FINANCIAL CONDUCT AUTHORITY

Quarterly Consultation

No 40

June 2023

How to respond

The Financial Conduct Authority invites comments on this Consultation Paper. Comments should reach us by 10 July 2023 for Chapters 2, 3 and 4.

Comments may be sent by electronic submission using the form on the FCA's website.

Alternatively, please send comments in writing to:

Chapter 2: Hillary Neale, Prudential Policy
Telephone: 020 7066 4856

Chapter 3: John Wu and Oliver Cierpka, Trading Policy
Telephone: 020 7666 8720 and 020 7066 0665

Chapter 4: Dhan Paramasivam, Consumer Investments Distribution Policy
Telephone: 020 7066 6319

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

All responses should be sent to:
Financial Conduct Authority, 12 Endeavour Square, London E20 1JN
Email: cp23-14@fca.org.uk

Moving around this document

Use your browser's bookmarks and tools to navigate.

To **search** on a PC use Ctrl+F or Command+F on MACs.

Sign up for our **news and publications alerts**

See all our latest press releases, consultations and speeches.

Request an alternative format

Please complete this form if you require this content in an alternative format.

Contents

Chapter 1

Overview

Chapter No	Proposed changes to Handbook	Consultation Closing Period
2	To make corrections and clarifications to MIFIDPRU 7 and SUP 16	5 weeks
3	To introduce a post-trade transparency deferral for exchange traded fund (ETF) transactions executed at net asset value (NAV)	5 weeks
4	To clarify the scope of the ban on offering retail clients incentives to invest in high-risk investments	5 weeks

.

Chapter 2

Changes to MIFIDPRU and SUP to provide clarification

Introduction

2.1 The Investment Firms Prudential Regime (IFPR) came into force on 1 January 2022. This created the Prudential sourcebook for MiFID investment Firms (MIFIDPRU) that applies to all Markets in Financial Instruments Directive (MiFID) investment firms. It also introduced changes to other parts of the Financial Conduct Authority (FCA) Handbook, including the Glossary of definitions, the Senior Management Arrangements, Systems and Controls sourcebook (SYSC), Threshold Conditions (COND), the Interim Prudential sourcebook for Investment Businesses (IPRU-INV) and the Supervision manual (SUP).

2.2 We propose to make some amendments to MIFIDPRU to further clarify its requirements. We also propose to amend SUP 16 to rectify some errors that have been identified, and to provide further clarification.

Summary of proposals

MIFIDPRU 7.6 – Own funds threshold requirement (OFTR)

2.3 A MIFIDPRU firm can be subject to other FCA prudential requirements in parallel with MIFIDPRU, when a firm has other non-MIFIDPRU business. For instance, a collective portfolio management investment firm (CPMI) may have higher requirements under IPRU-INV Chapter 11 than it does under MIFIDPRU. It still needs to meet the requirements in IPRU-INV Chapter 11 to be able to continue operating the collective portfolio management side of its business. This means that when setting the own funds threshold requirement (OFTR), a CPMI should be doing so at the minimum level of its total Chapter 11 requirements where this is higher than the minimum total MIFIDPRU requirements. Although MIFIDPRU 7 does cover all of a firm's business, there is not a specific provision in MIFIDPRU 7 for this scenario.

2.4 We propose to add a new provision MIFIDPRU 7.6.10AG. This will clarify how a firm should calculate its OFTR. The provision will make clear that the firm's OFTR can be no lower than the total resources requirement under any other prudential regime that applies to it if it is higher than the firm's own funds requirement under MIFIDPRU.

Q2.1: Do you agree with our proposed amendments to MIFIDPRU 7.6? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

2.5 This amendment will ensure that a firm is adequately capitalised to meet the prudential requirements that apply for all the activities it carries out.

MIFIDPRU 7.7.5G – Liquid assets threshold requirement determination

2.6 We have become aware that some firms are misinterpreting MIFIDPRU 7.7.5G and are not applying it as intended. MIFIDPRU 7.7.5G includes a diagram which summarises the process a firm should follow to determine its liquid assets threshold requirement (LATR). Some firms appear to be double counting the basic liquid asset requirement (BLAR) within 'Assessment B', which shows how a firm should estimate the additional amount of liquid assets it needs for its wind-down process. Firms are interpreting Assessment B as the total liquid assets, including the BLAR which would ultimately lead to double counting in the calculation.

2.7 We propose to add further clarification to the footnote of the diagram in MIFIDPRU 7.7.5G. This will remind firms that the amount of liquid assets under Assessment B is in addition to the basic liquid assets requirement, as set out in MIFIDPRU 7.7.3G(2).

Q2.2: Do you agree with our proposed amendments to MIFIDPRU 7.7.5G? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

MIFIDPRU 7.9 – Group internal capital adequacy and risk assessment (ICARA) process

2.8 MIFIDPRU 7.9 sets out the internal capital adequacy and risk assessment (ICARA) process for an investment firm group (IFG). An IFG may choose to operate a group ICARA process (whether that IFG is subject to prudential consolidation under MIFIDPRU 2.5 or not) if the business of the IFG and the risks arising from it are operated and managed on a group basis. To do so, the IFG must comply with the conditions in MIFIDPRU 7.9.5R, and with MIFIDPRU 7.9.7R which specifies some 'must nots' for operating a group ICARA process.

2.9 MIFIDPRU 7.9.6R and MIFIDPRU 7.9.8R further clarify that MIFIDPRU investment firms that are part of a group ICARA process are only subject to provisions in MIFIDPRU 7.4 to MIFIDPRU 7.8 that apply on an individual firm basis under MIFIDPRU 7.9.5R. This means that the IFG must apply certain requirements on an individual firm basis, while others apply to the group as a whole.

2.10 However, some IFGs have conducted the ICARA process on a consolidated basis without considering the consolidated situation of the IFG and have not carried out an individual ICARA process for each MIFIDPRU investment firm in the group.

2.11 We propose to amend MIFIDPRU 7.9.4G(2) to provide more clarity to firms about when a consolidated ICARA process may be required for IFGs. MIFIDPRU 7.9.4G(2) requires firms to complete an ICARA on a consolidated basis when the FCA deems it appropriate in exceptional circumstances. We propose amending this section to apply this on a case-by-case basis, to remove the prospect of firms misinterpreting what is classed as 'exceptional'.

2.12 We propose to add examples to MIFIDPRU 7.9.4 to illustrate when the FCA deems it appropriate for a particular IFG to apply the consolidated ICARA process. By way of example, this will include where the group ICARA process does not adequately reflect certain material risks that arise in the context of the investment firm group as a whole. It will also include where a material amount of business is conducted by authorised persons (other than MIFIDPRU investment firms) within the investment firm group and its impact is not adequately reflected using the individual or group ICARA process.

2.13 Where we decide to impose a requirement on a UK parent entity to operate an ICARA process on a consolidated basis, we will discuss our expectations on the operation of that ICARA process in further detail with the UK parent entity. We will clarify that an ICARA process operated by an investment firm group on a consolidated basis is additional to the individual ICARA process operated by a MIFIDPRU investment firm within an investment firm group or to the group ICARA process operated by an investment firm group.

2.14 We propose to add MIFIDPRU 7.9.8AG which clarifies the conditions for operating a group ICARA process and the levels of the application. This will clarify how a group ICARA process must comply with the requirements in MIFIDPRU 7.4 to MIFIDPRU 7.8 as if the references in those sections to a 'MIFIDPRU investment firm' are references to the IFG operating that group ICARA process.

2.15 We propose adding a table in MIFIDPRU 7.9.8AG(3), specifying the rules from MIFIDPRU 7.4 to MIFIDPRU 7.8 that apply on an individual basis to a MIFIDPRU investment firm included in a group ICARA process. This is subject to the conditions set out in MIFIDPRU 7.9.5R. The entity responsible for the group ICARA process is subject to all the rules in MIFIDPRU 7.4 to MIFIDPRU 7.8 as they apply at the level of the IFG under MIFIDPRU 7.9.5R, except for those specified in the table in MIFIDPRU 7.9.8AG(3) which apply on an individual basis.

