FINANCIAL CONDUCT AUTHORITY

# Quarterly Consultation
No 35

**Consultation Paper**
CP22/4

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# How to respond

The Financial Conduct Authority invites comments on this Consultation Paper.

Comments should reach us by 11 April 2022 for Chapters 2, 3, 4, 5, 6 and 7.

Comments may be sent by electronic submission using the form on the FCA's website at (www.fca.org.uk/cp22-04-response-form).

**Alternatively, please send comments in writing to:**

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

**All responses should be sent to:**
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# 1 Overview

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| 2 | Changes to chapters 2 and 13 of the Perimeter Guidance manual to clarify application of the MiFID II Ancillary Activities Test in the absence of overall market size data. | 5 weeks |
| 3 | Changes to the research and inducement rules for collective portfolio managers so they are subject to the same rules as investment managers. | 5 weeks |
| 4 | Changes to reflect amendments the Treasury has made to the UK MiFID delegated regulation in places where it is copied out in the Glossary and COBS. | 5 weeks |
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| 7 | A proposed extension to the MIFIDPRU TP 7.4R(2)(b) notification deadline. | 5 weeks |

# 2 Ancillary activities exemption

## Introduction

**2.1** Article 2(1)(j) of the Markets in Financial Instruments Directive (MiFID) II provides an exemption (known as the 'ancillary activities exemption') from the regime for 'persons dealing in commodity derivatives, emission allowances or derivatives thereof on own account or providing investment services to the customers or suppliers of their main business', subject to a number of conditions. These conditions include requirements that are further set out in onshored Regulatory Technical Standard (RTS) 20 and consist of:

- a 'market share test' to ascertain whether the persons within the group are large participants relative to the size of the financial market in different classes of commodity derivatives
- a 'main business test' to determine whether the commodity derivatives activity of those persons within the group is so large relative to the main business of the group that those activities cannot be considered to be ancillary to the main business

**2.2** To be exempt, a person must not exceed any of the thresholds in the market share test and have activity judged to be ancillary under the main business test.

**2.3** When implementing MiFID II, the Treasury included a specific exclusion in article 72J of the Regulated Activities Order (RAO) corresponding to the exemption under article 2(1)(j) of MiFID II. This provision enables firms carrying on investment services and activities relating to commodity derivatives and emission allowances on an ancillary basis to their main business to avoid the need for FCA authorisation. One component of the annual calculations to be performed by firms for these purposes is assessing their group's business as a percentage of the overall market in various commodity derivative asset classes, including metals, coals, gas, power and agricultural products, and emission allowances.

**2.4** The exclusion helps to provide legal certainty to firms while they perform their calculations. Under article 72J of the RAO, firms trading commodity derivatives are not carrying on regulated activities while they perform their annual calculations and, if necessary, while they seek authorisation as a MiFID investment firm, provided that this is done within a specified period. When carrying out their annual calculations, firms have previously been reliant on information by the European Securities and Markets Authority (ESMA) relating to overall market trading in the various asset classes against which they compare the trading of their group. The market share test is based on commodities trading activities in the European Economic Area, as if the UK were still part of the EU.

**2.5** Following the EU's decision to amend the ancillary exemption, the annual information relating to trading in 2021 is no longer required to be published and the market share test calculations cannot be performed. We propose to amend MiFID II RTS 20 relating to the ancillary exemption and update our perimeter guidance in chapters 2 and 13 of the Perimeter Guidance manual (PERG) accordingly. We also propose to amend RTS 20 in order to enable firms to perform the calculations relating to the main business test in a way that enables them to rely on current derogations.

## Summary of proposals

**2.6** We want to ensure that there is clarity as to how the ancillary activities exemption works in the absence of data on a consolidated view of overall market activity from an official source.

**2.7** In order to allow for Article 72J of the RAO to be fully utilised in the absence of a consolidated view of overall market activity in 2021 from an official source (ie, from ESMA), we propose to make clarifications within RTS 20 and the PERG 2 and PERG 13 Q&As to remove references that state a need to comply with both the market share test and main business test in order to benefit from the exemption.

**2.8** Further, we propose to clarify that for the purposes of relying on the main business test in the absence of the relevant market size data from an official source, firms may rely on the information published by an EU institution or regulator for the last 3 annual calculation periods for which that information is available. For the year 2022, for example, this will mean relying on the data available for the years 2018, 2019 and 2020.

**2.9** These technical clarifications will enable firms to gain certainty over the status of their activity and are also reflected in the updating of chapters 2 and 13 of our perimeter guidance.

**Q2.1:** **Do you agree with the proposed amendments to PERG 2 and PERG 13?**

**Q2.2:** **Do you agree with the proposed amendments to RTS 20?**

## Cost benefit analysis

**2.10** Sections 138S and 138I of the Financial Services and Markets Act 2000 (FSMA) require us to publish a cost benefit analysis (CBA) in relation to a standards instrument 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. We do not believe there will be an increase in costs as the proposals seek to clarify a situation which could otherwise lead to firms seeking to be authorised because of ambiguity in the application of the ancillary activities test, which would entail potentially unnecessary costs to firms. No cost benefit analysis is required in relation to the perimeter guidance.

### Impact on mutual societies

**2.11** Section 138S(2) of FSMA requires us to prepare a statement setting out our opinion on whether proposed technical standards 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 do not impact on mutual societies to a greater extent than on other authorised firms.

## Compatibility statement

**2.12** We propose making changes to RTS 20 and related changes to PERG that both maintain and improve the effectiveness and clarity of the existing regulatory framework. We are satisfied that these proposals are compatible with our general duties under section 1B of FSMA including the importance of taking action intended to minimise financial crime, having regard to the regulatory principles in section 3B. The amendments to RTS 20 and supporting perimeter guidance aim to secure an appropriate degree of consumer protection and promoting market integrity, by helping to ensure the continuing effectiveness and enable fuller understanding of the regulatory perimeter. We are also satisfied that, as far as is compatible with advancing these operational objectives, the proposed amendments are compatible with our duty to promote effective competition in the interests of consumers.

## Equality and diversity

**2.13** We have considered the equality and diversity issues that may arise from the proposals in this QCP. We do not consider that the proposals have a differential impact on any group sharing one of the characteristics protected under the Equality Act 2010 (ie, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation). We will continue to consider the equality and diversity implications of the proposals during the consultation period.

# 3 Changes to rules for collective portfolio managers

## Introduction

**3.1** In November 2021, we published our policy statement (PS) on changes to the UK Markets in Financial Instruments Directive's (MiFID's) conduct and organisational requirements (PS21/20).

**3.2** The PS set out our final policy position and Handbook rules making changes to the existing inducement rules on research and the removal of best execution reports linked to best execution. The removal of the best execution reporting in Regulatory Technical Standards (RTS) 27 and 28 came into force on 1 December 2021. The changes to the research rules came into force on 1 March 2022.

**3.3** The changes we made were to the existing inducements rules relating to research. The changes broaden the list of what are considered minor non-monetary benefits to include research on small and medium-sized enterprises (SMEs) with a market cap below £200m and fixed income currencies and commodities (FICC) research, so that such research is not subject to the inducement rules. We also made rule changes on how inducement rules apply to openly available research and research providers that do not provide execution services and that are not part of a financial services group that includes a firm offering execution or brokerage services.

**3.4** The policy objective we were seeking from these changes to research was to increase the research coverage of SME issuers and to create a regime that is proportionate to the risks of inducements that arise. The policy intention was to make changes that ensured consistency across all the rules on research and inducements for investment firms and collective portfolio managers (CPMs). However, we did not make all the necessary rule changes to achieve this outcome – in particular, the changes we made to the list of minor non-monetary benefits in Conduct of Business sourcebook (COBS) 2.3A were not mirrored in changes to the list of minor non-monetary benefits in COBS 18 Annex 1.

**3.5** We propose to complete the changes to the research rules for CPMs so they are subject to the same requirements as investment firms. CPM firms include:

- UCITS management companies
- full-scope UK Alternative Investment Fund Managers (AIFMs)
- small authorised UK AIFMs and residual Collective Investment Scheme operators
- incoming European Economic Area AIFM branches

## Summary of proposals

### Introduction

**3.6** Investment research is critical in providing potential and existing investors with the information that they need to understand a publicly traded company and assess the risks connected with the investment.

**3.7** In our Consultation Paper (CP) 21/9, the inducement rules for research aim to improve accountability over costs passed to customers and improve price transparency for both research and execution services. We fully support this objective and consider that these rules continue to bring benefits to end-investors in the form of lower charges and better-quality execution services.

**3.8** However, the rules apply to research regardless of the market capitalisation and size of the firm. This means that there is no differentiated treatment for research on smaller listed companies. In our PS prior to MiFID II's implementation in 2018, we said that we would revisit this position if necessary. As set out in CP21/9, research coverage is low for SMEs, with almost 30% of all UK publicly quoted companies having no research analysts.

**3.9** We reviewed the inducement rules for research to identity what change, if any, can be made to reduce the regulatory barriers to producing and using research, particularly SME research. This led to the rule changes we set out in PS20/21. We briefly describe the key changes below.

### Exemption for SME research

**3.10** We have introduced an exemption from the inducement rules for SME research below a market capitalisation of £200m to reflect and address the potential market failure in the form of low levels of coverage in research. The £200m threshold is assessed for the 36 calendar months preceding the provision of the research, provided that it is offered on a rebundled basis or for free. The exemption also applies to corporate access below this threshold.

**3.11** Under the exemption, research on firms below the market capitalisation of £200m that is provided on a rebundled basis or for free, as well as corporate access, constitutes an acceptable minor non-monetary benefit. It is therefore not capable of constituting an inducement under our new rules.

### Exemption for FICC research

**3.12** We have changed the research rules to create an exemption from the inducement rules for third-party research that is received by a firm providing investment services or ancillary services to clients, when it relates to fixed income, currency or commodity instruments.

**3.13** The rationale is that FICC transactions are typically not paid for by an agency commission to the broker, but instead the broker earns its revenues from the spread (the gap between the bid and ask prices of an instrument). Therefore, the exemption for FICC research does not create the same opacity risks between transaction fees and research costs that arise for equity research.

### Independent research providers

**3.14** We created an exemption for research provided by research providers that do not offer execution services or are not part of a financial services group that includes an investment firm offering execution services or brokerage services.

**3.15** We do not deem it necessary to apply the same conflicts of interest rules that apply when a research provider or a company in its group offers execution services as to when it does not.

### Openly available research

**3.16** We included in the list of minor non-monetary benefits written material that is made openly available from a third party to any firms wishing to receive it or to the general public.

**3.17** We consider that this exemption from the inducement rules for openly available research brings necessary regulatory clarification and recognise that for many participants this may reflect existing industry practice.

### Research rules for CPM

**3.18** When implementing the inducement rules for research in MiFID II, we decided to go beyond the requirements of the directive by extending the rules to CPM firms to ensure consistency across the market and to build on the fact that we previously had a set of use of dealing commission rules that had also been applied across the market as a whole.

**3.19** It was our intention that the changes to the research rules set out in PS20/21 would apply to all firms covered by the rules introduced as part of the implementation of the revised MiFID in 2018. The research rules for CPMs are contained in COBS 18 and include cross references to the rules for investment firms in COBS 2.3A and standalone provisions that reflect the provisions in COBS 2.3A. The latter includes a list of minor non-monetary benefits in COBS 18 Annex 1. It is the amendment of these that we inadvertently omitted to amend in line with the changes to the similar list in COBS 2.3A in the rules in PS20/21. We are now proposing to make those amendments.

**Q3.1: Do you agree with our proposed changes to the list of minor non-monetary benefits research rules in COBS 18 Annex 1 to complete the extension of the changes of the research rules for CPM?**

## Cost benefit analysis

**3.20** The changes we are proposing to the list of minor non-monetary benefits rules in COBS 18 Annex 1 will complete the extension of the changes to the research rules for CPMs that were introduced in PS20/21. In CP21/9, we set out the costs and benefits.

**3.21** In the case of our proposals for research from research providers not offering execution services and openly available written material, we do not anticipate that there will be significant costs.

**3.22** In our CP, we acknowledged that we were unable to estimate all the costs and benefits, but presented total estimated costs and benefits for the SME research and FICC exemption proposals for asset managers, research providers and brokers firms and investors:

- For SME research, we estimated total one-off costs of £6.7-17.1m and ongoing costs of £3.3-9.3m and ongoing benefits of £6.0-11.9m.
- For FICC research, we estimated total one-off costs of £5.3-14.3m and ongoing benefits of £2.5-6.7m.

**3.23** There are around 1,200 firms performing some type of CPM activity. Of that 1,200, around 500 also have MiFID individual portfolio management (IPM) permissions. The latter group of firms are subject to the changes we made in PS21/20 for their IPM activity, but not for all their CPM activity. We would expect from work done when the MiFID II research rules were introduced that most firms carrying out CPM and IPM activity would seek to take a common approach to research rules across both elements of their business.

**3.24** If we assume similar numbers to those predicted in CP21/9, we expect that between 25 and 75 firms will take advantage of the SME exemption proposals and between 30 and 85 firms will take advantage of the FICC exemption. In that case, we would estimate similar total industry costs to be incurred arising from familiarisation and legal review in the region of £90k, although this figure would be smaller for the actual number of firms that would use the exemption. For the SME exemption, we estimate systems, process and IT costs to be £3.8-11.3m and ongoing costs to be £1.8-5.3m (see paragraphs 25-29 of CP21/9). For the FICC exemption, we estimate the total one-off costs for buy-side firms to be £5.3-14.3m (see paragraphs 30-32 of CP21/9).

**3.25** The overall impact of our proposals is, however, dependent on the extent to which CPM firms (whether conducting IPM activity or not) choose to use the options provided by our proposals. In CP21/9 we said that we expected our proposals on research to be net beneficial, as set out above, but acknowledged there was uncertainty based on not being able to estimate all the costs and benefits.

