FINANCIAL CONDUCT AUTHORITY

Quarterly Consultation

CP25/24

No 49

September 2025

How to respond

The Financial Conduct Authority invites comments on this consultation paper. Comments should reach us by 15 October 2025 for Chapters 2 to 9.

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

Alternatively, please send comments in writing to:

Chapter 2: Emma Velati, Enforcement SRF, Law Policy and International

Chapter 3: Ian Adderley, Mutuals Registration

Chapter 4: Dannina Fontaine, Reporting Policy

Chapter 5: Isabelle Lambert, Sustainable Finance Policy

Chapter 6: Manon Kilvington, Consumer Investment Distribution Policy

Chapter 7: Jayne Williams, Primary Markets Policy

Chapter 8: Payal Khamar and Tunrayo Martins, Market Access Team, International

Chapter 9: Andrew Clemo, Payments Policy

If you are responding in writing to multiple 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: cp25-24@fca.org.uk

Disclaimer

When we make rules, we are required to publish:

- a list of the names of respondents who made representations where those respondents consented to the publication of their names,
- an account of the representations we receive, and
- an account of how we have responded to the representations.

In your response, please indicate:

- if you consent to the publication of your name. If you are replying from an organisation, we will assume that the respondent is the organisation and will publish that name, unless you indicate that you are responding in an individual capacity (in which case, we will publish your name),
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Irrespective of whether you indicate that your response should be treated as confidential, we are obliged to publish an account of all the representations we receive when we make the rules.

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Contents

On 30 September 2025, we amended CP25/24 – see paragraph 8.6 – and published an addendum. These cover the proposed BFSAG 2.1.1G amendments.

Chapter 1

Overview

Chapter No	Proposed changes to Handbook	Consultation closing period
2	To extend DEPP 6's penalties policy to Private Intermittent Securities and Capital Exchange System (PISCES).	5 weeks
3	To remove most statutory declarations from mutuals registration function forms to reduce the time and expense involved for mutual societies submitting applications to us.	5 weeks
4	To amend the frequency of Section E, G and M of the Retail Mediation Activities Return (RMAR). These returns have been identified as part of the data decommissioning workstream to further reduce firm burden.	5 weeks
5	To give proper effect to existing ESG sourcebook rules and providing flexibility for firms to publish ongoing product-level sustainability reports in alignment with other annual fund reporting requirements.	5 weeks
6	To update PERG as a result of the HMT statutory instrument which restates the MiFID Org Regs into our Handbook.	5 weeks
7	To amend UKLR 9.6.6R to align the timing and frequency of post-trade share buy-back notifications with the requirements for the buy-back programme exemption under the Market Abuse Regulation (Article 2(3) of the UK version of Commission Delegated Regulation (EU) 2016/1052).	5 weeks
8	To implement the Berne Financial Services Agreement (BFSA) which seeks to support cross-border financial services trade between both the UK and Switzerland.	5 weeks
9	To remove regulatory contactless limits and instead allow banks and other payment service providers to deliver contactless payments whenever they identify that a transaction poses a low level of risk.	5 weeks

Chapter 2

PISCES application of DEPP's penalty policy

Introduction

2.1 The Financial Services and Markets Act 2023 (Private Intermittent Securities and Capital Exchange System Sandbox) Regulations 2025 (the PISCES Regulations) were made in May this year providing for the testing of a new kind of share-trading system.

2.2 Private Intermittent Securities and Capital Exchange System (PISCES) is a new, innovative and flexible type of share trading platform. Its aim is to provide an efficient and effective solution allowing buyers and sellers of shares in private companies to trade those shares during intermittent trading periods. Companies using a PISCES platform can decide when their shares can be traded, who is allowed to buy them and at what price, and who can get information about the company or any transactions in its shares.

2.3 PISCES will allow private companies to reach a broader range of investors, supporting investment in growth companies and boosting the competitiveness of UK markets.

Summary of proposals

2.4 The PISCES Regulations gave the FCA rule making powers, and we consulted on the regulatory framework for the PISCES sandbox in December 2024 (Consultation Paper (CP24/29)). We issued our Policy Statement (PS25/6) and made rules in June 2025.

2.5 The PISCES Regulations also modified the definition of 'relevant requirement' in Chapter 3B of Part 18 of the Financial Services Markets Act 2000 (FSMA) to include a requirement imposed by or under PISCES Regulations, thereby enabling the FCA to impose a public censure under section 312E or financial penalties under section 312F on a recognised investment exchange or a data reporting service provider.

2.6 We are required by section 312K FSMA to consult on our policy in respect of the imposition and the amount of penalties under section 312F. Chapter 6 of The Decision Procedure and Penalties manual (DEPP) in our Handbook contains the FCA's existing policy with respect to imposing penalties under section 312F. We are consulting on applying this policy to penalties imposed under section 312F as applied by the PISCES Regulations. This will require minor consequential amendments to DEPP Schedule 4.

2.7 We intend to apply our existing procedures for issuing warning notices and decision notices as required by sections 312G and 312H of FSMA. This will require minor consequential amendments to DEPP 2 Annex 1.

Question 2.1: **Do you agree with our proposal to extend the existing, general policies and procedures in DEPP relating to section 312F as it applies in the PISCES context?**

Rule Review Framework

2.8 The FCA's Rule Review Framework states that while we will generally monitor key metrics of new rules, this is not a requirement where it would be disproportionate or where the new rule relates to a minor policy or rule change with minimal impact. Due to the nature of the changes proposed here, we are satisfied that the proposed amendments are exempt from the requirement to be monitored under the Framework.

Cost benefit analysis

2.9 Section 138I of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Our proposals do not introduce any new rules or significant changes to existing rules. We have therefore not undertaken a CBA.

Impact on mutual societies

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

Compatibility statement

2.11 When consulting on new rules, we are required by section 1B of FSMA to act (so far as reasonably possible) in a way which is compatible with our strategic objective, advances one or more of our operational objectives and (so far as reasonably possible) the secondary international competitiveness and growth objective. We must have regard to the regulatory principles in section 3B of FSMA and the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.

2.12 We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. Our proposals are unlikely to have a significant impact on the wider UK economy but by ensuring our Handbook is accurate and up to date, firms have certainty as to our processes and procedures, including the scope and applicability of our powers.

Equality and diversity

2.13 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). In Northern Ireland, the Equality Act is not enacted but other anti-discrimination legislation applies.

2.14 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

Mutuals registration function removal of statutory declarations

Introduction

3.1 We are the registering authority for mutual societies. This role is distinct from our wider responsibilities under the Financial Services and Markets Act 2000 (FSMA). This chapter sets out our proposals to remove the statutory declarations requested on most of the application forms and notifications submitted to us as the registering authority. This consultation will be relevant to mutual societies, their members and advisers.

3.2 We issue forms under the following legislation:

- Co-operative and Community Benefit Societies Act 2014 (previously the Industrial and Provident Societies Act 1965)
- Co-operative and Community Benefit Societies Act (Northern Ireland) 1969
- Credit Unions Act 1979
- The Credit Unions (Northern Ireland) Order 1985
- Friendly Societies Act 1974
- Friendly Societies Act 1992
- Building Societies Act 1986

3.3 We are proposing to remove all statutory declarations that are not required by legislation.

Summary of proposals

3.4 We are empowered under those statutes to direct the form, contents and method of delivery of applications and notifications to us. We have a longstanding practice of asking for statutory declarations to accompany many, but not all, forms. We currently ask for statutory declarations for the following:

- Alteration of rules and/or Memorandum
- Amalgamation of societies
- Amendment of rules for a branch
- Application to incorporate an existing friendly society
- Complete amendment of rules

- Conformity rules
- Conversion to a company
- Instrument of dissolution
- Partial amendment of rules
- Release or satisfaction of a charge
- Transfer of engagements

3.5 Statutory declarations are made under the Statutory Declarations Act 1835. They are a statement made before a solicitor, notary public, commissioner for oaths or justice of the peace confirming the statement to be true.

3.6 It is essential that applications submitted to us are accurate and properly made. The statutory declaration is a step that provides a degree of assurance, giving some comfort to the fact the process had been followed. The making of a false declaration can amount to perjury. That a statement must be made is intended as a deterrent against false applications.

3.7 We have isolated examples of non-compliance. There have been instances where rule amendments were made in a manner not consistent with the process set out in rules of the particular society in question. It is often a case of inadvertence. Where the non-compliance was not inadvertent, the statutory declaration appeared to provide no deterrent effect. We also see examples of people seeking to reuse old or previously used statutory declarations. It is not clear that the implications of a statutory declaration are well understood.

3.8 Under administrative law, public authorities are empowered to deal with material mistakes of fact – such as in instances where they believed the information before them to be true, but later transpired to not be. The presence of a statutory declaration is not critical in this assessment.

3.9 We generally see societies submitting applications and notifications to us in good faith.

3.10 As a registering authority, we have looked to the practices of other registering authorities, such as Companies House, and charity commissions. There should be parity of treatment between different types of legal entity unless there is reason to differentiate. We note similar applications to those registrars do not require the submission of statutory declarations.

3.11 Across the mutuals legislation, the only statutorily required statutory declaration from the applications listed above are:

- Instruments of dissolution (except for building societies and under the Friendly Societies Act 1992)
- Conformity rules by a friendly society registered under the Friendly Societies Act 1974, required by the Friendly Societies Act 1992
- Incorporation of a friendly society under the Friendly Societies Act 1992

- Alteration of rules under the Friendly Societies Act 1992
- Building society alterations to purpose, powers or rules

3.12 Separately, for credit unions amending their common bond, in relation to locality, we have the power to rely on a statutory declaration as sufficient evidence that the requirements in sections 1A and 1B of the Credit Unions Act 1979 are met (and, similarly for credit unions in Northern Ireland). This does not require a declaration to be submitted on each occasion. In practice, we rely on our own assessment of the common bond requirements – having reviewed information provided by the credit union. This optionality would remain notwithstanding the proposal to remove the requirement to provide the declaration.

3.13 That the legislation set out the requirement for a statutory declaration for one type of application, but not others, is indicative of Parliamentary intent.

3.14 We see benefit in removing the statutory declaration requirement for all forms (except where the declaration is required by legislation).

Question 3.1: **Do you support the proposal to remove the mutual society application form statutory declarations on all forms where this is not required by legislation?**

Implementation

3.15 Subject to consultation responses, if we proceed, we will need to:

- Amend the paper versions of our forms
- Amend the Mutuals Society Portal version of our forms
- Make consequential amendments to our website, and our Handbook guidance: Registration Function under the Co-operative and Community Benefit Societies Act 2014 Guide (RFCCBS)

3.16 We will seek to progress the changes to forms, subject to consultation responses, as soon as practicable, and in any event, before the 31 March 2026. We intend to communicate that change, when made, through the mutual societies newsletter.

3.17 We note an ongoing review by the Law Commission of the Co-operative and Community Benefit Societies Act 2014, which will likely result in legislative change. We intend to review our RFCCBS Handbook guidance to reflect any legislative change and would make changes to statutory declaration references at that time. This will not delay the practical implementation of the change.

Rule Review Framework

3.18 The FCA's Rule Review Framework states that while we will generally monitor key metrics of new rules, this is not a requirement where it would be disproportionate or where the

new rule relates to a minor policy or rule change with minimal impact. Due to the nature of the changes proposed here, in not being an amendment to rules, we are satisfied that the proposed amendments are exempt from the requirement to be monitored under the Framework.

Cost benefit analysis

3.19 The statutory declaration is a cost incurred by the society. There is a cost specified in statute (£5) for the taking of a declaration (see The Commissioner for Oaths (Fees) Order 1993). However, societies often incur greater cost – which in some instances is upwards of £30 per application. Additionally, while some declarations are being made virtually, many are made in person at the office of a solicitor, notary or commissioner. There is therefore an additional burden in obtaining a statutory declaration. Many societies are run and staffed by volunteers. In the financial year ending 31 March 2025, just over 1,100 applications requiring a statutory application were made to us. Given the change proposes a saving to mutual societies, with no increase in cost, and the limited materiality of the change, we have not consulted the cost benefit analysis (CBA) panel about the preparation of this CBA.

Impact on mutual societies

3.20 The proposed change is not a change to rules, and the impact is directed entirely at mutual societies, as a saving in time and cost in interacting with us.

Compatibility statement

3.21 Our statutory objectives under FSMA are not engaged on decisions made under mutuals legislation (section 1B(7) of FSMA).

Equality and diversity

3.22 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). In Northern Ireland, the Equality Act is not enacted but other anti-discrimination legislation applies.

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

Chapter 4

Reporting data frequency change

Introduction

4.1 This consultation is the next stage of our data decommissioning workstream, which is part of the Transforming Data Collection (TDC) programme. The programme seeks to streamline regulatory reporting and lessen the burden on firms by improving data collection processes. We have previously published 2 Consultation Papers (CPs) to either decommission or amend a total of 7 returns.

4.2 The regulatory landscape has evolved in recent years, characterised by a strategic focus on adapting to risks facing consumers and firms by streamlining regulatory processes. Through targeted interventions and implementing regulatory frameworks, we have maintained effective oversight of firms while promoting innovation and efficiency. As a result, we have observed reduced risk levels in some retail mediation activities.

4.3 The regular submission of the Retail Mediation Activities Return (RMAR) has historically served as an important mechanism for monitoring firms, consumer outcomes, and risk in relation to the activities of retail intermediary firms. However, our analysis has revealed that a reduction in reporting frequency for the sections of RMAR detailed in the proposals would allow firms to allocate resources more efficiently, without undermining the FCA's ability to monitor key risks or intervene in a timely manner.

4.4 The proposals also support our Strategy 2025 objective to become a smarter regulator – by reducing unnecessary regulatory burden on firms and ensuring that our rules remain proportionate to the scale and complexity of firms' business models.

4.5 Overall, the feedback we received on our previous data decommissioning consultations was positive. Firms and their representative's highlighted the importance of reducing duplication and aligning with broader regulatory developments. This consultation continues to address these points through proposed changes to submission frequency. We intend to strike an appropriate balance between maintaining effective oversight and minimising unnecessary requirements for regulated entities.

Summary of proposals

4.6 We propose to amend the reporting frequency to annual for the following returns:

- Section E of RMAR (known as RMA-E) – Professional indemnity insurance
- Section G of RMAR (known as RMA-G) – Training and competence
- Section M of RMAR (known as RMA-M) – Pension transfer specialist advice

4.7 In line with current scheduling, firms would have 30 business days to submit the data from their accounting reference date.

Section E – Professional indemnity insurance

4.8 Section E of RMAR was originally introduced in CP197 and later amended in CP07/17. It requires firms to confirm compliance with prudential requirements for professional indemnity insurance (PII) and to provide a summary of the cover. Firms have to submit information relating to all PII policies held, up to a maximum of 10 policies. Where a firm holds more than 10 PII policies, only the largest 10 policies should be reported. The data is collected on a quarterly or half-yearly basis – depending on firm size.

4.9 As PII is generally an annual policy, firm's often report in-between their policy renewals. As a result, some firms have experienced confusion when reporting the required information, and, in some cases, there are duplications of the policy details submitted in the returns. While we have previously updated guidance to address this issue, we now propose that Section E should be submitted annually.

4.10 Firms will still be required to notify us if they cease to hold adequate PII at any point during the reporting cycle, under Supervision manual (SUP) Chapter 15. So, we consider the risk in this area to be low and believe that this change will maintain appropriate oversight while reducing unnecessary reporting requirements.

Section G – Training and competence

4.11 Section G of RMAR allows us to collect information necessary to assess how firms are complying with established training and competence requirements. The return also requires firms to provide details of advisers, including the number employed, their regulated roles, and the qualifications and accreditations they hold.

4.12 Under the Senior Managers and Certification Regime (SM&CR), firms are responsible for ensuring certain individuals are fit and proper for their roles. While we can use Section G to maintain oversight of this, as a result, it has become less relevant to our supervisory activities. So, we propose to reduce its frequency to annual. This will still allow us to have the necessary oversight of the market while reducing burden on firms.

4.13 The SM&CR is currently under review and HM Treasury (HMT), the PRA and the FCA are all consulting on potential changes to it with a view to further reduce burden on firms. See CP25/21: Senior Managers and Certification Regime review. As we have already identified Section G as an area we can reduce firm burden, we want to take immediate action through our proposed frequency change.

Section M – Pension transfer specialist advice

4.14 Section M of RMAR requires firms to provide detailed information about their activities related to defined benefit (DB) pension schemes and other advice involving safeguarded benefits. This includes data relating to pension transfers and conversions. Transfers from, or conversions of, safeguarded benefits that carry a guaranteed annuity rate are

excluded. Currently, firms are required to submit this information on a half-yearly basis within 30 business days following their accounting reference date.

4.15 Section M was introduced in 2019 as part of CP19/25. The final rules were published in Policy Statement (PS20/6). The intent was to enable us to monitor and assess the nature and frequency of advice provided by firms in relation to DB pension transfers and conversions. Specifically, it collects data on the number of consumers advised to transfer, the proportion of clients who take up ongoing advice services, and the charging structures firms use for this type of advice. Section M gathers information on the size and composition of the pension transfer advice market, including the number of pension transfer specialists employed by firms and the extent to which introductions are used in connection with this advice.

4.16 Supervisory interventions and regulatory changes, such as the introduction of a ban on contingent charging and strengthened requirements for independent advice before a DB to defined contribution (DC) transfer, have contributed to a significant decline in the volume of transfers from DB to DC schemes.

4.17 Given these developments, we propose to amend the frequency of Section M and move to an annual reporting cycle. This reflects the reduced risk while ensuring that we continue to receive the information necessary to maintain effective oversight of pension transfer activity. Firms will still be required to provide comprehensive details of their DB and safeguarded benefit transfer activities in Section M each year.

4.18 We are satisfied that we will maintain our oversight of activity in this market and continue to identify firms involved in pension transfer activity through this return, as well as REP015 – Retirement Income market reporting, question 6, which provides the number of DB-DC transfers from the perspective of pension providers.

Question 4.1: Do you agree with our proposal to reduce the frequency of Section E of RMAR? If not, please explain why.

Question 4.2: Do you agree with our proposal to reduce the frequency of Section G of RMAR? If not, please explain why.

Question 4.3: Do you agree with our proposal to reduce the frequency of Section M of RMAR? If not, please explain why.

Rule Review Framework

4.19 The FCA's Rule Review Framework states that while we will generally monitor key metrics of new rules, this is not a requirement where it would be disproportionate or where the new rule relates to a minor policy or rule change with minimal impact. Due to the nature of the changes proposed here, we are satisfied that the proposed amendments are exempt from the requirement to be monitored under the Framework.

Cost benefit analysis

4.20 Section 138L(3) FSMA gives an exemption from the requirement to produce a cost benefit analysis in cases where we consider there will be no increase in cost or an increase in cost that will be of 'minimal significance'.

4.21 The proposals in this CP to reduce the frequency of some reporting and notification requirements will reduce the burden on firms and requires no new activity from them.

4.22 Although we consider there will be no increase in cost as a result of our proposals, and the exemption under section 138L(3) applies, we have attempted to quantify the savings to industry of our proposals.

4.23 We have adopted a conservative approach to estimate that the proposed intervention will save industry approximately £1.8m annually. This assumes that, had the intervention been implemented in 2024, firms would have avoided submitting at least 1 or up to 3 returns for Section of E, G and M of RMAR.

4.24 We have estimated the cost savings for firms by relying on the annual ongoing compliance costs calculated in the original CPs that introduced the returns and the number of firms who completed the return in 2024:

- We've assumed the total adminstrative burden of the total administrative burden of £31m – as outlined in CP07/17, page 34, sections 4.23 and 4.26 – was evenly distributed across the RMAR population of 16,000 firms to determine the annual cost per firm for Section E and G of RMAR.
- The ongoing cost of £3m – as outlined in CP11/8, was evenly spread across 5,490 firms for Section M of RMAR.
- Cost estimates for 2024 were adjusted for inflation using the Gross Domestic Product (GDP) deflator.

4.25 We made several other assumptions in our analysis:

- Overall compliance costs are unaffected by changes in the firm size or structure of in-scope firms.
- Minor changes in data collection processes are assumed to have no or minimal impact on cost.
- We have not accounted for any technological advancements.
- Annual costs are evenly spread across all 4 quarters of 2024.

Impact on mutual societies

4.26 We have determined there will be no significant difference in the impact on mutual societies.

Compatibility statement

4.27 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 and advances one or more of our operational objectives and (so far as reasonably possible) the secondary international competitiveness and growth objective. Further, we must promote effective competition when advancing our other operational objectives (section 1B(4) of FSMA), and have regard to the regulatory principles in section 3B of FSMA and the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006, the Regulators' Compliance Code and the Treasury's recommendations on economic policy (section 1JA of FSMA).

4.28 We are satisfied that the proposed amendments are compatible with our objectives and other legal obligations including the secondary objective in that they aim to ensure we can collect the data we need to prevent and detect harm but in a way that is proportionate for firms by streamlining and simplifying our requirements.

Equality and diversity

4.29 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). In Northern Ireland, the Equality Act is not enacted but other anti-discrimination legislation applies.

4.30 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 5

Minor amendments to the Sustainability Disclosure Requirements (SDR)

Introduction

5.1 We are proposing to make amendments to the Environmental, Social and Governance sourcebook (ESG) for the purposes of giving proper effect to an existing rule and amending rules to give firms more flexibility in relation to the publication of Part B of a public product-level sustainability report. These minor amendments are consistent with the policy proposals consulted upon in Consultation Paper (CP22/20) and finalised in Policy Statement (PS23/16). The proposed amendments are set out below.

Summary of proposals

ESG 4.2.4R(2)(b) and proposed new ESG 4.2.7G(2)

5.2 In PS23/16, we said that the qualifying criteria for labels were designed to accommodate both active and passive strategies, including where a product tracks an index.

5.3 ESG 4.2.4R(2)(b) states that for a product using a label, it must 'select' assets with reference to a robust, evidence-based standard that is an absolute measure of environmental and/or social sustainability. We have received feedback that this rule is challenging for index-tracking funds to meet as the fund manager does not 'select' the assets in an index-tracking fund. To clarify the policy intention, we are proposing to add guidance on ESG 4.2.4R(2)(b) to clarify that a manager of an index-tracking fund may meet this rule by investing in assets that meet this criteria, as opposed to selecting assets.

Question 5.1: **Do you agree with our proposed guidance on ESG 4.2.4R(2)(b), at ESG 4.2.7G?**

ESG 5.4.3R(1) and proposed new ESG 5.4.3R(1A)

5.4 ESG 5.4.3R(1) currently requires managers who use either a sustainability label or the terms set out in ESG 4.3.2R(2) (referred to hereafter as 'the terms') to produce Part B of a public product-level sustainability report (referred to hereafter as a 'sustainability product report') annually. The report must cover a reporting period of 12 months, and the first report must be published within 16 months after the manager first uses a sustainability label or one or more of the terms.

5.5 We have received feedback from some firms that restricting the sustainability product report to a 12-month reporting period is challenging. For example, they are unable to align sustainability product reports with other relevant reports (such as annual financial statements and product-level TCFD reports) or publish reports for new funds at the same time as other product reports. Firms have therefore requested the flexibility to align their product reporting to reduce administrative burdens. They also stated that it would be in their clients' best interest to receive all relevant product-level information at the same time, as this would support consumer understanding in line with the Consumer Duty.

5.6 The policy intention is to improve transparency and for consumers to have better information on which to make their investment decisions. We recognise that under the current rules, consumers are likely to receive sustainability product reports relating to different products at different times. Therefore, comparison of progress between similar products is unlikely to be possible (at least in the first year of reporting). So, if we were to provide the additional flexibility that some firms have requested, we do not consider the policy outcome to be affected.

5.7 We are therefore proposing to give firms the option not to cover a 12-month reporting period, so that they can align sustainability product reports with other relevant reports if they choose to. We have reflected this by proposing the insertion of ESG 5.4.3R(1A). This new provision would allow a manager to prepare and publish a sustainability product report which either covers a reporting period of less than 12 months, or which includes a period of time during which neither a label nor the terms were used. However, the following conditions must be met:

- The manager must make clear in the sustainability product report the reporting period that has been covered.
- The manager must provide contextual information to explain why the reporting period has been chosen. This aligns with our policy intention to increase transparency and help consumers to understand the context around progress towards the sustainability objective of a particular product. For example, this would enable a firm to explain why a product may not have made much progress towards meeting the sustainability objective (particularly if the reporting period covers less than 12 months).
- The manager must publish the report no later than 4 months after the end of the chosen reporting period. This timescale is in line with the current rule (allowing an additional 4 months to publish the first sustainability report after the 12-month reporting period) and gives firms time to prepare and publish the report once the reporting period ends.

5.8 This proposal is likely to be particularly relevant for newly launched funds or funds that started to use labels or terms part-way through another annual reporting cycle with which the firm is seeking to align the publication of its sustainability product reports.

5.9 In relation to our proposed condition that the manager provides contextual information, we remind firms of ESG 5.5.6R(9)(a) and (b) regarding contextual information and historical comparisons of metrics. For example, in cases where the first sustainability

product report covers a reporting period of less than 12 months, and the following (annual) report covers a 12-month reporting period, it may be helpful for firms to clarify the extent to which the historical calculations allow for comparisons.

5.10 We also remind firms that ESG 5.5.12R requires sustainability product reports to be consistent with the label and accompanying disclosures. Therefore, if firms publish sustainability product reports within 12 months of using a label or the terms, they must ensure that the information is consistent with that included in the consumer-facing and pre-contractual disclosures.

Question 5.2: Do you agree with our proposed amendment to ESG 5.4.3R(1) and the insertion of ESG 5.4.3R(1A)?

ESG 5.4.8R

5.11 Under ESG 5.4.7R, a manager must, insofar as reasonably practicable, use the most up-to-date information available when undertaking its reporting and disclosure obligations under ESG 5.4 and ESG 5.5. ESG 5.4.8R then requires that a manager must, in preparing a sustainability product report specifically, select the most recent calculation date for which up-to-date information is available from within the 12-month reporting period.

5.12 Given the proposed insertion of ESG 5.4.3R(1A), providing for a reporting period of less than 12 months, and that ESG 5.4.7R already requires managers to provide up-to-date information, ESG 5.4.8R is no longer needed. On that basis, we are proposing to delete it.

Question 5.3: Do you agree with our proposed deletion of ESG 5.4.8R?

