure power to the definitions of 'breach' and 'public censure' in the Glossary.

2.21 The proposed changes are set out in Appendix 2.

Q2.2: Do you have any comments on our proposed changes to the Glossary, DEPP or EG?

Other amendments to COLL

2.22 As a result of the UK's withdrawal from the EU, we made extensive changes to the Handbook to remove and replace references to the EU and its laws and institutions where these are no longer relevant to the UK. In relation to COLL, most of the changes were consulted on in CP18/28 and CP18/36.

2.23 We have since noticed instances where rules and guidance were not amended as they should have been during that exercise, so we now propose to make those amendments. They are as follows:

- COLL 4.3.10R addressed the situation of an authorised fund manager of a UK Undertakings for Collective Investment in Transferable Securities (UCITS) scheme resigning without prior warning and being replaced by a management company authorised in another member state of the European Economic Area (EEA). The first paragraph of the rule was revoked but the second paragraph, requiring the unitholders to be notified immediately of the change, remained in place. All UK UCITS schemes must now have a UK-established management company following EU withdrawal, so the whole rule is obsolete and we propose to delete it.
- COLL 6.6B.24G refers to a UCITS depositary having its 'branch or registered office in another EEA State'. It is no longer possible for a UK UCITS scheme to have a depositary with a registered office outside the UK, so we propose to modify sub-paragraph (3)(b)(ii) accordingly.
- Paragraph (2) of COLL 6.9.10G was originally intended to explain how the UCITS Directive provisions on the permitted activities of UCITS management companies would operate within the EU single market. Since the UK is no longer part of the single market, the reference to connected activities being carried out on behalf of EEA UCITS management companies is no longer relevant and we propose to delete it.

2.24 In addition, we propose to modify the title of COLL 6.6A since this section no longer applies to EEA UCITS schemes.

2.25 None of these modifications represent a change in our policy position, as they are all aligned with previous decisions made by the UK authorities about the scope and treatment of retained EU law in our Handbook.

Q2.3: Do you have any comments on our proposals to remove the specified references to the EU / EEA from our rules and guidance?

Cost benefit analysis

2.26 Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules unless, in accordance with section 138L(3) of FSMA, we believe that there will be no increase in costs or that the increase will be of minimal significance.

2.27 We believe that the 3 proposals in this chapter are not likely to result in cost increases or that any increases will be of minimal significance. The proposal on specifying 'material' alterations might lead to a decrease in cost. While fund operators are now required to notify us of all changes to a s.272 scheme, the proposed rule changes would allow such operators to consider making fewer notifications to us going forward by focusing only on 'material' scheme alterations in a more efficient way. The remaining proposals are unlikely to have a direct impact on cost.

2.28 No cost benefit analysis is therefore required.

Impact on mutual societies

2.29 Section 138K(2) of FSMA requires us to prepare a statement setting out our opinion on whether proposed amendments will have an impact on mutual societies which is significantly different from the impact on other authorised persons. We are satisfied that the proposed amendments in this chapter do not impact on mutual societies to a greater extent than on other authorised firms.

Compatibility statement

2.30 When consulting on proposed changes to our Handbook, we are required by section 138I(2) of 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 of FSMA and for the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.

2.31 We are satisfied that the proposed amendments in this chapter are compatible with our objectives and regulatory principles. The amendments will make the Handbook consistent with legislative changes and facilitate our operational objective of securing an appropriate degree of consumer protection and enhancing market integrity, by making it easier for firms to understand their regulatory obligations.

Equality and diversity

2.32 We have considered the equality and diversity issues that may arise from the proposed amendments in this chapter. We have not identified any adverse impact that the proposals in this chapter would have on any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).

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

3 Amendments to reporting requirements in the Supervision manual

Introduction

3.1 We collect regulatory data to inform and support our supervision of firms. Our data reporting requirements are set out in the Handbook, predominantly in the Supervision manual (SUP). We use internal feedback and feedback directly from firms to clarify and improve these requirements. This chapter sets out our proposed changes to regulatory reporting forms, their application rules and supporting guidance notes.

3.2 The proposed changes are to Handbook text and the FSA035 reporting form. The statutory powers the changes will be made under are set out in Appendix 3 of this Quarterly Consultation Paper.

Summary of proposals

3.3 We propose amendments to form FSA035. The same text is also presented in SUP 16 Annex 24R and the guidance on validation in SUP 16 Annex 25G. We also seek to amend labelling errors in SUP 16 Annexes 24R and 25G.

3.4 We propose to replace data elements 18A and 19A in FSA035 with data element 23A to reflect the prudential requirements firms have in Interim Prudential sourcebook for Investment Businesses (IPRU(INV)) 5.4.3R.

3.5 Data elements 18A and 19A currently ask firms to state the own funds requirement, for which input options are given as 5 and 4,000, respectively. These options are not aligned with the own funds requirements available to firms according to IPRU(INV) 5.4.3R.

3.6 We therefore propose to replace both with a new data element 23A: 'own funds requirement calculated in accordance with IPRU (INV) 5.4.3R'.

3.7 The Completion Guidance to FSA035 in SUP 16 Annex 25G currently gives the input options to data element 18A as 'blank' or '5' and the input options to data element 19A as 'blank' or '4000'.

3.8 We propose to modify this in line with the above changes and update the Completion Guidance to read as follows: 'Firms should review their own funds requirement according to IPRU(INV) 5.4.3R before submission of this form and ensure that the correct amount is reported in field 23A. Any currency conversions must use the relevant conversion rate as of the period end date. For example, if a firm is reporting in United States dollar (USD), and their own funds requirement is 4 million British pound sterling (GBP) (4,000k GBP), then they should use the period end date currency conversion rate to convert 4,000k GBP into USD and report this USD figure in field 23A'.

3.9 We also propose to correct labelling errors in both SUP 16 Annex 24R and 25G to correct the headers for FSA034 and FSA035 to ensure that these refer to the correct exemption in IPRU(INV). We propose to change the respective headers to:

- 'FSA034 Capital Adequacy (for firms subject to IPRU(INV) Chapter 5 that do not fall within any of the exceptions listed in IPRU(INV) 5.4.2R)'
- 'FSA035 Capital Adequacy (for firms subject to IPRU(INV) Chapter 5 that fall within one of the exceptions in IPRU(INV) 5.4.2R)'

3.10 We also propose to correct a labelling error in SUP Annex 25G, where the validation guidance pages for FSA033, FSA034 and FSA035 show 'FSA043 validations Page 1'.