### Impact on mutual societies

**3.26** The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies. The relevant rules we propose to amend will apply, according to the powers exercised and to whom they are addressed, equally regardless of whether it is a mutual society or another authorised body.

## Compatibility statement

**3.27** When consulting on new rules, we are required by section 138I(2) of the Financial Services and Markets Act 2000 (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. Further, we must have regard to the regulatory principles in section 3B 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.

**3.28** The proposed changes set out in this chapter are intended to ensure that our requirements are better tailored and more proportionate to the risks. This will remove unnecessary regulation, make the requirements less complex and make these markets work better.

## Equality and diversity

**3.29** 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 (ie, 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 Changes to conduct rules

## Introduction

**4.1** Last year, the Treasury made (in Statutory Instrument (SI) 2021/774) a number of changes to conduct of business rules in order to reduce regulatory burdens for investment business in the UK. This was done through amendments to secondary legislation derived from the EU's Markets in Financial Instruments Directive (MiFID) – Commission Delegated Regulation 2017/565. Many of the provisions that the Treasury amended are copied out in our Handbook in the Glossary and the Conduct of Business sourcebook (COBS) and we need to amend the copied-out text to reflect the revisions the Treasury made.

**4.2** Revising these provisions will ensure that the Handbook contains the correct version of the relevant requirements. It will also ensure that optional exemption firms, such as financial advisers, are not subject to more stringent rules than those which apply to investment firms in the areas where the Treasury has made changes.

## Summary of proposals

**4.3** In 2018, we copied out parts of the MiFID delegated regulation in the Glossary and COBS when implementing the revised MiFID rules for 2 reasons:

- First, to enable firms subject to MiFID to see all of the relevant MiFID rules relating to a particular topic in one place.
- Second, as part of MiFID's implementation, we were required to extend requirements that were at least analogous to certain of its rules to 'optional exemption firms' (ie, firms receiving and transmitting orders and/or providing investment advice in relation to certain financial instruments that did not hold client money and did not want to become MiFID investment firms and use the MiFID passport). Therefore, we needed to copy out various provisions of the MiFID delegated regulation in order to apply them to optional exemption firms as rules.

**4.4** Last year, following discussions with industry, the Treasury made a series of changes to certain conduct rules derived from MiFID. The changes were designed to reduce regulatory burdens without compromising an appropriate degree of regulatory protection. The changes the Treasury made included:

- making electronic communications the default mode of communication with professional clients
- disapplying the detail of costs and charges disclosure requirements when dealing with professional clients
- enabling delayed costs and charges disclosures to be made in certain circumstances
- turning off certain reporting requirements for dealings with professional clients, including the requirement to inform a client when the value of their portfolio falls by 10% within a quarter

**4.5** For investment firms, the Treasury's changes apply directly to them, as they are subject to the UK MiFID delegated regulation. They also apply directly to third-country firms undertaking equivalent investment business by virtue of the provisions in the General Provisions sourcebook that apply requirements on such firms in onshored regulations that derive from MiFID. As a result, our copy out of the UK MiFID delegated regulation in the Handbook requires conforming amendment so that the Handbook provides an accurate description of obligations in these areas for the above firms and avoids the danger that they could misunderstand the obligations they are subject to.

**4.6** As mentioned above, optional exemption firms were required to be authorised and subject to requirements 'at least analogous' to a number of the requirements under MiFID, including MiFID conduct of business rules. In most cases, these firms are currently subject to the same conduct of business rules as investment firms, including rules which are identical to those contained in the UK MiFID delegated regulation.

**4.7** The Treasury intended for its changes to the delegated regulation to benefit all firms subject to rules derived from the regulation because of MiFID. This would include optional exemption firms, investment firms and third-country firms. The requirement in the revised MiFID that optional exemption firms be subject to at least analogous requirements was to ensure that regulation was consistently applied to firms undertaking the same sort of business. The changes we are proposing ensure that this is the case.

**4.8** The changes include revisions to the definitions of 'durable medium' and 'website conditions' in the Glossary and changes to COBS 6.1ZA.14, COBS 6.1ZA.17 and COBS 6.1ZA.19 (information about the firm); COBS 8A.1.6 and COBS 8A.1.7 (client agreements); COBS 9A.2.18 (suitability); COBS 14.3A.7 and COBS 14.3A.9 (preparing product information to clients); and COBS 16A.3.1, COBS 16A.3.5, COBS 16.A.4.1 and COBS 16A.4.3 (reporting information to clients).

**Q4.1: Do you agree with our proposed amendments to the Glossary and COBS following the changes to the MiFID delegated regulation made by the Treasury in SI 2021/774?**

## Cost benefit analysis

**4.9** 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 that any increase will be of minimal significance.

**4.10** Having assessed the individual changes proposed in this chapter and taking account of the Treasury's explanatory memorandum on its SI, we believe that the proposals in this chapter are not likely to result in cost increases or that any increases will be of minimal significance; therefore, no CBA is required for the proposals in this chapter.

## Impact on mutual societies

**4.11** Section 138K(2) of the Financial Services and Markets Act 2000 (FSMA) requires us to prepare a statement setting out our opinion on whether proposed rules will have an impact on mutual societies which is significantly different from the impact on other authorised persons.

**4.12** We are satisfied that the proposed amendments do not impact on mutual societies to a greater extent than on other authorised firms, with the impact primarily affecting optional exemption firms conducting designated investment business.

## Compatibility statement

**4.13** When consulting on proposed changes to our Handbook, we are required by section 138I(2) of FSMA to explain why we believe that making those changes 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. 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 our proposed changes are compatible with our objectives and regulatory principles. They make the Handbook consistent with legislative changes and facilitate our operational objective of consumer protection by making it easier for firms to find their regulatory obligations.

## Equality and diversity

**4.15** 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). 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 LR 14 – standard listing of shares

## Introduction

**5.1** In Handbook Notice 84 we made changes to the Listing Rules (LRs) to create a more proportionate listing regime for open-ended investment companies (OEICs) in standard listing, while ensuring that existing investor protections were maintained. Previously, equity shares in OEICs were listed under LR 16 in the Premium Segment.

**5.2** In making these changes, we introduced a new chapter – LR 16A – setting out requirements for OEICs that are consistent with standard listing, to replace LR 16 in its entirety. We also proposed consequential changes to align our listing requirements for OEICs more closely with standard listing for shares in LR 14 (Standard listing (shares)).

**5.3** Prior to the changes above, which came into force on 4 January 2022, there was a general exclusion preventing investment entities from having a standard listing of equity shares under LR 14, subject to exceptions for investment entities that already had a premium listing of a class of equity shares.

**5.4** We have become aware that, because of the changes made to LR 14, the new rules could be interpreted as saying that the restriction on standard listing of equity shares in funds in LR 14.1.1R will in future apply only to closed-ended investment funds, rather than other 'investment entities' that are not OEICs.

**5.5** This interpretation goes beyond the policy intention in Handbook Notice 84 (moving OEICs to standard listing) by changing the types of investment entities that would be allowed in standard listing. This was never an intended consequence of the changes to LR. We are therefore proposing amendments as set out below.

## Summary of proposals

**5.6** By adding a new limb to LR 14.1.1, we are making changes to reflect the original policy position for investment entities other than OEICs prior to the amendments introduced by Handbook Notice 84. This will amend the rules to provide that LR 14 does not apply to equity shares issued by an investment entity unless:

- it has a premium listing of a class of its equity shares as a closed-ended investment fund under LR 15; or
- it is an open-ended investment company to which LR 16A applies.

**5.7** The question of whether investment entities should be eligible for a standard listing and the definition of 'investment entity' was one of the key areas discussed and consulted on during the Investment Entities Listing Review, which ran from 2006 to 2008.

**5.8** The intent behind the use of 'investment entity' in LR 14 was to clarify that funds of any type (whether open ended, closed ended or otherwise, and whether or not diversified) would not be eligible for standard listing of equity shares unless they already had a class of equity shares listed under LR 15 or (at the time) LR 16 and then applied to list a further class of equity shares.

**5.9** This dates back to our policy intention as expressed in the consultations from 2006 to 2008 on listed investment entities. The original policy intent arose as a result of strong feedback from stakeholders that standard listing should not be available to funds and that the protections afforded to investors in funds by the premium listing regime was regarded as particularly important. It remains our policy that (subject to the exceptions set out above) investment entities should be able to list equity shares only where the protections of the premium listing regime are available. The proposed amendments to LR 14 reflect this policy intent.

**Q5.1: Do you agree with the changes being proposed to LR 14 in the draft Handbook text, which are being made to reflect the original policy intention prior to Handbook Notice 84?**

## Cost benefit analysis

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

**5.11** We expect this change to have no cost implications for firms, since there have been no applications for standard listing by investment entities other than OEICs since 4 January 2022, when the rule changes took effect. This change prevents any prospective applications in future that may have sought to interpret the new wording to mean that standard listing under LR 14 is now available to investment entities other than OEICs. As such, there are no CBA implications, as we are reverting to the application of our rules that is in line with the original policy intention.

### 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 proposed changes are not expected to have a significantly different impact on mutual societies.

## Compatibility statement

**5.13** When consulting on proposed changes to our Handbook, we are required by section 138I(2) of FSMA to explain why we believe that making those changes 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. 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 our proposed changes are compatible with our objectives and regulatory principles. The changes that we are proposing revert back to a set of rules that enhance consumer protection and promoting market integrity. The changes that we are proposing enhance consumer protection and promote market integrity by better reflecting the original policy intentions of the changes to the Listing Rules set out in Handbook Notice 84.

## Equality and diversity

**5.15** 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, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation). 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. We welcome comments on any equality and diversity considerations respondents believe may arise.

# 6 Changes to the approach to continuing professional development for retail investment advisers and pension transfer specialists

## Introduction

**6.1** In this chapter, we propose to amend the guidance in Training and Competence sourcebook (TC) 2.1.20G to provide greater flexibility for firms and advisers adapting to new ways of learning. Specifically, our proposal relates to the minimum amount of time expected to be spent on structured activities (eg, courses and e-learning) for them to count towards continuing professional development (CPD).

**6.2** The proposal is relevant to retail investment advisers (RIAs) and pension transfer specialists (PTSs) and the firms employing them. It will also be of interest to these firms' trade associations, accredited and other professional bodies, organisations that award qualifications, and learning and qualification providers.

## Continuing professional development

**6.3** Starting in 2006, the predecessor to the Financial Conduct Authority (FCA), the Financial Services Authority, conducted a Retail Distribution Review. One of its aims was to increase the professional standards of RIAs, with a view to improving the quality of advice provided to customers. This included introducing CPD requirements.

**6.4** We also introduced CPD requirements for PTSs in October 2020. We introduced these as part of a package of measures to improve the quality of advice given to consumers considering a pension transfer. We require firms to ensure that PTSs complete at least 15 hours of appropriate CPD per year. The 15 hours must include 9 hours of structured CPD activities (see TC 2.1.23AR(1) and TC 2.1.23AR (2)(a)).

**6.5** The CPD requirements for RIAs are in TC and have applied since the end of 2012. We require firms to ensure that RIAs complete at least 35 hours of appropriate CPD per year. The 35 hours must include 21 hours of structured CPD activities (see TC 2.1.15R and TC 2.1.16R).

**6.6** In TC, we provide guidance (see TC 2.1.22G) setting out what CPD should involve – for example, it should be relevant to the RIA's current role and any anticipated changes to that role and should contribute to the RIA's professional skills and knowledge.

## Summary of proposals

**6.7** We are proposing to amend our guidance to remove the minimum 30-minute time requirement for structured CPD activities. We are also proposing new guidance

reflecting that the CPD activities should be relevant to the aims set out in TC 2.1.22G. These changes would apply to both RIAs and PTSs.

## Why we are proposing changes

**6.8** Since we introduced CPD requirements and standards for RIAs, technology has transformed the way that learning content is delivered and consumed. Developments in technology mean that there is now much more online (short and incremental) learning available and in more diverse formats. It has also become possible for individuals to undertake CPD activities in new ways, such as via smart devices.

**6.9** This has been accelerated by the COVID-19 pandemic, with many face-to-face forms of structured CPD (eg, seminars and workshops) being replaced by online learning and virtual meetings. This is often available on a flexible basis, enabling individuals to undertake them whenever is convenient.

**6.10** We have heard from accredited bodies (ABs) that there is increasing demand for shorter, more targeted and incremental learning. For example, they have told us that our present guidance – which suggests that only activities of at least 30 minutes should be viewed as structured CPD activities – is increasingly limiting opportunities for broader learning options for employees undertaking CPD activities.

**6.11** We have listened and agreed that it is appropriate to update our guidance to reflect the developments and expectations outlined above. We are not proposing to change our basic approach to CPD or the total CPD hours required for RIAs or PTSs.

## Our proposals

**6.12** We propose to:

- remove the reference in our guidance in TC 2.1.20G to structured CPD activities needing to be at least 30 minutes
- introduce guidance reflecting that appropriate CPD activities should still be relevant to the aims of CPD set out in TC 2.1.22G, even though there is no minimum time limit

**6.13** While these changes provide firms, RIAs and PTSs with more flexibility, these advisers must still continue to meet our CPD requirements and CPD must be to the required standards. This includes ensuring that the training has clear objectives and outcomes, as well as contribute to an adviser's competence. An activity is unlikely to be contribute to an adviser's competence if the activity is so short in length that it cannot reasonably be viewed as relevant to the aims set out in TC 2.1.22G.

## Outcomes we are seeking

**6.14** Our proposals are intended to provide firms, RIAs and PTSs with greater flexibility so that they can choose the most appropriate and effective CPD activities. This would help to maintain and develop their knowledge, and thus lead to further improvements in the quality of retail investment and pension transfer advice. It would also ensure that advisers have the appropriate skills and knowledge to continue to deliver good outcomes for consumers using their service.