ESG 5.5.15R

5.13 We are proposing to amend ESG 5.5.15R to remove the reference to '12 month reporting periods under ESG 5.4.8R' given our proposed insertion of ESG 5.4.3R(1A) and deletion of ESG 5.4.8R. We have inserted text to clarify that firms are not required to produce an on-demand sustainability product report until at least 16 months after the first use of a label or the terms. This remains in line with the amendments introduced following CP24/26.

Question 5.4: Do you agree with our proposed amendment to ESG 5.5.15R?

Rule Review Framework

5.14 The FCA's Rule Review Framework states that while we will generally monitor key metrics of new rules, this is not a requirement where it would be disproportionate or where the new rule relates to a minor policy or rule change with minimal impact. Due to the nature of the changes proposed here, we are satisfied that the proposed amendments are

exempt from the requirement to be monitored under the Framework. However, we will be carrying out a post-implementation review after 3 years to assess if our intervention has met its intended outcomes, identify implementation issues and potential unintended consequences, and assess compliance with the rule.

Cost benefit analysis

5.15 Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. The CBAs in CP22/20 and PS23/16 were based on the policy intention set out in CP22/20 and we do not anticipate that firms will need to take any additional action as a result of the changes proposed in this chapter. 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.

Impact on mutual societies

5.16 Clause 22 of the Financial Services Bill 2012 amends the rule-making powers in the Financial Services and Markets Act 2000 (FSMA) to require the FCA to provide an opinion on whether the impact of proposed rules on mutual societies is significantly different to the impact on other authorised persons. We are satisfied that the proposals in this chapter would not have a significantly different impact on mutual societies compared with other authorised persons.

Compatibility statement

5.17 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 (so far as reasonably possible) the secondary international competitiveness and growth objective. Further, we must promote effective competition when advancing our other operational objectives (section 1B(4) of FSMA) and have regard to the regulatory principles in section 3B of FSMA and the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006, the Regulators' Compliance Code and the Treasury's recommendations on economic policy (section 1JA of FSMA).

5.18 As set out in CP22/20 and PS23/16, which this further consultation seeks to implement, we are satisfied that the proposed amendments are compatible with our strategic objective and advance our operational objectives of securing an appropriate degree of consumer protection and promoting effective competition in the interests of consumers. The proposals continue to protect consumers from greenwashing, increase transparency and help them to identify products that meet their needs and preferences, as the disclosure requirements have not changed. Providing firms with more flexibility to publish sustainability product reports in alignment with other product reporting requirements also promotes competition by reducing reporting burdens on firms.

The proposed minor amendments seek to help firms to comply with the rules more effectively and efficiently but do not introduce additional requirements.

5.19 We are satisfied that any burdens or restrictions are proportionate to the expected benefits. We are also satisfied that the proposed amendments advance the FCA's secondary international competitiveness and growth objective by ensuring that the UK market for sustainable investment products is one of the most transparent and efficient. Better industry standards should improve integrity and help to build on the UK's existing reputation and leading international position in the sustainable finance market. Attracting sustainable investments that support a thriving economy is a key element to promoting innovation, which is paramount to increasing the productivity of the UK economy.

5.20 With respect to our duty to have regard to our regulatory principles, we consider that, under section 3B(1)(c) of FSMA, our proposed amendments may make an indirect contribution towards the Secretary of State meeting the UK's net-zero target and environmental targets through improving transparency and increasing consumer trust and thereby supporting potential market demand for sustainable products.

Equality and diversity

5.21 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). In Northern Ireland, the Equality Act is not enacted but other anti-discrimination legislation applies.

5.22 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 6

Changes to PERG as a result of the MiFID Org Reg restatement into our rules

Introduction

6.1 In Consultation Paper (CP24/24), we consulted on proposals to replace the firm-facing requirements of the MiFID Organisational Regulation (MiFID Org Reg) (Commission Delegated Regulation (EU) 2017/565) with FCA Handbook rules when His Majesty's Treasury (the Treasury) commences the repeal of the MiFID Org Reg. To provide continuity to firms, the general approach we proposed was to retain the current substance of the requirements, with changes to reflect Handbook drafting style and to simplify or clarify the text where possible.

6.2 In CP24/24, we were unable to consult on any amendments to the Perimeter Guidance manual (PERG) as these were dependent on the Treasury publishing legislation to amend the Regulated Activities Order (RAO) because of the MiFID Org Reg repeal. In July 2025, the Treasury laid The Markets in Financial Instruments (Miscellaneous Amendments) Regulations 2025 (the amending Statutory instrument (SI)) setting out these amendments to the RAO, allowing us to consult on changes to PERG now. After we have consulted, we will publish these amendments in a Handbook Notice separate to the MiFID Org Reg Policy Statement.

6.3 The proposed PERG changes are based on the draft instrument as laid before Parliament. If the legislation, when made, differs from the version laid before Parliament, we will reflect this in the amendments to PERG if required.

Summary of proposals

RAO amendments

6.4 As part of the implementation of the Markets in Financial Instruments Directive (MiFID), certain provisions of the MiFID Org Reg were set out in the RAO. These provisions were retained in The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (the RAO) following the UK's withdrawal from the European Union (EU). The amending SI restates those provisions with modifications and removes the references to the MiFID Org Reg.

6.5 We are proposing to reflect these amendments made to the RAO in Chapters 2 and 13 of PERG.

Other changes to PERG

6.6 Currently, PERG 13 explains the scope of the authorisation requirements in MiFID. It also contains a general explanation of how MiFID was 'onshored' in UK legislation and the FCA Handbook following the UK's withdrawal from the EU.

6.7 We propose turning PERG 13 into an explanation of UK rather than EU law with an explanation of the meaning of 'financial instrument', 'investment services and/or activities' and 'MiFID investment firm' (and of certain other kinds of investment firm), as used in the Handbook and UK legislation, and an explanation of how article 4(4) of the RAO (informally known as the MiFID override) works. We are making minor changes elsewhere in PERG and other sourcebooks to reflect these changes.

6.8 In line with our general approach to restating the MiFID Org Reg into our Handbook, the proposed amendments involve drafting changes rather than policy changes. We propose to keep nearly all of PERG 13 and to keep large parts unchanged but to remove the material related to 'onshoring'.

6.9 To help firms, we propose that PERG 13 should continue to treat MiFID and related EU legislation as a useful guide to the meaning of the corresponding provisions of the RAO covered by PERG 13. We plan to keep references to the relevant EU legislation (including recitals) and the FCA's interpretations of MiFID and related EU legislation that are currently in PERG 13. For example, we propose to retain the current material about combining exemptions in articles 2 and 3 of MiFID, but with reference to the corresponding provisions of the RAO and other UK legislation.

6.10 PERG 13 also contains references to advice and personal recommendations. In CP25/17, we committed to revisiting this area of guidance as part of the Advice Guidance Boundary Review.

Question 6.1: Do you agree that our proposed consequential amendments to the Handbook reflect the amendments made in the RAO?

Question 6.2: Do you agree with our proposed changes to PERG 13?

Rule Review Framework

6.11 The FCA's Rule Review Framework states that while we will generally monitor key metrics of new rules, this is not a requirement where it would be disproportionate or where the new rule relates to a minor policy or rule change with minimal impact. Due to the nature of the changes proposed and that we are not proposing new rules, we are satisfied that the proposed amendments are exempt from the requirement to be monitored under the Framework.

Cost benefit analysis

6.12 Section 138I of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Our proposals do not introduce any new rules or change any existing rules as they only consist of guidance. Our approach to a CBA states that we should produce a CBA for guidance 'if a high-level assessment of the impact of the proposal identifies an element of novelty which may be in effect prescriptive or prohibitive such that significant costs may be incurred'. The proposed guidance is intended to update the Handbook to reflect changes to the RAO because of the amending SI and to make the changes described above with no policy change. We have therefore not produced a CBA.

Impact on mutual societies

6.13 We do not expect the proposals in this consultation to have a significantly different impact on mutual societies.

Compatibility statement

6.14 We are required by section 1B of FSMA to act (so far as reasonably possible) in a way which is compatible with our strategic objective, advances one or more of our operational objectives and (so far as reasonably possible) the secondary international competitiveness and growth objective. Further, we must promote effective competition so far as is compatible with acting in a way which advances our consumer protection or integrity objectives (section 1B(4) of FSMA) and have regard to the regulatory principles in section 3B of FSMA and the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006, the Regulators' Compliance Code and the Treasury's recommendations on economic policy (section 1JA of FSMA).

6.15 We are satisfied that the proposed amendments are compatible with our objectives and other legal obligations. Our proposals will not have a significant impact on the wider UK economy but by ensuring our Handbook is accurate and up to date, firms have certainty as to our processes and procedures, including the scope and applicability of our powers.

Equality and diversity

6.16 We have considered the equality and diversity issues that may arise from the proposed amendments. Because we are making not making any policy changes, we consider that our proposals would not have any adverse impact 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). In Northern Ireland, the Equality Act is not enacted but other anti-discrimination legislation applies.

6.17 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 7

Notifying purchases of own securities under UKLR

Introduction

7.1 Sections 9.6 and 9.7 of the UK Listing Rules sourcebook (UKLR) set out long-standing requirements applicable to 2 subsets of listed companies (issuers with equity shares listed in either the equity shares (commercial companies) listing category (UKLR 5) or the closed-ended investment funds listing category (UKLR 11)) when they deal in their own securities.

7.2 In this consultation, we consider the UKLR deadlines for listed companies to notify the market of certain information on a transaction in its own securities alongside related UK Market Abuse Regulation (MAR) obligations and exemptions, which are contained in the provisions described below.

UKLR 9.6.6R

7.3 This is applicable to any purchase of own equity shares by or on behalf of the company or any other member of its group. The notification of the purchase must be made to a Regulatory Information Service (RIS) as soon as possible, and in any event, by no later than 7.30am on the business day following the calendar day on which the purchase occurred.

UKLR 9.7.2R

7.4 This is applicable to any purchases, early redemptions or cancellations of a company's own securities that are convertible into equity shares where the equity shares are listed in either the commercial companies or closed-ended investment fund categories by or on behalf of the company or any other member of its group. The notification must be made to a RIS when an aggregate of 10% of the initial amount of the relevant class of securities has been purchased, redeemed or cancelled, and for each 5% in aggregate of the initial amount of that class acquired thereafter. UKLR 9.7.3R requires the notification to be made as soon as possible and, in any event, no later than 7.30am on the business day following the calendar day on which the relevant threshold is reached or exceeded.

Stakeholder feedback on UKLR requirements and analysis

7.5 These UKLR requirements pre-date and may overlap with other requirements to notify information to the market in connection with the same or a similar type of purchase transaction, applicable to issuers with securities admitted to trading on a UK regulated

market (which would apply to issuers with securities listed in the above-mentioned listing categories) with less onerous deadlines for the notification to be made.

7.6 We have received feedback on the reporting frequency of the requirement set out in UKLR 9.6.6R. A small number of respondents provided feedback on this requirement in response to our Consultation Paper (CP23/31: Primary Markets Effectiveness Review: Feedback to CP23/10 and detailed proposals for listing rules reforms), which we did not take forward at the time. Subsequently, we have also received feedback during our multi-firm review looking at Share Buybacks.

7.7 The feedback received indicates that, while market participants value the information which is required to be disclosed on the purchase under UKLR 9.6.6R, the requirement to report '... as soon as possible, and in any event, by no later than 7.30 am on the business day following the calendar day in which the purchase occurred' is onerous for issuers. It also goes beyond the deadline set out in MAR and the relevant technical standards (ie, the Buy-back and Stabilisation Regulation), and is therefore unnecessary.

7.8 Specifically, if the transactions are part of a share buy-back programme, and the issuer chooses to rely on article 5 of MAR (the MAR 'safe harbour') which includes disclosing information on the transactions in accordance with article 2 of the Buy-back and Stabilisation Regulation, the deadline for the notification under article 2(3) is '...no later than by the end of the seventh daily market session following the date of execution'.

7.9 This creates duplication if a notification is made on the same transaction under both UKLR 9.6.6R and article 2(3) of the Buy-back and Stabilisation Regulation, whereas article 2(3) sets a longer deadline for the notification to be made.

7.10 This overlap in rules dealing with purchases of own shares, combined with the varying deadlines and the fact that issuers in different listing categories (ie, other than the commercial companies and closed-ended investment fund categories) do not have to comply with UKLR 9.6.6R or UKLR 9.7.2R, creates disparity for when market participants can expect to receive information on the purchase of own shares.

7.11 Also, Disclosure Guidance and Transparency Rules sourcebook (DTR) 5.5.1R (which implemented article 14 of the Transparency Directive) requires an issuer to make public the percentage of voting rights attributable to the number of its own shares that it holds as soon as possible but not later than 4 trading days following an acquisition or disposal of such shares where that percentage reaches, exceeds or falls below the thresholds of 5% or 10% of the voting rights. It is possible that a transaction which is caught by either of UKLR 9.6.6R or UKLR 9.7.2R might also cause a notification to be required under DTR 5.5.1R.

Summary of proposals

7.12 We are proposing to amend the notification deadline in UKLR 9.6.6R and are seeking views more broadly on the proportionality and usefulness of the notification requirements under UKLR 9.6.6R, UKLR 9.7.2R and UKLR 9.7.3R.

7.13 Taking into account the feedback, we consider it proportionate to align the UKLR 9.6.6R deadline for notification of purchases of own equity shares with that set out in article 2(3) of the Buy-back and Stabilisation Regulation. We are therefore consulting on amending UKLR 9.6.6R for this purpose. The change would mean that listed companies would no longer be required to notify 'as soon as possible' with a next business day backstop. They would instead have 7 days calculated by reference to 'daily market sessions'. The new notification deadline would apply to all purchases in scope of UKLR 9.6.6R, not just those made pursuant to a share buy-back programme or where the issuer was relying on the MAR safe harbour.

7.14 We would expect this change to reduce the number and frequency of notifications made under UKLR 9.6.6R when the listed company undertakes a share buy-back programme, potentially reducing its compliance costs. However, issuers could continue to notify the market of its purchases earlier and more frequently if they chose to do so.

7.15 We are not proposing to change the nature of the information to be disclosed under UKLR 9.6.6R. For example, while issuers might choose to include purchases over a week in a single notification, we would not now expect them to simply aggregate the number of shares purchased into a single weekly figure in place of the level of detail on daily transactions described in UKLR 9.6.6R.

7.16 We have proposed using the same terminology for the deadline as is used in article 2(3) to simplify matters by avoiding different expressions to describe the same concepts. We would be interested in views on whether this is helpful or requires further explanation, and how current market practice interprets 'daily market sessions' under article 2(3).

7.17 We recognise that retaining UKLR 9.6.6R (even with the amendments proposed in this consultation), UKLR 9.7.2R and UKLR 9.7.3R maintains regulatory friction for a subset of issuers that isn't imposed on issuers with equity shares or other securities listed in different listing categories. However, we haven't heard any broader concerns about the proportionality and usefulness of these rules and, in our view, they provide relevant information to the market with a clear framework for disclosure. However, we would be keen to hear stakeholders' views on this, and subject to feedback may consider amending our rules further to reduce regulatory friction.

7.18 We have also considered whether to amend the deadline in UKLR 9.7.3R either to track the proposed change to UKLR 9.6.6R for consistency or to align with DTR 5.5.1R instead. It could otherwise seem unduly onerous to require, for example, that the issuer notifies buybacks of securities that are convertible into the listed class on a tighter deadline than buy-backs of shares of the listed class. We have not included this change in the draft instrument as we would welcome feedback in the first instance on whether aligning the deadline in UKLR 9.7.3R to track the proposed change to UKLR 9.6.6R or an alternative deadline would be beneficial or not, and the reasons why. We may make the change if we receive sufficient evidence to do so.

Question 7.1: **Do you agree we should amend UKLR 9.6.6R so that the deadline for making a notification aligns with the deadline set out in article 2(3) of the Buy-back and Stabilisation Regulation and is expressed in the same way? Yes/no. Please explain your reasons.**

Question 7.2: **Do you consider it would be beneficial or not to amend the deadline in UKLR 9.7.3R to reflect the amended deadline proposed for UKLR 9.6.6R? Yes/no. Please explain your reasons and whether you consider that an alternative deadline would be appropriate and why.**

Question 7.3: **What are your views on the proportionality and usefulness of UKLR 9.6.6R (including as proposed to be amended in this consultation), UKLR 9.7.2R and UKLR 9.7.3R, including whether they should be retained? Please explain your reasons.**

Rule Review Framework

7.19 The FCA's Rule Review Framework states that while we will generally monitor key metrics of new rules, this is not a requirement where it would be disproportionate or where the new rule relates to a minor policy or rule change with minimal impact. Due to the nature of the changes proposed here, we are satisfied that the proposed amendments are exempt from the requirement to be monitored under the Framework.

Cost benefit analysis

7.20 Section 138I(2)(a) of 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. We consider the changes proposed in this chapter are not likely to result in cost increases or that any increases will be of minimal significance as the proposed amendments will extend the deadline for issuers to notify share purchase transactions, thereby potentially reducing costs for the company. We consider therefore that no CBA is required.

Impact on mutual societies

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

Compatibility statement

7.22 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 (so far as reasonably possible) the secondary international competitiveness and growth objective. Further, we must promote effective competition when advancing our other operational objectives (section 1B(4) of FSMA), and have regard to the regulatory principles in section 3B of FSMA and the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006, the Regulators' Compliance Code and the Treasury's recommendations on economic policy (section 1JA of FSMA).

7.23 We are satisfied that the proposed amendments are compatible with our objectives and other legal obligations. 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. We are also satisfied that the proposed amendments are compatible with the FCA's secondary international competitiveness and growth objective.

Equality and diversity

7.24 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). In Northern Ireland, the Equality Act is not enacted but other anti-discrimination legislation applies.

7.25 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.

Chapter 8

Amendments to implement the Berne Financial Services Agreement (BFSA)

Introduction

8.1 The Berne Financial Services Agreement (BFSA) or 'the Agreement' seeks to further support cross-border financial services trade between both the UK and Switzerland, including facilitating market access in certain areas. The Agreement was signed on 21 December 2023.

8.2 The Agreement will only enter into force once the UK and Switzerland have both completed their domestic procedures and informed each other (ratification). The Agreement is expected to enter into force on 1 January 2026.

8.3 Additionally, as part of the implementation of the Agreement, HM Treasury (the Treasury) has laid the Financial Services and Markets Act 2023 (Mutual Recognition Agreement) (Switzerland) Regulations 2025 (the MRA Regulations) in draft before Parliament and the Treasury has made the OTC Derivatives Risk Mitigation and Central Counterparties (Equivalence) (Switzerland) Regulations 2025. The PRA intends to consult on any changes related to the Agreement to its rules in October.

8.4 The Agreement covers mainly wholesale financial services sectors:

- insurance
- asset management
- banking
- financial market infrastructures
- the provision of investment services to certain categories of clients including high-net-worth individuals

8.5 In the financial services sectors (asset management, banking and trading venues) where the UK and Switzerland already have liberalised access under their respective domestic law, the Agreement enhances regulatory cooperation. For central counterparties (CCPs), the Agreement embeds new regulatory recognition decisions from both parties, and the Agreement enables counterparties to over-the-counter derivatives contracts the choice to comply with either UK or Swiss rules on risk mitigation requirements (Annex 3B of the Agreement).

Insurance

8.6 Annex 4 of the Agreement provides for UK insurance firms and intermediaries to be able to supply a number of wholesale lines of business into Switzerland. UK insurance

firms[1] are relieved of the obligation to apply Switzerland's authorisation and prudential measures (for these purposes 'prudential rules' is wider than rules relating to capital requirements, eg risk control and governance requirements, dispute resolution requirements and reporting requirements) for financial service suppliers. That means that those insurers are not required to be authorised in Switzerland and are not required to comply with the prudential rules covered by the Agreement.

8.7 UK insurers are still required to comply with the relevant UK laws, including FCA and PRA rules. The Agreement also introduces commitments that will grant better access for UK insurance brokers in Switzerland. UK insurance brokers will be exempt from a new Swiss law's requirements on non-Swiss insurance brokers to localise in Switzerland.

Investment services

8.8 Under Annex 5 of the Agreement, Swiss investment firms are permitted to provide certain investment services to certain categories of client (including to sophisticated high-net-worth individuals) in the UK on a cross-border basis from Switzerland, provided they meet the eligibility requirements set out in Annex 5 of the Agreement. These requirements include being listed on the register maintained by the FCA for the purposes of the Agreement (the BFSA Register).

8.9 Under Annex 5 of the Agreement, the UK will defer to the authorisation and prudential measures of Switzerland that apply solely to financial services suppliers. As a result, registered Swiss firms are not required to obtain separate UK authorisation for regulated activities covered by the Agreement, nor are they required to comply with UK prudential rules within the scope of the Agreement. For these purposes, 'prudential rules' is defined broadly and extends beyond capital requirements (eg, risk control and governance requirements, dispute resolution requirements and reporting requirements).

8.10 Additionally, under Annex 5 of the Agreement, UK client advisers are entitled to provide certain investment services to certain categories of client in Switzerland, provided they meet the eligibility requirements specified in the Agreement.

8.11 The MRA Regulations require the FCA to establish the BFSA register, and the regulations amend the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO) to provide an exclusion for Swiss investment firms carrying on activities under Annex 5 of the Agreement. The effect of the exclusion is that a person who is exercising rights under Annex 5 of the Agreement does not require authorisation for the purpose of carrying on regulated activities in the UK to the extent that that person is exercising rights under the Agreement.

8.12 As explained above, Swiss investment firms operating under the Agreement will not need to be authorised by the FCA when doing so. That in turn means that the majority of the rules in the FCA Handbook will not apply to such firms when they are relying on the Agreement (as the FCA Handbook generally applies to authorised firms). However,

1 **Footnote:** as noted in the QCP Addendum published on the FCA's website on 30 September 2025 (www.fca.org.uk/publications/consultation-papers/cp25-24-quarterly-consultation-paper-no-49), we are proposing an amendment to BFSAG 2.1.1G to clarify how deference applies to untied insurance intermediaries and, accordingly, the previous reference to 'intermediaries' in this sentence has been removed from the current online version of the QCP and should be disregarded in the original version of the QCP.

where a Swiss investment firm is authorised by the FCA to carry on some activities (eg, activities not covered by the Agreement) but is also carrying on activities under the Agreement, then the firm will still be subject to the FCA Handbook for those activities which it is authorised for. It is therefore necessary to disapply certain provisions of the FCA Handbook where firms are relying on the Agreement to give effect to the deference arrangements.

8.13 We are proposing amendments to the FCA's Handbook and guidance provisions in other related sourcebooks to give effect to the requirements of the Agreement.

Summary of proposals

General Provisions sourcebook (GEN)

8.14 We propose amending the General Provisions sourcebook (GEN) to give effect to the Agreement.

8.15 First, we propose to give effect to the deference arrangements for Swiss investment services firms providing services in the UK under Annex 5 of the Agreement by including a new FCA Handbook-wide rule providing that a person will not be subject to any FCA Handbook provisions where it would be contrary to the UK's obligations under the Agreement.

8.16 Second, we propose providing guidance on the effect of the rule mentioned above. The proposed guidance explains that the practical effect of the rule is to disapply certain Handbook provisions to authorised firms providing services under Annex 5 of the Agreement and sets out a list of provisions disapplied. That includes any FCA Handbook provisions made under the designated activities powers of Financial Services and Markets Act 2000 (FSMA) (sections 71N and 71O) unless there is a contrary intention indicated.

Question 8.1: **Do you have any comments on our proposed amendments to GEN that seek to give effect to the Agreement, including the clarification of which Handbook provisions do not apply?**

Conduct of Business sourcebook (COBS)

8.17 We are proposing 2 sets of amendments to the Conduct of Business sourcebook (COBS). The first set of amendments relates to product intervention rules.

8.18 The Agreement provides an exception from deference for product intervention measures. We are proposing to apply the product intervention measures under COBS 22.4 to COBS 22.6 to Swiss investment firms exercising rights under Annex 5 of the Agreement. The provisions in question provide protections in relation to specific consumer protection risks. The modifications would leave Swiss firms in an equivalent

position to a firm operating in the UK, ensuring proportionate consumer protection for UK investors and equal levels of access for UK and Swiss firms.

8.19 The second set of amendments implement Annex 5, Section IX. paragraph B.2 of the Agreement. That provision requires UK firms providing investment services into Switzerland through client advisers under Annex 5 of the Agreement to provide certain disclosures to their clients before commencing the supply of services. In particular, the provision requires the firm to provide a disclosure document with the statement that:

- the firm is incorporated or formed under UK law;
- the firm is authorised and supervised by the PRA and/or FCA (as appropriate);
- the duty to register as a client adviser in relation to article 28, paragraph 1 of the Swiss Financial Services Act (FinSA) is disapplied in accordance with Annex 5 of the Agreement; and
- (if required) information relating to the affiliation of the supplier to an ombudsman in accordance with article 77 of FinSA.

8.20 We propose to amend COBS to implement these requirements.

Question 8.2: Do you have any comments on our proposals to amend COBS?

Insurance: Conduct of Business sourcebook (ICOBS)

8.21 Annex 4, Section VII. paragraphs 1 to 2 of the Agreement requires UK insurers providing insurance services into Switzerland under the Agreement to provide certain pre-contractual and ad-hoc disclosures to their clients.

8.22 Before concluding a contract with clients, Annex 4, Section VII. paragraph 1.a requires insurers to provide:

- a written disclosure setting out their name and address;
- details of the relevant UK supervisory authorities;
- details of Swiss tax liability of the client in relation to premium payments;
- contact details of the insurer; and
- details of the jurisdiction and applicable law of the contract.

8.23 In the same circumstances, Annex 4, Section VII. paragraph 1.b requires insurance intermediaries to provide written disclosure of the details of Swiss tax liability of the client in relation to premium payments and details of the jurisdiction and applicable law of the contract.

8.24 Annex 4, Section VII. paragraph 2 requires insurers and insurance intermediaries to provide, on request, their client with a full copy of the file of the client and other documents within the scope of their business relationship, within 30 days.

8.25 We propose amending the Insurance: Conduct of Business Sourcebook to implement these requirements.

Question 8.3: Do you have any comments on our proposals to amend ICOBS to implement disclosure requirements for UK insurance firms?