3.11 We propose to amend this labelling error by changing the validation guidance pages to show:

- 'FSA033 validations Page 1'
- 'FSA034 validations Page 1'
- 'FSA035 validations Page 1'

Q3.1: **Do you have any comments on our proposals to update the FSA035 form and relevant supporting content contained in SUP 16 Annex 24R and 25G?**

Q3.2: **Do you have any comments on our proposals to correct the labelling errors in SUP 16 Annex 25G?**

Cost benefit analysis

3.12 Sections 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA provides that Section 138I(2)(a) does not apply where we consider that there will be no increase in costs, or the increases will be of minimal significance.

3.13 Having assessed the individual changes proposed in this chapter and based on previous estimates relating to similar reporting changes, we believe the exemption of minimal significance applies to the items therefore no CBA is required for the proposals in this chapter.

Q3.3: **Do you have any comments on our assessment that any increase of costs from the changes set out in this chapter will be of only minimal significance?**

Impact on mutual societies

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

Compatibility statement

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

3.16 The proposed changes in this chapter will further clarify our expectations as to what data we are requesting. In turn, this will allow more effective and efficient supervision of firms which will help us to advance our consumer protection objective.

3.17 We do not believe that the proposed changes will have an impact on competition. The changes are expected to impose no or minimal costs on firms and do not affect firms' incentives or ability to compete in the market.

Equality and diversity

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

3.19 We will continue to consider the equality and diversity implications of the proposals during the consultation period, and, if necessary, will revisit them when we update the Handbook. We welcome any feedback to this chapter of the consultation on our equality and diversity assessment.

4 Changes to PERG, CONC and MCOB to reflect the updated regulatory perimeter

Introduction

4.1 On 29 June 2022, Her Majesty's Treasury made the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2022. This came into force on 21 July 2022 and amongst other things amended the 'high net worth' exemption from the consumer credit regulatory perimeter, set out in article 60H of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. This exemption applies in respect of borrowers who meet certain conditions, chiefly in relation to their income and assets.

4.2 These changes enable certain credit agreements, which were previously outside the scope of the exemption, to fall within it provided that the borrower can meet certain additional residency requirements. Specifically, 'article 3(1)(b) credit agreements' (being credit agreements not secured on residential land, the purpose of which is to acquire or retain property rights in land or in an existing or projected building) can now be treated as exempt agreements. Previously, such agreements were largely carved out of the article 60H exemption in order to comply with our obligations as an EU member state under the Mortgage Credit Directive (MCD) (Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010).

4.3 We are proposing amendments to our Handbook to align with these changes.

Summary of proposals

PERG

4.4 The high net worth exemption from the consumer credit perimeter is described in the Perimeter Guidance manual (PERG), from PERG 2.7.19J. We are proposing amendments to ensure that PERG reflects the changes to the perimeter made by the Treasury.

4.5 We have also included additional provisions in PERG 4 (which contains guidance on the mortgages perimeter) to supplement the existing explanation of the effect of the MCD on the regulatory perimeter.

CONC and MCOB

4.6 We propose amending the Consumer Credit sourcebook (CONC) and the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) to:

- reflect the changes made by the Treasury's amendments
- ensure continuity of treatment for article 3(1)(b) credit agreements entered into by high net worth borrowers who do not meet the new UK residence requirements

4.7 At the moment, an article 3(1)(b) credit agreement entered into with a high net worth borrower cannot be treated as an exempt agreement unless the agreement is of a type that falls within an exemption or permitted derogation from the scope of the MCD (such as certain types of bridging finance) as it applied to the UK when we ceased being subject to EU law. Borrowers under regulated 'MCD article 3(1)(b) credit agreements' that would otherwise be eligible for the high net worth exemption could, however, waive all Handbook requirements except those that implemented the MCD.

4.8 CONC 1.2.10, CONC App 1.4 and MCOB 14 gave effect to this lighter touch regime provided the borrower met certain conditions. This effectively mirrored the requirements of the high net worth exemption by, for example, requiring the borrower to submit a declaration confirming that they understood that they would be waiving certain regulatory protections. Its effect was to ensure that such agreements were subject to relevant provisions in MCOB (ie, those that implemented the MCD) but not the provisions in CONC that would otherwise apply to article 3(1)(b) credit agreements as a result of CONC 1.2.8.

4.9 We propose to preserve this so that, going forward, high net worth borrowers under article 3(1)(b) credit agreements who do not meet the UK residence requirements newly set out in article 60H of the Regulated Activities Order (ie, they have been in this country for less than 183 days of the year before the agreement is entered into) can still benefit from this lighter touch regime.

4.10 We are also proposing a related amendment to the Glossary definition of 'exempt article 3(1)(b) credit agreement' to give effect to these changes.

Q4.1: Do you have any technical comments on the proposed changes to PERG, CONC or MCOB?

Q4.2: Do you have any comments on the proposed approach in respect of article 3(1)(b) credit agreements entered into with high net worth borrowers which remain regulated?

Cost benefit analysis

4.11 Section 138I(2)(a) of Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA states that section 138I(2)(a) does not apply if we consider that there will be no increase in costs or the increase will be of minimal significance. We consider that our proposed changes will not result in an increase in costs, or that where they do this will be of minimal significance. No cost benefit analysis is therefore required.

Impact on mutual societies

4.12 Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. The proposed changes are not expected to have a significantly different impact on mutual societies.

Compatibility statement

4.13 When consulting on new rules, we are required by section 138I(2) of 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 of FSMA and for the importance of taking action intended to minimise financial crime (section1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.

4.14 We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. The amendments advance our operational objective of securing an appropriate degree of consumer protection and promoting effective competition in the interests of consumers. We are satisfied that any burdens or restrictions are proportionate to the expected benefits, as these amendments are focused on reflecting and providing clarity on recent changes to the regulatory perimeter.