**6.15** We also consider that our proposals would:

- increase the CPD options available to RIAs and PTSs
- accommodate more diverse forms of learning
- enable a greater focus on measurable learning objectives and outcomes

**Q6.1:** **Do you agree with our proposal to remove the reference in our guidance in TC 2.1.20G to structured CPD activities needing to be 30 minutes or longer?**

**Q6.2:** **Do you agree with our proposal to introduce guidance reflecting that the CPD activities should still be relevant to the aims set out in TC 2.1.22G?**

## Cost benefit analysis

**6.16** Section 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. However, section 138L(3) of FSMA says that we do not need to provide a CBA where we consider that there will be no increase in costs, or the increase will be of minimal significance. Having assessed the changes proposed in this chapter, we believe this exemption applies to the proposals in this chapter.

**6.17** We expect the proposals are unlikely to have cost implications as firms would not be required to make any changes to their existing CPD arrangements. To the extent that these proposals do result in an increase in costs, we consider that the increase will be of minimal significance. The benefits will arise there is more flexibility in meeting CPD activities. This in turn could lead to further improvements in the quality of retail investment and pension transfer advice. We expect our proposals will be net beneficial.

### Impact on mutual societies

**6.18** Section 138K(2) of FSMA requires us to prepare a statement setting out our opinion on whether proposed rules will have an impact on mutual societies which is significantly different from the impact on other authorised persons.

**6.19** We are satisfied that the proposals in this chapter would not have a significantly different impact on mutual societies compared with other authorised persons.

### Compatibility statement

**6.20** When consulting on proposed changes to our Handbook, we are required by section 138I(2) of FSMA to explain why we believe that making those changes 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.

**6.21** We are satisfied that the proposals in this chapter are compatible with our objectives and regulatory principles. They are intended to provide firms, RIAs and PTSs with greater flexibility so they can choose the most appropriate and effective CPD

activities. This would contribute to better knowledge and skills and thus lead to further improvements in the quality of retail investment and pension transfer advice.

**6.22** As a result, the proposals advance our operational objectives of securing an appropriate degree of consumer protection and enhancing the integrity of the UK financial system.

## Equality and diversity

**6.23** 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).

**6.24** Our proposals would have positive impacts on some RIAs and PTSs, as they support diversity by putting greater emphasis on individuals being able to learn in the ways best suited to them. By increasing the choice of structured CPD activities which can be counted towards their yearly total, advisers who may find online activities easier to attend than face-to-face sessions would have more options available to them. This could, for example, benefit RIAs and PTSs who have disabilities, are pregnant or work part time. The explicit recognition of learning sessions shorter than 30 minutes would take better account of different learning styles (eg, visual, audio and logical), including where they have links to neurodiversity.

**6.25** 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.

# 7 MIFIDPRU TP 7.4R(2)(b) notification

## Introduction

**7.1** The Investment Firms Prudential Regime (IFPR) came into force on 1 January 2022. It applies to UK Markets in Financial Instruments Directive (MiFID) investment firms that are authorised and regulated by the Financial Conduct Authority (FCA) (ie, excluding Prudential Regulation Authority (PRA) designated investment firms) and to collective portfolio management investment firms (ie, full-scope UK alternative investment fund managers or UK undertaking for collective investment in transferable securities management companies that have additional permission to carry on MiFID activities). We refer to these firms collectively as 'FCA investment firms'. The IFPR also applies to certain UK parent entities within groups that contain one or more FCA investment firms. The IFPR provisions are mainly contained in the Prudential sourcebook for MiFID Investment Firms (MIFIDPRU) in our Handbook.

**7.2** We published our second IFPR policy statement (PS21/9) in July 2021. Within chapter 14 of PS21/9, we confirmed that FCA investment firms and UK parent entities that were not subject to the UK Capital Requirements Regulation (CRR) immediately before 1 January 2022 would need to notify us under MIFIDPRU TP 7. These firms would need to notify us if they wanted to treat existing capital instruments as own funds under MIFIDPRU 3. The transitional arrangements under MIFIDPRU 7 were designed to allow the senior management of these entities to 'self-certify' that their capital instruments met the conditions to be recognised as MIFIDPRU own funds without needing to go through the separate process of obtaining formal approval from us. Our final rules required notifications from FCA investment firms under MIFIDPRU TP 7.4R(2)(b) by 1 January 2022.

**7.3** We are concerned that we received significantly fewer notifications than we anticipated despite alerting firms several times of the notification deadline. Further, we have received a number of notifications after the deadline. Despite this, we continue to believe that this 'self-certification' approach is a proportionate solution to transitioning existing FCA investment firms to the new MIFIDPRU standards and that it has significant practical benefits for firms and for the FCA. We therefore propose to extend the deadline for TP 7.4R(2)(b) notifications until **29 June 2022**. We also propose to update our guidance to help firms complete the notification.

## Summary of proposals

### Background

**7.4** The standard rules in MIFIDPRU 3 contain the conditions for capital instruments of FCA investment firms to be recognised as own funds. Those conditions include:

- in the case of common equity tier 1 (CET1) instruments, a requirement in MIFIDPRU 3.3.3R (applying article 26(2) of the UK CRR) to obtain prior permission from the FCA to classify a class of instruments as CET1 capital; and
- in the case of additional tier 1 (AT1) instruments and tier 2 (T2) instruments, a requirement in MIFIDPRU 3.6.5R to notify the FCA of the first issuance of a new class of instruments and to provide a legal opinion confirming that the instruments meet all the other applicable conditions in MIFIDPRU 3.4 (for AT1 capital) or MIFIDPRU 3.5 (for T2 capital).

**7.5** In this chapter, for ease of reference, we refer to the above conditions relating to permissions or notifications collectively as 'FCA approval'. Technically, we do not grant formal approval for AT1 or T2 instruments, but we may respond to a firm that has notified us under MIFIDPRU 3.6.5R if we have concerns that the relevant AT1 or T2 conditions are not met. We remind all firms that it is their responsibility at all times to ensure that any capital instruments that they are counting as own funds meet the necessary conditions under MIFIDPRU 3.

**7.6** The FCA investment firm population consists of firms that were subject to different prudential regimes before 1 January 2022. Some of those firms ('IFPRU investment firms') were subject to the UK CRR and the IFPRU sourcebook, which contained definitions of own funds that were essentially identical to those now used in MIFIDPRU 3. Under the pre-1 January 2022 rules, those firms were required to obtain permissions or to make notifications in relation to CET1, AT1 and T2 instruments that are equivalent to the FCA approvals now contained in MIFIDPRU 3. In our final rules for IFPR, we provided a transitional arrangement in MIFIDPRU TP 1 where those pre-existing permissions or notifications would convert into their equivalent MIFIDPRU 3 approval on 1 January 2022. Our intention was that those firms would not need to take any further action when the IFPR entered into force in relation to pre-existing instruments. We applied the same approach to consolidating parent entities of UK CRR consolidation groups.

**7.7** FCA investment firms that were not IFPRU investment firms immediately before 1 January 2022 were not subject to the UK CRR and IFPRU requirements. As a result, they did not have equivalent permissions or notifications for pre-existing instruments that could be automatically converted on that date. Instead, we provided a mechanism in MIFIDPRU TP 7 under which those firms could notify us, by no later than 1 January 2022, that their pre-existing instruments met the criteria in MIFIDPRU 3 to be treated as own funds (excluding any requirements relating to FCA permissions or notifications in MIFIDPRU 3). Under this 'self-certification' approach, a firm's senior management were responsible for checking that the conditions were met in relation to all instruments notified to us. Provided that the conditions were met and the firm had notified us by 1 January 2022, the firm was treated as having a 'deemed' MIFIDPRU 3 approval for all instruments included in the notification. We applied the same approach to parent entities to which the UK CRR regime did not apply (on either an individual or consolidated basis) immediately before 1 January 2022.

**7.8** FCA investment firms that were not formerly IFPRU investment firms and that did not notify us under MIFIDPRU TP 7 would not have any deemed approval for their own funds instruments with effect from 1 January 2022. As FCA approval is one of the conditions to recognise own funds under MIFIDPRU 3, those firms will technically have zero own funds, unless and until they obtain formal FCA approval using the standard processes in MIFIDPRU 3.

**7.9** MIFIDPRU TP 7 was therefore designed to avoid the FCA expending significant resources processing approvals for pre-existing instruments and to ensure that firms were not in breach of the MIFIDPRU 3 requirements on 1 January 2022.

## Our proposals

**7.10** We are proposing to make the following changes in connection with MIFIDPRU TP 7:

- extending the deadline for the MIFIDFRU TP 7.4R(2)(b) notifications until 29 June 2022;
- extending the scope of MIFIDPRU TP 7 to include former IFPRU investment firms and former consolidating UK CRR parent undertakings where those entities did not obtain approvals under the UK CRR before 1 January 2022;
- allowing firms and parent entities to update the terms of non-MIFIDPRU 3-compliant capital instruments issued before 1 January 2022 to make them compliant. Firms and parent entities would be able to then benefit from notification under MIFIDPRU TP 7 (rather than make a MIFIDPRU 3 application), provided that this can be done before the new 29 June 2022 notification deadline; and
- updating related Handbook guidance to provide further clarity on how these provisions operate.

**7.11** We emphasise that these proposals **would not affect** any firm or parent undertaking that has already submitted a valid MIFIDPRU TP 7 notification on or before 1 January 2022. If our proposals are adopted, those TP 7 notifications would continue to be valid in relation to the instruments specified in the notification. Any late TP notifications we received after the 1 January 2022 deadline would also become valid.

**7.12** We have included some non-exhaustive example scenarios in Appendix 2 to this chapter that explain how our proposals would work in practice. These are intended to demonstrate how the updated transitional arrangements would apply to firms in different situations.

## Extending the TP 7 notification deadline

**7.13** The original deadline for the MIFIDFRU TP 7.4R(2)(b) notifications was 1 January 2022. We propose to extend the notification deadline until **29 June 2022**.

**7.14** We have selected that date because 30 June 2022 is a reference date for the MIF001 own funds report that must be submitted by all FCA investment firms. This should allow us to identify those firms that have not made a notification under MIFIDPRU TP 7, cannot rely on MIFIDPRU TP 1, and have not obtained any other FCA approvals for their capital instruments. Those firms would have to report a zero value for their own funds on the MIF001 return, allowing us to take appropriate follow-up action.

**7.15** We think that this 6-month extension to the notification deadline will be the most efficient use of our supervisory resources and will allow us to signpost the notification further. We expect to receive notifications from all eligible firms. Our proposal means that any notification made on or before 29 June 2022 will be valid.

**7.16** FCA investment firms must make this notification through Connect. A parent undertaking that is not regulated by the FCA will be able to notify us using this form. Those parent undertakings should return the form to ifprquery@fca.org.uk.

**Q7.1: Do you agree with our proposal to extend the MIFIDPRU TP 7 notification deadline to 29 June 2022?**

## Allowing updates to the terms of instruments issued before 1 January 2022 that are not compliant with the MIFIDPRU 3 requirements to benefit from TP 7

**7.17** A notification under TP 7 is effectively a certification by the senior management of a firm or parent undertaking that the instruments listed in that notification meet the necessary conditions to be recognised as own funds under MIFIDPRU 3. It is important that the firm or parent undertaking checks that those conditions are in fact met. A TP 7 notification does not have any legal effect if the relevant instruments to which it relates do not actually satisfy the underlying MIFIDPRU 3 conditions. In this context, we remind all firms of their obligations not to knowingly or recklessly mislead the FCA and to notify us of any information of which we might reasonably expect notice.

**7.18** It is important to note that the transitional arrangements in MIFIDPRU TP 7 are relevant only to capital instruments that were issued by a firm before 1 January 2022. We do not propose to change that position. The intention of the provisions is to provide a streamlined process for transitioning existing issued instruments that preceded the introduction of the IFPR into own funds under the new regime. If any FCA investment firm has issued a new class of capital instruments on or after 1 January 2022, and intends to count those instruments as own funds under MIFIDPRU 3, it will therefore need to obtain the standard formal approvals. TP 7 is not available in relation to new instruments issued on or after 1 January 2022.

**7.19** However, we are now proposing to extend the TP 7 notification date until 29 June 2022. An FCA investment firm or a parent undertaking could have pre-existing capital instruments that, on 1 January 2022, did not meet the MIFIDPRU 3 conditions. It may nonetheless be possible that the terms of those pre-existing instruments could be amended before 29 June 2022 to make them compliant with MIFIDPRU 3. We therefore propose to update the rules in MIFIDPRU TP 7 to make it clear that a firm or parent undertaking can make a notification under TP 7 in relation to pre-existing instruments that did not meet the MIFIDPRU 3 conditions on 1 January 2022, but which have been made MIFIDPRU 3 compliant by the time that the notification is submitted. We think that this approach is proportionate and follows logically from the extension of the MIFIDPRU TP 7 notification deadline.

**7.20** Nonetheless, we remind all FCA investment firms that they must have adequate own funds under MIFIDPRU and that this requirement has been in force since 1 January 2022. Where it is necessary to further our operational objectives, we will take appropriate supervisory action (whether before or after 29 June 2022) to ensure the continued financial stability of an FCA investment firm or its group.

**Q7.2:** **Do you agree with our proposal to allow firms that update the terms of capital instruments issued before 1 January 2022 (to make them compliant with MIFIDPRU 3 before the revised MIFIDPRU TP 7 notification deadline) to take advantage of an extended TP 7?**

## Extending the scope of MIFIDPRU TP 7 to cover former IFPRU investment firms and former consolidating UK CRR parents that did not obtain UK CRR approvals

**7.21** As we explained above, the current rules in MIFIDPRU TP 7 do not apply to an FCA investment firm that was formerly an IFPRU investment firm. They also do not apply to a parent undertaking that was previously the consolidating parent for a UK CRR consolidation group. The logic for this was that we expected those firms and parents to have already obtained approvals under the UK CRR or IFPRU in relation to their pre-existing own funds instruments. MIFIDPRU TP 1 then converted those UK CRR or IFPRU approvals into their MIFIDPRU 3 equivalents on 1 January 2022.