Supervision manual (SUP)

8.26 Annex 5, Section IX. paragraph B.1 of the Agreement requires UK firms providing investment services into Switzerland through client advisers under Annex 5 of the Agreement to notify the FCA of its intention to do so before commencing that supply.

8.27 We propose amending Section 15.8 of the Supervision manual (SUP) to implement this requirement.

Question 8.4: Do you have any comments on our proposal to amend SUP 15.8 to implement this requirement?

Berne Financial Services Agreement Guide (BFSAG)

8.28 We propose including a new Guide (Berne Financial Services Agreement Guide (BFSAG) for firms who are exercising market access rights under the Agreement. This will provide background details to the Agreement and set out how the FCA Handbook applies to firms making use of the Agreement.

Question 8.5: Do you have any comments on our proposed inclusion of the new BFSAG?

Perimeter Guidance manual (PERG)

8.29 We propose amending the Perimeter Guidance manual (PERG) to provide guidance on the effect of the amendments made to the RAO and the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 by the MRA Regulations.

Question 8.6: Do you have any comments on the amendments to PERG which provide guidance on amendments made by the MRA regulations?

Rule Review Framework

8.30 The FCA's Rule Review Framework states that while we will generally monitor key metrics of new rules, this is not a requirement where it would be disproportionate or where the new rule relates to a minor policy or rule change with minimal impact. Due to the nature

of the changes proposed here, we are satisfied that the proposed amendments are exempt from the requirement to be monitored under the Framework.

Cost benefit analysis

8.31 Section 138I(2)(a) of 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.

8.32 Having assessed the individual changes proposed in this chapter, we do not foresee a significant cost impact on firms as a result of the proposed revisions to the FCA Handbook. Our proposals are designed to ensure that the FCA can implement the requirements in the Agreement, which will provide firms with new market access, reduced regulatory burdens and stability enhancing commitments.

8.33 Please note, it is proposed that BFSA activity will not be subject to fees. For further details on fees, please see the Fees Policy Consultation Paper that will be published in November.

Impact on mutual societies

8.34 Section 138K(2) of FSMA requires the FCA to provide an opinion on whether proposed rules will have an impact on mutual societies which is significantly different from the impact on other authorised persons. We conclude that the proposed amendments will not have a significant impact on mutual societies.

Compatibility statement

8.35 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 (so far as reasonably possible) the secondary international competitiveness and growth objective. Further, we must promote effective competition when advancing our other operational objectives (section 1B(4) of FSMA) and have regard to the regulatory principles in section 3B of FSMA and the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006, the Regulators' Compliance Code and the Treasury's recommendations on economic policy (section 1JA of FSMA).

8.36 We are satisfied that the proposed amendments are compatible with our objectives and other legal obligations.

8.37 By adding the provisions to implement the Agreement into the FCA Handbook, our proposals give clarity to firms helping relevant markets function well, as well as supporting the FCA's operational objective of effective competition by lowering barriers to entry for Swiss investment firms into the UK market. By maintaining regulatory standards under the Agreement, the proposal implements the principles of the

Agreement that advance the FCA's primary objectives of consumer protection and market integrity.

8.38 In addition, the proposed amendments also support our secondary international growth and competitiveness objective by creating new market access for UK insurance firms in Switzerland. This supports the FCA's growth objective by increasing export opportunities for UK insurance firms and enhancing the attractiveness of being based in the UK.

8.39 The Agreement is the first of its kind as it establishes a new standard for supporting cross-border trade in financial services. The scope of the Agreement stretches wider than previous mutual recognition agreements seen in the past and can act as the blueprint for future international financial services agreements.

8.40 In preparing the proposals set out above, the FCA has had regard to the regulatory principles in section 3B of FSMA (as amended by the Financial Services and Markets Act 2023 (FSMA 2023)) and they support the desirability of sustainable growth in the UK economy and the principles that conducting the activities under the Agreement are proportionate to the benefits.

Equality and diversity

8.41 We have considered the equality and diversity issues that may arise from the proposed amendments and have not identified any adverse impact 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).

8.42 We will continue to consider the equality and diversity implications of the proposals which will be reviewed during the consultation period and revisited when publishing the final rules (if required). In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

Chapter 9

Contactless payment limits - Proposed technical standards

Introduction

9.1 Last year, the Prime Minister sent a letter to regulators asking them to improve regulation in order to support economic growth. In January 2025, we responded to the Prime Minister's letter and set out the actions we were taking to support growth, including considering the removal of the regulatory contactless payment limits. In March 2025, we published an Engagement Paper seeking feedback on the different ways we could approach contactless limits.

9.2 After reviewing the feedback received (see 'Feedback on Engagement Paper'), we considered that firms have clear incentives to minimise contactless payment fraud and should have more choices available to them in how they achieve that. As part of our work to become a smarter regulator, we believe that this is an area where overly restrictive regulations are not necessary to deliver good outcomes. As a result, we are now consulting on a new regulatory approach which will give greater flexibility to banks and other payment service providers (PSPs) to determine their approach to contactless payments. This additional flexibility could foster innovation and thereby support growth, while still requiring PSPs to maintain low levels of risk.

9.3 Currently, the FCA sets regulatory limits on the value and number of contactless payments that can be made before requiring authentication, typically via a personal identification number (PIN) entry. These requirements are set out in an exemption to the Strong Customer Authentication (SCA) requirements in the Payment Services Regulations 2017 (PSRs), within the Strong Customer Authentication Regulatory Technical Standards (SCA-RTS) (see 'Current regulatory framework').

9.4 We propose to replace these regulatory limits with a new exemption, which would allow PSPs to process contactless payments without asking the payer to authenticate the payment, where PSPs identify the risk of a transaction to be low (see 'Summary of proposals'). It is important to note that under the proposed approach, and subject to compliance with all requirements under the rule, PSPs will be able to set their own contactless limits, including at current levels. We will continue to monitor and supervise firms to ensure they are achieving good outcomes, such as low levels of fraud, under the new exemption.

Current regulatory framework

9.5 Retail payments, including for in-person and online transactions, are regulated under the PSRs. These place certain rights and obligations on PSPs and payment service users (payers and payees, including both consumers and business users). There are a number of protections in the PSRs for payment service users, including protections to prevent

unauthorised payments. For example, there are requirements on firms on how they should authenticate payments and reimburse customers for unauthorised payments.

9.6 Regulation 100 of the PSRs requires PSPs to apply SCA where payers make electronic payments, access payment accounts online or carry out any action through a remote channel (eg via the internet) which may carry a risk of fraud. SCA is a form of two-factor authentication which requires a payment to be verified using at least 2 independent elements from the following categories:

- **Knowledge:** something the customer knows (eg a password or PIN)
- **Possession:** something only the customer holds (eg a mobile phone or card)
- **Inherence:** something inherent to the customer (eg a fingerprint or face scan)

9.7 For in-person payments at a point of sale (eg in a shop), SCA is typically carried out when somebody uses a payment card and enters their PIN. However, SCA is also increasingly being applied through a digital wallet on a mobile phone or other device, with authentication taking place on the device itself (eg through a scan of fingerprints or facial features).

9.8 Regulation 100, combined with Regulation 106A, allows us to specify exemptions from the requirement to carry out SCA in the SCA-RTS, subject to certain considerations. There are several exemptions which the payer's PSP may use. One of these exemptions, in Article 11 of the SCA-RTS (Contactless payments at point of sale), applies to contactless payments at points of sale. Other exemptions include payments at unattended terminals for transport fares and parking fees (Article 12 of the SCA-RTS (Unattended terminals for transport fares and parking fees), which is frequently used for public transport fares. There are also other exemptions for remote and online transactions.

9.9 The existing contactless payments exemption in Article 11 sets separate limits on contactless payments:

- £100 for any single contactless transaction; and
- a cumulative total of £300 in contactless transactions or no more than 5 consecutive contactless transactions since the last application of SCA was done.

9.10 Individual PSPs have discretion to set their own limits within these regulatory limits and they generally adopt limits set at an industry-wide level. Therefore, changes to the regulatory limits do not automatically change the limits set by industry and PSPs. At present, the industry limits (and therefore most PSPs' limits) align with the regulatory limits. Some major banks and PSPs also enable their customers to set lower individual personal limits at their discretion.

9.11 There are separate requirements in the PSRs in relation to liability for unauthorised payments. If an unauthorised payment has been made, then the PSP is liable to reimburse their payment service user (eg a cardholder) for their losses incurred, subject to certain exceptions and conditions (eg if the PSP can show that the customer acted fraudulently). Further detail on liability can be found in the PSRs and our guidance.

9.12 The Consumer Duty, which is part of our wider regulatory framework, requires all firms (including PSPs) to act to deliver good outcomes for retail customers. It sets the standard of care that firms should give to customers in retail financial markets. The Consumer Duty has rules and guidance covering key aspects of the firm-customer relationship. For example, it requires firms to ensure that the design of the product or service meets the needs, characteristics and objectives of their target consumer market. Our guidance on the Consumer Duty gives more detail.

Feedback on Engagement Paper

9.13 In this section, we summarise the feedback received to the questions posed in our Engagement Paper. A full list of the questions asked can be found on pages 16 to 18 of the Engagement Paper.

9.14 During our engagement period, we held roundtable discussions with key stakeholders to understand their views on the options outlined in the Engagement Paper. These discussions included participants from PSPs, industry bodies, consumer organisations, and the wider payments, open banking and retail sectors. We also received written feedback from over 1,250 members of the public, alongside 30 responses from a wide range of corporate stakeholders, including the Financial Services Consumer Panel. We want to thank all the respondents for providing their feedback.

9.15 In the Engagement Paper, we presented 5 options for stakeholders to consider how we could approach contactless limits in the future. These options included:

- introducing a new risk-based exemption for in-person transactions
- amending the limits in the existing contactless payments exemption
- relying on the Consumer Duty following legislative change
- no change – keep things as they are
- any alternative options not raised in the paper

Introducing a new risk-based exemption for in-person transactions

9.16 Where respondents were supportive of introducing a new risk-based exemption for in-person transactions, they said that it could lead to benefits over our current regulatory approach. These benefits include:

- reduced fraud through better controls on and within firms
- ability for firms to set contactless limits in line with their own risk appetite
- rewarding firms that can maintain low levels of fraud through increased flexibility
- fostering technological innovation (eg fraud detection and prevention systems)

9.17 Of the respondents who agreed that a risk-based exemption could be a viable option, there were strong views on how such an exemption should be designed.

- Most respondents said that a new risk-based exemption should be designed simply and not impose additional burden or complexity on firms, such as by requiring additional reporting.
- Several respondents said that we should either set no reference fraud rate or a 'soft' reference fraud rate to ensure that smaller firms and new entrants could access the exemption.

9.18 Other respondents said that a risk-based exemption could create additional risks, particularly depending on the exemption's design. These risks include:

- additional costs and burden for firms (eg reporting requirements)
- smaller firms and new entrants may not be able to apply the exemption due to a lack of resources
- inconsistent approaches to contactless limits, causing inconvenience and reducing understanding for consumers and retailers

Amending the limits in the existing contactless payments exemption

9.19 In our Engagement Paper, we outlined a number of ways that we could amend the existing contactless payments exemption, including by:

- removing the contactless limits altogether
- amending the single limit
- amending or removing the cumulative and consecutive limits

Removing the contactless limits altogether

9.20 A few respondents said that removing the regulatory contactless limits altogether could lead to benefits over our current regulatory approach. These benefits include:

- greater responsiveness of contactless limits to changing consumer needs
- reduced firm burden
- making industry responsible for setting the contactless limits aligns with the approach taken in other countries (eg Canada, Australia and New Zealand)

9.21 However, most respondents said that removing the regulatory contactless limits altogether could lead to additional risks, such as:

- increased fraud
- reduced consumer protection, particularly for consumers with characteristics of vulnerability
- diminished consumer understanding and confidence in contactless payments

9.22 Where respondents said that removing the regulatory contactless limits could be a viable option, there were differences of opinion on whether some controls on contactless limits should still be retained or not.

9.23 Most respondents said that industry should coordinate a single limit to retain a consistent user experience and ensure consumer confidence. However, respondents held different views on whether coordination should be led by an industry body or by card schemes(eg Visa and Mastercard). Respondents who preferred an industry body to coordinate a single limit said that this would best ensure that a wide range of views are considered. Where card schemes were preferred, it was said that they would be best suited for coordinating contactless limits as they already fulfil this role in other countries.

9.24 At least 1 respondent said that individual PSPs should have discretion over their own contactless limits as industry-wide coordination of contactless limits could inhibit competition and innovation.

9.25 However, while these respondents considered that industry should have flexibility to coordinate and set contactless limits, most of them also agreed that the values of the existing contactless limits are currently set at appropriate levels. Accordingly, if allowed to set their own contactless limits, most of these respondents would not make material amendments to the existing values of the contactless limits in the short term, particularly in relation to the single limit.

Amending the single limit

9.26 A few respondents said that amending the existing single limit could lead to benefits over our current regulatory approach. These benefits include:

- reduced payment friction (ie quicker and easier transactions)
- adjusting the single limit to address recent and expected inflation
- providing greater freedom to consumers

9.27 Where respondents agreed that amending the single limit would be their preferred option, most said that the limit should be amended to be within the range of £150 to £250. Respondents said that this would reflect the impact of recent and expected inflation while retaining strong fraud protection.

Amend or remove the cumulative/consecutive limits

9.28 While members of the public had less awareness of the cumulative and consecutive limits compared to the single limit, they were broadly supportive of keeping the cumulative and consecutive limits to protect consumers from fraud, particularly consumers with characteristics of vulnerability.

9.29 Most industry respondents were also supportive of keeping the cumulative and consecutive contactless limits. However, some said that at least 1 of these limits could either be amended or removed. Where respondents held this view:

- some said that we could adjust the cumulative limit in proportion to any increase to the single limit or amend it to a value between £450 and £600.
- some said that we could amend the consecutive limit to between 8 and 10 transactions to reduce payment friction while retaining strong fraud protection.
- a few said that we could remove both limits as most firms conduct transaction risk analysis in addition to their regulatory requirements. These respondents said that transaction risk analysis is more effective for detecting and preventing fraud than cumulative and consecutive limits.

Relying on the Consumer Duty following legislative change

9.30 Where respondents referred to the Consumer Duty, most said that we should not rely upon it, as this could lead to disparity in how firms approach contactless limits, resulting in confusion and inconvenience. However, most respondents were supportive of the Consumer Duty being referred to within any guidance we provided.

No change – keep things as they are

9.31 Most public and corporate respondents said that they support keeping the existing contactless limits, particularly the £100 single limit. These stakeholders said that the existing single limit has benefits over the alternative options proposed. These include:

- the existing single limit covers the value of most in-person transactions
- providing for strong consumer understanding and confidence
- maintaining strong fraud protection

9.32 Where respondents said that we should keep the status quo, most said that their main concern was the risk of increased fraud. Additionally, respondents said that if fraud were to increase, then consumers in vulnerable circumstances would likely be disproportionately impacted.

9.33 In response to respondent concerns regarding increased fraud, we have undertaken analysis (see 'Cost benefit analysis') that indicates there is a low risk of increased fraud associated with our proposed changes to the contactless payments exemption. We note that PSPs have strong incentives to maintain low levels of fraud, especially given they are liable for reimbursement for unauthorised payments.

9.34 We recognise that certain consumers could be impacted by changes in this space more greatly than others. We have set out proposed guidance (see 'Summary of proposals') that outlines our expectation of firms to consider how their approach to contactless payments produce good outcomes for different groups of customers, particularly those with protected characteristics.

Any alternative options not raised in the Engagement Paper

9.35 From the submissions received, we did not identify any viable alternative policy options to the ones that we had already proposed in the Engagement Paper.

Feedback on other policy areas

9.36 We received feedback from some respondents on policy areas that were not directly about the regulatory contactless limits. These policy areas include:

- Many members of the public said that firms should enable their customers to adjust their individual personal contactless limits. Industry respondents broadly agreed that customers should have this functionality but said that this should not be a regulatory requirement, as smaller PSPs and new entrants would incur additional costs while most banks and larger PSPs already provide this functionality voluntarily to their customers.
- Online PIN was raised by some industry respondents as a technology that could enhance in-person payments. Online PIN is a verification method where the PIN is stored and verified online by the issuing PSP. This enables PIN entry following a contactless tap without requiring the insertion of a chip card into a terminal. Respondents said that online PIN could reduce friction, enhance fraud prevention, enable innovation and improve the interoperability of UK's payments infrastructure with other countries.
- Several industry respondents said that we should make wider reforms to the SCA-RTS beyond changing the contactless payments exemption to help accelerate the development of non-card-based in-person payments, such as account-to-account payment methods.

Summary of proposals

Response to feedback and proposal overview

9.37 We received a wide range of feedback on potential regulatory approaches, with respondents supporting a range of different options, from maintaining the existing policy as it is, to removing the regulatory contactless limits altogether.

9.38 When considering our preferred approach, we took into account the regulatory requirements and powers provided for by Regulations 100 and 106A of the PSRs, as well as our wider statutory objectives (see 'Compatibility statement'). We also considered alignment with the priorities in our FCA Strategy 2025-2030.

9.39 We propose replacing the current regulatory limits with a new exemption, which would allow PSPs to process contactless payments where they identify the risk of a payment transaction to be low. PSPs can still set or maintain contactless payment limits as they see fit in line with their business and customer needs and in compliance with regulation. We believe this better balances the requirements on the FCA in Regulation 106A to 'ensure an appropriate level of security for payment service users and payment service providers', while allowing 'for the development of user-friendly, accessible and innovative means of payment', such as contactless payments.

9.40 Our approach is designed to allow PSPs to take a risk-based approach to contactless payments, while also giving them greater flexibility to manage that risk, including though the ability to set their own contactless limits.

9.41 We note that a significant number of members of the public wrote in to support keeping the contactless limits at their current level, particularly expressing concerns around the potential impact on fraud. Our approach would enable PSPs to maintain contactless limits at their current levels, should they consider this appropriate to maintain a low level of risk. In our engagement, most PSPs did not express a desire to increase limits in the short term but were open to having more flexibility to set their own limits in the longer term. Under our proposed approach, PSPs would be able to respond to wider developments in prices and inflation over time and set higher limits where they identify that there is a low level of risk.

9.42 We recognise that consumers have a wide range of financial objectives and needs. PSPs are already required to act to deliver good outcomes for their retail customers under the Consumer Duty, and our guidance on contactless payments will reiterate this. We recognise that many PSPs already enable their customers to set lower contactless limits or remove the contactless functionality entirely at their discretion, and that this could help deliver good outcomes for some consumers.

9.43 The proposed approach supports our FCA Strategy 2025-2030 in the following ways:

- **becoming a smarter regulator:** by rebalancing risk and taking a more outcomes-focussed approach to regulation, allowing PSPs to process contactless payments as long as they identify there is a low risk
- **supporting growth and innovation:** by enabling PSPs to optimise for secure and low friction payments
- **helping consumers navigate their financial lives:** by emphasising to firms the importance of considering the Consumer Duty and the needs of different customers when making contactless payments, including customers with characteristics of vulnerability
- **fighting financial crime:** by requiring firms to apply SCA where a transaction has been identified as posing a higher risk

Amendments to the SCA-RTS

9.44 We propose to amend the existing exemption by replacing the current regulatory approach of requiring PSPs to implement payment limits (including single, cumulative and consecutive payment limits) with a new risk-based exemption for contactless payments. The amended Article 11 will read as follows:

9.45 'Subject to compliance with Article 2, payment service providers shall be allowed not to apply strong customer authentication where the payer initiates a contactless electronic payment transaction identified by the payment service provider as posing a low level of risk.'

9.46 We are proposing to provide accompanying guidance on how PSPs can implement Article 11 (see 'Amendments to guidance'). The new exemption is subject to the requirement for firms to have transaction monitoring mechanisms in place, in compliance with Article 2 of the SCA-RTS (General authentication requirements). In addition to the risk-based factors outlined under Article 2, firms may consider additional factors which may help them identify whether a transaction poses a low risk. Such factors may include, for example, normal spending or behavioural pattern of the payer, or location of the payer.

9.47 While the new exemption does not specifically require PSPs to set limits on contactless payments, it still gives PSPs the flexibility to implement payment limits if they choose to in order to help manage risk. Under the new exemption, firms will be able to continue to use their existing contactless limits.

9.48 We would also keep the existing Article 12 of the SCA-RTS exemption which enables contactless payments at ticket gates and unattended parking terminals. This is because this is a well-understood and used exemption. There is no mechanism for entering a PIN at a ticket gate, and the harms in terms of payment friction are more significant than for other transactions. We will consider any wider changes to the SCA RTS in due course.

9.49 We also propose some minor consequential amendments to Chapter -1 of the SCA-RTS (Guidance).

9.50 The proposed updates to the technical standards are set out in **Appendix 7**.

Amendments to guidance

9.51 We propose updating our guidance on the PSRs (the Approach Document) to help firms use the new exemption. We propose making changes to Chapter 20 (Authentication) of the Approach Document to cover the following key areas:

- How PSPs may identify the level of transaction risk when using this exemption.
- How PSPs may manage risk, including by still setting contactless limits.
- How PSPs may comply with their Consumer Duty obligations. Allowing consumers to set their own individual personal limits is one way PSPs could deliver good outcomes under the Consumer Duty. PSPs should also consider the needs of different customers, particularly customers with characteristics of vulnerability.
- How PSPs may work to reduce their fraud rates, including by referring to industry intelligence and benchmarking performance.

9.52 We are also proposing to make consequential amendments to other parts of our Approach Document to remove references to the previous version of the Article 11 exemption and to separate out and correct the guidance on Article 16 of the SCA-RTS (Low-value transactions) from the guidance on Article 11.

9.53 The proposed updates to the Approach Document are set out in **Appendix 8**.

Implementation

9.54 Following the consultation period, we will consider all feedback and then publish a summary of the feedback received and details of any changes we will make to the technical standards. As part of this, we will explain if we end up making any changes to the consultation proposals outlined in this chapter.

9.55 Once the standards instrument has been made and the technical standards and guidance are published, we plan for any changes to come into force with immediate effect. Given that the proposals give PSPs greater flexibility in how they deliver contactless payments, and they also allow PSPs to continue applying their existing contactless limits, we consider that immediate commencement of the rules and guidance is appropriate. However, we want to hear from PSPs if they believe they would face any issues with this approach.

9.56 The proposed changes will apply to PSPs, including Gibraltar firms providing payment services in the UK, as well as firms operating under the Supervised Run-Off Regime set out in Schedule 3 of The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018.

Monitoring and supervision

9.57 We will monitor the new exemption through our regular supervisory and fraud reporting activities. We already collect data on the use of, and fraud associated with, different SCA exemptions through our REP017 Payments Fraud Report. We also collect and assess data gathered through our supervisory activities and external sources (eg UK Finance Annual Fraud Reports). We will use all this data to identify PSPs with high rates of fraud and prioritise them for supervisory engagement.

Question 9.1: **Do you agree with our proposal to amend Article 11 of the SCA-RTS (Contactless payments at point of sale) by replacing the current regulatory payment limits with the proposed new risk-based exemption?**

Question 9.2: **Do you agree with the proposed wording of Article 11, Chapter -1 of the SCA-RTS (Guidance) and the supporting guidance in the Approach Document?**

Question 9.3: **Do you agree with our proposal to implement changes without a transitional period?**

Rule Review Framework

9.58 The FCA's Rule Review Framework states that while we will generally monitor key metrics of new rules, this is not a requirement where it would be disproportionate or where the new rule relates to a minor policy or rule change with minimal impact. Due to the nature

of the changes proposed here, we are satisfied that the proposed amendments are exempt from the requirement to be monitored under the Framework.

Cost benefit analysis

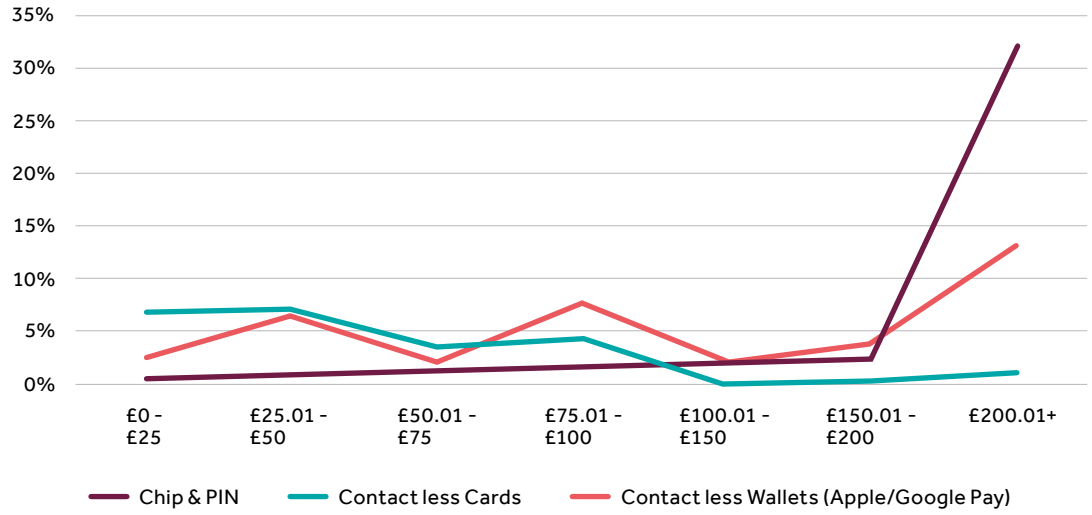
9.59 We are required under Section 138I of Financial Services and Markets Act 2000 (FSMA) to publish a cost benefit analysis (CBA), unless we consider that the proposals will not give rise to any increase in costs, or the increase in costs will be of minimal significance.