Equality and diversity

4.15 We have considered the equality and diversity issues that may arise from the proposed amendments. We have not identified any adverse impact that the proposals in this chapter would have on any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).

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

5 Changes to clarify the definition of a 'significant SYSC firm'

Introduction

5.1 When introducing the Investment Firm Prudential Regime (IFPR) in January 2022, we renamed and moved the definition of a 'significant IFPRU firm' within our Handbook. This definition had been used as one of the criteria for identifying Enhanced firms under the Senior Managers & Certification Regime (SM&CR). We renamed and moved this definition to retain it in our Handbook, following the deletion of the Prudential sourcebook for Investment Firms (IFPRU) sourcebook as part of implementation of the IFPR. Since then, it has come to our attention that the newly named definition of a 'significant SYSC firm' in the Senior Management Arrangements, Systems and Controls (SYSC) sourcebook could result in more firms being brought into scope as Enhanced firms than under the previous definition as it had been understood and applied.

5.2 Our policy intent had been for the scope of application of the SM&CR Enhanced regime to be maintained precisely as it was prior to the implementation of the IFPR. We therefore propose to amend the definition of a 'significant SYSC firm' to make sure that this outcome is delivered.

Why we are consulting

5.3 We previously consulted in Consultation Paper (CP) 21/26 on transferring the IFPRU definition of significant firm to the SYSC sourcebook as a consequential change in implementing the IFPR. We received no objections from respondents, so we included this change as final rules in our Policy Statement (PS) 21/17.

5.4 We were subsequently contacted by a number of firms and trade bodies which raised concerns that the process of moving across this definition may have unintentionally increased its scope of application, moving more firms into scope of the Enhanced regime under the SM&CR.

5.5 Stakeholders were concerned that moving firms from the Core regime of the SM&CR to the Enhanced regime would be disproportionate and not commensurate with the risk that they pose to the market and to consumers. Further, there were concerns that this move would bring into scope firms from other sectors, where other more specific thresholds have been set by us.

5.6 We considered the issue and found that the historical ambiguity arose because, while the definition of a 'significant IFPRU firm' appeared in the IFPRU sourcebook and contained 'IFPRU' in its name, it was not strictly limited only to IFPRU firms. This was not a problem in practice because we and firms both treated it as only applying to IFPRU firms.

5.7 While our policy intent had been to maintain the existing scope of application of the Enhanced regime under the SM&CR, in practice, the effect of moving and renaming the definition was to remove these limitations as they had been understood and applied. We estimate that this could result in as many as around 700 additional firms being brought into scope of the Enhanced regime. We therefore propose changes in this Quarterly Consultation Paper to ensure continuity of the scope of the Enhanced regime as it has previously been understood and applied.

Summary of proposals

5.8 We propose to make clear that only firms that would have been both significant IFPRU firms and IFPRU investment firms under the pre-IFPR arrangements fall within the definition of a 'significant SYSC firm' for the purpose of the Enhanced scope SM&CR regime.

5.9 We would make this change by limiting application of the definition of a 'significant SYSC firm' in our Handbook provisions about the SM&CR to reflect the scope of 'significant IFPRU firm' as it had previously been understood and applied by us and firms.

5.10 This amendment would provide clarity and ensure that the Handbook accurately reflects our original policy objectives.

Q5.1: Do you agree that our proposed amendments will clarify the scope of application of the SM&CR for firms?

Cost benefit analysis

5.11 Sections 1381(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. However, section 138L of FSMA states that we do not need to provide a CBA where we consider that there will be no increase in costs, or the increases will be of minimal significance. In effect, the proposed change would avoid an increase in costs for those 700 firms unintentionally potentially brought in scope of the Enhanced regime. Having assessed the clarificatory change proposed in this chapter, we believe this exemption applies.

Impact on mutual societies

5.12 Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies compared to other authorised persons. The FCA does not expect the proposals in this paper to have a significant different impact on mutual societies.

Compatibility statement

5.13 When consulting on new rules, we are required by section 138I(2) of 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 of FSMA and for the importance of taking action intended to minimise financial crime (section1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.

5.14 We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. The amendments advance our operational objectives of securing an appropriate degree of consumer protection and promoting effective competition in the interests of consumers. Specifically, we consider that they achieve this by preserving the widely understood scope and design of the SM&CR - that had been designed to achieve our operational objectives.

Equality and diversity

5.15 We have considered the equality and diversity issues that may arise from the proposed amendments. We do not think that the proposals in this chapter adversely impact any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation, and gender reassignment).

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

Annex 1
Abbreviations used in this paper

Abbreviation	Description
CBA	Cost benefit analysis
COLL	Collective Investment Schemes sourcebook
CONC	Consumer Credit sourcebook
CP	Consultation paper
DEPP	Decision Procedure and Penalties manual
EEA	European Economic Area
EG	Enforcement Guide
EU	European Union
FCA	Financial Conduct Authority
FS Act 2021	Financial Services Act 2021
FSMA	Financial Services and Markets Act 2000
GBP	British pound sterling
IFPR	Investment Firm Prudential Regime
IFPRU	Prudential sourcebook for Investment Firms
IPRU(INV)	Interim Prudential sourcebook for Investment Businesses
MCD	Mortgage Credit Directive
MCOB	Mortgages and Home Finance: Conduct of Business sourcebook
OFR	Overseas Funds Regime
PERG	Perimeter Guidance manual
PS	Policy statement
SM&CR	Senior Managers & Certification Regime

Abbreviation	Description
SUP	Supervision manual
SYSC	Senior Management Arrangements, Systems and Controls
UCITS	Undertakings for Collective Investment in Transferable Securities
UK	United Kingdom
USD	United States dollar

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.

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London E20 1JN

Appendix 1
List of questions

Q2.1: Do you agree with our proposed definition of what constitutes a material alteration to a s.272 scheme? Please specify any alterations that you think should be added to, or removed from, the list.

Q2.2: Do you have any comments on our proposed changes to the Glossary, DEPP or EG?

Q2.3: Do you have any comments on our proposals to remove the specified references to the EU / EEA from our rules and guidance?

Q3.1: Do you have any comments on our proposals to update the FSA035 form and relevant supporting content contained in SUP 16 Annex 24R and 25G?