2.16 We propose to add a reminder in MIFIDPRU 7.9.8AG(5) to MIFIDPRU investment firms included in a group ICARA process that they must still submit their MIF007 to the FCA on an individual basis, containing information about the firm that has been derived from that group ICARA process.

2.17 We propose to supplement MIFIDPRU 7.9.9G(3) with additional guidance. This will include reminding firms that when assessing the financial impact of risks at an IFG level, the assessment should also be allocated to the individual investment firms within the group.

This is to make sure that investments firms within the group will individually hold the responsibility of complying with the overall financial adequacy rule.

Q2.3: Do you agree with our proposed amendments to MIFIDPRU 7.9? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

MIFIDPRU 9 Annex 2G – Guidance notes on data items in MIFIDPRU 9 Annex 1R MIF007

MIF007 – ICARA Questionnaire

2.18 MIF007 provides the FCA with information on the overall financial position of the investment firm. It is intended to reflect the overall financial adequacy rule (OFAR) requirements contained in MIFIDPRU and allows for monitoring against the individual requirements already set out there.

2.19 We propose to amend the ICARA Questionnaire to simplify the form and avoid repeating questions. The first question in MIF007 currently asks firms if they are reporting on behalf of a consolidation group. The third question asks if the ICARA process has been completed through a group-level arrangement. We propose to update both these questions to make it clearer how firms should answer.

2.20 We propose to amend question 1 in MIF007 to ask the firm on which basis the form is being submitted.

2.21 We propose to amend question 2 so that it follows on from the first question. This will ask the submitting firm to list all the firm reference numbers of FCA regulated entities that are covered by the group ICARA process or the consolidated ICARA process. This will not be relevant to firms that are submitting MIF007 on an individual basis and under an individual ICARA process.

2.22 We propose to delete question 3 as it is no longer needed.

2.23 This will provide us with more accurate information on how the firm conducted the ICARA process behind the MIF007.

Q2.4: Do you agree with our proposed amendments to MIFIDPRU 9 annexes? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

Numbering in MIF007 in the Handbook

2.24 We are aware that there are layout and design inconsistencies between MIF007 and RegData.

2.25 We propose to update MIFIDPRU 9 Annex 1G and MIFIDPRU 9 Annex 2G so that the numbering is the same as it is in RegData. This will make it easier for firms to look at the guidance alongside the RegData version.

2.26 We are aware that there is some confusion for firms based on the current guidance for 34A – Liquid assets required to fund ongoing business operations. This field is not currently available in RegData. We propose to remove the current guidance against this field.

2.27 We plan to consult on adding this field into RegData as part of a future consultation paper.

Q2.5: Do you agree with our proposed amendments to MIF007? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

Supervision manual (SUP)

2.28 We propose to amend the guidance for FIN067 in SUP 16 Annex 25G. This reporting form is completed by CPMIs.

2.29 We propose to clarify that figures should be reported in 000s. This proposal will make the guidance consistent with previous instructions in the form and with FIN066.

Q2.6: Do you agree with our proposed amendments to SUP 16? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

Materiality

2.30 This section explains why we consider that the proposed changes to our rules and guidance made under Part 9C of the Financial Services and Markets Act 2000 (FSMA) are not material under section 143 of FSMA. It does not apply to those rules that have been made under our general FSMA rule-making power which include the proposed amendments to SUP 16 Annex 25G.

2.31 In our opinion, the proposed changes to our existing rules within this chapter are not material under sections:

- 143G(1) of FSMA – because we consider that they do not affect standards set by an international body or the relative standing of the UK as a place for internationally active investment firms to be based or to carry on activities; and are not relevant to the carbon target in section 1 of the Climate Change Act 2008
- 143I(3) and (5) of FSMA – because they do not affect relevant equivalence decisions

2.32 More generally, we do not consider that they materially change any risks to consumers, the market or the UK financial system arising from FCA investment firms.

2.33 Our proposed changes are intended to clarify the interpretation of, and to correct errors in relation to, existing rules and guidance for FCA investment firms and, where applicable, UK parent entities of IFGs that are subject to prudential consolidation under MIFIDPRU 2.5. We do not consider that they will impose substantive new obligations on firms or parent entities and therefore we do not expect them to increase the operational burden.

2.34 When we made the original rules in Policy Statement (PS) 21/17, we considered the application of our duties under Part 9C of FSMA at that time and explained how we considered that our rules discharged those duties. We consider that the minor amendments to rules and guidance that we are proposing in this chapter would not materially change our approach to monitoring and supervising the relevant underlying risks, and that the clarifications being proposed would facilitate the implementation of the existing obligations by the relevant firms or parent entities.

Cost benefit analysis

2.35 Sections 1381(2)(a) of the FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. However, section 138L of FSMA states that we do not need to provide a CBA where we consider that there will be no increase in costs, or the increases will be of minimal significance.

2.36 We consulted on the costs and benefits of the IFPR in Consultation Paper (CP) 21/26. We do not believe that our proposed changes and clarifications will alter the costs and benefits of the IFPR for firms. The cost benefit analysis in CP21/26 remains unchanged and applies to this consultation.

Impact on mutual societies

2.37 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.

2.38 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

2.39 When consulting on new rules, we are required by section 138I(2) of FSMA to explain why we believe that making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B of FSMA and for the importance of taking action intended to minimise financial crime (section1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.

2.40 We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. The amendments advance our operational objectives of securing an appropriate degree of consumer protection and promoting effective competition in the interests of consumers. We are satisfied that any burdens or restrictions are proportionate to the expected benefits.

Equality and diversity

2.41 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).

2.42 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.

Chapter 3

Deferral regime for transactions in ETFs priced at NAV

Introduction

3.1 During consultation (Consultation Paper (CP) 22/12), market participants raised the issue of the reporting of transactions in exchange traded funds (ETF) priced at the net asset value (NAV). The NAV of an ETF represents the unit value of all the securities and cash held by the ETF minus any liabilities.

3.2 Currently, transactions in ETFs that are priced at or against the NAV are required to be reported as soon as possible after execution, unless a deferral applies. Deferrals for ETFs are set at 60 minutes for trades at or above €10 million and until the end of the day for trades above €50 million. When reporting a trade before the NAV price is available, firms are expected to use the post-trade flag 'PNDG' in accordance with Table 3 in Annex I of regulatory technical standard (RTS) 1 to indicate that the price is pending.

3.3 Once the NAV is available (generally calculated by the fund administrators and published overnight), the investment firm or trading venue is required to send a cancellation (using the cancellation flag, 'CANC') and an amendment report (using the amendment flag 'AMND').

3.4 The current regime for NAV trades requires 3 trade reports instead of 1, which increases the costs of reporting for firms and complicates the interpretation of data by end-users. The availability of the large in scale deferral regime does not address the problem as the deferral period is likely to expire before the NAV is published. Disclosure before the NAV is published may also expose the counterparties' hedging of the trade to information leakage before the price is finalised.

3.5 In Policy Statement (PS) 23/4, we agreed to consult on this issue.

Summary of proposals

3.6 We are proposing to introduce a deferral for transactions in ETFs priced at NAV because, as mentioned above, the current regime imposes unnecessary operational costs on firms that are required to make public these transactions. These firms have to deal with the publication of multiple reports for a single transaction.

3.7 We considered whether the cost and administrative burden of publishing multiple trade reports is justified by any benefit gained from such arrangement. Real-time publication of trade information contributes to price formation. However, without price information, real-time publication of solely the volume of a transaction is less likely to contribute to price formation to justify the cost of multiple reports.

3.8 Moreover, the premature disclosure of transactions priced at NAV may complicate the hedging and trading for certain types of ETFs for firms active in these instruments.