**7.22** We have since been informed that, in some cases, these former IFPRU investment firms or their consolidating parent undertakings may not have obtained the relevant approvals. Nonetheless, the underlying capital instruments issued by those entities satisfy the substantive conditions to be recognised as own funds under MIFIDPRU 3.

**7.23** We are proposing to extend the scope of MIFIDPRU TP 7 to clarify that these firms and parent undertakings can also make a TP 7 notification in relation to instruments for which they did not previously obtain the relevant approvals. We consider that this is consistent with our approach to other FCA investment firms that are able to rely on TP 7.

**7.24** In practice, any parent undertaking that did not obtain approvals under the UK CRR or IFPRU for own funds instruments, but that is subject to own funds requirements under MIFIDPRU 2, should therefore notify us under MIFIDPRU TP 7. We remind investment firm groups that are applying the group capital test (GCT) in MIFIDPRU 2.6 (including those that are relying on a deemed permission to use the GCT under MIFIDPRU TP 3) that the GCT obligations apply to every GCT parent undertaking in the group. This means that multiple parent undertakings within the group may need to submit MIFIDPRU TP 7 notifications to obtain deemed approvals for their own funds instruments.

**Q7.3:** **Do you agree with our proposal to allow former IFPRU investment firms and former consolidating parents of UK CRR consolidation groups to use MIFIDPRU TP 7 if they did not obtain UK CRR or IFPRU approvals in relation to instruments issued before 1 January 2022?**

## Updating the Handbook guidance relating to MIFIDPRU TP 7

**7.25** If our above proposals are adopted, we will need to update some of the related guidance in MIFIDPRU 3.6 and MIFIDPRU TP 7 itself to explain the updated approach. We are therefore proposing to make relatively minor updates to the guidance in those sections of the Handbook.

## Materiality

**7.26** In our opinion, the proposed changes to our existing rules within this chapter are not material under section 143I(3) and (5) of the Financial Services and Markets Act 2000. We do not consider that they materially change any risks to consumers, the market or the UK financial system. The proposals have no relevance to the carbon target in section 1 of the Climate Change Act 2008, as they relate to pre-existing issued capital instruments.

**7.27** Our proposed changes do not alter the underlying criteria for the eligibility of own funds instruments under MIFIDPRU 3. The changes simply alter the time window for notifying us that existing instruments comply with those conditions and clarify which entities are permitted to make notifications. An instrument that does not meet the MIFIDPRU 3 conditions will not be compliant and can never be counted as own funds, regardless of whether we receive a notification in relation to that instrument by the proposed deadline of 29 June 2022.

**7.28** When we made the original rules, we anticipated that all firms and parent undertakings to which the transitional arrangements were relevant would notify us by 1 January 2022. An extension to this deadline is an administrative change, but does not materially change any of the expected substantive benefits or risks arising from the original approach. We believe that firms are likely to be compliant with the substantive conditions for capital instruments to be eligible as own funds but that many have failed to self-certify this. Without an extension to the notification deadline, we will need to require full applications from a significant volume of firms that are likely to be compliant to confirm this.

**7.29** The MIFIDPRU TP 7.4R(2)(b) notifications will be unavailable to new market entrants on or after 1 January 2022. Their capital instruments will be assessed as part of the authorisations process instead. For firms authorised before 1 January 2022, the proposed updated transitional approach will still only be available for capital instruments issued before 1 January 2022. The transitional approach will cease to be available to any firms on 29 June 2022. As such, the arrangements operate for a limited period and there is therefore a very limited effect on the relative standing of the UK as a place for internationally active firms to carry out their activities. Existing firms will be given a slightly longer opportunity to inform us of their capital position relative to the MIFIDPRU 3 requirements under our proposals. We will be supervising all firms against the substantive conditions in MIFIDPRU 3 on an ongoing basis.

## Cost benefit analysis

**7.30** We believe that firms are likely to be compliant with our requirements in MIFIDPRU 3 on the substantive conditions for own funds but have failed to notify us before the 1 January 2022 deadline. We consulted on the notifications in CP21/7 and we assumed that all relevant firms would have notified us by our original deadline. Extending the permitted deadline for notifications does not therefore impose any additional costs on firms. The cost benefit analysis in CP21/7 remains unchanged and is applicable to this consultation.

### Impact on mutual societies

**7.31** Section 138K(2) of FSMA requires us to prepare a statement setting out our opinion on whether proposed rules will have an impact on mutual societies which is significantly different from the impact on other authorised persons.

**7.32** We are satisfied that the proposals in this chapter would not have a significantly different impact on mutual societies compared with other authorised persons.

## Compatibility statement

**7.33** This proposal supports our strategy objective of ensuring that markets function well. Extending the deadline for TP 7.4R(2)(b) notifications will increase the number of legal notifications that we receive. These notifications will allow us to ensure that markets function well and to protect customers.

## Equality and diversity

**7.34** 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).
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 |
|---|---|
| **AB** | Accredited body |
| **AIFMs** | Alternative investment fund managers |
| **AT1** | Additional tier 1 |
| **CBA** | Cost benefit analysis |
| **CET1** | Common equity tier 1 |
| **COBS** | Conduct of Business sourcebook |
| **CPD** | Continuing professional development |
| **CPMs** | Collective portfolio managers |
| **ESMA** | European Securities and Markets Authority |
| **FCA** | Financial Conduct Authority |
| **FICC** | Fixed income currencies and commodities |
| **FSMA** | Financial Services and Markets Act 2000 (as amended) |
| **GCT** | Group capital test |
| **IFPR** | Investment Firms Prudential Regime |
| **IPM** | Individual portfolio management |
| **LR** | Listing Rules |
| **MifID** | Markets in Financial Instruments Directive |
| **MiFID II** | Markets in Financial Instruments Directive II |
| **MIFIDPRU** | The Prudential sourcebook for MiFID Investment Firms |
| **OEIC** | Open-ended investment company |
| **PERG** | Perimeter Guidance manual |
| **PRA** | Prudential Regulation Authority |

| Abbreviation | Description |
|---|---|
| **PTS** | Pension transfer specialist |
| **RAO** | Regulated Activities Order |
| **RIA** | Retail investment adviser |
| **RTS** | Regulatory Technical Standards |
| **RTS 20** | The UK version of Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business |
| **SI** | Statutory Instrument |
| **SME** | Small and medium-sized enterprises |
| **T2** | Tier 2 |
| **TC** | Training and Competence sourcebook |
| **TP** | Transitional provision |
| **UK CRR** | The onshored UK version of the Capital Requirements Regulation (575/2013) |
| **UK MiFID** | UK Markets in Financial Instruments Directive |

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

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

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# Appendix 1
# List of questions

**Q2.1:** Do you agree with the proposed amendments to PERG 2 and PERG 13?

**Q2.2:** Do you agree with the proposed amendments to RTS 20?

**Q3.1:** Do you agree with our proposed changes to the list of minor non-monetary benefits research rules in COBS 18 Annex 1 to complete the extension of the changes of the research rules for CPM?

**Q4.1:** Do you agree with our proposed amendments to the Glossary and COBS following the changes to the MiFID delegated regulation made by the Treasury in SI 2021/774?

**Q5.1:** Do you agree with the changes being proposed to LR 14 in the draft Handbook text, which are being made to reflect the original policy intention prior to Handbook Notice 84?

**Q6.1:** Do you agree with our proposal to remove the reference in our guidance in TC 2.1.20G to structured CPD activities needing to be 30 minutes or longer?

**Q6.2:** Do you agree with our proposal to introduce guidance that CPD must make a 'meaningful contribution' to the competence of RIAs and PTSs?

**Q7.1:** Do you agree with our proposal to extend the MIFIDPRU TP 7 notification deadline to 29 June 2022?

**Q7.2:** Do you agree with our proposal to allow firms that update the terms of capital instruments issued before 1 January 2022 (to make them compliant with MIFIDPRU 3 before the revised MIFIDPRU TP 7 notification deadline) to take advantage of an extended TP 7?

**Q7.3:** Do you agree with our proposal to allow former IFPRU investment firms and former consolidating parents of UK CRR consolidation groups to use MIFIDPRU TP 7 if they did not obtain UK CRR or IFPRU approvals in relation to instruments issued before 1 January 2022?

# Appendix 2
# Non-exhaustive example scenarios relating to MIFIDPRU TP 1 and MIFIDPRU TP 7

1. The following non-exhaustive examples illustrate how the transitional provisions in MIFIDPRU TP 1 and MIFIDPRU TP 7 would operate if our proposals for extending TP 7 were adopted.

2. These examples are designed to illustrate general principles. Firms and parent undertakings may need to refer to multiple examples depending on the status of their individual capital instruments. Where appropriate, they may also need to proceed by analogy with the examples given.

## Example 1: a former IFPRU investment firm with existing UK CRR own funds approvals and capital instruments that satisfy the substantive MIFIDPRU 3 conditions

3. Firm A is a MIFIDPRU investment firm that was an IFPRU investment firm immediately before 1 January 2022. Before that date, Firm A had issued CET1 instruments in the form of ordinary shares and T2 instruments in the form of a subordinated loan. Firm A obtained permission under article 26(3) of the UK CRR for the CET1 instruments and notified the FCA under IFPRU 3.2.10R (as it applied at the time) in relation to the T2 instrument.

4. Firm A does not need to take any action to treat the existing CET1 and T2 instruments as own funds under MIFIDPRU 3. This is because on 1 January 2022, the existing article 26(3) UK CRR permission and the existing IFPRU 3.2.10R notification were automatically converted by MIFIDPRU TP 1 into their equivalent approvals under MIFIDPRU 3.

## Example 2: a former IFPRU investment firm without existing UK CRR own funds approvals, but with capital instruments that satisfy the substantive MIFIDPRU 3 conditions

5. Firm B is a MIFIDPRU investment firm that was an IFPRU investment firm immediately before 1 January 2022. Before that date, Firm B had issued CET1 instruments in the form of ordinary shares and T2 instruments in the form of subordinated bonds. Firm B did not obtain permission under article 26(3) of the UK CRR for the CET1 instruments and did not notify the FCA under IFPRU 3.2.10R (as it applied at the time) in relation to the T2 instruments. However, the instruments meet the substantive underlying conditions in MIFIDPRU 3 (ie, the requirements other than those relating to FCA permission or notifying the FCA) to qualify as own funds.

6. Firm B does not have any existing UK CRR or IFPRU approvals that could have been automatically converted by MIFIDPRU TP 1. Instead, if Firm B wishes to treat the existing CET1 and T2 instruments as own funds under MIFIDPRU 3, it should notify the FCA under MIFIDPRU TP 7 by no later than the new deadline of 29 June 2022.

### Example 3: a former non-IFPRU investment firm with capital instruments that satisfy the substantive MIFIDPRU 3 conditions

**7.** Firm C is a MIFIDPRU investment firm that was a BIPRU firm immediately before 1 January 2022. Before that date, Firm C had issued CET1 instruments in the form of ordinary shares. Firm C was not subject to the requirement to obtain approval for those instruments under article 26(3) of the UK CRR at the time, as it was not an IFPRU investment firm. The shares meet the substantive underlying conditions in MIFIDPRU 3, but Firm C failed to notify the FCA of this under MIFIDPRU TP 7 by the original deadline of 1 January 2022.

**8.** If Firm C wishes to count the ordinary shares as CET1 capital under MIFIDPRU 3, it should notify the FCA under MIFIDPRU TP 7 by no later than the new deadline of 29 June 2022.

### Example 4: a former exempt IFPRU commodities firm with capital instruments that satisfy the substantive MIFIDPRU 3 conditions

**9.** Firm D is a MIFIDPRU investment firm that was an exempt IFPRU commodities firm immediately before 1 January 2022. Although Firm D was subject to certain requirements under IFPRU, it determined its financial resources under IPRU-INV 3 rather than using the UK CRR definition of own funds. Firm D issued subordinated loans before 1 January 2022 which meet the substantive requirements in MIFIDPRU 3. However, as Firm D was determining its own funds in accordance with IPRU-INV 3 (rather than the UK CRR and IFPRU), it did not notify the FCA of the issuance of the subordinated loans under IFPRU 3.2. Firm D failed to notify the FCA that the subordinated loans meet the conditions to be classified as T2 capital under MIFIDPRU 3 by the original deadline of 1 January 2022.

**10.** If Firm D wishes to count the subordinated loans as T2 capital under MIFIDPRU 3, it should notify the FCA under MIFIDPRU TP 7 by no later than the new deadline of 29 June 2022.

### Example 5: a former non-IFPRU investment firm with capital instruments that do not satisfy the substantive MIFIDPRU 3 conditions

**11.** Firm E is a MIFIDPRU investment firm that was a non-IFPRU investment firm (eg, an exempt Capital Adequacy Directive firm) immediately before 1 January 2022. Firm E is a partnership and its partnership capital is currently structured in a way that would not meet the requirements in MIFIDPRU 3.3 to qualify as CET1 capital.

**12.** If Firm E wishes to treat its partnership capital as CET1 capital, it should:

- amend the terms of its partnership agreement so that the partners' contributions meet the conditions in MIFIDPRU 3.3; and
- once the partnership agreement has been amended, notify the FCA under MIFIDPRU TP 7 by no later than 29 June 2022.

**13.** If Firm E is unable to amend the terms of the partnership agreement by 29 June 2022, it will be unable to submit a TP 7 notification in relation to the partnership capital. In that case, it will need to seek the standard full permission for CET1 capital under MIFIDPRU 3.3 once it has been able to make the necessary amendments.

### Example 6: a former IFPRU investment firm with a mixture of capital instruments, only some of which have existing UK CRR own funds approvals and only some of which satisfy the substantive MIFIDPRU 3 conditions

**14.** Firm F is a MIFIDPRU investment firm that was an IFPRU investment firm immediately before 1 January 2022. Before that date, Firm F had issued CET1 instruments in the form of ordinary shares and a T2 instrument in the form of a subordinated loan.