Q3.2: Do you have any comments on our proposals to correct the labelling errors in SUP 16 Annex 25G?

Q3.3: Do you have any comments on our assessment that any increase of costs from the changes set out in this chapter will be of only minimal significance?

Q4.1: Do you have any technical comments on the proposed changes to PERG, CONC or MCOB?

Q4.2: Do you have any comments on the proposed approach in respect of article 3(1)(b) credit agreements entered into with high net worth borrowers which remain regulated?

Q5.1: Do you agree that our proposed amendments will clarify the scope of application of the SM&CR for firms?

Appendix 2
Changes to the individually recognised overseas schemes regime and other amendments to COLL

COLLECTIVE INVESTMENT SCHEMES (INDIVIDUALLY RECOGNISED OVERSEAS SCHEMES AND MISCELLANEOUS AMENDMENTS) INSTRUMENT 2022

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) 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 261I (Contractual scheme rules);
(f) section 277 (Alteration of schemes and changes to the operator, trustee or depositary);
(g) section 282B (Public censure);
(h) section 395 (The FCA's procedures); and

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

(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 FCA 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).

(1)	(2)
Glossary of definitions	Annex A
Decision Procedure and Penalties Manual (DEPP)	Annex B
Collective Investment Schemes Sourcebook (COLL)	Annex C

Amendments to the material outside the Handbook

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

Citation

F. This instrument may be cited as the Collective Investment Schemes (Individually Recognised Overseas Schemes and Miscellaneous Amendments) Instrument 2022.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

Amend the following definitions as shown.

breach	in *DEPP*:	
	…	
	(10)	…
	(10A)	a contravention in respect of which the *FCA* is empowered to take action pursuant to section 282B (Public censure) of the *Act*;
	…	
public censure	…	
	(4)	a statement published under section 87M (Public censure of issuer) of the *Act*, under section 88A (Disciplinary powers: contravention of s88(3)(c) or (e)) of the *Act* or under section 91 (Penalties for breach of Part 6 rules) of the *Act*;
	(5)	a statement published under section 282B (Public censure) of the *Act*.

Annex B

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2 Statutory notices and the allocation of decision making

…

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

…

Section of the Act	Description	Handbook reference	Decision maker
…			
280(1)/(2)	…		
282B	when the *FCA* is proposing or deciding to publish a statement censuring the *operator* of a *scheme* recognised under section 272 of the *Act*.	*COLL* 9	*Executive procedures*
…			

6A The power to impose a suspension, restriction, condition, limitation or disciplinary prohibition

…

Insert the following new section, DEPP 6A.5, after DEPP 6A.4 (The interaction between the power to impose suspensions, restrictions, conditions, limitations or disciplinary prohibitions and the power to impose penalties or public censures). The text is not underlined.

6A.5 Collective investment schemes: the interaction between the power to revoke recognition and the power to issue public censures

6A.5.1 G Under sections 279, 281 and 282B of the *Act*, the *FCA* can revoke recognition of a *scheme* recognised under section 272 and/or issue the *operator* with a *public censure*. Following the approach in *DEPP* 6A.4.1G and *DEPP* 6A.4.2G(3), where the *FCA* considers it appropriate to impose both sanctions, it will decide whether the combined impact on the *operator*

is likely to be disproportionate in respect to the *breach* and the deterrent effect of the sanctions.

Annex C

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

4 Investor Relations

…

4.3 Approvals and notifications

…

~~Appointment of an AFM without prior written notice to unitholders~~

4.3.10 R (1) …

(2) ~~The new *authorised fund manager* must immediately notify *unitholders* of its appointment under (1) in an appropriate manner.~~ [deleted]

…

6 Operating duties and responsibilities

…

6.6A Duties of AFMs in relation to UCITS schemes ~~and EEA UCITS schemes~~

…

6.6B UCITS depositaries

…

Limitation on delegation

…

6.6B.24 G …

(3) …

(b) (i) …

(ii) For example, the *FCA's* ability to supervise the *depositary* might be impeded if the *depositary* performed tasks other than administrative and supporting tasks from its *branch* ~~or registered office~~ in ~~another~~ an *EEA State*.

…

6.9 Independence, names and UCITS business restrictions

…

Connected activities: guidance

6.9.10 G (1) …

(2) ~~The activities referred to at *COLL* 6.9.9R (3) (a) to *COLL* 6.9.9R (3) (c) may be performed on behalf of *EEA UCITS management companies.*~~ [deleted]

…

9 Recognised schemes

…

9.3 Section 272 recognised schemes

…

9.3.7 …

Notification of alterations to schemes

9.3.8 G Section 277(1) of the *Act* (Alteration of schemes and changes of operator, trustee or depositary) requires notification by the *operator* to the *FCA* of certain proposed alterations to a *scheme* recognised under section 272 of the *Act* which, if made, would be a material alteration. The types of alterations that would constitute a material alteration are set out at *COLL* 9.3.10R and *COLL* 9.3.11G.

9.3.9 G In accordance with section 277(2) of the *Act*, effect is not to be given to any such proposed material alteration to the *scheme* unless:

(1) the *FCA*, by written notice, has given its approval to the proposal; or

(2) one *month*, beginning with the date the notice was given under section 277(1) of the *Act*, has expired without the *FCA* having given written notice to the *operator* that it has decided to refuse approval.

Material alteration of a scheme

9.3.10 R For the purposes of section 277(1), a material alteration is an alteration which:

(1) changes the purpose or nature of the *scheme*;

(2) alters the risk profile of the *scheme*;

(3) may materially prejudice a *participant* in the *scheme*;

(4) affects the ability of *participants* in the *scheme* to exercise their rights in relation to their investments;

(5) introduces any new type of payment or materially increases other types of payment that a *participant* in the *scheme* would have to pay out of *scheme property*;

(6) changes the legal form of the *scheme*;

(7) changes the name of the *scheme* or the name of the *umbrella* of which a *sub-fund* is a part;

(8) will result in the restructuring of the *scheme* or a merger with another *scheme*;

(9) changes the regulatory status of the *scheme*;

(10) changes the regulatory status of the *operator* or, if the *scheme* has a *depositary*, of the *depositary*;

(11) changes the composition of the *board* or *governing body* of the *scheme*, if it has one; or

(12) otherwise has a material effect on the *scheme* and its *participants*.