9.60 Under our proposals, PSPs will have greater flexibility and can continue to apply their existing contactless limits, meaning they are likely to only make changes if it is beneficial for them to do so. Therefore, we do not foresee a significant cost impact on PSPs or consumers, and a detailed CBA has not been prepared. We anticipate that most PSPs will continue to apply their existing limits in the short term for the following reasons:

- Responses to our Engagement Paper indicate there is little appetite to change contactless limits in the short term.
  - In responses to our Engagement Paper, 56% of industry respondents stated their preferred option is for no change to the contactless limits due to concerns of potential fraud increases, and only 20% of industry respondents were in favour of amending the contactless limits. Under our proposals, PSPs can continue to maintain their existing limits.
  - 78% of consumers that responded to our Engagement Paper said we should maintain the £100 single limit. We saw similar responses in a representative sample of consumers survey carried out by Opinium Research for UK Finance, where 76% of respondents said the single limit should be at £100 or lower.
  - Engagement with industry respondents suggests there is little appetite from industry for change to the single limit in the short term, but that PSPs would appreciate additional flexibility on the cumulative and consecutive limits.
- UK Finance's Annual Fraud Report 2025 estimates that contactless fraud rates are currently low at circa 1.3p per £100, compared to 6p per £100 for all unauthorised fraud. As PSPs are liable for any reimbursement for unauthorised contactless payments, if PSPs increased the limits and their fraud rate increased, their reimbursement costs would also rise. They are therefore incentivised to maintain low levels of contactless payments fraud.
- Figure 1 below shows card fraud values by value bands as a percentage of overall in-person card fraud for 2024 split by payment type. This shows that most fraud is occurring over the £100 single limit. Digital wallet payments, which are most comparable to contactless card payments, have no payment limits and the figure shows fraud is greater for digital wallets compared with contactless cards. This explains why firms without adequate controls may not wish to increase their contactless limits due to the risk of fraud potentially rising.

- There are implementation costs to changing contactless limits for PSPs and merchants, both technical but also in relation to educating consumers and businesses. One of the key technical issues is that many point of sale terminals in the UK are programmed to decline contactless payments at £100. Respondents have expressed limited appetite to bear implementation costs at the present time.
- Data from UK Finance found that 82% of contactless transactions are below £25 and over 90% contactless transactions are below £50. The spread of these transactions may be considered by firms in deciding whether to change their limits.

Figure 1: Card fraud value by value band (2024)



Source: UK Finance data

9.61 In the medium to longer term, PSPs may decide to make changes to their contactless limits, due to improvements in fraud detection technology or changes in market conditions (eg increase in prices). If PSPs do make changes, we expect there could be benefits to merchants and consumers if there was a reduction in the number of step-ups (ie PIN entries) without corresponding increases in fraud, leading to lower payment friction and greater time savings. This could be delivered through innovative improvements in fraud detection systems. As PSPs would be free to determine when to make these changes and will only do so when it is beneficial to them, we expect that the costs associated with changing their limits would provide equivalent benefits. PSPs will also still have to apply SCA on transactions when the risk is not low, so there should not be an increase in detriment to consumers and may be a reduction.

Risks and uncertainties

9.62 While we anticipate that firms are unlikely to make significant changes to their contactless limits in the short term, and that they will only do so if there is a low risk of increased fraud, some firms could increase or remove their limits, which could heighten the risk to consumers. We include a conservative model of the potential scale of this risk below and assess the likelihood of its occurrence. It is important to note that while firms could increase or remove their contactless limits, they would only be permitted to allow

contactless payments where they have identified a transaction to be low risk and they would still be liable for reimbursement.

9.63 We have estimated potential increases to fraud using conservative assumptions based on when the limits were raised in 2021, including assuming that PSPs and fraudsters would react the same if we raised the limits now as they did back then and that all firms would make changes to their limits. We estimate that if PSPs raised both their single and cumulative limits to £150 and £450 respectively, fraud could increase up to a maximum of £31.3m per year over 3 years, which would be a 131% increase on the current contactless fraud rate.

9.64 However, we consider it highly unlikely that this fraud scenario would be realised, for the reasons set out earlier. Additionally, this is presented as a worst-case scenario based on highly conservative assumptions. PSPs are liable for unauthorised payments under the PSRs and are therefore financially incentivised to prevent contactless fraud. The Consumer Duty also applies to firms and will mitigate some of the risks as firms are required to respond if there is evidence that their conduct is causing foreseeable harm to consumers. We expect firms to have robust assessment methods in place to identify, mitigate and reduce the risk of fraud.

9.65 The incentive structures in place and evidence from our engagement with industry and consumers further indicate that the risk of fraud increasing at this scale is very unlikely. In addition, there have been major changes to the payments market since 2021. Notably, the use of digital wallets, which are an alternative to contactless cards, have increased significantly. For example, data from UK Finance's UK Payment Markets Report 2025 found that 57% of UK adults reported being registered for at least one mobile payment service in 2024, a significant increase from 42% in 2023. Given these market developments, changes to contactless limits are unlikely to impact fraud in the same way as we saw in 2021.

Impact on mutual societies

9.66 Section 138K of FSMA requires us to give an opinion on whether the impact of a proposed rule on mutual societies is significantly different from the impact on other authorised persons. Credit unions are exempt persons for the purposes of the PSRs and therefore the SCA-RTS do not apply. Although exempt from the PSRs, under FCA Handbook rule, BCOBS 5.1.10A, credit unions must consider the risk of fraud and put in place appropriate procedures and technical safeguards to ensure that such payments can be carried out in a safe and secure manner. Under guidance BCOBS 5.1.10B, such firms may wish to consider the adoption of SCA as specified in the PSRs and the SCA-RTS.

9.67 We are satisfied that the impact of our proposals on other mutual societies where SCA requirements in the PSRs apply, such as to building societies, is not significantly different from that on other authorised firms.

Compatibility statement

9.68 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 (so far as reasonably possible) the secondary international competitiveness and growth objective. Further, we must promote effective competition when advancing our other operational objectives and have regard to the regulatory principles in section 3B of FSMA and the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006, the Regulators' Compliance Code and the Treasury's recommendations in their remit letter on economic policy (section 1JA of FSMA), and principles set out in Regulations 106(3) and 106A(2) of the PSRs.

Compatibility with operational and strategic objectives

9.69 We are satisfied that the proposed amendments are compatible with our objectives and other legal obligations, specifically Regulations 106(3) and 106A(2). We have considered the FCA's operational objectives when preparing our proposals, as well as our strategic objective of ensuring relevant markets function well. We set out below how our proposals are compatible with each objective. As outlined below, we do not consider that the proposals place any additional burdens or restrictions on firms. We are also satisfied that the proposed amendments are compatible with the FCA's secondary international competitiveness and growth objective, as the proposals give PSPs greater flexibility to innovate and optimise for secure and low friction payments.

Securing an appropriate degree of protection for consumers

9.70 Our proposals clearly set out that PSPs must continue to protect consumers when making payments. By giving PSPs greater flexibility on how and when contactless payments can be made, the proposals enable firms to develop innovative fraud detection and prevention products designed to protect consumers and deliver secure and low friction payments. The increased regulatory flexibility also allows PSPs to respond better to situations which could potentially cause consumer harm.

Protecting and enhancing the integrity of the UK financial system

9.71 By requiring PSPs to only deliver contactless payments if they are identified as posing a low risk, the proposals support safe and secure payments which help support the integrity of the UK's financial market. Further clarifying our expectations in our guidance should also strengthen market integrity and improve trust in the financial system by setting clearer expectations of how PSPs should apply limits on contactless payments.

Promoting effective competition in the interests of consumers

9.72 Our proposed changes intend to allow PSPs greater flexibility over how contactless payments can be made, helping to support innovation and competition in the sector.

Compatibility with Regulation 106(3) of the PSRs

9.73 In preparing these proposals, we have considered the regulatory principles set out in Regulation 106(3) of the PSRs. We set out below how our proposals are compatible with each principle. We also had regard to the regulatory principles set out in section 3B of FSMA and incorporated consideration of those principles below.

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

9.74 By providing greater clarity on our expectations in our guidance, we can reduce the need for the FCA to use our resources on encouraging better practice and instead prioritise our efforts on addressing poor behaviours. When the guidance is finalised and published, this should reduce the resources we use in responding to requests for guidance.

The principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction

9.75 Our proposals do not require PSPs to move away from the way the contactless limits currently work, and so we do not consider we are a placing additional burdens or restrictions on firms. Subject to compliance with regulation, PSPs will remain free to keep applying the current approach to contactless limits if they judge the benefits for them of doing so outweigh the potential disadvantages.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term, including in a way consistent with contributing towards achieving compliance by the Secretary of State with (i) section 1 (target for 2050) of the Climate Change Act 2008, and (ii) section 5 (environmental targets: effect) of the Environment Act 2021, where the FCA considers the exercise of its functions to be relevant to the making of such a contribution

9.76 By enabling PSPs to take a more flexible approach to contactless payments based on a low level of risk, our proposals support innovative fraud detection and prevention products. Innovation is a key driver of economic growth. We do not consider there is anything in our proposals that is inconsistent with the targets in the Climate Change Act and the Environment Act, or with our environmental considerations more generally.

The general principle that consumers should take responsibility for their own decisions

9.77 We do not propose any requirements that are inconsistent with this principle. Our guidance notes that firms can help deliver good consumer outcomes by enabling their customers to set their own limits.

The responsibilities of those who manage the affairs of persons subject to requirements imposed by or under these Regulations, including those affecting consumers, in relation to compliance with those requirements

9.78 Senior managers of PSPs will need to ensure compliance with the PSRs, SCA-RTS, and all other requirements in legislation applicable to payments and the relevant parts of our Handbook (as applicable).

The desirability where appropriate of the FCA exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under these Regulations

9.79 We do not believe our proposals discriminate against any business model or approach.

The desirability in appropriate cases of the FCA publishing information in relation to persons on whom requirements are imposed by or under these Regulations

9.80 Our proposals do not affect our ability to publish information in relation to persons on whom requirements are imposed.

The principle that the FCA should exercise its functions as transparently as possible

9.81 We believe that by publishing an Engagement Paper in March 2025 and also now consulting on proposals we are acting in accordance with this principle.

9.82 We are also choosing to set out detailed guidance in our Approach Document to help firms navigate the requirements and explain the application of the relevant rules.

Compatibility with Regulation 106A(2) of the PSRs

9.83 In preparing the proposals relating to the SCA-RTS set out in this chapter, we have considered the regulatory principles set out in Regulation 106A(2) of the PSRs. We set out below how our proposals are compatible with each principle.

Ensuring an appropriate level of security for payment service users and payment service providers through the adoption of effective and risk-based requirements

9.84 We believe the proposals comply with this principle on the basis that the amended exemption is based on identifying low risk transactions, and with reference to the transaction monitoring requirements in Article 2 of the SCA-RTS.

Ensuring the safety of payment service users' funds and personal data

9.85 We believe our proposals are aligned with this principle as payments will only be exempt from SCA where the risk of a transaction has been identified to be low.

Securing and maintaining fair competition among all payment service providers

9.86 We believe our proposals comply with this principle as the exemption is open to all PSPs who provide contactless payments. We are aware, however, that larger PSPs have more resources for better fraud analysis, which could place them at an advantage over smaller firms.

9.87 While some types of payments, such as open banking payments, may not currently have contactless payment functionality at point of sale, our exemption would be accessible to those types of payments if that functionality develops in the future.

Ensuring technology and business-model neutrality

9.88 We believe our proposals comply with this principle on the basis that they do not discriminate against any particular business model or approach.

Allowing for the development of user-friendly, accessible and innovative means of payment

9.89 We believe our proposals are aligned with this principle. Contactless payments are a user-friendly and accessible means of payment, and our proposed approach allows for their continued use and growth. Giving firms the flexibility to determine their own approach to contactless payments can also help support innovation, including through the development of better fraud detection and prevention technologies.

Equality and diversity

9.90 We have considered the equality and diversity issues that may arise from the proposed amendments. We have not identified any adverse impacts that the proposals in this chapter would have on 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). In Northern Ireland, the Equality Act is not enacted but other anti-discrimination legislation applies.

9.91 In response to our Engagement Paper, some respondents noted that changes to contactless limits could impact on some people with protected characteristics, namely those relating to age and disability, due to perceived additional vulnerability to fraud and different accessibility needs. Respondents noted that there could be negative impacts on some consumers, due to potential harms from fraud, but also positive impacts on others as contactless payments are generally easier to make, particularly for people with low vision or mobility issues. As set out in our CBA, we do not expect that our proposals will materially impact on fraud levels.

9.92 Under the Consumer Duty, we expect firms to be able to identify and take appropriate action where particular groups of customers (such as those with characteristics of vulnerability or those with protected characteristics under the Equality Act 2010) receive systematically poorer outcomes. We will reiterate through our guidance the importance of firms considering the Consumer Duty in relation to the impacts of contactless payments on different groups of customers, including those with protected characteristics. Our proposed guidance also highlights how firms could enable consumers to set their own individual personal limits to help deliver good outcomes.

9.93 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 and guidance. In the meantime, we welcome comments on any equality and diversity considerations respondents may wish to raise.

Annex 1

List of questions

Question 2.1: Do you agree with our proposal to extend the existing, general policies and procedures in DEPP relating to section 312F as it applies in the PISCES context?

Question 3.1: Do you support the proposal to remove the mutual society application form statutory declarations on all forms where this is not required by legislation?

Question 4.1: Do you agree with our proposal to reduce the frequency of Section E of RMAR? If not, please explain why.

Question 4.2: Do you agree with our proposal to reduce the frequency of Section G of RMAR? If not, please explain why.

Question 4.3: Do you agree with our proposal to reduce the frequency of Section M of RMAR? If not, please explain why.

Question 5.1: Do you agree with our proposed guidance on ESG 4.2.4R(2)(b), at ESG 4.2.7G?

Question 5.2: Do you agree with our proposed amendment to ESG 5.4.3R(1) and the insertion of ESG 5.4.3R(1A)?

Question 5.3: Do you agree with our proposed deletion of ESG 5.4.8R?

Question 5.4: Do you agree with our proposed amendment to ESG 5.5.15R?

Question 6.1: Do you agree that our proposed consequential amendments to the Handbook reflect the amendments made in the RAO?

Question 6.2: Do you agree with our proposed changes to PERG 13?

Question 7.1: Do you agree we should amend UKLR 9.6.6R so that the deadline for making a notification aligns with the deadline set out in article 2(3) of the Buy-back and Stabilisation Regulation and is expressed in the same way? Yes/no. Please explain your reasons.

Question 7.2: Do you consider it would be beneficial or not to amend the deadline in UKLR 9.7.3R to reflect the amended deadline proposed for UKLR 9.6.6R? Yes/no. Please explain your reasons and whether you consider that an alternative deadline would be appropriate and why.

Question 7.3: What are your views on the proportionality and usefulness of UKLR 9.6.6R (including as proposed to be amended in this consultation), UKLR 9.7.2R and UKLR 9.7.3R, including whether they should be retained? Please explain your reasons.

Question 8.1: Do you have any comments on our proposed amendments to GEN that seek to give effect to the Agreement, including the clarification of which Handbook provisions do not apply?

Question 8.2: Do you have any comments on our proposals to amend COBS?

Question 8.3: Do you have any comments on our proposals to amend ICOBS to implement disclosure requirements for UK insurance firms?

Question 8.4: Do you have any comments on our proposal to amend SUP 15.8 to implement this requirement?

Question 8.5: Do you have any comments on our proposed inclusion of the new BFSAG?

Question 8.6: Do you have any comments on the amendments to PERG which provide guidance on amendments made by the MRA regulations?

Question 9.1: Do you agree with our proposal to amend Article 11 of the SCA-RTS (Contactless payments at point of sale) by replacing the current regulatory payment limits with the proposed new risk-based exemption?

Question 9.2: Do you agree with the proposed wording of Article 11, Chapter -1 of the SCA-RTS (Guidance) and the supporting guidance in the Approach Document?

Question 9.3: Do you agree with our proposal to implement changes without a transitional period?

Annex 2

Abbreviations used in this paper

Abbreviation	Description
BFSA (or the Agreement)	Berne Financial Services Agreement
BFSAG	Berne Financial Services Agreement Guide
Buy-back and Stabilisation Regulation	The UK version of Commission Delegated Regulation (EU) 2016/1052
CBA	Cost Benefit Analysis
CCP	Central clearing counterparty
COBS	Conduct of Business sourcebook (COBS)
CP	Consultation Paper
DB	Defined benefit
DC	Defined contribution
DEPP	Decision Procedure and Penalties manual
DTR	Disclosure Guidance and Transparency Rules sourcebook
ESG	Environmental, Social, Governance sourcebook
EU	European Union
FinSA	Swiss Financial Services Act
FSMA	Financial Services and Markets Act 2000
FSMA 2023	Financial Services and Markets Act 2023
GDP	Gross Domestic Product
GEN	General Provisions sourcebook
ICOBS	Insurance: Conduct of Business sourcebook ICOBS

Abbreviation	Description
MAR	Market Abuse Regulation
MiFID	Markets in Financial Instrument Directive
MiFID Org Reg	Markets in Financial Instrument Directive Organisational Regulation
MRA Regulations	Financial Services and Markets Act 2023 (Mutual Recognition Agreement) (Switzerland) Regulations 2025
PERG	Perimeter Guidance manual
PII	Professional indemnity insurance
PIN	Personal identification number
PISCES	Private Intermittent Securities and Capital Exchange System
PISCES Regulations	Financial Services and Markets Act 2023 (Private Intermittent Securities and Capital Exchange System Sandbox) Regulations 2025
PS	Policy Statement
PSP	Payment service provider
PSRs	Payment Services Regulations 2017
RAO	Regulated Activities Order
RFCCBS	Registration Function under the Co-operative and Community Benefit Societies Act 2014 Guide
RIS	Regulatory Information Service
RMAR	Retail Mediation Activities Return
SCA	Strong Customer Authentication
SCA-RTS	Strong Customer Authentication Regulatory Technical Standards
SDR	Sustainability Disclosure Requirements
SI	Statutory Instrument
SM&CR	Senior Managers and Certification Regime
SUP	Supervision manual
TDC	Transforming Data Collection

Abbreviation	Description
Treasury/HMT	HM Treasury
UKLR	UK Listing Rules sourcebook

Appendix 1

PISCES application of DEPP's penalty policy

DECISION PROCEDURE AND PENALTIES MANUAL (AMENDMENT) INSTRUMENT 2025

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 139A (Power of the FCA to give guidance); and
(2) section 395 (The FCA' and PRA's procedures).

Commencement

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

Amendments to the Handbook

C. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with the Annex to this instrument.

Citation

D. This instrument may be cited as the Decision Procedure and Penalties Manual (Amendment) Instrument 2025.

By order of the Board
[*date*]

Annex

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Statutory notices and the allocation of decision making

…

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

…

The Financial Services and Markets Act 2023 (Private Intermittent Securities and Capital Exchange System Sandbox) Regulations 2025	Description	Handbook reference	Decision maker
Section 207(1) and 208(1) of the *Act* as applied by Part 1 of Schedule 1 to the Regulations	when the *FCA* is proposing or deciding to publish a statement or impose a financial penalty in respect of an *authorised person* or a *person* participating under regulation 5(1) (under section 205 or 206 of the *Act* as applied by Part 1 of Schedule 1 to the Regulations)*	The Pisces sourcebook	*RDC*
Section 312G(1) and 312H(1) of the *Act* as applied by Part 1 of Schedule 1 to the Regulations	when the *FCA* is proposing or deciding to take action against a recognised investment exchange by exercising the disciplinary powers conferred by sections 312E and 312F (as applied by Part 1 of Schedule 1 to the Regulations)	The Pisces sourcebook	*RDC*

…

Sch 4 Powers Exercised

Sch 4.1 G

The following powers and related provisions in or under the *Act* have been exercised by the *FCA* to make the statements of policy in *DEPP*:
…
Section 312J (Statement of policy) (including as applied by Part 1 of Schedule 1 to the *Pisces sandbox regulations*)
…

…

Appendix 2

Reporting data frequency change

DATA DECOMMISIONING (No 3) INSTRUMENT 2025

Powers exercised

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

(1) section 137A (The FCA's general rules); and
(2) section 137T (General supplementary powers).

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

Commencement

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

Amendments to the Handbook

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

Citation

E. This instrument may be cited as the Data Decommissioning (No 3) Instrument 2025.

By order of the Board
[*date*]

Annex

Amendments to the Supervision manual (SUP)

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

16 Reporting requirements

…

16.12 Integrated Regulatory Reporting

…

Regulated Activity Group 7

…

16.12.23A R The applicable reporting frequencies for *data items* referred to in *SUP* 16.12.22AR are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	Frequency				
	Non-SNI MIFIDPRU investment firm	*SNI MIFIDPRU investment firm*	*Investment firm group*	Annual regulated business revenue up to and including £5 million	Annual regulated business revenue over £5 million
…					
Section E RMAR	~~Half yearly~~ Annually	~~Half yearly~~ Annually	~~Half yearly~~ Annually	~~Half yearly~~ Annually	~~Quarterly~~ Annually
Section G RMAR	~~Half yearly~~ Annually	~~Half yearly~~ Annually	~~Half yearly~~ Annually	~~Half yearly~~ Annually	~~Half yearly~~ Annually
…					
Section M RMAR	~~Half yearly~~ Annually	~~Half yearly~~ Annually	~~Half yearly~~ Annually	~~Half yearly~~ Annually	~~Half yearly~~ Annually
…					

16.12.24 A R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.23AR, unless indicated otherwise.

Data item	Quarterly	Half yearly	Annual
…			
Section E RMAR	~~30 *business days*~~	~~30 *business days*~~	30 *business days*
Section G RMAR		~~30 *business days*~~	30 *business days*
…			
Section M RMAR		~~30 *business days*~~	30 *business days*
…			

…

Regulated Activity Group 9

…

16.12.28 A R The applicable *data items*, reporting frequencies and submission deadlines referred to in *SUP* 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of *data item*	***Data item* (note 1)**	**Frequency**		**Submission deadline**
		Annual regulated business revenue up to and including £5 million	**Annual regulated business revenue over £5 million**	
Home finance mediation activity and insurance distribution activity				

…				
Professional indemnity insurance (note 2)	Section E RMAR	~~Half yearly~~ Annually	~~Quarterly~~ Annually	30 *business days*
Training and Competence	Section G RMAR	~~Half yearly~~ Annually	~~Half yearly~~ Annually	30 *business days*
…				

…

Authorised professional firms

…

16.12.31 R Table of data items from an *authorised professional firm*

Report	Return (note 1)	Frequency (Note 4)	Due date
Adequate information relating to the following activities:	RMAR (Note 3)	~~Half yearly~~ Annually for sections E, G and M ~~(~~quarterly Quarterly for sections A to ~~E~~ D for larger *firms*, subject to Note 3 exemptions~~)~~ (note 2) Otherwise half-yearly	~~For half yearly report: 30 *business days* after period end For quarterly report: 30 *business days* after quarter end~~ 30 *business days* after reporting period ends
(1) *insurance distribution activity*;			
(2) *mortgage mediation activity*;			
(3) *retail investment activity*;			
(4) advising on, or arranging deals in, *packaged products*, or *managing investments* for *private customers* where these activities are the *authorised professional firm's* "main business" as determined by *IPRU(INV)* 2.1.2R(3)			

…			

…

Appendix 3

Minor amendments to the Sustainability Disclosure Requirements (SDR)

SUSTAINABILITY LABELLING AND DISCLOSURE OF SUSTAINABILITY-RELATED FINANCIAL INFORMATION (AMENDMENT) (No 2) INSTRUMENT 2025

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

(2) article 1(2) of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 (SI 2018/1253);

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

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

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

Commencement

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

Amendments to the Handbook

D. The Environmental, Social and Governance sourcebook (ESG) is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Sustainability Labelling and Disclosure of Sustainability-Related Financial Information (Amendment) (No 2) Instrument 2025.

By order of the Board
[*date*]

Annex

Amendments to the Environmental, Social and Governance sourcebook (ESG)

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

4 Sustainability labelling, naming and marketing

…

4.2 Criteria for applying sustainability labels

…

General criteria: general features of a sustainability product using a sustainability label

…

4.2.7 G In relation to *ESG* 4.2.4R(2)(b)~~, assets should be selected using a methodology or approach which~~:

(1) ~~is applied in a systematic way; and~~ assets should be selected using a methodology or approach which:

(a) is applied in a systematic way; and

(b) may be based on, or determined by, an authoritative body, industry practice or proprietary methodology for determining:

(i) the *sustainability characteristics* of a product's assets; and

(ii) the ability of those assets to contribute to a positive environmental or social outcome.

(2) ~~may be based on, or determined by, an authoritative body, industry practice or proprietary methodology for determining:~~ a *manager* may, with respect to a *sustainability product* that is an index-tracking product, invest in assets with reference to a robust, evidence-based standard that is an absolute measure of environmental and/or social sustainability, as applicable under *ESG* 4.2.13R, *ESG* 4.2.14R and *ESG* 4.2.17R(1).

~~(a) the *sustainability characteristics* of a product's assets; and~~

~~(b) the ability of those assets to contribute to a positive environmental or social outcome.~~

…

5 Disclosure of sustainability-related information

…

5.4 Preparation of sustainability reports

…

5.4.3 R A *manager* must meet the following requirements in relation to the timing and publication of Part B of a *public product-level sustainability report* and a *sustainability entity report*:

(1) A *manager* must, subject to *ESG* 5.4.3R(1A), produce and publish Part B of a *public product-level sustainability report* annually~~,~~ covering a reporting period of 12 *months*, and must publish the first report within 16 *months* after the *manager* first starts to use a *sustainability label* or uses one or more of the terms listed in *ESG* 4.3.2R(2) in accordance with *ESG* 4.3.2R(1) in relation to a *sustainability product*.

(1A) A *manager* may prepare and publish Part B of a *public product-level sustainability report* which covers a reporting period of less than 12 *months* or which includes a period of time during which neither a *sustainability label* nor one or more of the terms listed in *ESG* 4.3.2R(2) were used in accordance with *ESG* 4.3.2R(1) in relation to the relevant *sustainability product*, providing that the *manager*:

(a) makes clear in the report the reporting period that has been covered;

(b) provides contextual information to explain why that particular reporting period has been chosen; and

(c) publishes the report no later than 4 *months* after the end of the chosen reporting period.

…

…

Data considerations when preparing sustainability reports

…

5.4.8 R ~~In preparing Part B of a *public product-level sustainability report*, a *manager* must select, from within the 12-*month* reporting period, the most recent calculation date for which up-to-date information is available.~~ [deleted]

…

5.5 Sustainability product-level reporting

…

On-demand product-level sustainability information

…

5.5.15 R The entitlement in *ESG* 5.5.13R(1) is limited to one request for *on-demand product-level sustainability information* annually in respect of each *sustainability product* ~~in each of the *manager's* 12-*month* reporting periods under *ESG* 5.4.8R~~ , no earlier than 16 *months* after the *manager* first starts to use a *sustainability label* or uses one or more of the terms listed in *ESG* 4.3.2R(2) in accordance with *ESG* 4.3.2R(1) in relation to that product.