3.9 We have sought views from market participants, including the members of our Secondary Markets Advisory Committee (S-MAC), on whether transactions priced at NAV should benefit from a deferral until the NAV is published.

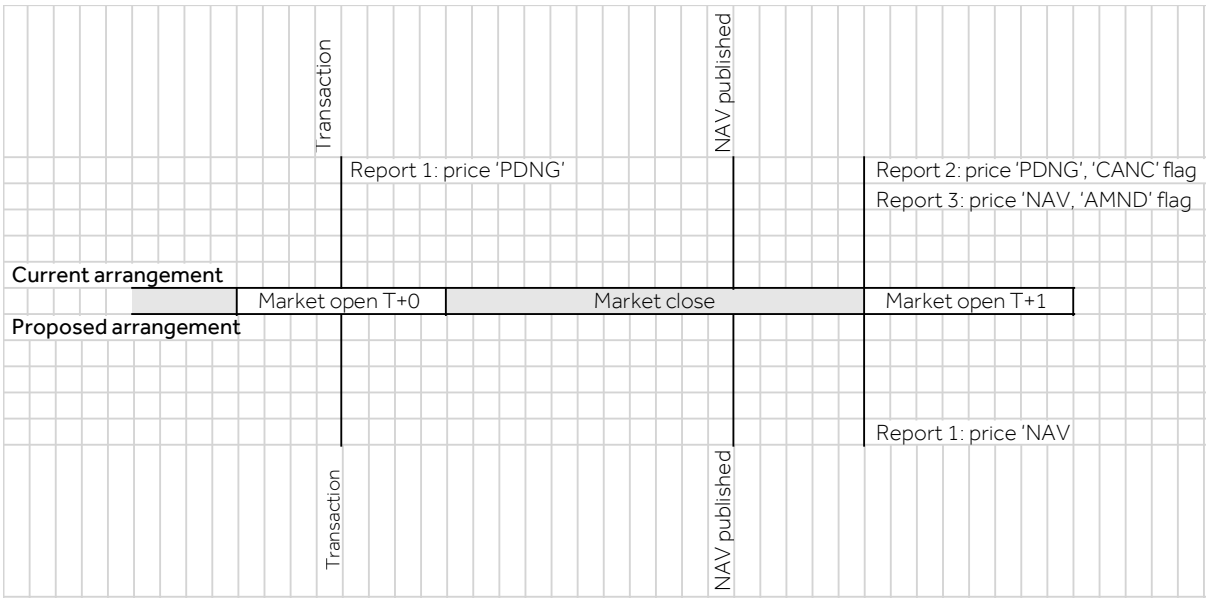
3.10 We looked at best practices outside the UK. In the US, the largest and most liquid market in ETFs, the Financial Industry Regulatory Authority's (FINRA) rules do not require the reporting of transactions priced at NAV until the NAV is set.

3.11 We also looked at the level of transparency ETFs that would be subject to following the introduction of a new deferral for trades at NAV. Our analysis is based on transactions executed on one of the most liquid UK trading venues in ETFs. We looked at the impact of the deferral on transparency and price formation. Based on the data provided to us, 98% of the trades and 46% of the volume in ETFs is currently reported in real time. The introduction of the deferral would result in 0.7% fewer trades and 2.7% less volume being reported in real time.

3.12 Article 7 of the onshored UK Markets in Financial Instruments Regulation (UK MiFIR) allows us to authorise market operators and investment firms operating a trading venue to provide for deferred publication of the details of transactions based on their type or size and to specify the criteria to be applied when deciding the transactions for which, due to their size or the type, deferred publication is allowed for ETFs.

3.13 Taking all of this into consideration, we are proposing to introduce a new deferral for ETF transactions that are executed at NAV. This proposed deferral would allow firms and trading venues to defer publication to after the publication of the ETF's NAV. They shall publish as close to real time as possible following the publication of the ETF's NAV. It would apply to all ETF transactions regardless of size, not solely those considered large in scale.

Figure 1: illustration of current and proposed trade reporting arrangements.



3.14 As for when such deferral would enter into force, we propose that this be aligned with the implementation timeline for the amendments to post-trade transparency that we announced in our PS23/4. This would be 29 April 2024.

Q3.1: Do you agree with our proposal to introduce a post-trade reporting deferral for ETF transactions executed at NAV? If not, please explain why.

Q3.2: Do you agree that the post-trade reporting deferral for ETF transactions executed at NAV should enter into force on 29 April 2024? If not, please indicate what we should consider when selecting an alternate date.

Cost benefit analysis

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

3.16 Having assessed the changes proposed in this chapter, whereby we propose to introduce a post-trade reporting deferral for ETF transactions executed at NAV, we consider that there would be no increase in costs to impacted firms. Furthermore, we consider that the proposal results in less post-trade reporting requirements and thus costs. Therefore, we are of the view that no CBA is required for the proposals in this chapter.

Impact on mutual societies

3.17 Further to section 138S, section 138K of FSMA requires us to state whether, in our opinion, our proposed technical standards have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. We do not expect the proposals in this chapter to have a significantly different impact on mutual societies.

Compatibility statement

3.18 When consulting on new rules, we are required by section 138I(2) of FSMA to explain why we believe that making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B of FSMA and for the importance of taking action intended to minimise financial crime (section1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.

3.19 We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. The amendments advance our operational objectives of securing an appropriate degree of consumer protection and promoting effective competition in the interests of consumers. We are satisfied that any burdens or restrictions are proportionate to the expected benefits.

Equality and diversity

3.20 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).

Chapter 4

Amendments to the ban on offering incentives to invest in high-risk investments

Introduction

4.1 In August 2022, we published our Policy Statement (PS) on strengthening our financial promotion rules for high-risk investments and firms approving financial promotions (PS22/10). This work aimed to reduce the number of consumers investing in high-risk investments where they indicate a low risk tolerance or demonstrate the characteristics of vulnerability. These rules also aimed to help us deliver on our Business Plan outcome of enabling consumers to help themselves.

4.2 The PS included our final policy position and Handbook rules, banning financial promotions for high-risk investments from offering any monetary or non-monetary benefits that aimed to incentivise investment activity. The rule banning incentives for high-risk investments came into force on 1 February 2023. It reflects a similar ban that already applies to the marketing and distribution of Contracts for Difference (CfDs), which was introduced in 2019.

4.3 We do not think incentives are appropriate in the context of high-risk investments. Offering incentives can unduly influence consumers' investment decisions and cause them to invest without fully considering the risks involved. Schemes such as refer-a-friend bonuses can exploit powerful social and emotional drivers, which our consumer research has shown can have a significant impact on investment decisions, and lead to consumers investing without fully considering the risks involved.

4.4 From subsequent discussions with firms following publication of PS22/10, we have identified that the rules and accompanying Handbook guidance require clarification to prevent misunderstanding of the policy and better communicate what types of benefit the ban applies to.

4.5 In this chapter, we propose changes to provide clarity on the scope of the ban on offering incentives to invest in high-risk investments, and to ensure the rules give effect to the final policy we outlined in PS22/10.

Summary of proposals

Our proposals

4.6 We are proposing to amend the wording of the incentives' rules and guidance (COBS 4.12A.1G, COBS 4.12A.7R to COBS 4.12A.9AG, COBS 4.12B.5G and COBS 4.12B.17R to COBS 4.12B.19AG) to better reflect the intended scope of the ban.

4.7 We want to clarify that the ban applies to any incentives offered to retail clients as part of a financial promotion relating to high-risk investments, even when there is no requirement to invest to gain the benefit. The ban applies regardless of the rationale for offering the incentive, which consumer the incentive is aimed at, or whether it might be incentivising related actions to investing, such as registration or sign up.

4.8 The intention of the ban is not to prevent legitimate competitive business practices. To this effect we exempted 'shareholder benefits,' for example, discounted products or services produced or provided by the firm receiving the proceeds of the investment, from the ban (COBS 4.12A.7(2) and COBS 4.12B.17(2)), based on feedback to Consultation Paper (CP) 22/2.