Guidance on material alterations

9.3.11 G (1) For the purpose of *COLL* 9.3.10R, a material alteration is likely to include:

(a) any material changes to the investment objective or policy;

(b) any change to the investment strategy that involves taking exposure to a new class of assets with a different risk profile;

(c) any change affecting arrangements for the redemption of *units* on behalf of *participants*, including any arrangements to sell *units* on an investment exchange;

(d) any change to the facilities maintained in the *United Kingdom*, including marketing arrangements, in accordance with *COLL* 9.4; and

(e) any expansion or limitation of the powers and duties of the *operator* or, if the *scheme* has a *depositary*, of the *depositary*.

(2) In addition to the particular matters specified in *COLL* 9.3.10R(1) to (11), *COLL* 9.3.10R(12) requires the *operator* of a *scheme* recognised under section 272 to notify the *FCA* of any other change which has a material effect on the *scheme* and its *participants*. Any change may be a material alteration depending on its degree of materiality and its effect on the *scheme* and its *participants*. Consequently, an *operator* will need to determine whether in each case a particular change is a material alteration or not.

Other notifications

9.3.12 G Section 277 of the *Act* also requires notification to the *FCA* of certain other changes in relation to a *scheme* recognised under section 272 of the *Act*, such as changes to the operator or depositary. This should be kept in mind when considering any proposed change.

Recognition of parts of a scheme

9.3.13 G (1) Section 282C of the *Act* (Recognition of parts of schemes under section 272) sets out that section 272(1) of the *Act* may apply in relation to part of a *collective investment scheme* as it applies in relation to such a *scheme*. In our view, this means that the *FCA* is able to recognise one or more but not necessarily all *sub-funds* in an *umbrella*.

(2) As a result, references to a *scheme* in *COLL* 9.3.8G to *COLL* 9.3.12G include references to a *sub-fund* in an *umbrella*.

Annex D

Amendments to the Enforcement Guide (EG)

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

7 Financial penalties and other disciplinary sanctions

7.1 The FCA's use of sanctions

…

7.1.2 G The FCA has the following powers to impose sanctions.

(1) It may publish a statement:

…

(ec) …

(eca) against an *operator* of a *scheme* recognised under section 272 of the *Act*;

…

…

…

14 Collective Investment Schemes

…

14.4 Exercise of the powers in respect of recognised schemes: sections 279, ~~and~~ 281 and 282B of the Act – powers to revoke recognition of schemes recognised under section 272 or issue the operators of such schemes with a public censure: the FCA's policy

Appendix 3
Amendments to reporting requirements in the Supervision manual

SUPERVISION MANUAL (REPORTING No [X]) INSTRUMENT 2022

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 137A (The FCA's general rules);
(2) section 137T (General supplementary powers); and
(3) section 139A (Power of the FCA to give guidance).

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

Commencement

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

Amendments to the FCA Handbook

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

Citation

E. This instrument may be cited as the Supervision Manual (Reporting No [X]) Instrument 2022.

By order of the Board
[*date*]

Annex

Amendments to the Supervision manual (SUP)

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

16 Reporting requirements

…

16 Annex 24R Data items for SUP 16.12

…

The form (Data items for SUP 16.12) referred to in SUP 16 Annex 24R is amended as shown.

FSA034

Capital adequacy (for firms subject to IPRU(INV) Chapter 5 ~~not subject to the exemption in IPRU(INV) 5.2.3(2)R)~~ that do not fall within any of the exceptions listed in IPRU(INV) 5.4.2R)

…

FSA035

Capital adequacy (for firms subject to IPRU(INV) Chapter 5 ~~subject to the exemption in 5.2.3(2)R)~~ that fall within one of the exceptions in IPRU(INV) 5.4.2R)

…

Regulatory capital test

…

Own funds requirement: ~~either~~

18 ~~£5 or~~ [deleted]

19 ~~£4,000~~ [deleted]

23 Own funds requirement calculated in accordance with IPRU(INV) 5.4.3R

20 Surplus / Deficit of Own Funds

…

16 Annex 25G Guidance notes for data items in SUP 16 Annex 24R

The form (Guidance notes for data items in SUP 16 Annex 24R) referred to in SUP 16 Annex 25G is amended as shown.

FSA033 – Capital Adequacy (for firms subject to IPRU(INV) Chapter 3) validations

…

FSA04~~33~~33 validations Page 1

FSA034 – Capital Adequacy (for firms subject to IPRU(INV) Chapter 5 ~~not subject to exemption in IPRU(INV) 5.2.3(2)R)~~ that do not fall within any of the exceptions listed in IPRU(INV) 5.4.2R

…

FSA034 – Capital Adequacy (for firms subject to IPRU(INV) Chapter 5 ~~not subject to exemption in IPRU(INV) 5.2.3(2)R) validations~~ that do not fall within any of the exceptions listed in IPRU(INV) 5.4.2R) validations

…

FSA04~~33~~34 validations Page 1

FSA035 – Capital Adequacy (for firms subject to IPRU(INV) Chapter 5 ~~and to the exemption in IPRU(INV) 5.2.3(2)R)~~ that fall within one of the exceptions in 5.4.2R)

…

Defined Terms

…

- The requirement that any figures be audited does not apply to small companies exempted from audit under the Companies Act 2006.

- Firms should review their own funds requirement according to IPRU(INV) 5.4.3R before submission of this form and ensure that the correct amount is reported in field 23A. Any currency conversions must use the relevant conversion rate as of the period end date. For example, if a firm is reporting in United States dollar (USD), and their own funds requirement is 4 million British pound sterling (GBP) (4,000k GBP), then they should use the period end date currency conversion rate to convert 4,000k GBP into USD and report this USD figure in field 23A.

FSA035 – Capital Adequacy (for firms subject to IPRU(INV) Chapter 5 ~~and to the exemption in IPRU(INV) 5.2.3(2)R) validations~~ that fall within one of the exceptions in 5.4.2R)

Internal validations

Data elements are referenced by row, then column.