…

Appendix 4

Changes to PERG as a result of the MiFID Org Reg restatement into our rules

PERIMETER GUIDANCE MANUAL (MIFID ORG REG) INSTRUMENT 2025

Powers exercised

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

Commencement

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

Amendments to the Handbook

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

(1)	(2)
Conduct of Business sourcebook (COBS)	Annex A
Product Intervention and Product Governance sourcebook (PROD)	Annex B
Supervision manual (SUP)	Annex C

Amendments to material outside the Handbook

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

Notes

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

Citation

F. This instrument may be cited as the Perimeter Guidance Manual (MIFID Org Reg) Instrument 2025.

By order of the Board
[*date*]

Annex A

Amendments to the Conduct of Business sourcebook (COBS)

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

1 Application

1.1 General application

…

Guidance

…

1.1.5 G *PERG* 13 contains general *guidance* on the ~~*persons* and businesses to which the *UK* provisions which implemented *MiFID* apply~~ meaning of *financial instrument*, *investment services and/or activities* and *MiFID investment firm* (and of certain other kinds of investment firm).

…

Annex B

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

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

1 Product Intervention and Product Governance Sourcebook

…

1.3 Application of PROD 3

…

MiFID

1.3.11 G *PERG* 13 contains general *guidance* on the ~~*persons* and businesses to which the *UK* provisions which implemented *MiFID* apply~~ meaning of *financial instrument*, *investment services and/or activities* and *MiFID investment firm* (and of certain other kinds of investment firm).

…

Annex C

Amendments to the Supervision manual (SUP)

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

15 Notifications to the FCA

…

15.3 General notification requirements

…

Breaches of rules and other requirements in or under the Act or the CCA

…

15.3.11A G *SUP* 15.3.11R(1)(e) relates to the standard requirement in the *permission* of ~~those~~ certain *firms* ~~which fall outside *MiFID* because of the Treasury's implementation of Article 3 of *MiFID*~~ imposed under the *MiFI Regulations*. *Guidance* on ~~how the Treasury has exercised the Article 3 exemption for the *United Kingdom*~~ this requirement is given in Q48 and the following questions and answers in *PERG* 13.5 (Exemptions from ~~MiFID~~ the definition of investment firm).

…

Annex D

Amendments to the Perimeter Guidance manual (PERG)

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

1 Introduction to the Perimeter Guidance manual

…

1.4 General guidance to be found in PERG

…

1.4.2 G Table: list of general guidance to be found in PERG.

Chapter:	Applicable to:	About:
…		
PERG 13: Guidance on ~~the scope of the *UK* provisions which implemented MiFID~~ investment services and activities and investment firms	Any *UK person* who needs to know whether ~~*MiFID* applies~~ the terms and provisions in column (3) apply to them	~~the scope of the *UK* provisions which implemented *MiFID*~~ the override in article 4(4) of the *Regulated Activities Order*, which disapplies many *Regulated Activities Order* exclusions in the case of investment firms the definitions of *investment services and/or activities* and *financial instruments* the definitions of investment firm as used in article 4(4) of the *Regulated Activities Order*, of *MiFID investment firm* and of certain other kinds of investment firm
…		

…

2 Authorisation and regulated activities

…

2.5 Investments and activities: general

…

Modification of certain exclusions for investment firms and as a result of ~~MiFID,~~ the IDD and the Mortgage Credit Directive

2.5.3 G The application of certain of the exclusions considered in *PERG* 2.8 (Exclusions applicable to certain regulated activities) and *PERG* 2.9 (Regulated activities: exclusions applicable to certain circumstances) is modified in relation to *persons* who come within the definition of an investment firm in article 3 of the *Regulated Activities Order* and *persons* who are subject to the *UK* provisions which implemented ~~*MiFID*~~, the *IDD* and the *MCD*. The reasons for this and the consequences of it are explained in *PERG* 2.5.4G for ~~*MiFID*~~ investment firms, *PERG* 5 (Guidance on insurance distribution activities) for the *IDD*, and *PERG* 4.10A for the *MCD*.

Investment services and activities

2.5.4 G ~~Certain *persons* subject to the requirements of the *UK* provisions which implemented *MiFID* must be brought within the scope of regulation under the *Act*. A core element of *MiFID* is the concept of investment firm. An *investment firm* is any *person* whose regular occupation or business is the provision of one or more *investment services* to third parties or the performance of one or more *investment activities* on a professional basis. An *investment firm* is not subject to the *UK* provisions which implemented *MiFID* requirements if~~ Article 4(4) of the *Regulated Activities Order* says that an investment firm that provides or performs *investment services and activities* on a professional basis is not entitled to the benefit of specified exclusions under the *Regulated Activities Order* unless it falls within one or more of the exemptions in Part 1 of Schedule 3 ~~of~~ to the *Regulated Activities Order*. Further information about the definition of investment firm and *investment services and activities* for these purposes is contained in *PERG* 13 and further information about these exemptions is contained in *PERG* 13.5. ~~To the extent that an *investment firm* falls within one of these exemptions, it will not be a *MiFID investment firm*.~~ Where a *firm* ~~is not a *MiFID investment firm* because~~ has the benefit of one or more of the exemptions in Part 1 of Schedule 3 ~~of~~ to the *Regulated Activities Order* ~~apply~~, it may still be carrying on *regulated activities* and therefore require *authorisation* unless it is an *exempt person*.

2.5.4A G ~~Prior to *IP completion day*, the *UK* exercised part of the optional exemption in article 3 of *MiFID*. This is now set out in regulation 8 of the *MiFI Regulations*. Further information about this exemption is contained~~

~~in Q48 to 53 in PERG 13.5. The investment services to which regulation 8 of the *MiFI Regulation* applies (namely reception and transmission of orders and investment advice in relation to either *transferable securities* or units in collective investment undertakings) correspond to regulated activities (see PERG 13 Annex 2 Tables 1 and 2).~~ [deleted]

2.5.5 G ~~For *persons* who are *MiFID investment firms*, the activities that must be caught by the *Regulated Activities Order* are those that are caught by the *UK* provisions which implemented *MiFID*. To achieve this result, some of the exclusions in the Order (that will apply to persons who are not caught by *MiFID*) have been made unavailable to *MiFID investment firms* when they provide or perform *investment services and activities*. A "MiFID investment firm", for these purposes, includes to which the *UK* provisions which implemented *MiFID* applies (see *PERG* 13, Q5 and 9); *collective portfolio management investment firms* providing the services of *portfolio management* and *personal recommendations* in relation to *financial instruments* or the ancillary service of safekeeping and administration in relation to *units* of collective investment undertakings; and *AIFM investment firms* providing the ancillary service of reception and transmission of orders in relation to *financial instruments*. The same exclusions are also unavailable to *third country investment firms* when they provide *investment services and activities*. Article 4(4) of the *Regulated Activities Order* (Specified activities: general) lists a number of~~ The exclusions that must be disregarded~~. These relate to the exclusions~~ as referred to in *PERG* 2.5.4G are concerned with:

…

2.5.5A G (1) In the *FCA's* view, article 4(4) of the *Regulated Activities Order* applies to a *credit institution* in the same way as it applies to other *persons*. Thus it does not apply to a *credit institution* that does not perform *investment services and activities* and potentially applies to one that does perform them.

(2) However, article 4(4) expressly applies to certain *credit institutions* (referred to in the *Regulated Activities Order* as 'qualifying credit institutions'). This raises the question why article 4(4) mentions them at all.

(3) The *FCA* understands that it is a result of the origin of article 4(4) in the implementation of *MiFID*. Although the term 'investment firm' as defined in *MiFID* can on the face of it apply to a *credit institution*, *MiFID* does not treat a *credit institution* as an investment firm except for certain limited purposes, as they are primarily regulated under other *EU* legislation. Therefore, article 4(4) mentions *credit institutions* specifically to make it clear that article 4(4) is meant to cover such institutions as long as they would otherwise fall into the definition of investment firm as contained in the *Regulated Activities Order*, which in turn is based on the definition in *MiFID*.

2.5.5B G The original purpose of article 4(4) of the *Regulated Activities Order* was to ensure that anyone coming within *MiFID* would require *authorisation* and *permission* for the *regulated activities* affected by article 4(4) and could not take advantage of the *Regulated Activities Order* exclusions referred to in *PERG* 2.5.5G. In turn, the purpose of that was to enable the *UK* provisions which implemented *MiFID* to be applied to them.

…

Wider definition of certain specified investments when carrying on some kinds of ~~MiFID~~ investment business

2.5.7 G Some *specified investments* ~~are defined so that certain products only come within that *specified investment*~~ have a wider meaning when a *person* of a specified kind is providing ~~services under certain legislation~~ or performing *investment services and/or activities* in relation to ~~that product~~ them, as explained in *PERG* 2.5.8G. *PERG* 2.5.9G lists the provisions in *PERG* where such wider meanings are summarised.

2.5.8 G ~~When *PERG* 2.5.7G applies, the product is only treated as falling within the definition of the *specified investment* concerned~~ A *specified investment* in *PERG* 2.5.9G has a wider meaning if (in relation to that ~~product~~ *specified investment*):

…

…

2.5.10 G …

2.5.11 G For *guidance* on the meaning of *MiFID investment firm*, *third country investment firm* and *investment services and/or activities*, please see *PERG* 13 (Guidance on investment services and activities and investment firms).

2.6 Specified investments: a broad outline

…

Emission allowances

2.6.19D G …

(2) An *emission allowance* is only a *specified investment* if *PERG* 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of ~~MiFID~~ investment business) applies.

…

…

Options

2.6.20 G The *specified investment* category of *options* comprises:

…

(2) options to acquire or dispose of other property and falling within paragraphs 5, 6, 7 or 10 of Part 1 of Schedule 2 to the *Regulated Activities Order* (see article 83(2) of the *Regulated Activities Order* and *PERG* 13, Q33A to Q34 for guidance about these instruments), but only where they are options to which *PERG* 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of ~~MiFID~~ investment business) applies; and

…

…

Futures

…

2.6.22A G As with *options*, there is an additional category of instruments which are *futures* only in limited circumstances. These are contracts as described in *PERG* 2.6.21G:

…

(3) to which *PERG* 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of ~~MiFID~~ investment business) applies.

…

Contracts for differences

2.6.23 G The *specified investment* category of *contracts for differences* covers:

…

(3) derivative contracts for the transfer of credit risk (not within (1) or (2)) falling within paragraph 8 or 9 of Part 1 of Schedule 2 to the *Regulated Activities Order* (see *PERG* 13, Q31 for *guidance* about these instruments), but only where *PERG* 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of ~~MiFID~~ investment business) applies.

…

…

2.6.24A G (1) A binary or other fixed outcomes bet is also treated as *contract for differences*. This is defined as something that meets the following conditions:

…

(e) one of the following requirements is met:

(i) *PERG* 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of ~~MiFID~~ investment business) applies; or

…

…

(5) A simple binary sporting bet is not a *contract for differences* as:

(a) it is not ~~covered by *MiFID*~~ a *financial instrument* and so it does not meet the condition in *PERG* 2.6.24AG(1)(d); and

…

…

2.6.24B G (1) Any derivative ~~under *MiFID*~~ that is a *financial instrument* will be an *option*, *future* or *contract for differences* where *PERG* 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of ~~EU~~ investment business) applies.

…

…

2.7 Activities: a broad outline

…

Bidding in emission auctions

2.7.6B G The *RAO* and the *UK auctioning regulations* together generate three broad categories of *person* in relation to bidding for *emission allowances* on an *auction platform*:

…

(1A) The first category also consists of a person that is exempt from ~~*MiFID*~~ the definition of investment firm under ~~article 2(1)(j), as onshored by~~ paragraph 1(k) of Part 1 of Schedule 3 to the *RAO*, where it is bidding on behalf of a client of its main business or bidding on its own account (further information on the ~~article~~

~~2(1)(j)~~ paragraph 1(k) exemption ~~from *MiFID*~~ is in *PERG* 13.5, Q44).

…

2.7.6C G A *person* may fall into both the first and the second category. For example, a *person* might be both exempt from ~~*MiFID*~~ the definition of investment firm under ~~article 2(1)(j)~~ paragraph 1(k) of Part 1 of Schedule 3 to the *RAO* (within the first category) and be a group entity of an operator (within the second category). In this case, that *person* does not require *permission* for activities that cause that *person* to fall into the second category because those activities are excluded from the activity of *bidding in emissions auctions*.

…

Operating a ~~UK~~ multilateral trading facility

2.7.7D G *Guidance* on the ~~*MiFID*~~ *investment service* of *operating a multilateral trading facility* is given in *PERG* 13, Q24. An activity that comes within the *regulated activity* of *operating a multilateral trading facility* does not come within the *regulated activities* of *dealing in investments as agent*, *dealing in investments as principal* or *arranging deals in investments*.

2.7.7DA G The definition of a ~~*UK*~~ *multilateral trading facility* covers:

…

Operating ~~a UK~~ an organised trading facility

2.7.7DB G *Guidance* on the ~~*MiFID*~~ *investment service* of *operating an organised trading facility* is given in *PERG* 13, Q24A. An activity that comes within the *regulated activity* of *operating an organised trading facility* does not come within the *regulated activities* of *dealing in investments as agent*, *dealing in investments as principal* or *arranging deals in investments*.

2.7.7DC G The definition of an ~~*UK*~~ *organised trading facility* covers:

(1) a *UK* organised trading facility as defined by article 2(1)(15A) of *MiFIR* (see *PERG* 13, Q24A) operated by an *investment firm*, a *credit institution* or a *market operator*; or

(2) a facility which:

…

(b) would come within ~~the *MiFID* definition~~ (1) if its operator was set up in the *United Kingdom*.

2.7.7DD G (1) The *regulated activity* of *operating an organised trading facility* only covers a trading facility on which non-equity ~~*MiFID*~~ MiFID instruments are traded. The term non-equity MiFID instruments is

used in this paragraph even though *MiFID* no longer has effect in the *UK* as the relevant legislation uses that term.

(2) Subject to (3), a non-equity ~~*MiFID*~~ MiFID instrument means:

…

(3) However, a product in (2) is only a non-equity ~~*MiFID*~~ MiFID investment if it also falls into one of the following categories:

…

(d) an instrument falling within paragraphs 4 to 10 of ~~Section C of Annex 1 of *MiFID*~~ Part 1 of Schedule 2 to the *Regulated Activities Order* (these are described in *PERG* 13.4) if the instrument is a *transferable security*.

…

4 Guidance on regulated activities connected with mortgages

…

4.10A Activities within scope of the Mortgage Credit Directive

…

The effect of article 4(4B) on advisers

…

4.10A.23 G Giving personal recommendations is narrower than giving advice. The *guidance* on this point ~~in relation to *MiFID*~~ in Q18 to Q21 in *PERG* 13.3 (Investment Services and Activities) is relevant here.

…

7 Periodical publications, news services and broadcasts: applications for certification

…

7.3 Does the activity require authorisation?

…

Advice in publications and broadcasts ~~and MiFID~~

7.3.2A G Advice about *financial instruments* in a newspaper, journal, magazine, publication, internet communication or radio or television broadcast should not normally be a *personal recommendation* ~~under *MiFID*~~ (see ~~*PERG* 13, Q18 to Q21~~ *PERG* 8.30B.23G).

…

8 Financial promotion and related activities

…

8.30B Personal recommendations

…

Link to ~~MiFID~~ investment service or activity

8.30B.3 G (1) The definition of *personal recommendation* ~~in the *Regulated Activities Order*~~ for the purpose of the definition of the *regulated activity* of *advising on investments (except P2P agreements)* is based on the definition of the ~~*MiFID*~~ *investment service or activity* of making a personal recommendation.

(2) *Personal recommendation* should therefore be interpreted for the purpose of the *regulated activity* of *advising on investments (except P2P agreements)* consistently with ~~*MiFID*~~ that *investment service or activity*.

(3) However the types of *investments* to which the recommendation relates (as listed in *PERG* 8.30B.2G(2)) are not limited to ones covered by ~~*MiFID*~~ that *investment service or activity*.

…

Presenting a recommendation as suitable

…

8.30B.10 G An *investment* can be presented as suitable for an investor even if in fact the *investment* is not suitable or even if the *firm* does not think it is. While a recommendation of an *investment* that is unsuitable for the investor would be a breach of requirements under ~~*MiFID* and~~ the *Handbook*, it would not stop the recommendation from being presented as suitable.

…

10 Guidance on activities related to pension schemes

10.1 Background

Q1. What is the purpose of these questions and answers ("Q&As") and who should be reading them?

…

The Q&As complement the general *guidance* on regulated activities in Chapter 2 of our Perimeter Guidance Manual ("PERG"), the general guidance on insurance

distribution activities in Chapter 5 of *PERG* (*PERG* 5), the guidance about the ~~scope of the *Markets in Financial Instruments Directive*~~ definition of *investment services and/or activities* and investment firm in Chapter 13 of *PERG* (*PERG* 13) and the relevant legislation. In addition, Chapter 12 of *PERG* (*PERG* 12) has further guidance about the regulated activities relating to the operation and sale of personal pension schemes that came into force on 6 April 2007.

…

…

10.4 Pension scheme service providers other than trustees

…

Q32. What are the exclusions that might apply to me as a pensions administration service provider?

…

But none of these exclusions will apply to you if, in carrying on the relevant *regulated activity*, you are an *investment firm* and do not benefit from any of the *Regulated Activities Order* exemptions ~~under *MiFID*~~ from the definition of investment firm in the *Regulated Activities Order* (see Chapter 13 of *PERG*, including Q42).

…

10.4A The application of the definition of investment firm and of requirements which implemented EU directives

Q41A. Are pension scheme trustees and administration service providers likely to be ~~subject to authorisation under the UK provisions which implemented the Markets in Financial Instruments Directive~~ an investment firm carrying on investment services and/or activities?

This is possible, but in many instances it is likely that pension scheme trustees and service providers will either not be providing an investment service ~~for the purposes,~~ or ~~otherwise~~ will be exempt under the exemptions ~~which were set out in article 2.1 of the *Markets in Financial Instruments Directive* but have been onshored~~ in Part 1 of Schedule 3 to the *Regulated Activities Order*. The following table expands on this in broad terms.

In the table below, 'investment firm' means an investment firm as defined in the *Regulated Activities Order*.

Detailed guidance on ~~the scope of the *UK* provisions which implemented the *MiFID*~~ *investment services and/or activities* and the definition of investment firm is in *PERG* 13.

~~In the table below, references to relevant paragraphs of Article 2.1 of *MIFID* should be read as the equivalent exemptions which have been onshored in Part 1~~

~~of Schedule 3 to the *Regulated Activities Order*, or, in respect of Article 3 of *MIFID*, which can now be found in regulation 8 of the *MiFI Regulations*.~~

Activity	Potential ~~MiFID~~ investment activity or service?	~~Potential application of MiFID or of a MiFID article 2.1 exemption?~~ Is a trustee or provider an investment firm and is an exemption in Part 1 of Schedule 3 to the Regulated Activities Order available?
Dealing in scheme assets as trustee	…	The trustees ~~MiFID~~ will not ~~apply~~ be an investment firm provided ~~the trustees~~ they are either not acting by way of business or otherwise are not holding themselves out as persons who provide a dealing service to third parties. This is because the trustees would not be regarded as providing an investment service to third parties on a professional basis In any event, the trustee should be exempt under ~~article 2.1(i)~~ paragraph 1(j) as manager or depositary (or both) of a pension fund
Issuing rights under a stakeholder or personal pension scheme to members	None - the rights are not ~~MiFID~~ financial instruments	Not an ~~MiFID does not apply~~ investment firm
Pension scheme service provider: …	…	~~MiFID will~~ Will potentially ~~apply~~ be an investment firm where the investments are ~~MiFID~~ financial instruments (such as shares, debt securities or units) However, many pension schemes will be employee participation schemes, the administration of which is exempt under ~~article 2.1(f)~~ paragraph 1(g) Where the service provider is providing services exclusively for the benefit of a corporate trustee who is a member of its group, the exemption in ~~article 2.1(b)~~ paragraph 1(c) should apply. And ~~article 2.1(g)~~ paragraph

		1(h) will provide for the exclusions in ~~2.1(b) and 2.1(f)~~ paragraphs 1(c) and 1(g) to be combined where the service provider is both administering an employee participation scheme and providing services to a trustee who is a group member Where the activity is receiving and transmitting orders and the service provider is authorised, the optional intermediaries exemption in ~~article 3 of MiFID~~ regulation 8 of the *MiFI Regulations* may ~~apply~~ be available If the service provider is acting as the operator of a stakeholder or personal pension scheme (for example, as the scheme administrator), he should be exempt under ~~article 2.1(i)~~ paragraph 1(j) as manager of a pension fund
Managing the assets of the scheme	…	~~MiFID will not apply to~~ The trustees will not be an investment firm provided they are either not acting by way of business or otherwise are not holding themselves out as, or additionally remunerated for, providing investment management services. This is because the trustees would not be regarded as providing an investment service to third parties on a professional basis In any event, trustees should be exempt under ~~article 2.1(i)~~ paragraph 1(j) as manager or depositary (or both) of a pension fund If a service provider is acting as the operator of a stakeholder or personal pension scheme, ~~he~~ they should also be exempt under ~~article 2.1(i)~~ paragraph 1(j) as manager of a pension fund But a service provider who is merely managing the assets of a pension fund without being the manager or depositary of the scheme will not be exempt under ~~article 2.1(i)~~ paragraph 1(j). The manager and depositary are those persons charged with responsibility for managing the fund or

		safeguarding its assets and not persons to whom such functions may be delegated or outsourced
Safeguarding and administering the scheme assets	…	Safekeeping and administration of investments is ~~a MiFID ancillary service~~ an *ancillary service*
Establishing, operating or winding up a stakeholder or personal pension scheme	…	~~MiFID does not apply~~ Will not be an investment firm
a. Pension scheme trustee advising fellow trustees or members or prospective members …	…	~~MiFID will~~ Will potentially ~~apply~~ be an investment firm where the advice concerns ~~MiFID financial instruments~~ *financial instruments* (such as shares, debt securities or units) and so ~~may apply to~~ advice given to the trustees about scheme assets may be an investment service or activity. [*Editor's note*: insert paragraph break.] However, beneficial interests in financial instruments held under the trusts of a pension scheme will not themselves be financial instruments ~~under MiFID~~. And rights under a personal pension or stakeholder pension scheme are also not financial instruments. So, advice given to scheme members or prospective members about these should not be the investment service of investment advice ~~under MiFID~~ ~~MiFID will not apply to trustees~~ Trustees who are advising their fellow trustees for the purposes of the trust will not be an investment firm provided they are not additionally remunerated for providing investment advisory services Also, trustees will be exempt under ~~article 2.1(i)~~ paragraph 1(j) in respect of anything they do in the capacity of manager or depositary of a pension

		fund (including advising their fellow trustees) If a service provider is acting as the operator of a stakeholder or personal pension scheme, ~~he~~ they should also be exempt under ~~article 2.1(i)~~ paragraph 1(j) as manager of a pension fund if ~~he gives~~ they give advice to the trustees Where the service provider is providing advice to a corporate trustee who is a member of its group, the exemption in ~~article 2.1(b)~~ paragraph 1(c) may apply (and may be combined with the exemption for administration of an employee participation scheme under ~~article 2.1(g)~~ paragraph 1(h) where relevant)

…

…

12 Guidance for persons running or advising on personal pension schemes

…

12.4 The application of the definition of investment firm and of requirements which implemented EU directives

Do ~~the changes in the scope of regulated activities concerning pension schemes that took effect on 6 April 2007 have any implications for~~ pension scheme trustees or service providers ~~under the UK provisions which implemented the Investment Services Directive or~~ provide investment services and how do the UK provisions which implemented ~~the Markets in Financial Instruments Directive or~~ the Insurance Distribution Directive affect them?

~~In general terms, if a pension scheme trustee or service provider did not need to be authorised under the *Investment Services Directive* prior to 6 April 2007 he should not need to be authorised for carrying on the same activities after that date. This is because rights~~ Rights under a personal pension scheme are not a ~~financial instrument under that Directive~~ *financial instrument* and establishing, operating or winding up a personal pension scheme is not an ~~investment service under the Directive~~ *investment service and/or activity*. ~~This is also the case under the Markets in Financial Instruments Directive which replaced the Investment Services Directive in late 2007.~~ Therefore, a pension scheme trustee or service provider acting as such is not necessarily a *MiFID investment firm*. Guidance on ~~the scope of *MIFID* as implemented into *UK* law~~ *financial instruments*, *investment services and/or activities* and *MiFID investment firm* can be found in

PERG 13. *PERG* 10.4A (The application of requirements which implemented EU directives) also has relevant material.

…

…

13 Guidance on ~~the scope of the UK provisions which implemented MiFID~~ investment services and activities and investment firms

13.1 Introduction

The purpose of this chapter is to help a UK ~~firms~~ *person* consider:

- ~~whether they fall within the scope of the *UK* provisions which implemented Markets in Financial Instruments Directive 2014/65/EU ('MiFID') and therefore are subject to the requirements derived from it, and~~;
- the meaning of *investment services and/or activities*;
- what a *financial instrument* is;
- the meaning of investment firm as defined in the *Regulated Activities Order*, which is the basis of the disapplication by article 4(4) of those regulations of various *Regulated Activities Order* exclusions in the case of investment firms and is used for various other purposes in those regulations;
- the definitions of investment firm in *MiFIR*, *investment firm*, *MIFIDPRU investment firm* and *MiFID investment firm*;
- whether it is carrying on an *ancillary service*; and
- how ~~their existing~~ a *firm's permissions* correspond to related ~~MiFID derived concepts~~ *investment services and/or activities*~~;~~.