4.9 Under a similar principle we are therefore proposing to exempt from the ban incentives offered for the sole purpose of encouraging clients to switch platforms. This exemption is intended to apply where a financial promotion is aimed at inducing a platform transfer, but there is no attempt to encourage a client to change the total level of their holdings or the underlying products they hold. We recognise that switching offers are common practice across different markets and can be a legitimate practice used to build a customer base, promoting competition in the interests of consumers.

4.10 We acknowledge that 'incentive' can be broadly defined and have received feedback that firms currently find it difficult to judge what might fall within the ban, based on the Handbook language.

4.11 We are therefore also proposing to amend our Handbook guidance to clarify some of the factors that we consider characterise an incentive falling within scope of the ban. Firms can use this guidance to better understand what we consider an incentive within this context.

4.12 Lower fees that are available to all retail clients and not linked to the volume of trades made do not constitute a monetary incentive. Firms are not prohibited from competing on price, and the price of an investment is an inherent part of the offer. We consider this to cover tiered pricing models. We recognise that tiered pricing is a common practice across many markets and allows consumers to benefit from lower costs if investing beyond a certain level. This enables consumers to benefit from lower marginal costs to firms from larger investments.

4.13 Tiered pricing structures differ from volume-based rebates or discounts in how they incentivise consumers, as they are 'stepped'. They do not apply to past investments but allow consumers to benefit from lower fees when making investments beyond a specified level. We consider rebates, including those based on volume, to be within

scope of the ban. This application is similar to the restrictions on offering incentives relating to CfDs (COBS 22.5.20), and so we are adjusting the wording of our guidance to more closely reflect the phrasing of COBS 22.

4.14 A benefit that is intrinsically linked to the investment product would typically not constitute an incentive for the purposes of our ban, as we do not believe that you can 'incentivise' an investment purchase with the investment itself. For example, access to voting rights is a typical inherent benefit of an equity share purchase, and so we do not consider offering this to be an 'incentive' in scope of the ban.

4.15 If a benefit is extrinsic to and separable from the investment, we think it is likely to be an independent perk that is designed to incentivise a consumer to invest and therefore would fall within the scope of the ban. For example, a free gift offered alongside an investment proposition would be an incentive unless it was in scope of the 'shareholder benefit' exemption.

4.16 A benefit that is only available in some specific circumstances is likely to constitute an incentive. This may be a benefit that is time limited, or only available through certain channels. We believe this indicates that the benefit is unlikely to be a core part of the investment offering and is being used as a separate bonus to encourage investment that may otherwise not be made. This type of benefit is likely to create a sense of exclusivity or time pressure that may cause consumers to not fully consider the risks involved with the investment.

4.17 Time limited benefits would include bonuses that are only available if a future investment is made.

4.18 As the amendments proposed in this chapter are clarifying the application of existing rules, we are proposing that the changes will apply with immediate effect when the final Handbook changes are made and published.

Incentives relating to cryptoassets

4.19 The UK Government has confirmed its intention to legislate bringing certain types of cryptoasset within scope of the financial promotions regime. In CP22/2, the FCA proposed to categorise cryptoassets as 'Restricted Mass Market Investments' (RMMI) and subject them to various marketing restrictions, including the ban on incentives to invest.

4.20 We will publish our final rules for cryptoasset financial promotions once the relevant legislation has been made. If we were to proceed with categorising cryptoassets as RMMI, financial promotions of cryptoassets would also be affected by the proposals in this consultation. We therefore welcome responses from firms operating in the cryptoasset sector on these proposals.

Q4.1: Do you have any comments on our proposed amendments to the ban on offering incentives to invest in high-risk investments?

Cost benefit analysis

4.21 The findings of the cost benefit analysis (CBA) outlined in CP22/2 and PS22/10 remain unchanged and continue to be applicable. As these proposals are aimed at clarifying the policy intention of existing rules, we are satisfied that the proposed amendments either do not increase costs to firms or consumers, or any increase will be of minimal significance.

Impact on mutual societies

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

4.23 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, and has regard to the regulatory principles in section 3B of FSMA and for the importance of taking action intended to minimise financial crime (section1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.

4.24 We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles, including the FCA's upcoming secondary international growth and competitiveness objective. The amendments advance our operational objectives of securing an appropriate degree of consumer protection and promoting effective competition in the interests of consumers. The proposed changes are intended to clarify the application of existing rules, making it easier for firms to comply with their regulatory obligations and ensuring consistent and proportionate levels of consumer protection.

Equality and diversity

4.25 We have considered the equality and diversity issues that may arise from the proposed amendments. We have not identified any adverse impact that the proposals in this chapter would have on any of the groups with protected characteristics under the

Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).

4.26 We welcome comments on any equality and diversity considerations respondents believe may arise, and we will reconsider the equality and diversity implications of the proposals when publishing the final rules.

Annex 1

Abbreviations used in this paper

Abbreviation	Description
AMND	Amendment
BLAR	Basic liquid asset requirement
CANC	Cancelled
CBA	Cost benefit analysis
CfDs	Contracts for Difference
COND	Threshold Conditions
CP	Consultation Paper
CPMI	Collective portfolio manager investment firm
ETF	Exchange traded fund
FCA	Financial Conduct Authority
FINRA	Financial Industry Regulatory Authority
FSMA	Financial Services and Markets Act 2000
ICARA	Internal capital adequacy and risk assessment
IFG	Investment firm group
IFPR	Investment Firms Prudential Regime
IPRU-INV	Interim Prudential sourcebook for Investment Businesses
LATR	Liquid asset threshold requirement
MiFID	Markets in Financial Instruments Directive
MIFIDPRU	Prudential sourcebook for MiFID Investment Firms
NAV	Net asset value

Abbreviation	Description
OFAR	Overall financial adequacy rule
OFTR	Own funds threshold requirement
PNDG	Pending
PS	Policy Statement
RMMI	Restricted Mass Market Investments
RTS	Regulatory technical standard
S-MAC	Secondary Markets Advisory Committee
SUP	Supervision manual
SYSC	Senior Management Arrangements, Systems and Controls
UK MiFIR	UK Markets in Financial Instruments Regulation

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

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

All our publications are available to download from www.fca.org.uk.

Request an alternative format

Please complete this form if you require this content in an alternative format.

Appendix 1

List of questions

Q2.1: Do you agree with our proposed amendments to MIFIDPRU 7.6? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

Q2.2: Do you agree with our proposed amendments to MIFIDPRU 7.7.5G? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

Q2.3: Do you agree with our proposed amendments to MIFIDPRU 7.9? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

Q2.4: Do you agree with our proposed amendments to MIFIDPRU 9 annexes? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

Q2.5: Do you agree with our proposed amendments to MIF007? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

Q2.6: Do you agree with our proposed amendments to SUP 16? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

Q3.1: Do you agree with our proposal to introduce a post-trade reporting deferral for ETF transactions executed at NAV? If not, please explain why.

Q3.2: Do you agree that the post-trade reporting deferral for ETF transactions executed at NAV should enter into force on 29 April 2024? If not, please indicate what we should consider when selecting an alternate date.

Q4.1: Do you have any comments on our proposed amendments to the ban on offering incentives to invest in high-risk investments?

Appendix 2

Changes to MIFIDPRU and SUP to provide clarification

INVESTMENT FIRMS PRUDENTIAL REGIME (AMENDMENT) INSTRUMENT 2023

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 Annex A to this instrument.

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

Notes

F. In the Annexes to this instrument, the "notes" (indicated by "**Note**:" or "*Editor's note*:") are included for the convenience of readers, but do not form part of the legislative text.

Citation

G. This instrument may be cited as the Investment Firms Prudential Regime (Amendment) Instrument 2023.

By order of the Board
[*date*]

Annex A

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.