**15.** Firm F obtained FCA permission under article 26(3) of the UK CRR for the CET1 instruments. However, it did not notify the FCA under IFPRU 3.2.10R in relation to the T2 instrument. The T2 instrument does not meet the substantive requirements to comply with MIFIDPRU 3.5.

**16.** The transitional arrangements would apply as follows:

- The existing article 26(3) UK CRR permission will convert automatically into an equivalent MIFIDPRU 3.3 permission under MIFIDPRU TP 1. Firm F therefore does not need to take any action in relation to the ordinary shares.
- If Firm F wishes to include the T2 instrument in a TP 7 notification, it will need to amend the terms of the loan to make it compliant with the substantive requirements in MIFIDPRU 3.5 first. The subsequent TP 7 notification must be submitted by no later than 29 June 2022. If Firm F cannot make the loan compliant by 29 June 2022 and still wishes to include the T2 instrument in its own funds, it will instead need to update the loan's terms and then submit the standard notification under MIFIDPRU 3.6.5R. The standard notification includes a requirement for a legal opinion confirming that the relevant conditions are met.

### Example 7: a former IFPRU investment firm without existing UK CRR approvals for existing AT1 capital instruments where those instruments satisfy the substantive MIFIDPRU 3 conditions

**17.** Firm G is a MIFIDPRU investment firm that was an IFPRU investment firm immediately before 1 January 2022. Before that date, Firm G had issued convertible bonds which it treating as additional tier 1 instruments under the UK CRR, but Firm G had failed to notify the FCA of the issuance of the instruments under IFPRU 3.2.10R (as it applied at the time). In December 2021, Firm G amended the terms of the convertible bonds to ensure that they complied with the updated trigger event requirements for AT1 capital in MIFIDPRU 3.

**18.** Firm G did not notify the FCA under MIFIDPRU TP 7 by 1 January 2022 that the convertible bonds met the substantive conditions to be counted as AT1 instruments under MIFIDPRU 3. However, Firm G did notify the FCA under MIFIDPRU TP 1.8R by 1 February 2022 that the terms of the convertible bonds had been updated to make them compliant with the requirements for AT1 capital in MIFIDPRU 3.

**19.** If Firm G wishes to treat the convertible bonds as AT1 instruments under MIFIDPRU 3, it should notify the FCA under MIFIDPRU TP 7 by no later than the new deadline of 29 June 2022.

**20.** The notification submitted under MIFIDPRU TP 1.8R does **not** allow Firm G to treat the instruments as AT1 instruments. That notification does not produce any transitional effects, but was intended to provide us with information about the approach firms were taking to existing AT1 instruments due to the difference in the calibration of

the mandatory trigger event under the UK CRR and MIFIDPRU 3. The change in the mandatory trigger for AT1 instruments (from a CET1 capital ratio of 5.125% calculated by reference to a total risk exposure amount under the UK CRR to 64% of the MIFIDPRU 4 own funds requirement) is a substantive change from the previous UK CRR eligibility conditions for own funds.

### Example 8: a former UK CRR consolidating parent without existing UK CRR approvals for consolidated own funds, but with capital instruments that satisfy the substantive MIFIDPRU 3 conditions (as they apply to that parent on a consolidated basis)

**21.** Parent H is a UK parent investment holding company, with Firm I as its only subsidiary. Immediately before 1 January 2022, Parent H was a consolidating parent under the UK CRR. Firm I is a MIFIDPRU investment firm that, immediately before 1 January 2022, was an IFPRU investment firm. The resulting investment firm group is subject to prudential consolidation under MIFIDPRU 2.5.

**22.** Before 1 January 2022, Parent H issued ordinary shares that would meet the substantive conditions to be classified as CET1 instruments under MIFIDPRU 3. However, Parent H did not seek permission from the FCA under article 26(3) of the UK CRR to treat those shares as CET1 capital for the purposes of the consolidated situation.

**23.** If Parent H wishes to treat the shares as CET1 capital for the purposes of its obligations under MIFIDPRU 2.5, it should notify the FCA under MIFIDPRU TP 7 by no later than 29 June 2022.

### Example 9: an intermediate UK parent in an investment firm group that uses the group capital test, without existing UK CRR approvals, but with capital instruments that the substantive MIFIDPRU 3 conditions

**24.** Parent J is a UK investment holding company of an investment firm group that contains an intermediate investment holding company (Intermediate Parent K) and a MIFIDPRU investment firm (Firm L). The investment firm group is applying the group capital test (either relying on a deemed permission under MIFIDPRU TP 3 or having been granted full permission). This means that both Parent J and Intermediate Parent K are GCT parent undertakings and they must each hold sufficient own funds to satisfy the group capital test on an individual basis.

**25.** Immediately before 1 January 2022, Intermediate Parent K was included in a UK CRR consolidation group for which Parent J was the consolidating parent. Intermediate Parent K issued ordinary shares before 1 January 2022, but no approval under article 26(3) of the UK CRR was required for those shares. The shares would meet the substantive conditions to qualify as CET1 under MIFIDPRU 3.

**26.** If Intermediate Parent K wishes to count the shares as CET1 capital under MIFIDPRU 3.3 (as applied by MIFIDPRU 3.7.4R) for the purposes of meeting its group capital test under MIFIDPRU 2.6, it should notify the FCA under MIFIDPRU TP 7 by no later than 29 June 2022.

**27.** As the group capital test also applies to Parent J, it will also need to consider whether it obtained the appropriate UK approvals before 1 January 2022 for any instruments it intends to count as own funds under MIFIDPRU 3. If it has not, Parent J should notify the FCA under MIFIDPRU TP 7 by no later than 29 June 2022, confirming that the instruments meet the relevant conditions.

### Example 10: a UK parent entity that was part of a group that had an article 15 UK CRR consolidation waiver, with capital instruments that do not meet the substantive MIFIDPRU 3 conditions

**28.** Parent M is a UK investment holding company of Firm N, a MIFIDPRU investment firm that, immediately before 1 January 2022, was previously an IFPRU investment firm. Before 1 January 2022, the group would have been subject to UK CRR consolidation requirements but had obtained a consolidation waiver under article 15 of the UK CRR.

**29.** Parent M is a limited liability partnership with existing partnership capital that meets the substantive conditions to qualify as CET1 capital under MIFIDPRU 3. Since 1 January 2022, the group has been classified as an investment firm group and Parent M is the consolidating UK parent entity under MIFIDPRU 2.5.

**30.** There are no existing UK CRR approvals relating to Parent M's partnership capital that can be converted under MIFIDPRU TP 1, as Parent M was not subject to consolidated requirements under the UK CRR due to the consolidation waiver.

**31.** If Parent M wishes to count the partnership capital as CET1 capital under MIFIDPRU 3.3 (as it applies on a consolidated basis under MIFIDPRU 2.5), it will need to submit a notification under MIFIDPRU TP 7 to the FCA by no later than 29 June 2022.

### Example 11: a former BIPRU firm that is adding a new class of capital instruments after 1 January 2022

**32.** Firm O is a MIFIDPRU investment firm that was a BIPRU firm immediately before 1 January 2022. Firm O is a limited liability partnership with an existing class of partnership capital (Class A partnership capital) in issue before that date. The Class A partnership capital met the substantive conditions under MIFIDPRU 3 to be classified as CET1 capital. Firm O notified the FCA of this in a MIFIDPRU TP 7 notification submitted on 30 December 2021.

**33.** Firm O is amending its LLP agreement and issued a new class of partnership capital (Class B partnership capital) in February 2022. Firm O believes that the new Class B partnership capital, while having some different rights from the Class A partnership capital, also meets the conditions in MIFIDPRU 3.3 to be classified as CET1 capital.

**34.** Firm O cannot use a notification under MIFIDPRU TP 7 in relation to the Class B partnership capital. This is because the new instruments (ie, the Class B capital contributions) were issued after 1 January 2022 and TP 7 is available only in relation to instruments **issued before that date**. If Firm O wishes to count the Class B partnership capital as CET1 capital, it must make the standard full application to the FCA under MIFIDPRU 3.3.3R instead.

**35.** Firm O can issue further Class A partnership capital without needing obtain permission from the FCA under MIFIDPRU 3.3.3R. This is because Firm O has a deemed permission for the Class A partnership capital due to its valid TP 7 notification for that class of capital in December 2021. In that case, Firm O simply needs to notify the FCA of a follow-on issuance of an existing class of CET1 instruments in accordance with the guidance in MIFIDPRU 3.3.4G(2).

# Appendix 3
# Ancillary activities exemption

# TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS) (ANCILLARY EXEMPTION) INSTRUMENT 2022

## Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the powers and related provisions in or under:

(1) paragraph 19 of Schedule 3 to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012; and

(2) the following sections of the Financial Services and Markets Act 2000 ("the Act"):

(a) section 138P (Technical standards);
(b) section 138Q (Standards instruments);
(c) section 138S (Application of Chapters 1 and 2); and
(d) section 137T (General supplementary powers).

B. The rule-making powers listed above are specified for the purposes of section 138Q(2) (Standards instruments) of the Act.

## Pre-conditions to making

C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with section 138P of the Act.

D. A draft of this instrument has been approved by the Treasury in accordance with section 138R of the Act.

## Interpretation

E. In this instrument, any reference to any provision of direct EU legislation is a reference to it as it forms part of retained EU law.

## Modifications

F. Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business is amended in accordance with the Annex to this instrument.

## Commencement

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

## Citation

H. This instrument may be cited as the Technical Standards (Markets in Financial Instruments) (Ancillary Exemption) Instrument 2022.

By order of the Board
[*date*]

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

## Annex

**Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business is amended in accordance with the Annex to this instrument**

…

*Article 1*

**Application of thresholds**

An 'article 2.1(j) activity', as referred to in article 72J(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 shall be considered to be ancillary to the main business of the group if those activities ~~meet the conditions set out in Article 2 and~~ constitute a minority of activities at group level in accordance with Article 3.

…

*Article 3*

**Main business threshold**

…

(8) The calculation of the estimated capital shall not include positions resulting from transactions referred to in points (a), (b) and (c) of subparagraph 5 of Article 2(4) of Directive 2014/65/EU – that is:

(a) intra-group transactions as referred to in Article 3 of Regulation (EU) No 648/2012 that serve group-wide liquidity or risk management purposes;

(b) transactions in derivatives which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity;

(c) transactions in commodity derivatives and emission allowances entered into to fulfil obligations to provide liquidity on a trading venue, where such obligations are required by regulatory authorities in accordance with Union law or with national laws, regulations and administrative provisions, or by trading venues.

…

*Article 4*

**Procedure for calculation**

(1) The calculation of the size of the trading activities and capital referred to in Articles 2 and 3 shall be based on a simple average of the daily trading activities or estimated capital allocated to such trading activities, during three annual calculation periods that precede the date of calculation. The calculations shall be carried out annually in the first quarter of the calendar year that follows an annual calculation period. For the purposes of the derogation in article 3(2), the calculation of the size of trading activities may use information published by an EU institution or regulator for the last three annual calculation periods for which that information is available.

…

# PERIMETER GUIDANCE (COMMODITY DERIVATIVES EXEMPTION) INSTRUMENT 2022

## Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 ("the Act").

## Commencement

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

## Amendments to the Handbook

C. The Glossary of definitions is amended in accordance with Annex A to this instrument.

## Amendments to material outside the Handbook

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

## Citation

E. This instrument may be cited as the Perimeter Guidance (Commodity Derivatives Exemption) Instrument 2022.

By order of the Board
[*date*]

## Annex A

## Amendments to the Glossary of definitions

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

| | |
|---|---|
| *MiFID RTS 20* | the *UK* version of Commission Delegated Regulation (EU) 2017/592 of December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business, which is part of *UK* law by virtue of the *EUWA*. |

## Annex B

## Amendments to the Perimeter Guidance manual (PERG)

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

### 2 Authorisation and regulated activities

…

### 2.9 Regulated activities: exclusions applicable in certain circumstances

…

2.9.29 …

Persons seeking to use the exemption under Article 2.1(j) of the Markets in Financial Instruments Directive

2.9.30 G This exclusion applies to the activities of:

(1) *dealing in investments as principal*;

(2) *dealing in investments as agent*; and

(3) *arranging (bringing about) deals in investments*.

It is available to a *person* who is not an *authorised person* and whose activity is one to which article 2(1)(j) of *MiFID* applies (see *PERG* 13 Q44). Where the *person* meets the conditions of the exemption relating to article 2(1)(j) but during a calendar year is not able to perform the market threshold test in article 2 of *MiFID RTS 20* because the relevant data is not available from an *EU* institution or regulator, its activities are excluded from the activities in (1) to (3) above. Similarly, if the *person* has made an application for a *Part 4A permission* in relation to any of the activities in (1) to (3) above, to which article 2(1)(j) of *MiFID* applies, the exclusion applies for as long as that application has not been determined or withdrawn. In each case, a *person* seeking to rely on the article 2(1)(j) exemption must provide notice to the *FCA* in accordance with regulation 47 of the *MiFI Regulations*.

…

### 13 Guidance on the scope of the UK provisions which implemented MiFID

…

### 13.5 Exemptions from MiFID

…

**Exemption for commodity derivatives business**

…

**Q45. What is an ancillary activity for the purposes of the commodities exemption?**

You can find the meaning of 'ancillary' for the purposes of the commodities exemption described in the answer to Q44 in MiFID RTS 20 (regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business). You will need to consider whether your commodity derivatives business exceeds the main business threshold as stipulated in article 3 of MiFID RTS 20.