Validation number	Data element		
…			
4	18A	=	~~blank or 5~~ [deleted]
5	19A	=	~~blank or 4000~~ [deleted]
6	19A		~~If 18A = blank, then 4000, else blank~~ [deleted]
7	20B	=	17B – ~~(18A + 19A)~~ 23A
…			
10	23A		Value calculated in accordance with IPRU (INV) 5.4.3R

Appendix 4
Changes to PERG, CONC and MCOB to reflect the updated regulatory perimeter

CONSUMER CREDIT AND MORTGAGES (HIGH NET WORTH) INSTRUMENT 2022

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 (General rule-making power);
(2) section 137T (General supplementary powers); and
(3) section 139A (Power of the FCA to give guidance).

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

Commencement

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

Amendments to the Handbook

D. The 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):

(1)	(2)
Glossary of definitions	Annex A
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex B
Consumer Credit sourcebook (CONC)	Annex C

Amendments to material outside the Handbook

E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex D to this instrument.

Citation

F. This instrument may be cited as the Consumer Credit and Mortgages (High Net Worth) Instrument 2022.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

Amend the following definition as shown:

exempt article 3(1)(b) credit agreement	an *article 3(1)(b) credit agreement* that is:		
	(a)	an *MCD exempt bridging loan*;	
	(b)	an *MCD exempt credit union loan*;	
	(c)	an *MCD exempt overdraft loan*; ~~or~~	
	(d)	an *MCD exempt lifetime mortgage*; or	
	(e)	an exempt agreement for the purposes of Chapter 14A of the *Regulated Activities Order* pursuant to *article 60H* of that Order.	

Annex B

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

In this Annex, striking through indicates deleted text.

14 MCD article 3(1)(b) credit agreements

14.1 Handbook provisions which apply in respect of MCD article 3(1)(b) credit agreements

…

14.1.7 R The following provisions do not apply to an *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* where the conditions in *CONC* 1.2.10R~~(1) and~~ (2) are fulfilled: *MCOB* 7.5 (mortgages: statements) and *MCOB* 13 (arrears, payment shortfalls and repossessions) (except for *MCOB* 13.3.1AR to *MCOB* 13.3.1BG, *MCOB* 13.3.2AR to *MCOB* 13.3.8G, and *MCOB* 13.6.1R to *MCOB* 13.6.2G, which apply even where those conditions are fulfilled).

~~[**Note:** article 60H(2) of the *Regulated Activities Order*]~~

…

Annex C

Amendments to the Consumer Credit sourcebook (CONC)

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

1 Application and purpose and guidance on financial difficulties

…

1.2 Who? What? Where?

…

Application to MCD article 3(1)(b) creditors and MCD article 3(1)(b) credit intermediaries

…

1.2.10 R (1) *CONC* 1.2.8R and the *rules* applied by *CONC* 1.2.8R do not apply to an *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* where~~: the *MCD article 3(1)(b) credit agreement* would be an exempt agreement pursuant to article 60H(1) of the *Regulated Activities Order* but for~~ the conditions in paragraph (2) are met.

~~(a) paragraph (1)(b)(ii)(bb) of article 60H of the *Regulated Activities Order* (which relates to high net worth borrowers); or~~

~~(b) article 60HA of the *Regulated Activities Order* (exemptions not permitted under the *MCD*).~~

(2) ~~Agreements of the kind referred to in paragraph (1)(a) are excluded from *CONC* 1.2.8R and the *rules* applied by *CONC* 1.2.8R only if the *rules* in *CONC* App 1.4.1R to *CONC* App 1.4.4R, and the *rules* to which those *rules* refer, are complied with.~~ The conditions referred to in paragraph (1) are:

(a) the agreement is either secured on *land* or for credit which exceeds £60,260;

(b) the agreement includes a declaration, made by the *borrower* which provides that the *borrower* agrees to waive the protections and remedies applicable to *regulated credit agreements* except for those that transposed or implemented

the *MCD* as it applied to the *United Kingdom* before *IP completion day*, and which complies with *CONC* App 1.4;

(c) a statement has been made in relation to the income or assets of the *borrower* which complies with *CONC* App 1.4; and

(d) a copy of the statement required by sub-paragraph (c) was provided to the *lender* before the agreement was entered into.

~~[**Note:** article 60H(2) of the *Regulated Activities Order*]~~

1.2.11 G ~~The purpose of *CONC* 1.2.10R(1)(a) is to enable a high net worth borrower under an *MCD article 3(1)(b) credit agreement* to waive the protections and remedies applicable to *regulated credit agreements*, except for those that transpose or implement the *MCD*. The *MCD* does not contain an exemption or derogation in respect of borrowing above a certain amount, unlike the *Consumer Credit Directive*: the EUR75,000 threshold in that Directive has been was implemented in the form of the exemption for high net worth borrowers in article 60H of the *Regulated Activities Order*.~~ The regulatory status of *article 3(1)(b) credit agreements* entered into with high net worth individuals is dependent on several factors due to the different treatment of these agreements over time.

(1) An *article 3(1)(b) credit agreement* is exempt under article 60H of the *Regulated Activities Order*:

(a) if at the time it was entered into, the conditions set out in article 60H(1) were met; and

(b) if entered into on or after 21 March 2016 (whether before or after 21 July 2022), it was outside the scope of the *MCD* as implemented in the *United Kingdom* (such agreements were set out in article 60HA of the *Regulated Activities Order* until *IP completion day*, and in section 423A(3) of the *Act* thereafter).

(2) Where an *article 3(1)(b) credit agreement* not falling within paragraph (1)(b) is entered into on or after 21 July 2022:

(a) if the *borrower* is (or is treated as) *UK* resident when the agreement is entered into (see *PERG* 2.7.19J), the agreement is an exempt agreement where the conditions in article 60H(1) of the *Regulated Activities Order* are met.

(b) if the *borrower* is not (and not treated as) *UK* resident (such as those who have been present in the *UK* for less than 183 *days* in the year before the agreement was entered into), the agreement will not be an exempt agreement under article 60H. The *borrower* can, however, elect to waive the protections and remedies applicable to *regulated credit agreements* except for those that transposed or implemented the *MCD* as it applied to the *United Kingdom* before *IP completion day*. This will mean the agreement will not be subject to *CONC* but some *rules* in *MCOB* will still apply (see *CONC* 1.2.9G).