7 Governance and risk management

…

7.6 ICARA process: assessing and monitoring the adequacy of own funds

…

7.6.10 G …

7.6.10A G (1) Where a *MIFIDPRU investment firm* is also subject to another prudential regime for its non-*MiFID business*, its *own funds threshold requirement* can be no lower than the total financial resources requirement under that prudential regime. This is illustrated by the examples in (2) and (3).

(2) Firm A is a *collective portfolio management investment firm* that is required under *IPRU(INV)* 11.6 to comply with the applicable requirements of *MIFIDPRU* in parallel with its requirements under *IPRU(INV)* 11. Firm A has an *own funds requirement* of £2,000,000 under *MIFIDPRU* 4 and, through its *ICARA process*, assesses that it needs £500,000 of additional *own funds* to cover potential material harms. However, Firm A also has a total requirement for *own funds* of £3,000,000 under *IPRU(INV)* 11.2. In this case, Firm A's *own funds threshold requirement* would be £3,000,000, because its *own funds threshold requirement* can be no lower than the total resources requirement under any other prudential regime that applies to it (*IPRU(INV)* 11).

(3) Firm B is a *collective portfolio management investment firm* that is required under *IPRU(INV)* 11.6 to comply with the applicable requirements of *MIFIDPRU* in parallel with its requirements under *IPRU(INV)* 11. Firm B has an *own funds requirement* of £2,000,000 under *MIFIDPRU* 4 and, through its *ICARA process*, assesses that it needs £1,500,000 of additional *own funds* to cover potential material harms. Firm B also has a total requirement for *own funds* of £3,000,000 under *IPRU(INV)* 11.2. In this case, Firm B's *own funds threshold requirement* would be £3,500,000. This is because Firm B's assessment of its *own funds threshold requirement* is higher than the total resources requirement under the other prudential regime that applies to it (*IPRU(INV)* 11).

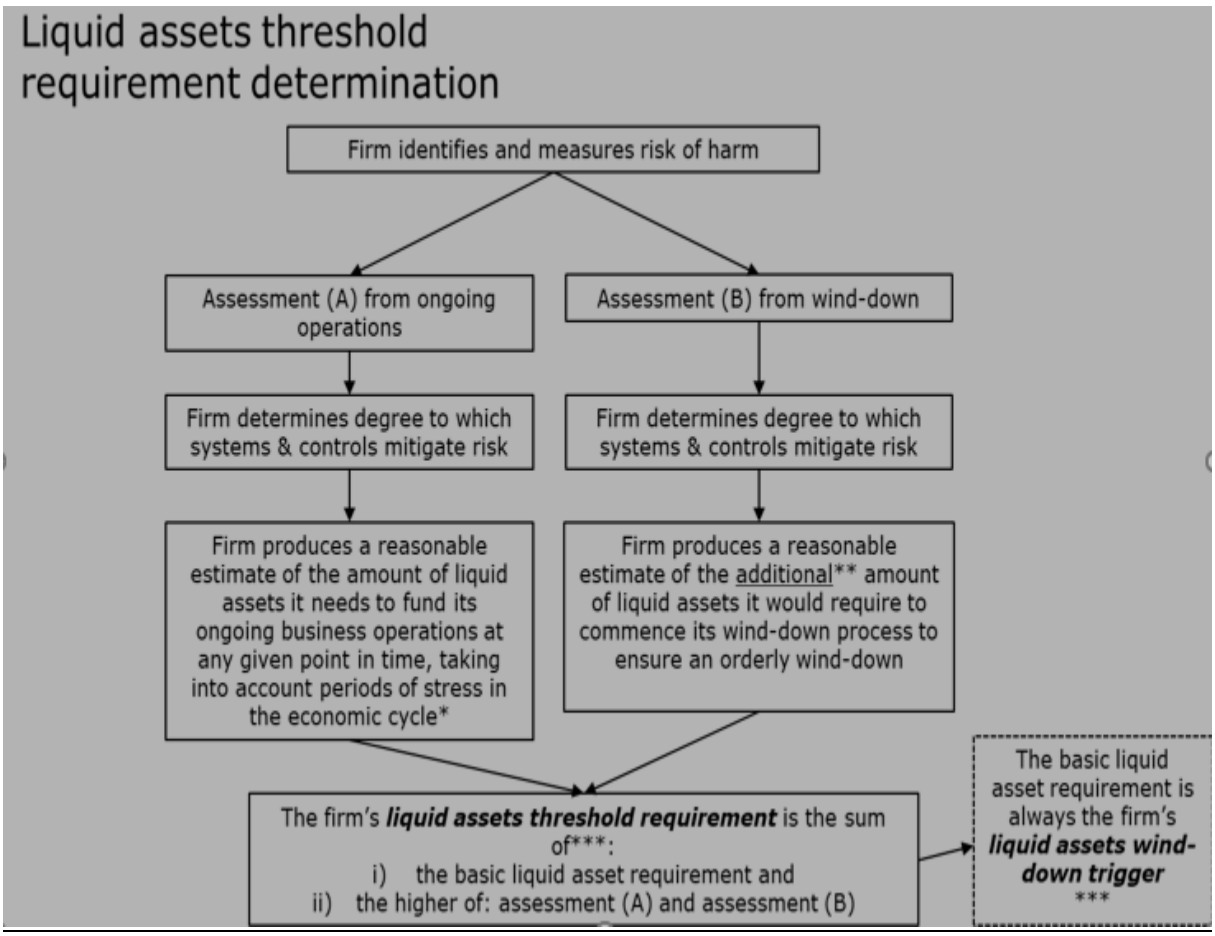
…

7.7 ICARA process: assessing and monitoring the adequacy of liquid assets

…

7.7.5 G …

(3) The following diagram summarises the process that a *firm* should undertake to determine its *liquid assets threshold requirement*:



* When a *firm* assesses the amount of *liquid assets* it needs for ongoing operations, it cannot use the value of the *core liquid assets* held to meet the *basic liquid assets requirement* to fund those operations.

** The *basic liquid assets requirement* may be insufficient to provide the *liquid assets* that the *firm* has assessed would be necessary to facilitate an orderly wind-down. Therefore, the *firm* may identify that it needs to hold an additional amount of *liquid assets* to meet its funding needs to commence its wind-down process. The amount of additional *liquid assets* under Assessment (B) therefore does not include the amount of the *basic*

liquid assets requirement (as explained in *MIFIDPRU* 7.7.3G(2)(b)).

*** Unless otherwise specified by the *FCA*.

…

7.9 ICARA process: firms forming part of a group

7.9.1 G This section contains:

(1) …

(1A) *guidance* on the extent to which an *investment firm group* may operate an *ICARA process* on a *consolidated basis*;

…

…

~~Group ICARA process~~ Consolidated ICARA process

7.9.4 G …

(2) However, ~~in exceptional circumstances~~ on a case-by-case basis, the *FCA* may determine that a particular *investment firm group* should operate an *ICARA process* on a *consolidated basis*~~. For example, the *FCA* may conclude that the individual *ICARA process* operated by a *MIFIDPRU investment firm* within an *investment firm group*, or the *group ICARA process* operated by an *investment firm group*, does not adequately reflect certain material risks that arise in the context of the *investment firm group* as a whole.~~ (i.e. as if the *overall financial adequacy rule* applied to the *consolidated situation*, so that the *UK parent entity* and the *relevant financial undertakings* in the *investment firm group* were treated as a single *MIFIDPRU investment firm*). Paragraph 2A includes examples of such cases. Therefore, in appropriate cases, the *FCA* may:

…

(2A) For the purposes of paragraph (1), examples of such cases may include where the *FCA* concludes that:

(a) the individual *ICARA process* operated by a *MIFIDPRU investment firm* within an *investment firm group*, or the *group ICARA process* operated by an *investment firm group*, does not adequately reflect certain material risks that arise in the context of the *investment firm group* as a whole;

(b) the operation of a group or an individual *ICARA process* doesn't enable the *FCA* to effectively supervise the compliance of the *investment firm group*, or any of the individual *MIFIDPRU investment firms* within it, with the obligations in *MIFIDPRU* 7, due to the structure of the *investment firm group*;

(c) there is a material amount of business conducted by *authorised persons* (other than *MIFIDPRU investment firms*) within the *investment firm group* and its impact is not adequately reflected using the individual or *group ICARA process*;

(d) a *MIFIDPRU investment firm* within the *investment firm group* is materially dependent on a *relevant financial undertaking* (other than a *MIFIDPRU investment firm*) within the *investment firm group* for either revenue or services;

(e) the financial resilience of the *investment firm group* could adversely affect the ongoing financial resilience of the *MIFIDPRU investment firm*s within the *investment firm group* (for example, due to significant levels of goodwill); and

(f) there are significant amounts of on- and off-balance sheet claims or liabilities (excluding *own funds*) between one or more *MIFIDPRU investment firms* and other *relevant financial undertakings* within the *investment firm group*, and they are not short-term or non-recurring.