This answer does not give a full summary as the definition is too detailed for *PERG*. ~~Instead this answer summarises the broad approach.~~

~~There are two tests. The exemption only applies if you meet both tests. Both are based on commodities trading activities in the EEA.~~

~~The first test looks at the size of trading activities of members of your group in various asset classes. For each class, this is calculated by comparing their trading activities in that class with the overall trading activity in the EEA for that class.~~

~~The asset classes are made up of emission allowances and various types of commodity derivatives. The emission allowances asset class includes emission allowances to which the exemption for emission allowances in article 2.1(e) (see the table in the answer to Q35A) applies and any bidding under the UK auctioning regulations.~~

~~For this test to be met, the trading level of persons within your group needs to be below the maximum amount for each asset class. There is a different maximum amount for each class.~~

~~Certain privileged transactions are excluded from the calculation:~~

- ~~intra-group transactions that serve group-wide liquidity or risk management purposes;~~
- ~~transactions in derivatives that reduce risks directly relating to commercial activity or treasury financing activity in accordance with criteria set out in MiFID RTS 20 (regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business);~~
- ~~transactions in commodity derivatives and emission allowances entered into to fulfil obligations to provide liquidity on a *trading venue*, where such obligations are required by:~~
    - ~~regulatory authorities in accordance with domestic law;~~
    - ~~national laws, regulations and administrative provisions; or~~

~~o those *trading venues*; and~~

- ~~transactions executed by a group member authorised under MiFID or the CRD or with a corresponding Part 4A permission~~.

The ~~second~~ test as stipulated by article 3 of MiFID RTS 20 has two calculation methods. If the result of either calculation is that you fall below the specified threshold, you meet the ~~second~~ test.

- One method is based on the size of group trading activities in commodity derivatives and emission allowances.
- The second measure compares the estimated capital employed for carrying out commodity derivative and emission allowance activities with group capital.

Both methods are based on commodities trading activities in the EEA, as if the UK were still part of the EU.

…

# Appendix 4
# Changes to rules for collective portfolio managers

# CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT) INSTRUMENT 2022

## Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the powers and related provisions in or under:

(1) the following sections of the Financial Services and Markets Act 2000 ("the Act"):
   (a) section 137A (The FCA's general rule-making power);
   (b) section 137R (The FCA's financial promotion rule-making power);
   (c) section 137T (General supplementary powers);
   (d) section 139A (Power of the FCA to guide guidance);
   (e) section 247 (Trust scheme rules);
   (f) section 261I (Contractual scheme rules); and
   (g) regulation 6 (FCA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).

(2) regulation 3 of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc) (EU Exit) Regulations 2018; and

(3) the other 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 provisions referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

## Commencement

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

## Amendments to the Handbook

D. The 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 (Amendment) Instrument 2022.

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.

### 18 Specialist Regimes

…

### 18 Research and inducements for collective portfolio managers
### Annex 1

…

| | | | | | | |
|---|---|---|---|---|---|---|
| 3 | Acceptable minor non-monetary benefits | | | | | |
| 3.1 | R | A *firm* must not accept a non-monetary benefit unless it is a minor non-monetary benefit which is reasonable, proportionate and of a scale that is unlikely to influence the *firm's* behaviour in any way that is detrimental to the interests of the *fund*, and which consists of: | | | | |
| | | (1) | information or documentation relating to a *financial instrument* that is generic in nature; or | | | |
| | | (2) | written material from a third party that: | | | |
| | | | (a) | is either: | | |
| | | | | (i) | commissioned and paid for by a corporate *issuer* or potential *issuer* to promote a new issuance by the company; or | |
| | | | | (ii) | produced on an ongoing basis, where the third party is contractually engaged and paid by the *issuer*; | |
| | | | (b) | clearly discloses the relationship between the third party and the *issuer*; and | | |
| | | | (c) | is made available at the same time to any *firm* wishing to receive it, or to the general public; or | | |
| | | (3) | participation in conferences, seminars and other training events on the benefits and features of a specific *financial instrument*; or | | | |
| | | (4) | hospitality of a reasonable de minimis value, such as food and drink during a business meeting or another training event mentioned under (3); or | | | |

| | | | | |
|---|---|---|---|---|
| | | (5) | research relating to an issue of *shares*, *debentures*, *warrants* or *certificates representing certain securities* by an *issuer*, which is: | |
| | | | (a) | produced by a *person* that is providing underwriting or placing services to the *issuer* on that issue; |
| | | | (b) | made available to prospective investors in the issue; and |
| | | | (c) | disseminated before the issue is completed; or |
| | | (6) | free sample *research* provided for a limited trial period where: | |
| | | | (a) | the trial period lasts no longer than three months; |
| | | | (b) | the trial period is not commenced with a provider within 12 *months* from the termination of an arrangement for the provision of *research* (including a previous trial period) with that provider; |
| | | | (c) | the research provider offering the free trial has no existing relationship with the recipient *firm* for the provision of *research* or *execution* services; and |
| | | | (d) | the recipient *firm* keeps records of the dates of any trial periods, and sufficient records to demonstrate compliance with the conditions in (a) to (c) above. |
| | | (7) | *research* on listed or unlisted companies with a market capitalisation below £200m, provided that it is offered on a rebundled basis or provided for free. The market capitalisation is to be calculated with reference to the average closing price of the shares of the company at the end of each *month* to 31 October for the preceding 24 *months*. For companies newly admitted to trading, determination of the threshold should be based on the market capitalisation at the close of day one trading and apply until the date of the next re-assessment (ie, 31 October). For these purposes, *firms* may reasonably rely on the assessment of a third party that the *research* is on a company with a market capitalisation below £200m; | |
| | | (8) | third party *research* that is received by a *firm* providing investment services or ancillary services to clients where it relates to fixed income, currency or commodity instruments; | |
| | | (9) | *research* received from a research provider where the research provider is not engaged in *execution* services and is not part of a financial services group that includes an *investment firm* that offers *execution* or brokerage services; | |
| | | (10) | written material that is made openly available from a third party to any *firm* wishing to receive it or to the general public. "Openly available" in this context means that there are no conditions or | |

| | | | |
|---|---|---|---|
| | | | barriers to accessing the written material other than those which are necessary to comply with relevant regulatory obligations, for example requiring a log-in, sign-up or submission of user information by a *firm* or a member of the public in order to access that material; or |
| | | (11) | corporate access services which relate to listed or unlisted companies with a market capitalisation below £200m in accordance with paragraph 3.1 R(7). |
| … | | | |
| 3.4 | G | In relation to paragraph 3.1R(8) above, since the particular features of the fixed income, currency and commodity markets, whereby portfolio managers and independent investment advisers transact with counterparties based on competitive pricing processes, the pricing of transactions in fixed income, currency and commodity instruments will typically not take into account *research* services. | |

# Appendix 5
# Changes to conduct rules

# CONDUCT OF BUSINESS SOURCEBOOK (MIFID ORG REGULATION AMENDMENT) INSTRUMENT 2022

## Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the powers and related provisions in or under:

(1) the following sections of the Financial Services and Markets Act 2000 ("the Act"):
  (a) section 137A (The FCA's general rules);
  (b) section 137T (General supplementary powers);
  (c) section 139A (Power of the FCA to give guidance); and

(2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

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

## Commencement

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

## Amendments to the Handbook

E. The Glossary of definitions is amended in accordance with Annex A to this instrument.

F. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex B to this instrument.

G. The Financial Conduct Authority confirms and remakes in the Glossary of definitions the defined expression "MiFID Org Regulation".

## Notes

H. In Annexes A and B to this instrument, the "notes" (indicated by "**Note:**") are included for the convenience of readers but do not form part of the legislative text.

## Citation

I. This instrument may be cited as the Conduct of Business Sourcebook (MiFID Org Regulation Amendment) 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, unless otherwise stated.

Amend the following definitions as shown.

*durable medium*

(a) paper; or

(b) any instrument which enables the recipient to store information addressed personally to the recipient in a way accessible for future reference and for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored. In relation to the *equivalent business of a third country investment firm*, *MiFID optional exemption business* or *collective portfolio management*, if the relevant *rule* derives from the *MiFID Org Regulation* or is a *rule* which implemented the *UCITS Directive*, the *UCITS implementing Directive* or the *UCITS implementing Directive No 2* the instrument used must be:

(i) appropriate to the context in which the business is to be carried on; and

(ii) specifically chosen by the recipient when offered the choice between that instrument and paper.

If the relevant *rule* derives from the *MiFID Org Regulation*:

(iii) the requirements in (i) and (ii) above only apply in relation to *retail clients* or potential *retail clients*;

(iv) where the *client* or potential *client* is a *retail client*, or potential *retail client*, who has requested to receive the information on paper, that information must be provided on paper and free of charge; and

(v) *firms* must provide all information required to be provided in a *durable medium* by the relevant *rule* to *clients* or potential *clients* in electronic format, except where the *client* or potential *client* is a *retail client*, or potential *retail client*.

In *ICOBS* and, in relation to *life policies*, in *COBS*:

~~(ii)~~ (vi) the instrument used must be appropriate in the context of the business conducted between the *insurance distributor* and (for *ICOBS*) the *customer* or (for *COBS*) the *client*; and

~~(iv)~~ (vii) the *customer* (for *ICOBS*) or *client* (for *COBS*) must be given the choice between information on paper and the instrument used, and must specifically choose the latter medium.

For the purposes of this definition, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the *firm* and the *client* is, or is to be, carried on if there is evidence that the *client* has regular access to the internet. The provision by the *client* of an e-mail address for the purposes of the carrying on of that business is sufficient. [Note: article 2(f) of, and Recital 20 to, the *Distance Marketing Directive*, articles 2(1)(18), 23(4) and 23(6) of the *IDD*, article 4(1)(62) of *MiFID* and article 3(1), (1A) and (1B) of the *MiFID Org Regulation*, articles 75(2) and 81(1) of the *UCITS Directive*, article 20(3) of the *UCITS implementing Directive* and article 7 of the *UCITS implementing Directive No 2*]

*website conditions* the following conditions:

(1) the provision of information by means of a website must be appropriate to the context in which the business between the *firm* and the *client* is, or is to be, carried on (that is, there is evidence that the *client* has regular access to the internet, such as the provision by the client of an e-mail address for the purposes of the carrying on of that business);

(2) the *client* must specifically consent to the provision of that information in that form (only in the case of a *retail client* if the relevant *rule* derives from the *MiFID Org Regulation*);

(3) the *client* must be notified electronically of the address of the website, and the place on the website where the information may be accessed;

(4) the information must be up to date; and

(5) the information must be accessible continuously by means of that website for such period of time as the *client* may reasonably need to inspect it.

[Note: article 23(5) of the *IDD*, article 3 of the *MiFID Org Regulation* and article 38(2) of the *KII Regulation*]

## 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.

### 6 Information about the firm, its services and remuneration

…

### 6.1ZA Information about the firm and compensation information (MiFID and insurance distribution provisions)

…

Costs and associated charges disclosure: MiFID

| | | | |
|---|---|---|---|
| 6.1ZA.14 | UK | 50(1) | For the purposes of providing information to clients on all costs and charges pursuant to [*COBS* 6.1ZA.11R] ("the relevant rule"), investment firms shall comply with the detailed requirements in paragraphs 2 to 10.<br><br>~~Without prejudice to the obligations set out in the relevant rule, investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements set out in this Article with these clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.~~<br><br>~~Without prejudice to the obligations set out in the relevant rule, investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this Article, except when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients.~~ |
| | | 50(1A) | (1) Subject to sub-paragraph (2), the requirements laid down in the relevant rule do not apply to services provided to professional clients.<br><br>(2) The requirements laid down in the relevant rule do apply to services provided to professional clients for investment advice and portfolio management. |
| | | … | |

…

Timing of disclosure: MiFID business

| | | | |
|---|---|---|---|
| 6.1ZA.17 | UK | 46(2) | ~~Investment firms shall~~ Subject to paragraph 2A, investment firms must, in good time before the provision of investment services or ancillary services to clients or potential clients, to provide the information required under Articles 47 to 50. |
| | | 46(2A) | Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication, which prevents the delivery of the information on costs and charges before that conclusion: |
| | | | (a) the investment firm must give the client or potential client the option of receiving the information on costs and charges over the telephone before the conclusion of the transaction; and |
| | | | (b) subject to meeting the conditions referred to in paragraph 2B(a) and (b), the investment firm may provide the information on costs and charges to clients in: |
| | | | (i) electronic format; or |
| | | | (ii) where requested by a retail client or potential retail client, on paper, without undue delay after the conclusion of the transaction. |
| | | 46(2B) | The conditions referred to in paragraph 2A(b) are: |
| | | | (a) the client or potential client has requested and consented to receiving the information without undue delay after the conclusion of the transaction; and |
| | | | (b) the investment firm has given the client or potential client the option of delaying the conclusion of the transaction until the client has received the information. |
| | | | [**Note**: article 46(2), (2A) and (2B) of the *MiFID Org Regulation*] |

…

Medium of disclosure: MiFID business

| | | | |
|---|---|---|---|
| 6.1ZA.19 | UK | 46(3) | The information referred to in paragraphs 1 ~~and 2~~ to 2B shall be provided in a durable medium or by means of a website (where it does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.<br>[**Note:** article 46(3) of the *MiFID Org Regulation*] |

…

## 8A Client agreements (MiFID provisions)

### 8A.1 Client agreements (MiFID, equivalent third country or optional exemption business)

…

General requirement for information to clients

…

8A.1.6 UK 46(2) ~~Investment firms shall~~ Subject to paragraph 2A, investment firms must, in good time before the provision of investment services or ancillary services to clients or potential clients, to provide the information required under Articles 47 to 50.

46(2A) Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication, which prevents the delivery of the information on costs and charges before that conclusion:

(a) the investment firm must give the client or potential client the option of receiving the information on costs and charges over the telephone before the conclusion of the transaction; and

(b) subject to meeting the conditions referred to in paragraph 2B(a) and (b), the investment firm may provide the information on costs and charges to clients in:

(i) electronic format; or

(ii) where requested by a retail client or potential retail client, on paper, without undue delay after the conclusion of the transaction.

46(2B) The conditions referred to in paragraph 2A(b) are:

(a) the client or potential client has requested and consented to receiving the information without undue delay after the conclusion of the transaction; and

(b) the investment firm has given the client or potential client the option of delaying the conclusion of the transaction until the client has received the information.