(3) An *article 3(1)(b) credit agreement* not falling within paragraph (1) entered into on or after 21 March 2016 and before 21 July 2022 cannot be an exempt agreement under article 60H, but the borrower could elect to waive the protections and remedies applicable to *regulated credit agreements* except those that transposed or implemented the *MCD*. This will mean the agreement will not be subject to *CONC* but some *rules* in *MCOB* will still apply (see *CONC* 1.2.9G).

(4) The ability of a *borrower* to waive the protections and remedies applicable to regulated credit agreements except those that transposed or implemented the *MCD* is set out in *CONC* 1.2.10R (as it applied when the agreement was entered into).

…

App 1.4 Exemption for high net worth borrowers and hirers and exemption relating to businesses

Exemption for high net worth borrowers and hirers

1.4.1 R (1) For the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order* ~~and of *CONC* 1.2.10R(2)~~, a declaration made by the *borrower* or *hirer* which provides that the *borrower* or *hirer* agrees to forgo the protection and remedies that would be available to the *borrower* or *hirer* if the agreement were a *regulated credit agreement* or a *regulated consumer hire agreement* must comply with *CONC* App 1.4.2R and ~~either~~ *CONC* App 1.4.6R ~~or, in the case of an *MCD article 3(1)(b) credit agreement*, *CONC* App 1.4.6AR~~.

(1A) For the purposes of *CONC* 1.2.10R, a declaration made by the *borrower* which provides that the *borrower* agrees to waive the protections and remedies applicable to *regulated credit agreements*, except for those that transposed or implemented the

MCD as it applied to the *United Kingdom* before *IP completion day*, must comply with *CONC* App 1.4.2R and *CONC* App 1.4.6AR.

(2) For the purposes of articles 60H(1)(d) and 60Q(c) of the *Regulated Activities Order* and of *CONC* 1.2.10R~~(2)~~, a statement in relation to the income or assets of the *borrower* or *hirer* (referred to in this section as a statement of high net worth) must comply with *CONC* App 1.4.3R, *CONC* App 1.4.4R and *CONC* App 1.4.7R.

(3) For the purposes of articles 60H(1)(e) and 60Q(d) of the *Regulated Activities Order* and of *CONC* 1.2.10R~~(2)~~, the statement in (2) must be made during the period of one year ending with the day on which the agreement was made.

1.4.2 R A declaration for the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order* and of *CONC* 1.2.10R~~(2)~~ shall

…

…

Declaration by high net worth borrower or hirer

…

1.4.6A R **Declaration by high net worth borrower under an MCD article 3(1)(b) credit agreement**

The declaration for the purposes of ~~article 60H(1)(c) of the *Regulated Activities Order*~~ *CONC* 1.2.10R must have the following form and content-

"Declaration by high net worth borrower under an MCD article 3(1)(b) credit agreement

~~(article 60H(1)(c) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)~~

I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of ~~article 60H(1)(d) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001~~ *CONC* 1.2.10R in the *FCA's* Consumer Credit sourcebook.

I understand that by making this declaration I will not have the benefit of the protection and remedies that would be available to me under the

Financial Services and Markets Act 2000, except for those that transposed or implemented the Mortgage Credit Directive (Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property).

~~(a) the Financial Services and Markets Act 2000, except for those that transpose or implement the Mortgage Credit Directive, Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property, or~~

~~(b) the Consumer Credit Act 1974,~~

~~if this were a regulated agreement under those Acts.~~

…

Statement of high net worth

1.4.7 A statement of high net worth for the purposes of articles 60H(1)(d) and 60Q(c) of the *Regulated Activities Order*, and *CONC* 1.2.10R, must have the following form and content:

"Statement of High Net Worth

(articles 60H(1) and 60Q of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and CONC 1.2.10R)

…

…

Annex D

Amendments to the Perimeter Guidance manual (PERG)

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

2 Authorisation and regulated activities

…

2.7 Activities: a broad outline

…

High net worth exemption

2.7.19J G A *credit agreement* is an exempt agreement if:

…

(5) the connection between that statement and the *credit agreement* complies with *CONC* App 1.4; ~~and~~

(6) a copy of that statement was provided to the *lender* before the agreement was entered into; and

(7) the purpose of the agreement is to acquire or retain property rights in *land* or in an existing or projected building:

(a) a declaration has been made by the *borrower* which provides that either the *borrower* is *UK* resident or is treated as present in the *United Kingdom*;

(b) a copy of that declaration was provided to the *lender* before the agreement was entered into; and

(c) the agreement is entered into on or after 21 July 2022.

…

2.7.19J-A G For the purposes of *PERG* 2.7.19JG(7)(a), a *borrower*:

(1) is *UK* resident if the *borrower* (or the *borrower's* spouse or civil partner, when living with them on the date the agreement is entered into) has been present in the *United Kingdom* for at least 183 *days* during the continuous period of 365 *days* ending with the date the agreement is entered into;

(2) is treated as present in the *United Kingdom* if, on the date the agreement was entered into, the *borrower*:

(a) is in Crown employment (being employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by a statutory provision); and

(b) is present in a country or territory outside the *United Kingdom* for the purpose of performing activities in the course of that employment; or

(c) is living with their spouse or civil partner who is an individual falling within (a) and (b).

2.7.19J-AB G In *PERG* 2.7.19J-A(1) and (2)(c) the reference to spouse or civil partner excludes individuals who are separated under an order of a court of competent jurisdiction, are separated by deed of separation, or are otherwise separated in circumstances in which the separation is likely to be permanent.

2.7.19JA G The exclusion referred to in *PERG* 2.7.19JG may not (unless paragraph (7) of that [section] applies) be available to a *firm* that is an *MCD firm* (see *PERG* 4.10A (Activities regulated under the Mortgage Credit Directive)).

…

4.10A Activities within scope of the Mortgage Credit Directive

General treatment for activities within scope of the Mortgage Credit Directive

…

4.10A.2 G Article 4(4B) of the *Regulated Activities Order* says that where:

…

4.10A.2A G Some *credit agreements* fall outside of the mortgages perimeter but are nevertheless covered by *MCD*. Specifically, the scope of *MCD* includes *credit agreements* with *consumers* that are not secured on residential *land* where their purpose is to acquire or retain property rights in *land* or in an existing or projected building.