…

(4) …

(5) An *ICARA process* operated by an *investment firm group* on a *consolidated basis* is in addition to the individual *ICARA process* operated by a *MIFIDPRU investment firm* within an *investment firm group*, or to the *group ICARA process* operated by an *investment firm group*.

Group ICARA process

…

7.9.8 R …

7.9.8A G (1) As explained in *MIFIDPRU* 7.9.6R, a *MIFIDPRU investment firm* that is included within a *group ICARA process* does not generally need to comply with the requirements in *MIFIDPRU* 7.4 to *MIFIDPRU* 7.8 on an individual basis.

(2) However, as *MIFIDPRU* 7.9.5R explains, an *investment firm group* can operate a group *ICARA process* only if each *MIFIDPRU investment firm* within it complies with certain provisions of *MIFIDPRU* 7.4 to *MIFIDPRU* 7.8 on an individual basis.

(3) The following table explains which provisions a *MIFIDPRU investment firm* must comply with on an individual basis in order to meet the relevant conditions in *MIFIDPRU* 7.9.5R:

The relevant condition in MIFIDPRU 7.9.5R	**The main rules and related guidance that must be met on an individual basis to comply with the conditions in MIFIDPRU 7.9.5R**
Paragraph (3) – each *MIFIDPRU investment firm* must comply with the *overall financial adequacy rule*	*MIFIDPRU* 7.4.7R and provisions related to the *overall financial adequacy rule*
Paragraph (4) – each *MIFIDPRU investment firm* must maintain a separate wind-down plan and apply the *wind-down triggers* on an individual basis	*MIFIDPRU* 7.5.7R to *MIFIDPRU* 7.5.10G
Paragraph (5) – each individual *MIFIDPRU investment firm* must comply with the requirements to notify the *FCA* of certain levels *of own funds* and *liquid assets*	*MIFIDPRU* 7.6.11R to *MIFIDPRU* 7.6.13G *MIFIDPRU* 7.7.14R to *MIFIDPRU* 7.7.15G
Paragraph (9) – each *MIFIDPRU investment firm* must submit *data item* MIF007	*MIFIDPRU* 7.8.4R *MIFIDPRU* 7.8.5G *MIFIDPRU* 9.2

(4) The effect of *MIFIDPRU* 7.9.8R is that all the *rules* and *guidance* in *MIFIDPRU* 7.4 to *MIFIDPRU* 7.8 (except those specified in the table in *MIFIDPRU* 7.9.8AG(3)) apply at the level of the *investment firm group*.

(5) Where a *MIFIDPRU investment firm* is included in a *group ICARA process* in accordance with *MIFIDPRU* 7.9.5R, the *firm* is reminded that under *MIFIDPRU* 9.2.1R and *MIFIDPRU* 9.2.3R (as applicable), it must still submit *data item* MIF007 to the *FCA* on an individual basis. *Data item* MIF007 will provide information

about the *firm* that has been derived from that *group ICARA process*.

7.9.9 G …

(3) Under a *group ICARA process*, the risk management and analysis of the financial impact of the risks is carried out at the level of the *investment firm group*. Each *firm* in the *investment firm group* is then allocated on a reasonable basis the assessment of *own funds* or *liquid assets* that are required to cover identified risks. In addition, each *MIFIDPRU investment firm* in the *investment firm group* must comply with the *overall financial adequacy rule* on an individual basis. An *investment firm group* that wishes to operate a *group ICARA process* must therefore ensure that its risk management processes are sufficiently robust to satisfy the requirements in *MIFIDPRU* 7.9.5R and that there is appropriate accountability of the responsible *governing body* in accordance with the requirements of that *rule*.

…

…

9 Reporting

…

9 Annex 1R Data items for MIFIDPRU 9

This annex consists of forms which can be found through the following link:

[*Editor's note*: insert link]

…

MIF007 – ICARA questionnaire

		A
Part A: Basis of completion of the ICARA process		
1	~~Is this report on behalf of a consolidation group?~~ Please confirm the basis on which you are submitting this MIF007:	~~Yes/No~~
	On an individual basis (under an individual ICARA process)	☐
	On an individual basis (as part of a group ICARA process)	☐

	On a consolidated basis (**Note**: this option will apply only where the FCA has imposed a requirement on a UK parent undertaking to operate an ICARA process on a consolidated basis)	☐
2	If ~~yes,~~ you undertake the ICARA process on a group or a consolidated basis, please list the firm reference numbers of all FCA regulated entities ~~in the consolidated situation~~ that are covered by the group ICARA process or consolidated ICARA process.	*number*
~~3~~	~~Has the ICARA process review been completed through a group-level arrangement?~~	~~*Yes/No*~~

…

Part B: Assessing and monitoring the adequacy of own funds

…

Liquid assets required as identified through the ICARA process

…

~~34~~	Additional liquid assets required to fund ongoing business operations at any given point in time (MIFIDPRU 7.7)	
~~35~~ 34	Quarter 1	*number*
~~36~~ 35	Quarter 2	*number*
~~37~~ 36	Quarter 3	*number*
~~38~~ 37	Quarter 4	*number*
~~39~~ 38	Additional liquid assets required to start wind-down (MIFIDPRU 7.7)	*number*

Meeting debts as they fall due

~~40~~ 39	Has the firm at any point not been able to meet its debts as they fall due?	*Yes/No*
~~41~~ 40	Please provide details	*Alpha*

Additional liquid assets requirement specified by the FCA

~~42~~ 41	Has the FCA specified a liquid asset requirement for the firm?	*Yes/No*
	If yes, basis for the FCA specified requirement	
~~43~~ 42	Liquid assets threshold requirement	*Yes/No*
~~44~~ 43	Liquid assets wind-down trigger	*Yes/No*
~~45~~ 44	Liquid assets threshold requirement specified by the FCA	*number*
~~46~~ 45	Liquid assets wind-down trigger specified by the FCA	*number*

Part D: MiFID investment services and activities and business model information

MiFID investment services and activities

Indicate the MiFID investment services and activities the firm provides

~~47~~ 46	Reception and transmission of orders in relation to one or more financial instruments [A1]	*Yes/No*
~~48~~ 47	Execution of orders on behalf of clients [A2]	*Yes/No*
~~49~~ 48	Dealing on own account [A3]	*Yes/No*
~~50~~ 49	Portfolio management [A4]	*Yes/No*
~~51~~ 50	Investment advice [A5]	*Yes/No*
~~52~~ 51	Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis [A6]	*Yes/No*
~~53~~ 52	Placing of financial instruments without a firm commitment basis [A7]	*Yes/No*
~~54~~ 53	Operation of an MTF [A8]	*Yes/No*
~~55~~ 54	Operation of an OTF [A9]	*Yes/No*