[**Note**: article 46(2), (2A) and (2B) of the *MiFID Org Regulation*]

8A.1.7 UK 46(3) The information referred to in paragraphs 1 ~~and 2~~ to 2B shall be provided in a durable medium or by means of a website (where it

does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.

[**Note**: article 46(3) of the *MiFID Org Regulation*]

…

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

…

**9A.2 Assessing suitability: the obligations**

…

Switching: MiFID business

| | | | |
|---|---|---|---|
| 9A.2.18 | UK | 54(11) | When providing investment advice or portfolio management services that involve switching investments, either by selling an instrument and buying another or by exercising a right to make a change in regard to an existing instrument, investment firms shall collect the necessary information on the client's existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs.<br><br>The requirements laid down in the first subparagraph do not apply to services provided to professional clients.<br><br>[**Note**: article 54(~~13~~ 11) of the *MiFID Org Regulation*] |

…

**14 Providing product information to clients**

…

**14.3A Information about financial instruments (MiFID provisions)**

…

Timing of disclosure

| | | | |
|---|---|---|---|
| 14.3A.7 | UK | 46(2) | ~~Investment firms shall~~ Subject to paragraph 2A, investment firms must, in good time before the provision of investment services or ancillary services to clients or potential clients, to provide the information required under Articles 47 to 50. |
| | | 46(2A) | Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication, which prevents the delivery of the information on costs and charges before that conclusion: |

(a) the investment firm must give the client or potential client the option of receiving the information on costs and charges over the telephone before the conclusion of the transaction; and

(b) subject to meeting the conditions referred to in paragraph 2B(a) and (b), the investment firm may provide the information on costs and charges to clients in:

(i) electronic format; or

(ii) where requested by a retail client or potential retail client, on paper, without undue delay after the conclusion of the transaction.

46(2B) The conditions referred to in paragraph 2A(b) are:

(a) the client or potential client has requested and consented to receiving the information without undue delay after the conclusion of the transaction; and

(b) the investment firm has given the client or potential client the option of delaying the conclusion of the transaction until the client has received the information.

[**Note**: article 46(2), (2A) and (2B) of the *MiFID Org Regulation*]

…

Medium of disclosure

14.3A.9 UK 46(3) The information referred to in paragraphs 1 ~~and 2~~ to 2B shall be provided in a durable medium or by means of a website (where it does not constitute a durable medium) provided that the conditions specified in Article 3(2) are satisfied.

[**Note**: article 46(3) of the *MiFID Org Regulation*]

…

## 16A Reporting information to clients (MiFID and insurance-based investment products provisions)

…

### 16A.3 Occasional reporting: MiFID business

Execution of orders other than when undertaking portfolio management

16A.3.1 UK 59(1) Investment firms having carried out an order on ~~behalf of a client~~ behalf of a retail client or a professional client, other than for portfolio management, shall, in respect of that order:

(a) promptly provide the ~~client~~ retail client or professional client, as applicable, in a durable medium, with the essential information concerning the execution of that order;

(b) send a notice to ~~the client~~ a retail client in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, where the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.

…

59(3) In the case of retail client orders relating to units or shares in a collective investment undertaking which are executed periodically, investment firms shall either take the action specified in point (b) of paragraph 1 or provide the retail client, at least once every six months, with the information listed in paragraph 4 in respect of those transactions.

59(4) The notice referred to in point (b) of paragraph 1 shall include such of the following information as is applicable and, where relevant, in accordance with the regulatory technical standards on reporting obligations adopted in accordance with Article 26 of Regulation (EU) No 600/2014:

(a) the reporting firm identification;

(b) the name or other designation of the retail client;

(c) the trading day;

(d) the trading time;

(e) the type of the order;

(f) the venue identification;

(g) the instrument identification;

(h) the buy/sell indicator;

(i) the nature of the order if other than buy/sell;

(j) the quantity;

(k) the unit price;

(l) the total consideration;

(m) a total sum of the commissions and expenses charged and, where the retail client so requests, an itemised breakdown

including, where relevant, the amount of any mark-up or mark-down imposed where the transaction was executed by an investment firm when dealing on own account, and the investment firm owes a duty of best execution to the retail client;

(n) the rate of exchange obtained where the transaction involves a conversion of currency;

(o) the retail client's responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the retail client;

(p) where the retail client's counterparty was the investment firm itself or any person in the investment firm's group or another retail client of the investment firm, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading.

For the purposes of point (k), where the order is executed in tranches, the investment firm may supply the retail client with information about the price of each tranche or the average price. Where the average price is provided, the investment firm shall supply the retail client with information about the price of each tranche upon request.

59(5) The investment firm may provide the retail client with the information referred to in paragraph 4 using standard codes if it also provides an explanation of the codes used.

[**Note:** article 59 of the *MiFID Org Regulation*]

…

Reporting obligations in respect of eligible counterparties

16A.3.5 UK 61 The requirements ~~applicable to reports for retail and *professional clients* under Articles 49 and 59 shall apply unless *investment firms* enter into agreements with *eligible counterparties* to determine content and timing of reporting.~~ in Articles 46 to 51 and 59 do not apply to services provided to eligible counterparties.

[**Note:** article 61 of the *MiFID Org Regulation*]

…

## 16A.4 Periodic reporting

Provision by a firm and contents: MiFID business

**16A.4.1** UK 60(1) Investments firms which provide the service of portfolio management to retail clients or professional clients shall provide each such client with a periodic statement in a durable medium of the portfolio management activities carried out on behalf of that client unless such a statement is provided by another person.

60(2) The periodic statement required under paragraph 1 shall provide a fair and balanced review of the activities undertaken and of the performance of the portfolio during the reporting period and shall include, where relevant, the following information to retail clients:

(a) the name of the investment firm;

(b) the name or other designation of the client's account;

(c) a statement of the contents and the valuation of the portfolio, including details of each financial instrument held, its market value, or fair value if market value is unavailable and the cash balance at the beginning and at the end of the reporting period, and the performance of the portfolio during the reporting period;

(d) the total amount of fees and charges incurred during the reporting period, itemising at least total management fees and total costs associated with execution, and including, where relevant, a statement that a more detailed breakdown will be provided on request;

(e) a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the investment firm and the client;

(f) the total amount of dividends, interest and other payments received during the reporting period in relation to the client's portfolio;

(g) information about other corporate actions giving rights in relation to financial instruments held in the portfolio;

(h) for each transaction executed during the period, the information referred to in Article 59(4)(c) to (l) where relevant, unless the client elects to receive information about executed transactions on a transaction-by-transaction basis, in which case paragraph 4 of this Article shall apply.

60(3) The periodic statement referred to in paragraph 1 shall be provided to retail clients once every three months, except in the following cases:

(a) where the investment firm provides its retail clients with access to an online system, which qualifies as a durable

medium, where up-to-date valuations of the client's portfolio can be accessed and where the client can easily access the information required by Article 63(2) and the firm has evidence that the client has accessed a valuation of their portfolio at least once during the relevant quarter;

(b) in cases where paragraph 4 applies, the periodic statement must be provided at least once every 12 months;

(c) where the agreement between an investment firm and a retail client for a portfolio management service authorises a leveraged portfolio, the periodic statement must be provided at least once a month.

The exception provided for in point (b) shall not apply in the case of transactions in financial instruments covered by Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of *Part 1* of Schedule 2 to the Regulated Activities Order.

60(4) Investment firms, in cases where the retail client elects to receive information about executed transactions on a transaction-by-transaction basis, shall provide promptly to the retail client, on the execution of a transaction by the portfolio manager, the essential information concerning that transaction in a durable medium.

The investment firm shall send the retail client a notice confirming the transaction and containing the information referred to in Article 59(4) no later than the first business day following that execution or, where the confirmation is received by the investment firm from a third party, no later than the first business day following receipt of the confirmation from the third party.

The second subparagraph shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the retail client by another person.

[**Note:** article 60 of the *MiFID Org Regulation*]

…

Additional reporting obligations for portfolio management or contingent liability transactions

16A.4.3 UK 62(1) Investment firms providing the service of portfolio management ~~shall~~ to a retail client must inform the client where the overall value of the portfolio, as evaluated at the beginning of each reporting period, depreciates by 10% and thereafter at multiples of 10%, no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

62(2) Investment firms that hold a retail client account that includes positions in leveraged financial instruments or contingent liability

transactions shall inform the client, where the initial value of each instrument depreciates by 10% and thereafter at multiples of 10%. Reporting under this paragraph should be on an instrument-by-instrument basis, unless otherwise agreed with the client, and shall take place no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day.

[**Note:** article 62 of the *MiFID Org Regulation*]

# Appendix 6
# Changes to LR 14 – standard listing of shares

# LISTING RULES (OPEN-ENDED INVESTMENT COMPANIES) (AMENDMENT) 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 73A (Part 6 Rules);
(2) section 96 (Obligations of issuers of listed securities); and
(3) section 137T (General supplementary powers).

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 Listing Rules sourcebook (LR) of the FCA's Handbook of rules and guidance is amended in accordance with the Annex to this instrument.

## Citation

E. This instrument may be cited as the Listing Rules (Open-ended Investment Companies) (Amendment) Instrument 2022.

By order of the Board
[*date*]

## Annex

## Amendments to the Listing Rules sourcebook (LR)

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

### 14 Standard listing (shares)

### 14.1 Application

14.1.1 R This chapter applies to a *company* with, or applying for, a *standard listing* of *shares* other than:

(1) *equity shares* issued by a *company* that is a *closed-ended investment fund* unless it has a *premium listing* of a class of its *equity shares*;

(1A) *equity shares* issued by an *open-ended investment company* (unless applied by *LR* 16A); ~~and~~

(1B) *equity shares* issued by a *company* that is an *investment entity* but not a *closed-ended investment fund* or an *open-ended investment company*; and

(2) *preference shares* that are *specialist securities*.

…

# Appendix 7
# Changes to the approach to continuing professional development for retail investment advisers and pension transfer specialists

# TRAINING AND COMPETENCE SOURCEBOOK (AMENDMENT No 10) INSTRUMENT 2022

## Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 ("the Act").

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 Training and Competence (TC) sourcebook is amended in accordance with the Annex to this instrument.

## Citation

E. This instrument may be cited as the Training and Competence Sourcebook (Amendment No 10) Instrument 2022.

By order of the Board
[*date*]

## Annex

## Amendments to the Training and Competence sourcebook (TC)

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

**2 Competence**

…

Continuing professional development for retail investment advisers

…

2.1.20 G Examples of structured continuing professional development activities include participating in courses, seminars, lectures, conferences, workshops, web-based seminars or e-learning ~~which require a contribution of thirty minutes or more~~.

…

2.1.22 G …

2.1.22A G (1) *Firms* are unlikely to be able to demonstrate how the activities are appropriate continued professional development if the activities are so short in duration that they cannot reasonably be viewed as relevant to the aims set out in *TC* 2.1.22G. For example, an e-learning module of very short duration may not contribute to those aims when viewed in isolation.

(2) Where the *retail investment adviser* completes a block of short activities within a reasonable time, then a *firm* may be able to demonstrate that these activities, taken as a whole, are relevant to the aims set out in *TC* 2.1.22G.

…

Continuing professional development for pension transfer specialists

…

2.1.23B G (1) Appropriate continuing professional development has the same meaning as given in *TC* 2.1.22G(1) to (5). Also see *TC* 2.1.22AG. For this purpose, reference to *retail investment adviser* should be read as if it were a reference to a *pension transfer specialist*.

…

…

# Appendix 8
# MIFIDPRU TP 7.4R(2)(b) notification

# INVESTMENT FIRMS PRUDENTIAL REGIME (AMENDMENT) 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);
(3) section 139A (Power of the FCA to give guidance);
(4) section 143D (Duty to make rules applying to parent undertakings); and
(5) section 143E (Powers to make rules applying to parent undertakings).

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 Prudential sourcebook for MiFID Investment Firms (MIFIDPRU) is amended in accordance with the Annex to this instrument.

E. The FCA confirms and remakes in the Glossary of definitions any defined expressions used in MIFIDPRU where the defined expressions relate to UK legislation that has been amended since those defined expressions were last made.

## Citation

F. This instrument may be cited as the Investment Firms Prudential Regime (Amendment) Instrument 2022.

By order of the Board
[*date*]

## Annex

## Amendments to the Prudential sourcebook for MiFID Investment Firms (MIFIDPRU)

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

### 3 Own funds

…

### 3.6 General requirements for own funds instruments

…

3.6.6 G (1) *MIFIDPRU investment firms* that were classified as *CRR firms* immediately before 1 January 2022 should refer to *MIFIDPRU* TP 1 for transitional provisions relating to *own funds* permissions that were issued, and notifications that were made, before that date. Those *firms* should also refer to *MIFIDPRU* TP 7, which contains transitional provisions about capital instruments issued before 1 January 2022 and in respect of which the *firm* had not obtained *own funds* permissions or made notifications under the legal requirements in force at that time.

(2) *MIFIDPRU investment firms* that were in existence immediately before 1 January 2022, but were not classified as *CRR firms*, should refer to *MIFIDPRU* TP 7 for transitional provisions relating to *own funds* instruments issued before that date.

(3) *Parent undertakings* should also refer to the following:

(a) *MIFIDPRU* TP 1, where they were subject to the *UK CRR* on an individual or a consolidated basis immediately before 1 January 2022 and had obtained permissions or made notifications under the *UK CRR* relating to *own funds* instruments issued before that date; or

(b) *MIFIDPRU* TP 7 in either of the following cases:

(i) where they were not subject to the *UK CRR* on either an individual or a consolidated basis immediately before 1 January 2022, but wish to rely on transitional provisions relating to capital instruments issued before that date; or

(ii) where they were subject to the *UK CRR* on an individual or a consolidated basis immediately before 1 January 2022, but wish to rely on

transitional provisions relating to capital instruments issued before that date in respect of which the *parent undertaking* had not obtained *own funds* permissions or made notifications under the legal requirements in force at that time.