~~This chapter is mostly aimed at questions that are relevant to someone who wants to know whether they need to be authorised under the *Act*. This means that this chapter does not cover those types of persons for whom MiFID or MIFIR requirements are applied outside the authorisation regime under the *Act*, such as:~~

- ~~a *data reporting service provider*;~~
- ~~those subject to position limit requirements in derivatives markets;~~
- ~~those subject to an obligation to trade in derivatives on a regulated market, OTF or MTF;~~
- ~~persons with a proprietary interest in benchmarks who are obliged to provide access to certain information; or~~

- ~~central counterparties subject to the requirements about non-discriminatory access for financial instruments.~~

Background

One of the main original purposes of this chapter was to explain whether a UK firm fell within the scope of the *UK* provisions which implemented the Markets in Financial Instruments Directive 2014/65/EU('MiFID') and therefore was subject to the requirements derived from it. That Directive no longer applies in the *UK* but its terminology remains relevant to an understanding of the application of the matters discussed in this chapter.

MiFID replaced the Markets in Financial Instruments Directive 2004/39/EC (MiFID 1), which in turn replaced the Investment Services Directive (ISD).

The definitions and statutory provisions discussed in this chapter are based on (but with changes) MiFID as supplemented and expanded by the *EU MiFID Org Regulation*, as implemented in the *UK* prior to *IP completion day*.

While these *EU* provisions no longer apply in the *UK*, we have retained the references in this chapter, and its annexes, to the provisions in MiFID and other relevant directives such as the CRD, the UCITS directive and the AIFMD for ease of reference. As a result, where the context requires, any references to a directive, its articles or recitals, which could be read as having continuing effect, should be read as a reference to the *UK* provisions which implemented that directive or the relevant article.

In the *FCA's* view, the recitals of MiFID and other *EU* legislation discussed in this chapter can still be useful in interpreting a term defined in the *Regulated Activities Order* or other *UK* legislation where the drafting of that term in the *UK* legislation closely follows the drafting in MiFID or that other *EU* legislation. This chapter therefore refers to such recitals in appropriate places.

This chapter does not address the question of whether an investment firm providing *investment services and/or activities* is providing an investment service as opposed to carrying on an investment activity.

~~MiFID onshoring in UK legislation and the FCA Handbook~~

~~The *United Kingdom's* onshoring of the directive takes the form of a combination of legislation made by HM Treasury, in the form of a number of statutory instruments, and rules contained in the FCA Handbook and the PRA Rulebook. "Onshoring", for these purposes, refers to the process by which law deriving from EU legislation at IP completion day is retained or adapted, post IP completion day.~~

~~The Treasury legislation is set out in the following statutory instruments as amended by the Exit Regulations, in particular:~~

- ~~Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 ('MiFI regulations'), SI 2017/701;~~

- ~~Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 2001 ('RAO Amendment Order'), SI 2017/488 2001/544.~~

~~The FCA Handbook complements the Treasury legislation, referred to above.~~

~~Transitional onshoring provisions~~

~~The effect of section 3 of the European Union (Withdrawal) Act 2018 is that "direct EU legislation" became part of *UK* law, as at IP completion day (and is known as "retained EU law" in accordance with section 6 of the same legislation). As such, MiFIR and all directly applicable regulations made under MiFID and MiFIR including the MiFID Org Regulation (Commission Delegated Regulation 2017/565), the MiFIR Delegated Regulation (Commission Delegated Regulation 2017/567) and technical standards became part of *UK* law, as at IP completion day.~~ [deleted]

~~Each of these pieces of legislation is subject to the power in section 8 of the European Union (Withdrawal) Act 2018 to deal with deficiencies arising out of the United Kingdom's withdrawal from the EU. The Treasury has exercised this power in the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (the 'Exit Regulations') to amend each of the following:~~

- ~~MiFIR~~
- ~~MiFID Org Regulation~~
- ~~MiFIR Delegated Regulation~~
- ~~Data Reporting Services Regulations~~
- ~~The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017~~

~~A reference to any of the above in the remaining text of this chapter is to the legislation as amended by the Exit Regulations.~~

~~MiFID scope~~

~~The scope aspects of MiFID are primarily addressed through the *Regulated Activities Order* ('RAO') and *PERG 2* focuses on the scope of *regulated activities* under the RAO and includes materials on the effect that the *UK* provision which implemented MiFID has had on the *RAO*. This chapter focuses more on the underlying MiFID investment services and activities, as well as the exemptions.~~

~~Where a firm's regular occupation or business is providing one or more *investment services* to third parties or performing investment activities in relation to MiFID financial instruments on a professional basis, it is a firm to which *UK* provisions which implemented MiFID applies unless it is exempt.~~

~~Broadly, the exemptions from MiFID are likely to be relevant to insurers, group treasurers, professional firms to which Part XX of the *Act* applies, many *authorised professional firms*, professional investors who invest only for themselves, pension schemes, depositaries and operators of collective investment schemes or other collective investment undertakings (such as investment trusts), journalists, and commodity producers and traders. The exemptions are subject to conditions and limitations described in more detail below (see *PERG* 13.5).~~

~~The Treasury's implementation of the article 3 MiFID exemption, onshored in regulation 8 of the *MiFI Regulations*, is likely to be relevant to many financial advisers (see Q50) including some corporate finance advisers. It may also be relevant to some venture capital firms. The Treasury legislation enables firms falling within the scope of the exemption to elect to be subject to the requirements derived from of MiFID (see Q52).~~

~~In each case, it will be for firms and individuals to consider their own circumstances and consider whether they fall within the relevant exemptions. A firm which takes the benefit of one or more of the exemptions in article 2 or 3 MiFID, onshored in Part 1 of Schedule 3 to the Regulated Activities Order and Regulation 8 of the MiFI Regulations, may nevertheless require authorisation under the *Act* (see *PERG* 2).~~

~~In addition to *investment firms*, the *UK* provisions which implemented *MiFID* are also relevant to *credit institutions* providing investment services or performing investment activities (see Q5), to *AIFMs* to which the *UK* provisions which implemented article 6.4 of *AIFMD* applies (in other words, *AIFM investment firms*) and to *UCITS management companies* to which the *UK* provisions which implemented article 6.4 of the *UCITS Directive* applies (in other words, *UCITS investment firms*).~~

~~This guidance is concerned with the scope of the *UK* provisions which implemented MiFID and does not address the question of whether an investment firm that falls within the scope of the *UK* provisions which implemented MiFID is providing a MiFID investment service as opposed to an investment activity.~~

…

How does this document work?

This document is made up of Q and As divided into the following sections:

…

- Exemptions from ~~MiFID derived provisions~~ the definition of investment firm (*PERG* 13.5); and

…

We have also included guidance in the form of flow charts to help firms decide whether ~~the *UK* provisions which implemented MiFID apply to them~~ it is a *MiFID investment firm* and whether article 4(4) of the *Regulated Activities Order*

applies as well as permission maps indicating which regulated activities and *specified investments* correspond to ~~MiFID~~ investment services, activities and ~~MiFID~~ financial instruments (see *PERG* 13 Annex 1 and *PERG* 13 Annex 2.)

Article and recital references to *EU* legislation are to MiFID (Level 1 measures) unless otherwise stated. References to categories of ~~MiFID~~ investment services and activities and ~~MiFID~~ financial instruments ~~adopt the structure of~~ in *EU* legislation refer to Annex 1 MiFID: for example, A1 refers to "reception and transmission of orders in relation to one or more financial instruments" and C1 relates to "transferable securities".

~~While these provisions have been "onshored", we have, unless otherwise stated, retained the references in this chapter, and its annexes, to the provisions in MiFID and other relevant directives such as CRD, UCITS directive and AIFMD for ease of reference. As a result, where the context requires, any references to a directive, its articles or recitals, which could be read as having continuing effect, should be read as a reference to 'the *UK* provisions which implemented' that directive or the relevant article. In addition, any reference which adopts the structure of Annex 1 of MiFID, for example by referring to A1 or C1, should be read as a reference to the relevant corresponding paragraph as onshored in Schedule 2 of the *Regulated Activities Order*.~~

13.2 General

Q-1. Are all the different types of investment firm mentioned at the start of this chapter basically the same?

They are very similar and the *guidance* in this chapter is applicable to them all. The following is a list of the factors that the definitions use:

- an investment firm is a *person* whose regular occupation or business is the provision or performance of investment services and activities on a professional basis (see Q4);
- a *person* exempt under Schedule 3 to the *Regulated Activities Order* is excluded (see *PERG* 13.5);
- a *person* whose home State is not the *United Kingdom* and who would be exempt under Schedule 3 if the *person's* registered office (or head office, in the case of a *person* that is not a body corporate or a *person* that is a body corporate but has no registered office) was in the *United Kingdom* is excluded; and
- a *person* who is exempt under the *MiFI Regulations* is excluded (see Q48).

However, the factors do not all appear in each definition. The following table explains this by reference to each factor listed above.

Table: Different kinds of investment firm

Elements of definition					
Type of investment firm	**Regular occupation (bullet point 1 in preceding list)**	**Investment services in relation to financial instruments (bullet point 1 in preceding list)**	**Exempt under Schedule 3 of the Regulated Activities Order (bullet point 2 in preceding list)**	**Would have been exempt under Schedule 3 if in the United Kingdom (bullet point 3 in preceding list)**	**Exempt under MiFI Regulations (bullet point 4 in preceding list)**
MiFID investment firm	Yes.	Yes.	Yes	Not applicable as the definition only covers *UK firms*. An overseas *firm* that would otherwise have been a *MiFID investment firm* is a *third country investment firm*.	Yes
Investment firm as defined *Regulated Activities Order*	Yes	Yes	Yes	Yes	No
Investment firm as defined in *MiFIR*	Yes.	Yes.	No	No	No
Investment firm as	Same as *MiFIR*.	Same as *MiFIR*.	Same as *MiFIR*.	Same as *MiFIR*.	Same as *MiFIR*.

defined in the *Glossary*					
Investment firm as defined in the *Act*	Yes.	Yes.	Yes.	Yes.	Yes
MIFIDPRU investment firm	Yes.	Yes.	Yes	Not applicable as the definition only covers *UK firms*.	Yes

The definition of a *MIFID investment firm* has some additional elements, which are covered in the answers to Q6 to Q7.

The definition of a *MIFIDPRU investment firm* also has additional elements, which are not covered in this chapter. They are set out in the *Glossary* definition.

Q1. Why does it matter whether or not we ~~fall within the scope of MiFID~~ are an investment firm?

Depending on whether or not you ~~fall within the scope of MiFID~~ are one of the kinds of investment firm referred to at the start of this chapter, you may be subject to:

- ~~domestic legislation implementing MiFID (for example, FCA rules)~~ *UK law on markets in financial instruments*; and
- ~~"direct EU legislation", which became part of *UK* law as at IP completion day in accordance with section 3 of the European Union (Withdrawal) Act 2018, and is known as "retained EU law" in accordance with section 6 of the same legislation. (such as, *MiFIR* and all directly applicable regulations made under it or under MiFID); and~~
- other FCA rules or legislation whose scope is drawn by reference to ~~MiFID~~ one of those kinds of investment firm (for example, the Prudential sourcebook for MiFID investment firms (*MIFIDPRU*)).

Whether or not you are an investment firm as defined in the *Regulated Activities Order* is an essential element of whether the override in the *Regulated Activities Order* described in *PERG* 2.5.4G to *PERG* 2.5.5BG (Investment services and activities) applies.

…

Q3. How much can we rely on these Q and As?

The answers given in these Q and As represent the ~~FCA's~~ *FCA's* views but the interpretation of financial services legislation is ultimately a matter for the courts. How the ~~scope of MiFID~~ matters discussed in this chapter affect the regulatory position of any particular person will depend on ~~his~~ their individual circumstances. If you have doubts about your position after reading these Q and As, you may wish to seek legal advice. The Q and As are not a substitute for reading the ~~relevant the *UK* provisions which implemented MiFID~~ legislative and *Handbook* provisions discussed in this chapter.

~~Moreover,~~ MiFID has been subject to guidance and communications by the European Commission, the European Securities and Markets Authority ('ESMA') and the European Banking Authority ('EBA')~~, we have now issued guidance on how this will be treated after IP completion day~~. This material can still be helpful in interpreting the provisions discussed in this chapter if there is no *FCA guidance* on the point and the drafting of the *UK* provision is close to the corresponding MiFID one. However care should be taken as the legislative context is different and the provisions have effect under different legal systems.

~~[**Note:** link to the relevant guidance is to be inserted].~~

Q4. We provide investment services to our clients - ~~does MiFID apply to us~~ am I an investment firm?

~~Yes if you are:~~

- ~~an "investment firm" and the exemptions in MiFID do not apply to you; or~~
- ~~a "tied agent" as defined by MiFID.~~

~~If you are a non-*UK* firm, for example the UK branch of a US firm, MiFID does not apply to you. However, if MiFID would have applied to you if you had been incorporated or formed in the *United Kingdom*, you will be a *third country investment firm* under the FCA's rules. As a result, certain MiFID based requirements will apply to you.~~

If your regular occupation or business includes the provision of investment services in relation to financial instruments to others on a professional basis, you are an investment firm.

Where you are a firm with more than one business, you can still be an investment firm.

What amounts to a 'professional basis' depends on the individual circumstances and in our view relevant factors will include the existence or otherwise of a commercial element and the scale of the relevant activity.

However, you are not an investment firm if you have the benefit of an exemption in Schedule 3 to the *Regulated Activities Order*, except as otherwise shown in the table in the answer to Q-1 (Are all the different types of investment firm mentioned at the start of this chapter basically the same?).

See the flow charts in Annex 1 for further information and *PERG* 13.5 for guidance relating to exemptions. See ~~Q7 and 8~~ Q8 for further guidance on whether you are an investment firm ~~and Q11 for guidance relating to tied agents~~.

Q5. We are a credit institution. ~~How does MiFID apply~~ Is this chapter relevant to us?

If you are ~~an~~ a credit institution, ~~article 1.3 MiFID provides that selected MiFID provisions apply to you, including organisational and conduct of business requirements, when you are providing investment services to your clients or performing investment activities. In our view, MiFID will apply when you are providing ancillary services in conjunction with investment services. Where you provide ancillary services on a standalone basis, MiFID will not apply in relation to those services. Article 1.3 MiFID is reflected in paragraph (2) of the Handbook definition of "MiFID investment firm"~~ you are an investment firm for the purpose of all the types of investment firm mentioned at the start of *PERG* 13.1 as long as you otherwise meet the definitions. However, the position is a bit different for the purpose of the definition of a *MIFID investment firm*. If you otherwise meet the definition, you are only a *MIFID investment firm* for certain purposes of the *Handbook*, as described in the *Glossary* definition of *MIFID investment firm*.

~~In addition, article 1.4 MiFID provides that various MiFID provisions apply when selling or advising clients about structured deposits (see Q34B). Article 1.4 MiFID is reflected in paragraph (2) of the *FCA Handbook* definition of "MiFID investment firm".~~ *PERG* 2.5.5AG (Investment services and activities) describes how the definition of investment firm in the *Regulated Activities Order* applies to credit institutions. The answer to Q9 in this chapter (We are a credit institution that does not provide investment services to customers but we do have a treasury function. Are we an investment firm?) also has further details about credit institutions.

Q6. We are a UCITS management company that, in addition to managing unit trusts, contractual schemes and investment companies, provides portfolio management services to third parties. ~~How does MiFID~~ Is this chapter relevant to us?

In general, the *management company* of a *UCITS scheme* is not an investment firm for the purpose of any of the types of investment firm mentioned at the start of this chapter (see *PERG* 13.5 (Exemptions from the definition of investment firm)). However, the position is a bit different for the purpose of the definition of a *MIFID investment firm*. If you are the *management company* of a *UCITS scheme* with a permission to manage investments including ~~MiFID~~ financial instruments pursuant to article 6.3 of the *UCITS Directive*~~, certain MiFID provisions apply to you when you provide investment services to third parties (see article 6.4 *UCITS Directive*). These include initial capital endowment, organisational and conduct of business requirements. You~~ you are a *UCITS investment firm* for the purposes of the Handbook. ~~Article 6.4 of the *UCITS Directive* is~~ You are also a *MiFID investment firm* for certain purposes of the *Handbook*, as reflected in paragraph (3) of the Handbook definition of "MiFID investment firm".

When you carry out these additional activities, you will be carrying on a *regulated activity*.

Q6A. We are an AIFM that, in addition to managing AIFs, provides portfolio management services to third parties. ~~How does MiFID apply~~ Is this chapter relevant to us?

In general, an *AIFM* is not an investment firm for the purpose of any of the types of investment firm mentioned at the start of this chapter (see *PERG* 13.5 (Exemptions from the definition of investment firm)). However, the position is a bit different for the purpose of the definition of a *MIFID investment firm*. If you are the *AIFM* of an *AIF* with a *Part 4A permission* to *manage investments* including ~~*MiFID* *financial instruments*~~ pursuant to article 6.4 of *AIFMD*, ~~certain *MiFID* provisions apply to you when you provide investment services to third parties (see article 6.6 of AIFMD). These include initial capital endowment, organisational and conduct of business requirements. You~~ you are an *AIFM investment firm* for the purposes of the *Handbook*. ~~Article 6.6 of *AIFMD* is~~ You are also a *MiFID investment firm* for certain purposes of the *Handbook*, as reflected in paragraph (3) of the *Handbook* definition of "*MiFID investment firm*".

When you carry out these additional activities, you will be carrying on a *regulated activity*.

Q7. We provide investment services to our clients. How do we know whether we are an investment firm for the purposes of article 4.1(1) MiFID?

~~If your regular occupation or business includes the provision of investment services in relation to MiFID financial instruments to others on a professional basis, you are an investment firm and require *authorisation* unless you benefit from an exemption or are a tied agent (see Q11).~~

~~Where you are a firm with more than one business, you can still be an investment firm. What amounts to a "professional basis" depends on the individual circumstances and in our view relevant factors will include the existence or otherwise of a commercial element and the scale of the relevant activity.~~ [deleted]

Q8. We do not provide investment services to others but we do buy and sell financial instruments (for example, shares and derivatives) on a regular basis. Are we an investment firm ~~for the purposes of MiFID~~?

Yes, if you are trading in ~~MiFID~~ financial instruments for your own account as a regular occupation or business on a "professional basis". You can be an investment firm even if you are not providing investment services to others; this arises from the fact that you are also an investment firm ~~under MiFID~~ where you perform investment activities on a professional basis.

Even if you are an ~~investment firm~~ *investment firm* you may still be able to rely on one or more exemptions in ~~article 2 MiFID~~ Schedule 3 to the *Regulated Activities Order* (Exemptions from the definition of 'investment firm') for the purpose of the definition of investment firm in the *Regulated Activities Order* and of most of the other types of investment firm listed at the start of this chapter~~, in which case~~

~~MiFID will not apply~~ (see *PERG* 13.5 and in particular ~~article 2.1(d)~~ paragraph 1(d) of Part 1 of that schedule (see Q40 to Q41)) and ~~2.1(j)~~ paragraph 1(k) of Part 1 of that schedule (see Q44 to Q45)).

Q9. We are a credit institution that does not provide investment services to customers but we do have a treasury function. Are we ~~subject to MiFID~~ an investment firm?

Not necessarily. Although you may be dealing on own account in relation to ~~MiFID~~ financial instruments, you may be able to rely upon the exemption in ~~article 2.1(d) MiFID~~ paragraph 1(e) of Part 1 of Schedule 3 to the *Regulated Activities Order* (Exemptions from the definition of 'investment firm') (see Q40). In our view, credit institutions can rely on exemptions in ~~article 2~~ Schedule 3 to the *Regulated Activities Order* where they meet the conditions of the exemptions.

Q10. Is there any change to the "by way of business" test in ~~domestic legislation~~ the definition of regulated activities?

~~There is no change to article 3 of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities By Way of Business) Order 2001 as part of MiFID implementation by the Treasury, so the domestic~~ No. The test for whether you are carrying on 'regulated activities by way of business' and require authorisation ~~remains unchanged~~ is the same for a person who provides investment services in relation to financial instruments as it is for other people.

Q11. How will we know whether we are a tied agent (article 4.1(29))?

~~A tied agent under MiFID is a similar concept to an *appointed representative* under the *Act*. A tied agent does not require *authorisation* for the purposes of MiFID, just as an *appointed representative* does not require authorisation under the *Act*. In our view, you will only be a tied agent if your principal is an investment firm (including a credit institution) to which MiFID applies. So, if you act for a principal that is subject to an exemption in article 2 of MiFID, you are not a tied agent for the purposes of MiFID although you may be an *appointed representative* for domestic purposes. You will still not require authorisation under MiFID, either because you are not performing investment services and activities or, if you are, because you fall within an exemption in article 2 of MiFID.~~

~~MiFID says that firms exempt under article 3 should be subject to requirements which are at least analogous to the MiFID regime for tied agents of investment firms. This has been implemented in the UK through the *appointed representative* regime. If you are an *appointed representative* of a principal who is exempt under article 3 you will also be exempt under MiFID. Q48 to Q53 deal with the article 3 exemption.~~

~~Assuming your principal is an investment firm to which MiFID applies, if you are registered as an *appointed representative* on the *Financial Services Register* and carry on the activities of *arranging (bringing about) deals in investments* or *advising on investments*, in either case in relation to MiFID financial instruments, you are likely to be a tied agent for the purposes of article 4.1(29).~~

~~It is not possible for a tied agent to provide *investment services* on behalf of more than one investment firm to which MiFID applies.~~

~~Further material on *appointed representatives* and tied agents is contained in chapter 12 of our Supervision Manual ('SUP').~~ [deleted]

13.3 Investment Services and Activities

Introduction

Q12. Where do we find a list of ~~MiFID~~ investment services and activities?

~~The list in Section A of Annex 1 of MiFID has been onshored in~~ They are listed in Part 3 of Schedule 2 to the Regulated Activities Order. ~~There are nine investment services and activities in Part 3 (A1 to A9 have now been onshored in paragraph 1 to paragraph 9). However, as explained in PERG 13.1 above, for ease of reference we have retained the references to the relevant MiFID provisions in this chapter. Article 4 MiFID defines some~~ Some of them are defined in more detail~~:~~ elsewhere, as explained in the answers to the applicable questions in this section.

- ~~investment advice (article 4.1(4) MiFID;~~
- ~~execution of orders on behalf of clients (article 4.1(5) MiFID);~~
- ~~dealing on own account (article 4.1(6) MiFID); and~~
- ~~portfolio management (article 4.1(8) MiFID).~~

~~A further provision relating to investment advice is contained in article 9 of the *MiFID Org Regulation*.~~

~~As explained in PERG 13.1, this chapter only covers the MiFID activities dealt with through the authorisation regime under the Act. The other activities covered by MiFID and MiFIR are not dealt with in section A of Annex 1, as onshored in Part 3 of Schedule 2 of the *Regulated Activities Order*.~~

…

Reception and transmission

Q13. When might we be receiving and transmitting orders in relation to one or more financial instruments? ~~(A1 and recital 44)?~~

…

If you are party to a transaction as agent for your client or commit your client to it, you may be doing more than receiving and transmitting orders and will need to consider whether you are providing the investment service of executing orders on behalf of clients.

The investment service or activity of reception and transmission is set out in paragraph 1 of Part 3 of Schedule 2 to the Regulated Activities Order. It

corresponds to the activity described in paragraph 1 of section A of MiFID, which is explained by recital 44 of that Directive.

Q14. We are introducers who merely put clients in touch with other investment firms - are we receiving and transmitting orders?

No. If all you do is introduce others to investment firms so that they can provide investment services to those clients, this in itself does not bring about a transaction and so will not amount to receiving and transmitting orders. But if you are a person who does more than merely introduce, for example an introducing broker, you are likely to be receiving orders on behalf of your clients and transmitting these to clearing firms and therefore may ~~fall within the scope of MiFID~~ be carrying on this investment service.

Executing orders

Q15. When might we be executing orders on behalf of clients ~~(A2, article 4.1(5) and recital 45)~~?

When you are acting to conclude agreements to buy or sell one or more ~~MiFID~~ financial instruments on behalf of clients. You will be providing this investment service if you participate in the execution of an order on behalf of a client, as opposed simply to arranging the relevant deal. In our view, you can execute orders on behalf of clients either when dealing in investments as agent (by entering into an agreement in the name of your client or in your own name, but on behalf of your client) or, in some cases, by dealing in investments as principal (for example by back-to-back or riskless principal trading).

This activity includes the issue of their own *financial instruments* by an ~~*investment firm*~~ investment firm or a credit institution.

The investment service or activity of executing orders on behalf of clients is set out in paragraph 2 of Part 3 of Schedule 2 to the *Regulated Activities Order* and defined in *MiFIR*. It corresponds to the activity described in paragraph 2 of section A of MiFID, which is defined by article 4.1(5) and further explained by recital 45 of that Directive.

Q15A. Is every issue of financial instruments ~~a MiFID~~ an investment service?

No. Although the answer to Q15 says that executing client orders includes issuing your own *financial instruments*, not every issue of *financial instruments* amounts to the ~~MiFID~~ investment service of execution of orders on behalf of clients. This is explained in more detail in the rest of this answer.

…

Dealing on own account

Q16. What is dealing on own account ~~(A3, article 4.1(6)) and recital 24)~~?

Dealing on own account is trading against proprietary capital resulting in the conclusion of transactions in one or more ~~MiFID~~ financial instruments.

…

Dealing on own account may be relevant to firms with a *dealing in investments as principal* permission in relation to ~~MiFID~~ financial instruments, but only where they trade financial instruments on a regular basis for their own account, as part of their ~~MiFID~~ investment services business. We do not think that this activity is likely to be relevant in cases where a person acquires a long term stake in a company for strategic purposes or for most venture capital or private equity activity. Where a person invests in a venture capital fund with a view to selling its interests in the medium to long term only, in our view he is not dealing on own account ~~for the purposes of MiFID~~.

If a firm executes client orders by standing between clients on a matched principal basis (back-to-back trading), it is both dealing on own account and executing orders on behalf of clients.

The investment service or activity of dealing on own account is set out in paragraph 3 of Part 3 of Schedule 2 to the *Regulated Activities Order* and defined in *MiFIR*. It corresponds to the activity described in paragraph 3 of section A of MiFID, which is defined by article 4.1(6) and further explained by recital 24 of that Directive.

Portfolio management

Q17. What is portfolio management under MiFID ~~(A4 and article 4.1(8))~~?