Other business activities

~~56~~	~~Indicate the other business services and activities the firm provides~~	

Indicate the other business services and activities the firm provides

~~57~~ 55	Holding client assets or client money for non-MiFID business	*Yes/No*
~~58~~ 56	Receive money or assets from clients under title transfer collateral agreements	*Yes/No*
~~59~~ 57	Operating 'name give-up' as an inter-dealer broker	*Yes/No*
~~60~~ 58	Clearing activities	*Yes/No*
~~61~~ 59	Corporate finance business	*Yes/No*
~~62~~ 60	Venture capital business	*Yes/No*
~~63~~ 61	Are you part of a financial conglomerate?	*Yes/No*
~~64~~ 62	Delegation of discretionary portfolio management to other firms	*Yes/No*
~~65~~ 63	If yes, what is the current value delegated to other firms?	*number*
~~66~~ 64	Discretionary portfolio management delegated from other firms	*Yes/No*
~~67~~ 65	If yes, what is the current value delegated from other firms?	*number*
~~68~~ 66	Provide advice of an ongoing nature	*Yes/No*
~~69~~ 67	If yes, what is the current value of assets included within the K-AUM calculation?	*number*
~~70~~ 68	Calculation of AUM at ICARA process reference date excluding offsetting - when calculating AUM has the firm applied any offsetting of negative values or liabilities attributed to positions within the relevant portfolios?	*Yes/No*
~~71~~ 69	If yes, what is the AUM value without any offsetting?	*number*

…

9 Annex 2 G Guidance notes on data items in MIFIDPRU 9 Annex 1R

This annex consists of guidance which can be found through the following link:

[*Editor's note*: insert link]

…

MIF007 – ICARA Questionnaire

Introduction

…

Part A: Basis of completion of the ICARA process

1A asks FCA investment firms to specify, using the dropdown list, the basis on which ~~the ICARA process is being completed~~ they are submitting the MIF007.

2A asks for the FRNs of all the FCA ~~investment firms that form part of the consolidation group, where the answer to 1A is 'Yes'~~ regulated entities that are covered by the group ICARA process or by the consolidated ICARA process.

~~**3A** asks if the ICARA process review has been completed through a group-level arrangement.~~

…

Part B: Assessing and monitoring the adequacy of own funds

…

Own funds threshold requirement

10A – Own funds threshold requirement identified through the ICARA process

FCA investment firms should enter their own funds threshold requirement as determined through the ICARA process set out in MIFIDPRU 7.6. This amount should not include any additional own funds amount specified by the FCA.

If the FCA investment firm has determined that no additional own funds are required to that set by the MIFIDPRU 4 requirements, it should enter the higher of its PMR, its FOR and its KFR (where this applies).

…

Part B1: Breakdown of additional own funds requirement to address risks from ongoing activities

…

Part B2: Breakdown of additional own funds requirement necessary for orderly wind-down

…

Part C: Assessing and monitoring the adequacy of liquid assets held

…

~~33A~~ 32A – Non-core liquid assets – post-haircut

…

Liquid assets required as identified through the ICARA process

33A – Liquid assets threshold requirement

FCA investment firms should enter their liquid assets threshold requirement from their ICARA assessment here.

This will be the sum of the firm's basic liquid asset requirement; and the higher of

- the amount of liquid assets the firm requires at any given point in time to fund its ongoing business operations ~~(cell 34A)~~
- the additional amount of liquid assets the firm requires to start its wind-down (cell ~~39A~~ 38A)

This amount should not include any additional liquid assets amount specified by the FCA.

~~**34A – Liquid assets required to fund ongoing business operations**~~

~~FCA investment firms should enter the amount of liquid assets they need to fund ongoing business operations at any given point in time, taking into account periods of stress in the economic cycle. More information on this assessment is in MIFIDPRU 7.7.~~

~~35A~~ 34A to ~~38A~~ 37A – Breakdown of liquid assets estimate to fund ongoing business operations by quarter

As part of the ICARA process to estimate funding needs for ongoing business operations, FCA investment firms must produce a reasonable estimate of the amount of liquid assets they would require to fund its ongoing business during each quarter over the next 12 months from the ICARA assessment date. FCA investment firms should enter those quarterly values into cells ~~A35~~ 34A to ~~A38~~ 37A. See MIFIDPRU 7.7, particularly MIFIDPRU 7.7.4G, for more information and guidance on this assessment.

~~35A~~ 34A – Quarter 1

…

~~36A~~ 35A – Quarter 2

…

~~37A~~ 36A – Quarter 3

…

~~38A~~ 37A – Quarter 4

…

~~39A~~ 38A – Liquid assets required to begin an orderly wind-down

…

Meeting debts as they fall due

~~40A~~ 39A – Has the firm at any point not been able to meet its debts as they fall due?

…

~~41A~~ 40A – Please provide details

FCA investment firms should provide full details of issue(s) referred to in ~~40A~~ 39A, including:

- reasons they were unable to meet their debts as they fell due
- what action they took to remedy the situation
- what changes have been made to systems and controls to prevent this from re-occurring

Additional liquid assets requirement set by the FCA

…

~~42A~~ 41A – Has the FCA specified a liquid asset requirement for the firm?

FCA investment firms should indicate if the FCA has specified a liquid asset requirement amount. This could be as the result of a SREP or through other means.

If the answer is 'Yes', FCA investment firms must also answer 'Yes' to at least one of 42A and 43A ~~and 44A~~. Both can be completed if appropriate.

~~43A~~ 42A – Liquid assets threshold requirement

FCA investment firms should indicate if the FCA has specified a liquid assets threshold requirement. If 'Yes', ~~45A~~ 44A must be completed.

~~44A~~ 43A – Liquid assets wind-down trigger

FCA investment firms should indicate if the FCA has specified liquid assets wind-down trigger. If 'Yes', ~~46A~~ 45A must be completed.

~~45A~~ 44A – Liquid assets threshold requirement set by the FCA

…

~~46A~~ 45A – Liquid assets wind-down trigger set by the FCA

…

Part D: MiFID investment services and activities and business model information

…

~~47A~~ 46A to ~~55A~~ 54A – MiFID investment services and activities

…

Other business activities

~~56A – 62A~~ 55A – 60A

…

~~63A~~ 61A – Financial conglomerate

…

~~64A~~ 62A – delegation of discretionary portfolio management to other firms

…

~~65A~~ 63A should only be completed where ~~64A~~ 62A has been answered 'Yes'. It should be left blank otherwise. Firms should enter the amount **delegated to** other firms.

~~66A~~ 64A – delegation of discretionary portfolio management from other firms

…

~~67A~~ 65A should only be completed where ~~66A~~ 64A has been answered 'Yes'. It should be left blank otherwise. Firms should enter the amount of assets **delegated from** other firms.

~~68A~~ 66A – provision of advice on an ongoing nature

…

~~69A~~ 67A should only be completed where ~~64A~~ 66A has been answered 'Yes'. It should be left blank otherwise. Firms should enter the amount of assets under ongoing advice they have included within their K-AUM calculation.

~~70A~~ 68A – Calculation of AUM at ICARA accounting reference date excluding offsetting

…

~~67A~~ **69A** should only be completed where ~~66A~~ 68A has been answered 'Yes'. It should be left blank otherwise.

. . .

Annex B

Amendments to the Supervision manual (SUP)

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

16 Reporting requirements

…

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

This annex consists only of one or more forms. Forms are to be found through the following address:

Guidance notes for data items in SUP 16 Annex 24R -

[*Editor's note*: insert link]

…

FIN067 – Additional reporting for Collective Portfolio Management Investment firms (CPMIs)

This form only applies to Collective Portfolio Management Investment firms

How to report figures?

Figures should be reported in 000s.

Capital held as own funds

…

Appendix 3

Deferral regime for transactions in ETFs priced at NAV

TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS TRANSPARENCY) (No 2) INSTRUMENT 2023

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) articles 7 and 20 of 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) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser, 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 Transparency) (No 2) Instrument 2023.