As a result of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2022, article 4(4B) of the *Regulated Activities Order* does not apply in respect of these *credit agreements* when entered into with high net worth *borrowers* after 21 July 2022. Such agreements can therefore now be exempt from the consumer credit lending activity if certain conditions (set out in article 60H of the *Regulated Activities Order*) are met (see

PERG 2.7.19J) (High net worth exception). It should be noted that this exemption does not apply to *regulated mortgage contracts* as there is no general 'high net worth' exemption to the mortgages perimeter.

…

Appendix 5
Changes to clarify the definition of a 'significant SYSC firm'

SENIOR MANAGERS AND CERTIFICATION REGIME (SIGNIFICANT SYSC FIRM) INSTRUMENT 2022

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 59 (Approval for particular arrangements);
(2) section 60 (Applications for approval);
(3) section 60A (Vetting candidates by authorised persons);
(4) section 61 (Determination of applications);
(5) section 62A (Changes to responsibilities of senior managers);
(6) section 63ZA (Variation of senior manager's approval at request of authorised person);
(7) section 63ZD (Statement of policy relating to conditional approval and variation);
(8) section 63C (Statement of policy);
(9) section 63E (Certification of employees by authorised persons);
(10) section 63F (Issuing of certificates);
(11) section 64A (Rules of conduct);
(12) section 64C (Requirements for authorised persons to notify regulator of disciplinary action);
(13) section 69 (Statement of policy);
(14) section 137A (The FCA's general rules);
(15) section 137T (General supplementary powers);
(16) section 139A (Power of the FCA to give guidance).

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

Commencement

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

Amendments to the Handbook

D. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Senior Managers and Certification Regime (Significant SYSC Firm) Instrument 2022.

By order of the Board
[*date*]

Annex

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

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

23 Senior managers and certification regime: Introduction and classification

…

23 Annex 1 Definition of SMCR firm and different types of SMCR firms

…

Part Seven: Exclusion from enhanced regime

…

7.4	R	…
7.5	R	An *ICVC* is excluded from the enhanced regime.

…

Part Nine: Other qualification conditions for being an enhanced scope SMCR firm

9.1	R	A *firm* meets a qualification condition for the purposes of identifying an *enhanced scope SMCR firm* under the flow diagram in Part One of this Annex if it meets one of the following criteria: (1) the *firm* is a *significant SYSC firm* and it meets all the additional criteria in *SYSC* 23 Annex 1 9.3R; …
9.2	G	…
9.3	R	The criteria that a *significant SYSC firm* must meet as referred to in *SYSC* 23 Annex 1 9.1R(1) are as follows: (1) it is an investment firm, as defined in article 4(1)(2) of the *UK CRR* (including a *collective portfolio management investment firm*) as it has effect on [date instrument comes into force]; and (2) it is not excluded by any of the exclusions in *SYSC* 23 Annex 1 9.4R.

9.4 R (1) A *firm* is excluded for the purposes of *SYSC* 23 Annex 1 9.3R(2) if it is a *local firm*.

(2) A *firm* is excluded for the purposes of *SYSC* 23 Annex 1 9.3R(2) if it meets the following conditions:

(a) it is authorised to provide one or more of the following *investment services*:

(i) reception and transmission of orders in relation to one or more *financial instruments*;

(ii) execution of orders on behalf of clients;

(iii) portfolio management; and

(iv) investment advice.

(b) it is not authorised to provide any other *investment services*;

(c) it is not authorised to provide the *ancillary service* referred to in paragraph 1 of Part 3A of Schedule 2 to the *Regulated Activities Order* (Safekeeping and administration of *financial instruments*); and

(d) it is not permitted to hold money or securities belonging to its clients and for that reason may not at any time place itself in debt with those clients.

9.5 R (1) A *firm* that is authorised to execute investors' orders for *financial instruments* and to hold such *financial instruments* for its own account is not, for that reason, authorised for the purpose of *SYSC* 23 Annex 1 9.4R to provide the *investment service* of dealing on own account if it meets the following conditions:

(a) such positions only arise as a result of the *firm's* failure to match investors' orders precisely;

(b) the total market value of all such positions is no higher than 15% of the *firm's* initial capital; and

(c) such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

(2) Position and initial capital have the meaning that they had for the purpose of *IFPRU* 1.1.12R (Meaning of dealing on own account) as it applied on 31 December 2021.

9.6 G The purpose of the criteria in *SYSC* 23 Annex 1 9.3R to *SYSC* 23 Annex 1 9.5R is to replicate the main part of the definition of 'IFPRU investment firm'. Other elements of the definition are reflected elsewhere in *SYSC* 23

Annex 1. However, the definition applies to a *firm* whether or not it ever has been treated as an IFPRU investment firm for the purposes of any *rules* that used that definition.

…

Part Ten: When a firm becomes an enhanced scope SMCR firm

…

Meeting the qualification conditions in Part 9

…

10.5 G Table: Date firm becomes an enhanced scope firm

Qualification condition	**Date firm becomes an enhanced scope SMCR firm**
The *firm* is a *significant SYSC firm*	~~It~~ If a *firm* meets the criteria in *SYSC* 23 Annex 1 9.3R but does not at first meet the conditions for being a *significant SYSC firm* and then later becomes a *significant SYSC firm*, it becomes an *enhanced scope SMCR firm* one year and three *months* after the date in *SYSC* 1.5.2R (the three-month period in *SYSC* 1.5.5R(2) plus the one year in this Part). If a *firm* meets the conditions for being a *significant SYSC firm* but at first does not meet the criteria in *SYSC* 23 Annex 1 9.3R and then later meets those criteria, the three-month period in *SYSC* 1.5.5R(2) does not apply. The one-year period in this Part runs from the date it first meets the criteria in *SYSC* 23 Annex 1 9.3R. If a *firm* first meets the conditions for being a *significant SYSC firm* and the criteria in *SYSC* 23 Annex 1 9.3R at the same time, the three-month period in *SYSC* 1.5.5R(2) applies.
…	

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