…

**TP 7 ~~Former non-CRR firms and parent undertakings: transitional~~ Transitional provision for own funds instruments without UK CRR approvals before 1 January 2022**

Application

7.1 R (1) *MIFIDPRU* TP 7 applies to a *MIFIDPRU investment firm* that, immediately before 1 January 2022:

~~(1)~~ (a) was an *authorised person*; and

~~(2)~~ (b) ~~was not classified as a *CRR firm* in accordance with the *rules* then in force.~~ either:

(i) was not classified as a *CRR firm* in accordance with the *rules* then in force; or

(ii) met all of the conditions in (2).

(2) The conditions referred to in (1)(b)(ii) are:

(a) the *firm* was classified as a *CRR firm* in accordance with the *rules* that applied immediately before 1 January 2022; and

(b) in relation to an instrument to which *MIFIDPRU* TP 7.4R(1) applies, the *firm* had not, before 1 January 2022:

(i) obtained *FCA* approval under article 26(3) of the *UK CRR* (in the form in which it stood immediately before 1 January 2022); or

(ii) notified the *FCA* of the issuance of the instrument under *IFPRU* 3.2 (as it applied immediately before 1 January 2022).

7.2 R (1) *MIFIDPRU* TP 7 also applies to the following if the conditions in (2) are met:

(a) a *UK parent entity* to which *MIFIDPRU* 3 applies on a *consolidated basis* in accordance with *MIFIDPRU* 2.5.7R; and

(b) a *parent undertaking* to which the *group capital test* applies.

(2) The conditions are that immediately before 1 January 2022 the *UK parent entity* or *parent undertaking*:

(a) formed part of the same *investment firm group* as a *firm*, which, on 1 January 2022 became a *MIFIDPRU investment firm*; and

(b) ~~was not required to hold *own funds* on either an individual or a consolidated basis in accordance with the *UK CRR*.~~ either:

(i) was not required to hold *own funds* on an individual or a consolidated basis in accordance with the *UK CRR*; or

(ii) met all of the conditions in (3).

(3) The conditions referred to in (2)(b)(ii) are:

(a) the *UK parent entity* or *parent undertaking* was required to hold *own funds* on an individual or a consolidated basis in accordance with the *UK CRR* (in the form in which it stood immediately before 1 January 2022);

(b) the *UK parent entity* or *parent undertaking* has issued an instrument to which *MIFIDPRU* TP 7.4R(1) applies; and

(c) in relation to the instrument in (b), the *UK parent entity* or *parent undertaking* had not, before 1 January 2022:

(i) obtained *FCA* approval under article 26(3) of the *UK CRR* (in the form in which it stood immediately before 1 January 2022); or

(ii) notified the *FCA* of the issuance of the instrument under *IFPRU* 3.2 (as it applied immediately before 1 January 2022).

(4) A reference in (3)(c) to a notification or approval includes a notification or approval that was granted to another member of the *UK parent entity* or *parent undertaking's group* in relation to an instrument issued by the *UK parent entity* or *parent undertaking*.

Purpose

7.3 G (1) Before *MIFIDPRU* applied, certain *firms* that subsequently became *MIFIDPRU investment firms* determined their available capital resources according to various provisions in *GENPRU* or

*IPRU-INV*. In addition, certain other *firms* were not subject to a dedicated prudential sourcebook in the *FCA Handbook* that contained a detailed regime for recognising the eligibility of capital resources.

(2) The *rules* on *own funds* in *MIFIDPRU* 3 broadly replicate the approach to recognising capital resources under the *UK CRR*. The purpose of *MIFIDPRU* TP 7 is to permit *firms* that were not *CRR firms* immediately before *MIFIDPRU* began to apply to recognise instruments as *own funds* under *MIFIDPRU* without requiring separate permission from, or notification to, the *FCA* if those instruments:

(a) were issued before *MIFIDPRU* began to apply; and

(b) meet the conditions to be classified as *own funds* under *MIFIDPRU* 3 (other than the conditions relating to the requirements to seek prior *FCA* consent or to notify the *FCA*).

(3) Under *MIFIDPRU* TP 1, a permission recognising the issuance of capital instruments as *common equity tier 1 capital* under the *UK CRR* is deemed to be an equivalent permission under *MIFIDPRU*. ~~Therefore, a~~ A notification made before *MIFIDPRU* began to apply by a former *CRR firm* in relation to the issuance of *additional tier 1 instruments* and *tier 2 instruments* will also continue to be valid under *MIFIDPRU* TP 1.

(3A) Where a former *CRR firm* did not obtain permission for an existing instrument under the *UK CRR* or make a notification under *IFPRU* 3.2 in relation to an instrument, there will be no existing permission or notification to carry forward under *MIFIDPRU* TP1. In that case, the former *CRR firm* may make a notification under *MIFIDPRU* TP 7 in relation to any outstanding capital instruments issued before 1 January 2022, provided that those instruments meet the conditions to be recognised as the relevant type of *own funds* under *MIFIDPRU* 3.

(4) *MIFIDPRU* TP 7 also applies to *UK parent entities* to which *MIFIDPRU* 3 applies on a *consolidated basis* and *parent undertakings* to which the *group capital test* applies, where those entities were not required to hold *own funds* on an individual or consolidated basis under the *UK CRR* immediately before *MIFIDPRU* began to apply. This means that provided that the existing instruments issued by these entities meet the relevant conditions in *MIFIDPRU* 3, they can be treated as *own funds* for the purposes of the application of *MIFIDPRU* 3 on a *consolidated basis* or the *group capital test* as long as the entity complies with *MIFIDPRU* TP 7.

(5) *MIFIDPRU* TP 7 also applies to a *UK parent entity* or other *parent undertaking* that was required to hold *own funds* under the *UK CRR* (whether on an individual or consolidated basis) immediately before *MIFIDPRU* began to apply but did not:

(a) obtain permission for an existing common equity tier 1 instrument under the *UK CRR*; or

(b) make a notification in accordance with *IFPRU* 3.2 in relation to an existing additional tier 1 instrument or a tier 2 instrument.

(6) Where (5) applies, the *UK parent entity* or other *parent undertaking* may make a notification under *MIFIDPRU* TP 7 in relation to any outstanding capital instruments issued before 1 January 2022, provided that those instruments meet the conditions to be recognised as the relevant type of *own funds* under *MIFIDPRU* 3.

(7) In some cases, the *FCA* may have granted permission to, or accepted a notification from, another member of the *UK parent entity* or other *parent undertaking's group* in relation to an instrument issued by the *UK parent entity* or other *parent undertaking* that counted towards the *consolidated situation*. This is because the *UK CRR* previously applied only indirectly to unregulated *parent undertakings*. In that case, the existing *UK CRR* permission or notification will be treated as a permission or notification of the *UK parent entity* or *parent undertaking*. This means that it will convert into an equivalent deemed *MIFIDPRU* 3 permission or notification of the *UK parent entity* or *parent undertaking* under *MIFIDPRU* TP 1. A notification under *MIFIDPRU* TP 7 is not required in this situation.

Eligibility of pre-MIFIDPRU capital resources meeting requirements in MIFIDPRU 3 to qualify as own funds under MIFIDPRU without a separate permission or notification

7.4 R (1) This *rule* applies to any capital instrument that:

(a) was issued by a *firm*, *UK parent entity* or *parent undertaking* before 1 January 2022; and

(b) was still in issue on 1 January 2022.

(2) The *firm*, *UK parent entity* or *parent undertaking* in (1)(a) is deemed to have been granted the permission, or to have complied with the notification obligation, in column (A) of the table in *MIFIDPRU* TP 7.5R in relation to a capital instrument where the following conditions are met:

(a) the conditions in column (B) of the same row of the table in *MIFIDPRU* TP 7.5R are met in relation to that instrument; and

(b) the *firm* has submitted the notification in *MIFIDPRU* TP 7 Annex 1R using the *online notification and application system* by no later than ~~1 January~~ 29 June 2022.

(3) A deemed permission or notification under (2) ceases to apply in relation to a capital instrument if the terms of the instrument are varied on or after 1 January 2022 and the instrument ceases to meet:

(a) in relation to an instrument being treated as *common equity tier 1 capital*, the conditions in *MIFIDPRU* 3.3 (other than the condition for prior *FCA* permission to classify the instrument as *common equity tier 1 capital*);

(b) in relation to an instrument being treated as *additional tier 1 capital*, the conditions in *MIFIDPRU* 3.4; and

(c) in relation to an instrument being treated as *tier 2 capital*, the conditions in *MIFIDPRU* 3.5.

7.5 R This table belongs to *MIFIDPRU* TP 7.4R.

| **(A)**<br>**Requirement for permission or notification with which the *firm*, *UK parent entity* or *parent undertaking* is deemed to have complied** | **(B)**<br>**Conditions for deemed compliance to apply** |
|---|---|
| Individual *MIFIDPRU investment firms* | |
| Article 26(3) *UK CRR* (as applied and modified by *MIFIDPRU* 3.3.1R) and *MIFIDPRU* 3.3.3R:<br>Requirement for prior *FCA* permission to classify an issuance of capital instruments by a *firm* as *common equity tier 1 capital* | Immediately before *MIFIDPRU* began to apply or, if later, on the date on which the notification in *MIFIDPRU* TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as *common equity tier 1 capital* in *MIFIDPRU* 3.3, except for the requirement for prior *FCA* permission under article 26(3) of the *UK CRR* and *MIFIDPRU* 3.3.3R |
| *MIFIDPRU* 3.6.5R(1)(a): | Immediately before *MIFIDPRU* began to apply or, if later, on the date on which the notification in *MIFIDPRU* |

| | |
|---|---|
| Requirement to notify the *FCA* of the intention to issue *additional tier 1 instruments* | TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as *additional tier 1 capital in MIFIDPRU* 3.4 |
| *MIFIDPRU* 3.6.5R(1)(b):<br>Requirement to notify the *FCA* of the intention to issue *tier 2 instruments* | Immediately before *MIFIDPRU* began to apply or, if later, on the date on which the notification in *MIFIDPRU* TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as *tier 2 capital* in *MIFIDPRU* 3.5 |
| *UK parent entities* to which consolidation under *MIFIDPRU* 2.5.7R applies | |
| Article 26(3) *UK CRR* (as applied and modified by *MIFIDPRU* 3.3.1R) and *MIFIDPRU* 3.3.3R, as they apply on a *consolidated basis* under *MIFIDPRU* 2.5.7R(1):<br>Requirement for prior *FCA* permission to classify an issuance of capital instruments by a *UK parent entity* as *common equity tier 1 capital* | Immediately before *MIFIDPRU* began to apply or, if later, on the date on which the notification in *MIFIDPRU* TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as *common equity tier 1 capital* in *MIFIDPRU* 3.3 (as it applies on a *consolidated basis*), except for the requirement for prior *FCA* permission under article 26(3) of the *UK CRR* and *MIFIDPRU* 3.3.3R |
| *MIFIDPRU* 3.6.5R(1)(a), as modified by *MIFIDPRU* 3.6.8R:<br>Requirement to notify the *FCA* of the intention to issue *additional tier 1 instruments* | Immediately before *MIFIDPRU* began to apply or, if later, on the date on which the notification in *MIFIDPRU* TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as *additional tier 1 capital* in *MIFIDPRU* 3.4 (as it applies on a *consolidated basis*) |
| *MIFIDPRU* 3.6.5R(1)(b), as modified by *MIFIDPRU* 3.6.8R:<br>Requirement to notify the *FCA* of the intention to issue *tier 2 instruments* | Immediately before *MIFIDPRU* began to apply or, if later, on the date on which the notification in *MIFIDPRU* TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as *tier 2 capital* in *MIFIDPRU* 3.5 (as it applies on a *consolidated basis*) |
| *Parent undertakings* to which the *group capital test* applies | |
| Article 26(3) *UK CRR* (as applied and modified by *MIFIDPRU* 3.3.1R) and *MIFIDPRU* 3.3.3R, as they apply to a | Immediately before *MIFIDPRU* began to apply or, if later, on the date on which the notification in *MIFIDPRU* TP 7.4R(2)(b) was made, the capital |

| | |
|---|---|
| *parent undertaking* under *MIFIDPRU* 3.7.4R(1)(a):<br><br>Requirement for prior *FCA* permission to classify an issuance of capital instruments by a *parent undertaking* as *common equity tier 1 capital* | instruments met the conditions to be classified as *common equity tier 1 capital* in *MIFIDPRU* 3.3, except for the requirement for prior *FCA* permission under article 26(3) of the *UK CRR* and *MIFIDPRU* 3.3.3R |
| *MIFIDPRU* 3.6.5R(1)(a), as modified by *MIFIDPRU* 3.7.4R(1)(b):<br><br>Requirement to notify the *FCA* of the intention to issue *additional tier 1 instruments* | Immediately before *MIFIDPRU* began to apply or, if later, on the date on which the notification in *MIFIDPRU* TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as *additional tier 1 capital* in *MIFIDPRU* 3.4 |
| *MIFIDPRU* 3.6.5R(1)(b), as modified by *MIFIDPRU* 3.7.4R(1)(b):<br><br>Requirement to notify the *FCA* of the intention to issue *tier 2 instruments* | Immediately before *MIFIDPRU* began to apply or, if later, on the date on which the notification in *MIFIDPRU* TP 7.4R(2)(b) was made, the capital instruments met the conditions to be classified as *tier 2 capital* in *MIFIDPRU* 3.5 |

7.6 G Where a *firm*, *UK parent entity* or *parent undertaking* is deemed under *MIFIDPRU* TP 7.3R and 7.4R to have notified the *FCA* of its intention to issue *additional tier 1 instruments* or *tier 2 instruments*, *MIFIDPRU* 3.6.5R(2)(a) will apply to a subsequent issuance of the same class of instruments. In practice, this means that provided that the subsequent issuance of the same class is on terms that are identical in all material respects to the existing class of those instruments, a notification to the *FCA* under *MIFIDPRU* 3.6.5R(1) is not required.

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