Portfolio management is managing portfolios in accordance with mandates given by *clients* on a discretionary client-by-client basis where such portfolios include one or more ~~*MiFID*~~ *financial instruments*. If there is only a single *financial instrument* in a portfolio, you may be carrying on portfolio management even if the rest of the portfolio consists of other types of assets, such as real estate. Portfolio management includes acting as a third party manager of the assets of a *fund*, where discretion has been delegated to the manager by the *operator* or manager of the *fund*. In the case of management of a collective investment undertaking, however, an exemption may be available to the operator (see Q43). The advisory agent who keeps clients' portfolios under review and provides advice to enable the client to make investment decisions (but does not exercise discretion to take investment decisions himself) is not carrying on portfolio management but may be providing other investment services such as investment advice ~~under MiFID~~.

The investment service or activity of portfolio management is set out in paragraph 4 of Part 3 of Schedule 2 to the *Regulated Activities Order* and defined in regulation 3 of those regulations. It corresponds to the activity described in paragraph 4 of section A of MiFID, which is defined by article 4.1(8) of that Directive.

Investment advice

Q18. What is investment advice ~~under MiFID (A5 and article 4.1(4))~~?

Investment advice means providing personal recommendations to a client, either at his request or on your own initiative, in respect of one or more transactions relating to ~~MiFID~~ financial instruments.

The investment service or activity of investment advice is set out in paragraph 5 of Part 3 of Schedule 2 to the *Regulated Activities Order*. It corresponds to the activity described in paragraph 5 of section A of MiFID, which is defined by article 4.1(4) of that Directive.

Q19. What is a 'personal recommendation' ~~for the purposes of MiFID (article 9 of the MiFID Org Regulation)~~?

…

This is similar to the ~~UK~~ regulated activity of advising on investments but is narrower in scope insofar as it requires the recommendation to be of a personal nature. A personal recommendation does not include advice given to an issuer to issue securities, as the latter is not an "investor" for the purposes of ~~MiFID~~ the definition of personal recommendation or article 53 of the ~~*RAO*~~ *Regulated Activities Order*.

As explained in *PERG* 8.24.1AG, there are circumstances in which the ~~*UK*~~ regulated activity is also based on giving personal recommendations. *PERG* 8.30B (Personal recommendations) gives guidance on the definition in the context of the ~~*UK*~~ regulated activity. In the *FCA's* view that guidance is also relevant to the meaning of 'personal recommendation' ~~under MiFID~~ in Schedule 2 to the *Regulated Activities Order*.

A personal recommendation is defined in Part 4 of Schedule 2 to the *Regulated Activities Order*. The definition corresponds to the one in article 9 of the *EU MiFID Org Regulation*.

Q20. Can you give us some other practical examples of what are not personal recommendations ~~under MiFID~~?

A recommendation is not a personal recommendation if it is issued exclusively to the public (~~article 9 of the *MiFID Org Regulation*~~ Part 4 of Schedule 2 of the *Regulated Activities Order*). Advice about financial instruments in a newspaper, journal, magazine, publication, internet communication addressed to the public in general or in a radio or television broadcast should not amount to a personal recommendation. However, use of the internet does not automatically mean that a communication is not a personal recommendation on the grounds that it is made to the public. Therefore, for instance, while advice through a generally accessible website is unlikely to be a personal recommendation, an email communication provided to a specific person, or to several persons, may amount to investment advice.

…

However, you should bear in mind that, where a person provides only selective information to a client, for example, when comparing one ~~MiFID~~ financial instrument against another, or when a client has indicated those benefits that he seeks in a product, this could, depending on the circumstances, amount to an implied recommendation and hence the investment service of investment advice ~~for the purposes of MiFID~~.

If you provide an investment research service to your clients or otherwise provide recommendations intended for the public generally, this is not ~~MiFID~~ the investment service of investment advice ~~(A5)~~ although it may be an ancillary service ~~(B5) for the purposes of MiFID~~ under paragraph 5 of Part 3A of Schedule 2 to the *Regulated Activities Order* and may also amount to the regulated activity of *advising on investments* for which you are likely to require *authorisation*.

Q21. Is generic advice investment advice ~~for the purposes of MiFID (recitals 15 to 17 to the MiFID Org Regulation)~~?

No. Investment advice is limited to advice on particular ~~MiFID~~ financial instruments, for example "I recommend that you buy XYZ Company shares". If you only provide generic advice on ~~MiFID~~ financial instruments and do not provide advice on particular ~~MiFID~~ financial instruments, you are not ~~a firm to which MiFID applies and do not require *authorisation*~~ providing the investment service of investment advice.

If you are ~~an investment firm to which MiFID applies~~ a *firm*, however, the generic advice that you provide may be subject to ~~MiFID-based~~ conduct of business requirements. For example, if you recommend to a client that it should invest in equities rather than bonds and this advice is not in fact suitable, you are likely, depending on the circumstances of the case, to contravene ~~MiFID~~ requirements to:

…

Acts carried out by an investment firm that are preparatory to the provision of ~~a~~ ~~MiFID~~ an investment service or activity are an integral part of that service or activity. This would include the provision of generic advice. Therefore if a person provides generic advice to a client or a potential client prior to or in the course of the provision of investment advice or any other ~~MiFID~~ investment service or activity, that generic advice is part of that ~~MiFID~~ investment service or activity.

Providing a general recommendation about a transaction in a financial instrument or a type of financial instrument is an ancillary service within ~~Section B(5) of Annex I of MiFID~~ paragraph 5 of Part 3A of Schedule 2 to the *Regulated Activities Order*.

There is material on generic advice in recitals 15 to 17 of the *EU MiFID Org Regulation*, which is reflected in this section.

Underwriting and firm commitment placing

Q22. What is underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis ~~(A6)~~?

~~A6~~ This activity comprises two elements:

…

In our view, the 'firm commitment' aspect of the placing service relates to the person arranging the placing, as opposed to the person who has agreed to purchase any instruments as part of the placing. Accordingly, placing on a firm commitment basis occurs where a firm undertakes to arrange the placing of ~~MiFID~~ financial instruments and to purchase some or all the instruments that it may not succeed in placing with third parties. In other words, the placing element of ~~A6~~ the underwriting and/or placing activity requires the same person to arrange the placing and provide a firm commitment that some or all of the instruments will be purchased.

Where a person distributes units in a UCITS fund to investors, in our view this does not amount to placing although it is likely to involve the reception and transmission of orders.

The investment service or activity of underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis is set out in paragraph 6 of Part 3 of Schedule 2 to the *Regulated Activities Order*. It corresponds to the activity described in paragraph 6 of section A of MiFID.

Placing without a firm commitment

Q23. When might placing of financial instruments without a firm commitment basis arise ~~(A7)~~?

Where the person arranging the placing does not undertake to purchase those ~~MiFID~~ financial instruments ~~he fails~~ they fail to place with third parties.

The investment service or activity of placing without a firm commitment basis is set out in paragraph 7 of Part 3 of Schedule 2 to the *Regulated Activities Order*. It corresponds to the activity described in paragraph 7 of section A of MiFID.

Operating a multilateral trading facility

Q24. What is a multilateral trading facility ~~(A8, article 4.1(22) and recital 7 of MiFIR)~~?

…

For there to be an MTF, the buying and selling of ~~MiFID~~ financial instruments in these systems must be governed by non-discretionary rules in a way that results in contracts. As the rules must be non-discretionary, once orders and quotes are received within the system an MTF operator must have no discretion in determining how they interact. The MTF operator instead must establish rules governing how the system operates and the characteristics of the quotes and

orders (for example, their price and time of receipt in the system) that determine the resulting trades. An MTF may be contrasted with an OTF (see Q24A for OTFs) in this regard, because the operator of an OTF is required to carry out order execution on a discretionary basis.

The investment service or activity of operating a multilateral trading facility is set out in paragraph 8 of Part 3 of Schedule 2 to the *Regulated Activities Order* and is defined in *MiFIR*. It corresponds to the activity described in paragraph 8 of section A of MiFID, which is defined in article 4.1(22) of that Directive.

Operating an organised trading facility

Q24A. What is an organised trading facility ~~(A9, article 4.1(23) and recitals 8 and 9 of MiFIR)~~?

…

In exercising its discretion, the operator must comply with the requirement under ~~article 18 of MiFID~~ *MAR* 5A.4 (Trading process requirements) to establish objective criteria for the efficient execution of orders, and must also comply with the best execution requirements under ~~article 27 of MiFID~~ *COBS* 11.2A (Best execution – MiFID provisions) and *MAR* 5A.3.9R (Other MiFID obligations).

The investment service or activity of operating an organised trading facility is set out in paragraph 9 of Part 3 of Schedule 2 to the *Regulated Activities Order* and is defined in *MiFIR*. It corresponds to the activity described in paragraph 9 of section A of MiFID, which is defined in article 4.1(23) of that Directive.

…

Ancillary services

Q25. What about ancillary services ~~(Annex 1, section B)~~? Do we need to be authorised if we wish to provide these services?

Yes, but only when providing these services is a *regulated activity*, for example, if you provide custody services which fall within the *regulated activity* of *safeguarding and administering investments*. You are not an investment firm ~~within the scope of MiFID~~, however, if you only perform ancillary services (regardless of whether these are *regulated activities* requiring *authorisation* under the Act).

Ancillary services are described in Part 3A of Schedule 2 to the *Regulated Activities Order*. They correspond to the activities described in section B of Annex 1 of MiFID.

…

13.4 Financial instruments

Introduction

Q27. Where do we find a list of ~~MiFID~~ financial instruments?

~~The list in Section C of Annex 1 to MiFID has been onshored in Part 1 of Schedule 2 to the Regulated Activities Order.~~ There are eleven categories of financial instruments ~~in Section C~~, which ~~have been onshored~~ are listed in Part 1 ~~(C1 to C11, which have been onshored in paragraph 1 to paragraph 11). However, as explained in *PERG* 13.1 above, for ease of reference we have retained the references to the relevant MiFID provisions in this chapter. Transferable securities (C1) and money market instruments (C2) are defined in article 4. Some financial instruments are further defined in the *MiFID Org Regulation*.~~ of Schedule 2 to the *Regulated Activities Order*. This list essentially corresponds to the list in Section C of Annex 1 to MiFID, where they are lettered and numbered C1 to C11.

Transferable securities

Q28. What are transferable securities? ~~(C1 and article 4.1(44))~~?

…

Examples of instruments which, in our view, do not amount to transferable securities include securities that are only capable of being sold to the issuer (as is the case with some industrial and provident society interests) and OTC derivatives concluded by a confirmation under an ISDA master agreement.

Transferable securities are set out in paragraph 1 of Part 1 of Schedule 2 to the *Regulated Activities Order* and defined in *MiFIR*. They correspond to the instruments set out in paragraph 1 of section C of Annex 1 to MiFID, which are defined in article 4.1(44) of that Directive.

Money market instruments

Q28A. What are money market instruments ~~(C2 and article 4.1(17) of MiFID and article 11 of the MiFID Org Regulation)~~?

This means those classes of instruments which are normally dealt in on the money market. Examples include treasury bills, certificates of deposit, ~~and~~ commercial paper and other instruments with substantively equivalent features. A money market instrument does not include an instrument of payment.

An instrument is only a money market instrument if it also meets the following conditions:

…

- it does not fall into ~~sections C4 to C10 of Annex 1 to MiFID~~ paragraphs 4 to 10 of Part One of Schedule 2 to the *Regulated Activities Order* (derivatives); and

…

Money market instruments are set out in paragraph 2 of Part 1 of Schedule 2 to the *Regulated Activities Order* and defined in paragraph 2 of Part 2 of Schedule 2 to the *Regulated Activities Order*. They correspond to the instruments set out in paragraph 2 of section C of Annex 1 to MiFID, which are defined in article 4.1(17) of that Directive and in article 11 of the *EU MiFID Org Regulation*.

Collective investment undertakings

Q29. What are units in collective investment undertakings ~~(C3)~~?

…

Units in collective investment undertakings are set out in paragraph 3 of Part 1 of Schedule 2 of the *Regulated Activities Order* and correspond to the financial instrument in paragraph 3 of Section C of Annex 1 to MiFID.

Derivatives: general

Q30. Which types of derivative ~~fall within MiFID scope~~ are financial instruments?

The following derivatives ~~fall under MiFID~~ are financial instruments:

…

- financial contracts for differences (these are included in ~~paragraph 9 of Section C of Annex 1 to MiFID, onshored in~~ ~~10~~ paragraph 9 of Part 1 of Schedule 2 of the *Regulated Activities Order* and correspond to the financial instrument in paragraph 9 of Section C of Annex 1 to MiFID); and

…

Credit derivatives

Q31. What are derivative instruments for the transfer of credit risk ~~(C8)~~?

Derivative instruments that are designed for the purposes of transferring credit risk from one person to another. They include, for example, credit default products, synthetic collateralised debt obligations, total rate of return swaps, downgrade options and credit spread products.

This category of financial instrument is set out in paragraph 8 of Part 1 of Schedule 2 to the *Regulated Activities Order* and corresponds to the financial instrument in paragraph 8 of Section C of Annex 1 to MiFID.

General financial and emission derivatives ~~(C4)~~: General

Q31A. Which types of financial derivative fall within this heading?

~~The C4~~ This category of financial ~~instruments~~ instrument is set out in paragraph 4 of Part 1 of Schedule 2 of the *Regulated Activities Order* and corresponds to the financial instrument in paragraph 4 of Section C of Annex 1 to MiFID. It covers:

…

General financial and emission derivatives ~~(C4)~~: Treatment of foreign exchange contracts

Q31B. Is every foreign exchange contract ~~caught by MiFID (article 10 of the MiFID Org Regulation)~~ a financial derivative?

No. There are two exclusions:

…

- There is an exclusion for a foreign exchange transaction connected to a payment transaction (see the answer to Q31G).

These exclusions are set out in paragraph 3 of Part 2 of Schedule 2 to the *Regulated Activities Order*. They correspond to the exclusion in article 10 of the *EU MiFID Org Regulation*.

Technically these exclusions relate to the ~~other~~ "any other derivative contracts" type of ~~C4~~ derivative contract listed in the answer to Q31A. However in the ~~FCA's~~ *FCA's* view no contract that has the benefit of one of these exclusions could be a ~~C4~~ future under any of the other categories listed in that answer either.

~~These~~ Recital 13 to the *EU MiFID Org Regulation* says that these exclusions do not apply to an option or a swap on a currency, regardless of the duration of the swap or option and regardless of whether it is traded on a *trading venue* or not ~~(recital 13 to the *MiFID Org Regulation*)~~. The *FCA* believes that this statement also applies to the *Regulated Activities Order* exclusions discussed in this answer.

Q31C. What is the exclusion for foreign exchange spot contracts mentioned in Q31B?

…

If a foreign exchange contract falls into the third category (contract for the purpose of purchase of securities) it ~~may~~ does not also fall into one of the other two categories. ~~As a result there are potentially two maximum delivery periods. Where this is the case, the longer of the two delivery periods applies for the purpose of deciding whether the exclusion applies.~~

…

~~This~~ Recital 13 the *EU MiFID Org Regulation* says that this exclusion only applies if there is a direct and unconditional exchange of the currencies being bought and sold ~~(recital (13) to the *MiFID Org Regulation*)~~. The *FCA* believes that that statement broadly also applies to the *Regulated Activities Order*

exclusion discussed in this answer. However a contract may still benefit from the exclusion if the exchange of the currencies involves converting them through a third currency.

…

Q31D. How are contracts for multiple exchanges of currency treated under the exclusion for foreign exchange spot contracts mentioned in Q31C?

~~The~~ Recital 13 to the *EU MiFID Org Regulation* says that the exclusion can cover a single contract with multiple exchanges of currencies. In such a contract, each exchange of a currency should be treated separately for the purpose of the exclusion ~~(recital 13 to the *MiFID Org Regulation*)~~. The *FCA* believes that that statement also applies to the *Regulated Activities Order* exclusion discussed in this answer.

…

Q31H. What do identifiable and means of payment as referred to in the answer to Q31G mean?

The most straightforward example (Example ~~(1)~~ (X)) of what this means is a contract where one of the parties to the contract:

…

See Example (10) in Q31M (Can you give me some more examples of how the means of payment exclusion referred to in the answer to Q31G works?) for an example of the second type of foreign exchange contract in Example ~~(1)~~ (X) (contract to achieve certainty about the level of payments).

…

~~*The MiFID Org Regulation* says that the~~ The foreign exchange contract must be a means of payment. Therefore the exclusion requires that not only should the currency contract facilitate payment for identifiable goods, services or direct investment but that it should also be a means of payment. This combined requirement does not mean that there has to be a three-party arrangement between the buyer and seller of goods or services and the foreign exchange supplier. So, for example, if a UK company (A) is buying goods from an exporter in Germany (B) and is paying in euro and A buys the euro forward from a bank (C), there is no need for C to issue some sort of instrument to B (Example ~~(2)~~ (Y)).

Instead this combined requirement means that the currency contract that is to be excluded should facilitate the payment in the way described in Example ~~(1)~~ (X) at the start of this answer or that there should be an equivalent close connection between the currency contract and the payment transaction.

Even though there is no requirement for a formal instrument of payment, the exclusion can cover such arrangements. So in Example ~~(2)~~ (Y) in this answer, the

exclusion may apply to an arrangement that involves bank C issuing a euro letter of credit at the request of A for the benefit of B.

Q31I. What do goods, services and direct investment mean in the answer to Q31G?

…

However, in the ~~FCA's~~ *FCA's* view ~~MiFID investments~~ financial instruments are only covered by the exclusion if they constitute a direct investment.

…

A foreign exchange contract connected to the purchase of a ~~MiFID investment~~ financial instrument may still be covered by the exclusion for spot contracts if the payment instrument exclusion does not apply. The spot exclusion makes particular provision for purchases of transferable securities and units in a collective investment undertaking (see the answer to Q31C). The result is that the means of payment exclusion does not undermine the specific provisions of the spot contract exclusion dealing with such transactions.

…

Q31K. How do I know whether the conditions for the means of payment exclusion described in the answer to Q31G are met?

A financial counterparty (A) selling currency to a client may want to know whether the client (B) is going to use the foreign currency in a way that meets the exclusion conditions. This may be relevant to whether ~~MiFID~~ conduct of business obligations that apply to *investment services* apply to the services provided by A.

…

Q31L. Can a flexible forward come within the means of payment exclusion described in the answer to Q31G?

…

An argument against the availability of the means of payment exclusion is that a flexible forward contract is an option and that the exclusion is not available for an option. However in the ~~FCA's~~ *FCA's* view, the approach in the answer to Q31B applies. That is, a flexible forward contract that meets all the conditions of the exclusion is not a traditional option but rather a hybrid contract that is in the "any other derivative" contract category listed in the answer to Q31A (~~Types of C4 derivative contracts~~ Which types of financial derivative fall within this heading?), even in the example in which the unused balance is cancelled.

…

Q31M. Can you give me some more examples of how the means of payment exclusion referred to in the answer to Q31G works?

Examples of how the means of payment exclusion works	
Example	**Explanation**
…	…
(10) An exporter (A) sells goods to a French importer for payment on delivery in euros. A, before the due date for payment for the goods, sells the euro for the equivalent amount in sterling. The foreign exchange contract is made at the applicable forward rate on the date of the currency contract. Settlement of the currency contract is due on the same day as payment for the goods. A is thereby protected against adverse movements in sterling against the euro.	~~The exclusion is potentially available. Recital 10 to the *MiFID Org Regulation* says that a~~ A contract to achieve certainty about the level of payments for identified goods is covered by the exclusion. Recital 10 of the *EU MiFID Org Regulation* says that contracts to achieve such certainty are within the means of payment exemption corresponding to the *Regulated Activities Order* exclusion discussed in this example and the *FCA* considers that that is also the case for that *Regulated Activities Order* exclusion.
…	…
(15) A UK importer (A) has bought €100,000 worth of goods. The supplier has issued an invoice but the sum is not yet due from A. A buys €200,000 forward. A will use other €100,000 for purposes that do not meet the exclusion conditions.	The exclusion is not available where A uses part of the currency it buys for purposes that do not meet the conditions of the exclusion. The contract should not be treated as partly excluded and partly as a ~~C4~~ currency derivative within paragraph 4 of Part 1 of Schedule 2 of the *Regulated Activities Order*. If however A enters into two foreign exchange contracts, each for €100,000, the exclusion may apply to one of them. Also see example (16).
…	…
(19) ~~A farmer's farm payment under the EU basic payment scheme will be €10,000 and will be paid in sterling. The payment will be made in three months' time. In order to fix the sterling amount they will receive, the farmer wishes to book a forward with a currency provider to sell €10,000 and buy sterling in three months' time.~~ [deleted]	~~The issue here is whether the forward exchange contract relates to identifiable goods and services as referred to in the answer to Q31G (What is the second exclusion for foreign exchange contracts mentioned in Q31B?).~~ ~~The exclusion may not be available. This is because the payment may not be linked to any specific goods or services being sold or bought by the farmer.~~

	~~However it is possible that the farmer is going to use the payments under the scheme to purchase goods or stock for their farming business. If there is an identifiable payment transaction in accordance with the examples in this table the exclusion will potentially be available.~~ ~~If the exclusion is not available it is unlikely that the farmer will be carrying on MiFID business for the reasons described in the answer to Q7 (We provide investment services to our clients. How do we know whether we are an investment firm for the purposes of article 4.1(1) MiFID?).~~
…	…

…

Q31O. I am a payment services provider under the Payment Services Regulations. How do the spot contract and means of payment exclusions referred to in the answers to Q31C and Q31G apply to me?

…

The *Payment Services Regulations* allow you to provide foreign exchange services that are closely related and ancillary to your payment services. That right does not allow you to provide foreign exchange derivative services that would otherwise require ~~authorisation~~ *authorisation* as an investment firm under ~~MiFID~~ the *Act*. You therefore need to consider the availability of ~~MiFID~~ the foreign exchange exclusions discussed in this section for your foreign exchange business.

…

The foreign exchange part of this example may involve a ~~MiFID C4~~ derivative within paragraph 4 of Part 1 of Schedule 2 of the *Regulated Activities Order* if it has a forward element. However in practice it is likely that such foreign exchange transactions will ~~fall outside MiFID~~ not involve an *investment service* because the spot exclusion applies.

The following are examples of how the delivery period should be calculated for the ~~MiFID~~ spot exclusion. They are all based on a payment being made in one currency funded from a payment account in another currency.

…

Q31P. Can a non-deliverable forward come within the exclusion for spot foreign exchange contracts in the answer to Q31C or the means of payment exclusion in the answer to Q31G?

…

As settlement is for the difference between an exchange rate agreed before delivery and the actual spot rate at maturity, a non-deliverable forward is not a spot contract, regardless of the settlement period ~~(recital (12) of the *MiFID Org Regulation*)~~, and the means of payment exclusion is also not available. See the answer to Q31R about why settlement for a difference does not come within either exclusion.

This answer is consistent with recital (12) of the *EU MiFID Org Regulation*.

Q31Q. How is holiday spending money treated under the spot contract and means of payment exclusions referred to in the answers to Q31C and Q31G?

One way of buying holiday currency is for the holidaymaker to order currency to be collected, for example, a week after the order, to be paid for at the currency seller's spot rate on the day of collection. This contract is not a ~~MiFID investment~~ financial instrument either because it ~~does not fall into the category C4 type of derivative~~ is not a derivative within paragraph 4 of Part 1 of Schedule 2 of the *Regulated Activities Order* in the first place or because the spot contract exclusion described in the answer to Q31C applies.

Another way of buying holiday money is for the holidaymaker to order currency to be collected, for example, a week after the order, to be paid for at the currency seller's spot rate on the day the currency is ordered. This type of contract is potentially a derivative within ~~the C4 type of derivative~~ paragraph 4 of Part 1 of Schedule 2 of the *Regulated Activities Order*. However the means of payment exclusion is potentially available. The holiday can be treated as identifiable goods or services even though the holidaymaker may not know what restaurant they are going to eat at or what tourist attractions they are going to visit.

…

These answers are relevant to whether the currency seller ~~requires authorisation under MiFID~~ is an investment firm. The holidaymaker will of course not ~~require authorisation~~ be an investment firm because a holiday-maker buying holiday money is not acting on a professional basis in the way described in the answer to ~~Q7~~ Q4.

…

Q31S. I enter into my foreign exchange contracts on a trading venue. What exclusions or exemption can I rely on?

…

If neither exclusion is available, and the contract is a ~~C4~~ derivative within paragraph 4 of Part 1 of Schedule 2 of the *Regulated Activities Order*, you may find the own account exemption described in the answer to Q40 helpful. Although that exemption is usually unavailable to those who have direct electronic access to a trading venue, this is not the case where the contract is for hedging purposes.

Commodity derivatives

Q32. Which types of commodity derivative ~~fall within MiFID scope~~ are financial instruments?

Broadly speaking, the following commodity derivatives ~~fall within the scope of MiFID~~ are *financial instruments*:

- a derivative relating to a commodity derivative, for example, an option on a commodity future (~~C4~~ paragraph 4 of Part 1 of Schedule 2 to the *Regulated Activities Order*);
- cash-settled commodity derivatives (as explained in more detail in Q33A) (~~C5~~ paragraph 5 of Part 1 of Schedule 2 to the *Regulated Activities Order*);
- physically settled commodity derivatives traded on certain markets or facilities (as explained in more detail in Q33B) (~~C6~~ paragraph 6 of Part 1 of Schedule 2 to the *Regulated Activities Order*);
- other commodity derivatives capable of physical settlement and not for commercial purposes or wholesale energy products traded on an *EU OTF* that must be physically settled (as explained in more detail in Q33C) (~~C7~~ paragraph 7 of Part 1 of Schedule 2 to the *Regulated Activities Order*).

The definition of commodity derivative in ~~MiFIR~~ *MIFIR* also includes derivatives falling into ~~paragraph C10 of Section A of Annex 1 to MiFID, onshored in~~ paragraph 10 of Part 1 of Schedule 2 ~~of~~ to the *Regulated Activities Order* (see the answer to Q34 for this type of derivative).

Q33. What is a commodity ~~for the purposes of MiFID~~?

"Commodity" means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products and energy such as electricity (~~article 2.6 of the *MiFID Org Regulation*~~ article 3 of the *Regulated Activities Order*). The fact that energy products, such as gas or electricity, may be "delivered" by way of a notification to an energy network (such as notifications under the Network Code or the Balancing and Settlement Code) does not prevent them being "capable of being delivered" for these purposes. If a good is freely replaceable by another of a similar nature or kind for the purposes of the relevant contract (or is normally regarded as such in the market), the two goods will be fungible in nature for these purposes. Gold bars are a classic example of fungible goods. In our view, the concept of commodity does not include services or other items that are not goods, such as currencies or rights in real estate, or that are entirely intangible.