By order of the Board
[*date*]

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

Annex

Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser

…

Article 15

Deferred publication of transactions (Article 7(1) and 20(1) and (2) of Regulation (EU) No 600/2014)

(1) Where the FCA authorises the deferred publication of the details of transactions pursuant to Article 7(1) of Regulation (EU) No 600/2014, market operators and investment firms operating a trading venue and investment firms trading outside a trading venue shall make public each transaction no later than at the end of the relevant period set out in Tables 4, 5 and 6 of Annex II provided that the following criteria are satisfied:

(a) the transaction is between an investment firm dealing on own account other than through matched principal trading and another counterparty;

(b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size specified in Tables 4, 5 or 6 of Annex II, as appropriate.

(2) The relevant minimum qualifying size for the purposes of point (b) in paragraph 1 shall be determined in accordance with the average daily turnover calculated as set out in Article 7.

(3) For transactions for which deferred publication is permitted until the end of the trading day as specified in Tables 4, 5 and 6 of Annex II, investment firms trading outside a trading venue and market operators and investment firms operating a trading venue shall make public the details of those transactions either:

(a) as close to real-time as possible after the end of the trading day which includes the closing auction, where applicable, for transactions executed more than two hours before the end of the trading day;

(b) no later than noon local time on the next trading day for transactions not covered in point (a).

For transactions that take place outside a trading venue, references to trading days and closing auctions shall be those of the most relevant market in terms of liquidity as determined in accordance with Article 4.

(4) Without prejudice to paragraph (1), where a transaction in an ETF is executed at its net asset value (NAV) before the NAV is published, deferred publication is permitted regardless of the size of the transaction. Once the NAV is published, market operators and investment firms operating a trading venue and investment firms trading outside a trading venue shall make public each transaction in accordance with the timeframes set out in Article 14.

Appendix 4

Amendments to the ban on offering incentives to invest in high-risk investments

FINANCIAL PROMOTIONS AND HIGH-RISK INVESTMENTS (INCENTIVES) INSTRUMENT 2023

Powers exercised

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

(1) section 137A (The FCA's general rules);
(2) section 137D (FCA general rules: product intervention);
(3) section 137R (Financial promotion rules);
(4) section 137T (General supplementary powers); and
(5) section 139A (Power of the FCA to give guidance).

B. The rule-making powers listed above are specified for the purpose of section 138G (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 Financial Promotions and High-Risk Investments (Incentives) Instrument 2023.

By order of the Board
[*date*]

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

4 Communicating with clients, including financial promotions

…

4.12A Promotion of restricted mass market investments

Purpose

4.12A.1 G The *rules* in this section:

(1) require that any *financial promotion* relating to a *restricted mass market investment*~~:~~

~~(a)~~ includes a prescribed form of risk warning;

~~(b)~~ ~~does not include any form of incentive to invest; and~~

(2) restrict the *communication* and *approval* of *direct offer financial promotions* in relation to *restricted mass market investments* except where certain conditions are satisfied~~.~~; and

(3) require that a *financial promotion* that relates to a *restricted mass market investment* does not offer to any *retail client* any form of incentive. The purpose of this *rule* (*COBS* 4.12A.7R) is to ensure that *retail clients* are not persuaded or incited to *engage in investment activity* relating to a *restricted mass market investment* other than by reference to the features of the investment activity that is the subject of the *financial promotion*.

…

Restrictions on monetary and non-monetary incentives

4.12A.7 R (1) A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a *restricted mass market investment* and which offers to a *retail client* any monetary or non-monetary incentive ~~to invest~~.

(2) …

(3) The *rule* in (1) does not apply where the exclusive purpose of the *financial promotion* is to persuade or incite a recipient to transfer the *custody* of an existing holding of a *restricted mass market investment*.

4.12A.8 G For the purposes of *COBS* 4.12A.7R, monetary and non-monetary incentives include, but are not limited to:

(1) offering bonuses or discounts or rebates on fees when investing in a *restricted mass market investment* ~~for the first time~~;

…

(4) offering discounts or rebates on fees paid when investing a particular amount in *restricted mass market investments*;

…

4.12A.9 G (1) Information and research tools do not constitute non-monetary incentives.

(2) Lower fees not linked to volumes, offered to all *retail clients*, do not constitute a monetary incentive.

4.12A.9A G Subject to *COBS* 4.12A.8G and *COBS* 4.12A.9G, the following factors are relevant in determining whether a benefit is an incentive:

(1) A benefit which is intrinsically connected with the *investment* or investment activity that is the subject of the *financial promotion* is unlikely to constitute an incentive; for example, voting rights which are inherently connected with a share. However, a benefit which is entirely separable from the *investment* or investment activity that is the subject of the *financial promotion* is likely to be an incentive.

(2) A benefit which is only available for a fixed period of time, or is contingent upon investing in a *restricted mass market investment* in the future, is likely to constitute an incentive.

(3) A benefit which is only available to *retail clients* who invest through a particular channel is likely to constitute an incentive; for example, a benefit which is only offered to *retail clients* who invest via a social media link.

4.12A.9B G (1) *COBS* 4.12A.7R applies irrespective of the nature of the investment activity. This means that the *rule* applies not only in relation to incentives to *buy restricted mass market investments* but also, for example, to incentives to enter into agreements for the purposes of transacting in *restricted mass market investments*.

(2) The rationale for offering the incentive is immaterial. This means that the *rule* applies to incentives which are intended, for example, to encourage *retail clients* to make investments ahead of the end of the tax year.

…

4.12B Promotion of non-mass market investments

…

Purpose and overview of the rules

4.12B.5 G (1) …

(1A) *COBS* 4.12B.17R requires that a *financial promotion* that relates to a *non-mass market investment* does not offer to any *retail client* any form of incentive. The purpose of this *rule* is to ensure that *retail clients* are not persuaded or incited to *engage in investment activity* relating to a *non-mass market investment* other than by reference to the features of the investment activity that is the subject of the *financial promotion*.

…

Restrictions on monetary and non-monetary incentives

4.12B.17 R (1) A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a *non-mass market investment* and which offers to a *retail client* any monetary or non-monetary incentive ~~to invest~~.

(2) …

(3) The rule in (1) does not apply where the exclusive purpose of the *financial promotion* is to persuade or incite a recipient to transfer the *custody* of an existing holding of a *non-mass market investment*.

4.12B.18 G For the purposes of *COBS* 4.12B.17R monetary and non-monetary incentives include, but are not limited to:

(1) offering bonuses or discounts or rebates on fees when investing in a *non-mass market investment* ~~for the first time~~;

…

(4) offering discounts or rebates on fees paid when investing a particular amount in *non-mass market investments*;

…

4.12B.19 G (1) Information and research tools do not constitute non-monetary incentives.

(2) Lower fees not linked to volumes, offered to all *retail clients*, do not constitute a monetary incentive.

4.12B.19A G Subject to *COBS* 4.12B.18G and *COBS* 4.12B.19G, the following factors are relevant in determining whether a benefit is an incentive:

(1) A benefit which is intrinsically connected with the *investment* or investment activity that is the subject of the *financial promotion* is unlikely to constitute an incentive; for example, voting rights which are inherently connected with a share. However, a benefit which is entirely separable from the *investment* or investment activity that is the subject of the *financial promotion* is likely to be an incentive.

(2) A benefit which is only available for a fixed period of time, or is contingent upon investing in a *non-mass market investment* in the future, is likely to constitute an incentive.

(3) A benefit which is only available to *retail clients* who invest through a particular channel is likely to constitute an incentive; for example, a benefit which is only offered to *retail clients* who invest via a social media link.

4.12B.19 G (1) *COBS* 4.12B.17R applies irrespective of the nature of the investment activity. This means that the *rule* applies not only in relation to incentives to *buy non-mass market investments* but also, for example, to incentives to enter into agreements for the purposes of transacting in *non-mass market investments*.

(2) The rationale for offering the incentive is immaterial. This means that the *rule* applies to incentives which are intended, for example, to encourage *retail clients* to make investments ahead of the end of the tax year.

…

Pub ref: 1-001569

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