Q33A. Can you tell me more about ~~category C5~~ commodity derivatives within paragraph 5 of Part 1 of Schedule 2 of the Regulated Activities Order?

This type of commodity derivative is one that must be settled in cash or one that provides for settlement in cash at the option of one of the parties. A derivative that only allows a party to opt for cash in the event of default or termination is not included.

This type of derivative corresponds to the derivative in paragraph 5 of Section C of Annex 1 to MiFID.

Q33B. Can you tell me more about ~~category C6~~ commodity derivatives within paragraph 6 of Part 1 of Schedule 2 to the Regulated Activities Order?

…

~~The~~ This category ~~C6 type~~ of commodity derivative excludes a wholesale energy product traded on a *UK* OTF that must be physically settled. ~~The *MiFID Org Regulation*~~ Paragraph 4 of Part 2 of Schedule 2 to the *Regulated Activities Order* defines physical settlement in more detail.

~~Article 6 of the *MiFID Org Regulation* has special definitions for what types of oil, coal and wholesale energy products are included in the C6 category of commodity derivative.~~

A contract that can be physically settled but which is not traded on a regulated market, MTF or OTF might still fall within the ~~C5 or C7~~ paragraph 5 or 7 category of commodity derivative even though it falls outside the paragraph 6 category ~~C6~~.

The paragraph 6 type of commodity derivative corresponds to the derivative in paragraph 6 of Section C of Annex 1 to MiFID. There is further EU material about it in articles 5 and 6 of the *EU MiFID Org Regulation*.

Q33C. Can you tell me more about ~~category C7~~ ~~(recital 5 to, and article 7 of, the MiFID Org Regulation)~~ commodity derivatives within paragraph 7 of Part 1 of Schedule 2 of the Regulated Activities Order?

This type of commodity derivative is one that meets all the following conditions:

…

- It is not a ~~C6~~ commodity derivative within paragraph 6 of Part 1 of Schedule 2 to the *Regulated Activities Order*.

…

- It meets one of the following criteria:

- it is traded on a ~~third country~~ trading venue other than a UK trading venue that performs a similar function to a regulated market, an MTF or an OTF (an "equivalent ~~third country~~ overseas trading venue"); or

- it is expressly stated to be traded on, or is subject to the rules of, a *UK* regulated market, a *UK* MTF, a *UK* OTF or an equivalent ~~third country~~ overseas trading venue; or

- it is equivalent to a contract traded on a *UK* regulated market, *UK* MTF, *UK* OTF or equivalent ~~third country~~ overseas trading venue. Equivalence in a contract is judged by reference to the price, the lot, the delivery date and other contractual terms such as quality of the commodity or place of delivery.

- It is standardised so that the price, the lot~~,~~ and the delivery date ~~and other terms~~ are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

Certain contracts entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network are excluded from the ~~C7~~ paragraph 7 category of commodity derivative.

The ~~category C7~~ paragraph 7 type of commodity derivative also excludes a wholesale energy product traded on an EU OTF that must be physically settled. ~~The *MiFID Org Regulation*~~ Paragraph 4 of Part 2 of Schedule 2 to the *Regulated Activities Order* defines physical settlement in more detail.

The paragraph 7 type of derivative corresponds broadly to the derivative in paragraph 7 of Section C of Annex 1 to MiFID. There is further EU material about this kind of derivative in recital 5 to, and articles 5, 6 and 7 of, the *EU MiFID Org Regulation*.

Miscellaneous derivatives ~~(C10)~~

Q34. What types of derivatives fall into ~~the C10 category~~ paragraph 10 of Part 1 of Schedule 2 of the Regulated Activities Order?

There is a miscellaneous category of derivatives in ~~C10~~ paragraph 10 of Part 1 of Schedule 2 to the *Regulated Activities Order*, which is supplemented by ~~articles 7 and 8 of the *MiFID Org Regulation*~~ paragraphs 7 and 8 of Part 2 of Schedule 2 to the *Regulated Activities Order*. These relate to:

…

- an index or measure related to the price or value of, or volume of transactions in, any asset, right, service or obligation; or

…

~~C10~~ Paragraph 10 derivatives must also meet at least one of the following criteria:

…

- the contract is traded in a *regulated market*, an MTF, an OTF or a non-~~EEA~~ UK trading venue that performs a similar function; or

…

A contract of insurance or reinsurance is not a ~~C10~~ paragraph 10 commodity derivative ~~(recital 6 to the *MiFID Org Regulation*)~~. Neither is a contract falling under one of the other paragraphs of ~~section C of Annex 1 to MiFID, onshored in~~ part 1 of Schedule 2 ~~of~~ to the *Regulated Activities Order*.

The paragraph 10 type of derivative corresponds to the derivative defined in paragraph 10 of Part C of Annex 1 to MiFID, as supplemented by recital 6 and articles 7 and 8 of the *EU MiFID Org Regulation*.

Emission allowances

Q34A. How are emission allowances treated?

…

- The *UK auctioning regulations* allow the following to bid:

  …

  - a person exempt under ~~article 2(1)(j) of MiFID as onshored~~ paragraph 1(k) in Part 1 of Schedule 3 to the ~~*RAO*~~ *Regulated Activities Order* (see Q44 to Q45 for more on this exemption).

- An *emission allowance* is itself a financial instrument ~~(C11).~~ under paragraph 11 of Part 1 of Schedule 2 to the *Regulated Activities Order*. It corresponds broadly to the financial instrument in paragraph 11 of Part C of Annex 1 to MiFID.

- An option, future, swap, forward rate agreement or any other derivative contract relating to *emission allowance* is included as a ~~C4~~ derivative under paragraph 4 of Part 1 to Schedule 2 to the *Regulated Activities Order*.

It is not always clear how all this overlapping legislation fits together but in the ~~FCA's~~ *FCA's* view, it works like this ~~(for ease of reference the phrase 'MiFID authorisation' is used to refer to UK requirements onshoring MiFID)~~:

…

(2) The five-day future auction product is a financial instrument ~~and is regulated under MiFID as onshored by~~ under paragraphs 4 and 11 of Part 1 of Schedule 2 to the *RAO*. ~~It is included under C4 and C11.~~

(3) The two-day spot contract product is also a financial instrument. It is included under ~~C11. It is therefore also regulated under MiFID as onshored by~~ paragraph 11 of Part 1 of Schedule 2 to the *RAO*.

(4) In the ~~FCA's~~ *FCA's* view an *emission allowance* (including when auctioned under the *EU auction regulation* or the *UK auctioning regulations*) will not come within ~~C1~~ paragraph 1 of Part 1 to Schedule 2 of the *Regulated Activities Order*.

(5) The *UK auctioning regulations* provide certain exemptions for aircraft operators and operators of plant and other installations. These exemptions continue to apply whether or not ~~a MiFID~~ an exemption~~, as onshored~~ in Part 1 of Schedule 3 to the ~~*RAO*~~ *Regulated Activities Order* is available, but only for bidding activities covered by the *UK auctioning regulations*.

(6) Thus for example, regulation 16 of the *UK auctioning regulations* ~~enable~~ enables business groupings of operators in (5) to be eligible to apply for admission to bid. The ~~MiFID~~ exemption in (12) below may not cover all such persons but they are still entitled to submit bids under the *UK auctioning regulations*.

(7) The mere fact of being exempt under ~~MiFID, as onshored in~~ Part 1 of Schedule 3 to the ~~*RAO*~~ *Regulated Activities Order* does not allow someone to bid under the *UK auctioning regulations*. The *UK auctioning regulations* regulate who can and cannot bid.

(8) The *UK auctioning regulations* cover the reception, transmission and submission of a bid. This corresponds to the investment services and ~~MiFID~~ activities of the reception and transmission of orders in relation to one or more financial instruments, execution of orders on behalf of clients and dealing on own account.

(9) Therefore the *UK auctioning regulations* activities of receiving, transmitting and submitting a bid are all also ~~covered by MiFID~~ *investment services*, whether the emission allowance is auctioned as a five-day future or a two-day spot contract. However, a person exempt under (5) is not ~~subject to MiFID~~ acting as an investment firm when bidding (subject to (10)).

(10) If a person who is allowed to bid under the *UK auctioning regulations* ~~or~~ is ~~authorised under MiFID~~ also *authorised* as an *investment firm* (because for example it wants to carry out other ~~activities~~ *investment services* for which it needs ~~MiFID authorisation~~ *authorisation*), ~~MiFID will apply to~~ its bidding activities will be *investment services* and regulated as such.

(11) The ~~MiFID~~ investment services and activities that apply to a product covered by the *UK auctioning regulations* are not limited to the bidding activities listed in paragraph (8) of this list. All the ~~MiFID~~ investment services and activities apply to *emission allowances* auctioned as a financial instrument. Therefore, for example, giving personal recommendations about emission allowances (including bids) is ~~covered~~

~~by MiFID~~ an *investment service*. Anyone ~~wishing to carry~~ carrying out such activities will ~~need to be authorised as a MiFID~~ be an investment firm, unless some other exemption is available.

(12) ~~Article 2.1(e) of MiFID as onshored in~~ Paragraph 1(f) of Part 1 of Schedule 3 to the ~~*RAO*~~ *Regulated Activities Order* exempts an operator with compliance obligations under the *trading scheme order 2020* from ~~*MiFID*~~ the definition of investment firm for the purposes of the *Regulated Activities Order*.

(a) The exemption covers some of the same ground as the exemption in the *UK auctioning regulations* described in (5) to (7) above. However this overlap neither extends nor narrows the effect of the *UK auctioning regulations* exemption.

(b) The ~~article 2.1(e)~~ exemption also covers activities not covered by the *UK auctioning regulations*. So, for example, the ~~article 2.1(e)~~ exemption covers buying and selling the underlying *emission allowance* or the five-day future or two-day spot auction product in the secondary market.

…

…

Structured deposits

Q34B. How are structured deposits covered?

~~Article 1.4 of MiFID applies certain provisions of MiFID to an investment firm or credit institution that sells or advises on *structured deposits*.~~

A *structured deposit* is not a financial instrument. This means, for example, that a firm does not become ~~a *MiFID firm*~~ an investment firm by advising on or selling them.

However certain conduct of business *rules* that apply to *investment services* also apply to *structured deposits*.

13.5 Exemptions from ~~MiFID~~ the definition of investment firm

Introduction

Q35. Where do we find a list of ~~MiFID~~ exemptions from the definition of investment firm?

The exemptions can be found in ~~articles 2 and 3 MiFID, have been onshored in~~ Part 1 of Schedule 3 to the ~~Regulated Activities Order~~ *Regulated Activities Order* and Regulation 8 of the MiFI Regulations. ~~However, as explained in PERG 13.1 above, for ease of reference we have retained the references to the relevant MiFID~~

~~provisions in this chapter.~~ They broadly correspond to the exemptions in articles 2 and 3 of MiFID.

Q35A. Can you give me a complete list of exemptions?

Description of exemption	**Paragraph in Part 1 of Schedule 3 to the Regulated Activities Order**	MiFID reference	Guidance in this chapter
Insurers	Paragraphs 1(a), (b) and (ba)	article 2.1(a)	Q36
Intra-group services	Paragraph 1(c)	article 2.1(b)	Q37 and Q38
Services complementary to other professional activities	Paragraph 1(d)	article 2.1(c)	Q39
Own account dealing (except in commodities or emission allowances)	Paragraph 1(e)	article 2.1(d)	Q40 to Q40C
An operator with compliance obligations under the UK trading scheme who, when dealing in emission allowances, does not: …	Paragraph 1(f)	article 2.1(e)	Q34A
Employee share schemes and pension schemes	Paragraphs 1(g) and 1(h)	article 2.1(f) and (g)	Q42
The following public financial institutions: • the Treasury; • the Bank of England; • other public bodies charged with or intervening in the management of the public debt in the *United Kingdom*; and	Paragraph 1(i)	article 2.1(h)	None

• members of the European System of Central Banks~~;~~. • ~~other national bodies performing similar functions in the EU;~~ • ~~other public bodies charged with or intervening in the management of the public debt in the EU; or~~ • ~~international financial institutions established by two or more EU Member States which have the purpose of mobilising funding and providing financial assistance to the benefit of their members that are experiencing or threatened by severe financing problems.~~			
Collective investment undertakings and pension funds	Paragraph 1(j)	article 2.1(i)	Q43
Activities relating to commodity derivatives or emission allowances	Paragraph 1(k)	article 2.1(j)	Q44 to Q45
Persons providing investment advice in the course of providing another professional activity ~~not covered by MiFID~~ that is not an investment service This only applies if the provision of such advice is not specifically remunerated.	Paragraph 1(l)	article 2.1(k)	None
Any of the following: • Transmission system operators as defined in article 2(4) of Directive 2009/72/EC or article 2(4) of Directive 2009/73/EC (Directives about common rules for the internal markets in electricity and natural gas) when carrying out their tasks under the law of the *United*	Paragraph 1(o)	article 2.1(n)	None

Kingdom or part of the *United Kingdom* relied on by the *United Kingdom* immediately before *IP completion day* to implement Directive 2009/72/EC or 2009/73/EC, under Regulation (EC) No 714/2009, under Regulation (EC) No 715/2009 or under network codes or guidelines adopted pursuant to those Regulations; • any persons acting as service providers on their behalf to carry out their task under those legislative acts or under network codes or guidelines adopted pursuant to those Regulations; or • any operator or administrator of an energy balancing mechanism, pipeline network or system to keep in balance the supplies and uses of energy when carrying out such tasks. This exemption is subject to various detailed conditions			
Central securities depositories as defined in *CSDR* when providing services explicitly listed in Sections A and B of ~~EU Regulation 909/2014 (Securities settlement and central securities depositories regulation)~~ that regulation	Paragraph 1(p)	article 2.1(o)	None
Optional ~~article 3~~ exemption	It is not dealt with in the Regulated Activities Order. It is dealt with in regulation 8 of the *MiFI Regulations*.	article 3	Q48 to Q53

Exemptions relevant to Italy, Denmark and Finland	Paragraphs 1(m) and 1(n)	articles 2.1(l) and (m)	None

Q35B. How are the Schedule 3 exemptions relevant?

A *person* is not an investment firm as defined in the *Regulated Activities Order* or the *Act* and is not a *MiFID investment firm* or a *MIFIDPRU investment firm* if it has an exemption in Part 1 of Schedule 3 to the *Regulated Activities Order*. However, a *person* with such an exemption can still be an *investment firm* as defined in the *Glossary*. Please see the table in the answer to Q-1 (Are all the different types of investment firm mentioned at the start of this chapter basically the same?) for more details.

Q35C. Broadly speaking, who do the Schedule 3 exemptions cover?

They are likely to be relevant to insurers, group treasurers, professional firms to which Part XX of the *Act* applies, many *authorised professional firms*, professional investors who invest only for themselves, pension schemes, depositaries and operators of collective investment schemes or other collective investment undertakings (such as investment trusts), journalists, and commodity producers and traders.

Insurance

Q36. We are an insurer. ~~Does MiFID apply to us~~ Are we exempt?

~~No. Insurers are exempt from MiFID (article 2.1(a)).~~ Yes. More specifically, you are exempted from the definition of investment firm if you fall into one of the following categories.

- The *Society*.
- A *firm* with *permission* for:
    - *effecting contracts of insurance* or *carrying out contracts of insurance*);
    - *insurance risk transformation*; or
    - *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*.

  The exemption is available when carrying on those activities and any other activities permitted by rules made by the *FCA* or the *PRA*.
- A person that is a third country insurance or reinsurance undertaking (as defined by regulation 2(1) of the Solvency 2 Regulations 2015, as those regulations have been amended under the European Union (Withdrawal)

Act 2018)) where the undertaking is transferring risk to a transformer vehicle, provided that the assumption of risk by that vehicle is the *regulated activity* of *insurance risk transformation*.

Intra-group activities

Q37. We are a non-financial services group company providing investment services to other companies in the same group. Are we exempt under the group exemption ~~in article 2.1(b)~~?

Yes, you are exempted from the definition of investment firm if you provide these services exclusively for your parent company, your subsidiaries and those of your parent company. The exemption is narrower than the corresponding exclusion in article 69 of the ~~Regulated Activities Order~~ *Regulated Activities Order* (groups and joint enterprises) insofar, for example, as it does not apply to investment services supplied to a joint venture participant (see *PERG* 2.9.10G).

Q38. We also buy and sell financial instruments for ourselves. Are we still able to use the group exemption?

Yes. As long as your own account dealing does not involve you providing an ~~investment service (to which MiFID applies)~~ *investment service* to non-group entities, you can still rely on the group exemption in respect of the services you provide solely to other group companies.

So far as your own account dealing is concerned, you may be able to rely upon the own account exemption ~~in article 2.1(d)~~ (see ~~Q39~~ Q40) or ~~2.1(j)~~ the commodities exemption (see Q44 to Q45) if you meet the relevant conditions. The ability to combine reliance on ~~article 2.1(b)~~ the group exemption and ~~articles 2.1(d) or 2.1(j)~~ the own account and commodities exemptions could be relevant to companies performing group treasury functions.

The answer to Q46 (Is it possible to combine ~~article 2~~ Schedule 3 exemptions?) explains why it is possible to combine exemptions.

Incidental services as part of a professional activity

Q39. We provide investment services as a complement to our main professional activity. Are we exempt ~~(article 2.1(c) of MiFID and article 4 of the MiFID Org Regulation)~~?

Yes, ~~you will be exempt under article 2.1(c) MiFID~~ you are exempted from the definition of investment firm under paragraph 1(d) in Part 1 of Schedule 3 to the *Regulated Activities Order*. The exemption is further defined in Part 2 of that Schedule. The exemption is only available if:

…

This exemption is relevant, for example, to firms belonging to *designated professional bodies*, such as accountants, actuaries and solicitors, to whom Part XX of the *Act* applies. It could also apply to *authorised professional firms* which provide investment services in an incidental manner in the course of their

professional activity. In our view, the criteria set out in *PROF* 2.1.14G in relation to section 327(4) of the *Act* are also relevant to considering whether a firm can rely on the ~~MiFID~~ Schedule 3 exemption (see further guidance in *PROF* 2.1.16G).

If an *authorised professional firm* has the standard requirement on its permission that it "...must not carry on the specified regulated activities otherwise than in an incidental manner in the course of the provision by it of professional services (that is, services which do not consist of regulated activities)", our assumption is that it is exempt ~~from MiFID~~ if it complies with this requirement.

If you are an *authorised professional firm* ~~not falling within article 2.1(c) MiFID~~ that does not benefit from the exemption, you may also wish to consider whether you are ~~exempt or otherwise from MiFID requirements by virtue of the domestic implementation of the article 3 exemption~~ eligible to be treated as a *MiFID optional exemption firm* (see Q48 and Q49).]

The ~~article 2.1(c) MiFID~~ exemption may also apply to journalists, broadcasters and publishers (where they are subject to regulation or a code of ethics), although in most cases the FCA would not expect these persons to fall within the ~~MiFID~~ definition of investment firm (see ~~Q7 and Q8~~ Q4).

The exemption corresponds to the exemption in article 2.1(c) of MiFID as supplemented by article 4 of the *EU MiFID Org Regulation*.

Own account

Q40. We regularly buy and sell financial instruments ourselves but never as a service to third parties. Are there any exemptions which might apply to us?

Yes, ~~you could fall within the article 2.1(d) MiFID~~ you could be exempted from the definition of investment firm under paragraph 1(e) in Part 1 of Schedule 3 to the *Regulated Activities Order*. However, the exemption ~~but~~ does not apply if you:

…

- have direct electronic access to a regulated market, an MTF or an OTF; and in relation to this condition, please note that:
    - ~~(except that~~ non-financial entities can however have such access, as described in the answer to Q40A); and
    - direct electronic access is defined in paragraph 7 of Schedule 3 to the *Regulated Activities Order*;

…

Article 2(1)(d) of MiFID says that persons exempt under the commodities exemption described in the answer to Q44 are not required to meet the conditions laid down in the MiFID own account exemption corresponding to the own account exemption described in this answer in order to be exempt. In the ~~FCA's~~ *FCA's* view that does not mean that you can do business of the type covered by the article 2.1(d) exemption without meeting the exemption conditions described

in this answer just because you qualify for the commodities exemption. Recital 22 to MiFID confirms that the two exemptions apply cumulatively. Another reason for this conclusion is that articles 2.1(d) and (j) apply to different asset classes and there does not seem to be any reason apparent from MiFID why exemption under article 2.1(j) should be relevant to the asset classes in article 2.1(d).

This is also the position for the *Regulated Activities Order* provisions discussed in this chapter: a person may rely on the commodities exemption even if they do not meet the conditions of the own account exemption but qualification for the commodities exemption does not mean that the person is exempt as respects the activities covered by the own account exemption.

See the answer to Q46 for more information about combining this exemption with other exemptions, particularly the exemption for commodity derivatives business.

The exemption corresponds to the exemption in article 2.1(d) of MiFID.

Q40A. When can a non-financial entity have direct electronic access to or be a participant in a trading venue without losing the benefit of the own account exemption described in the answer to Q40?

The ~~article 2.1(d)~~ paragraph 1(e) own account exemption can still be available if you are a member of, or a participant in, a regulated market or an MTF or you have direct electronic access to a regulated market, an MTF or an OTF, as long as:

…

Q40B. What does direct reduction of risk mean in the answer to Q40A?

The second condition described in the answer to Q40A (objectively measurable reduction of risks) is designed to allow a non-financial business to hedge without losing the exemption. The following points are relevant to whether hedging meets this second condition:

…

- A transaction may be treated as risk-reducing if it qualifies as a hedging contract pursuant to International Financial Reporting Standards ~~adopted in accordance with article 3 of Regulation (EC) No 1606/2002 of the European Parliament and Council~~ as they have effect in the *United Kingdom*.

…

Q41. What is a market maker?

~~A~~ It has the same meaning as it does in *MiFIR*. Therefore, a market maker is "a natural or legal person ~~who holds himself~~ holding themselves out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against that person's proprietary capital at prices defined by that person" ~~(article 4.1(7) MiFID)~~. In our view anyone who satisfies the definition will be a market maker for the purposes of ~~MiFID~~ the exemption,

even if they have not entered into the agreement with the regulated market required by ~~article 48(2) of MiFID (Systems resilience, circuit breaker and electronic trading)~~ *MAR* 5A.5.3R (Market making agreements).

The definition corresponds to the definition of market maker in article 4.1(7) of MiFID.

Q41A. What is a high-frequency algorithmic trading technique?

…

~~A high-frequency *algorithmic trading* technique~~ The term is defined in paragraphs 8 and 9 of Schedule 3 to the *Regulated Activities Order*. It is a type of ~~algorithmic trading~~ *algorithmic trading* technique~~. Article 4.1(40) of MiFID defines a high-frequency *algorithmic trading* technique as an *algorithmic trading* technique~~ characterised by:

…

For the purposes of MIFID, the term is defined in article 4.1(40) of that Directive.

Employee share and company pension schemes

Q42. Is there an exemption relating to employee share schemes and company pension schemes?

Yes, there is an exemption from the definition of investment firm in ~~article 2(1)(f) MiFID~~ paragraph 1(g) of Part 1 of Schedule 3 to the *Regulated Activities Order* for persons providing investment services consisting exclusively in the administration of employee-participation schemes, for example employee share schemes and company pension schemes. In our view, whilst administration for these purposes could extend to services comprising reception and transmission or execution of orders on behalf of clients or placing, it would not include *personal recommendations* in relation to, or managing, the assets of employee share schemes or company pension schemes.

This exemption can also be combined with the "group exemption" in ~~article 2.1(b) of MiFID~~ paragraph 1(c) of Part 1 of Schedule 3 to the *Regulated Activities Order*, by virtue of ~~article 2.1(g) of MiFID~~ paragraph 1(h) of Part 1 of Schedule 3 to the *Regulated Activities Order*. See the answer to Q46 for more about combining exemptions.

The corresponding MiFID exemption is in article 2(1)(f) of that Directive.

Collective investment undertakings

Q43. Are we right in thinking that ~~MiFID does not apply to~~ there is an exemption for collective investment undertakings and their operators?

Yes, there is an exemption from the definition of investment firm under paragraph 1(j) of Part 1 of Schedule 3 to the *Regulated Activities Order*. Generally speaking, collective investment undertakings are specifically exempt, as are their

depositaries and managers. For collective investment undertakings within the scope of the *UCITS Directive* or *AIFMD* the "manager" corresponds to the *management company* or *AIFM* of the undertaking. So far as *collective investment schemes* which are outside the scope of the *UCITS Directive* or *AIFMD* are concerned, the "manager" corresponds, in essence, to the *operator* of a *scheme* and not to a person who is managing the assets of the *scheme* (unless that person is also the *operator*). In our view, the manager of a collective investment undertaking only benefits from the exemption in respect of any investment services or activities it may carry on in that capacity. To the extent that it also provides investment services or performs investment activities in a different capacity, for example, if it provides investment advice to, or manages the assets of, an individual third party, these services and activities fall outside the scope of this exemption.

In the case of *UCITS management companies*, some ~~*MiFID* provisions~~ requirements applying to investment firms will apply to those who provide portfolio management services (other than *collective portfolio management*), investment advice or safekeeping and administration services in relation to units to third parties~~, by virtue of article 6.4 of the *UCITS Directive*~~ (see Q6). *UK AIFMs* will also be subject to ~~*MiFID*~~ some requirements applying to investment firms if they provide *investment services or activities* for an undertaking other than a *fund* for which they are appointed as manager or *operator*. *Full-scope UK AIFMs* are only able to provide a limited range of such activities~~, for which they are subject to specific *MiFID* provisions by virtue of article 6.6 of *AIFMD*~~ (see Q6A).

Exemption for commodity derivatives business

[*Editor's note*: Questions 44 to 45 and their answers are outside the scope of this consultation.]

…

Q46. Is it possible to combine ~~article 2~~ Schedule 3 exemptions?

Various other answers to questions in this section deal with certain detailed combinations of exemptions:

- Q42 deals with employee share schemes and company pension schemes.
- It is possible to combine the exemption for own account dealing in ~~article 2.1(d)~~ paragraph 1(e) of Part 1 of Schedule 3 to the *Regulated Activities Order* and the exemption for commodity derivatives in ~~article 2.1(j)~~ paragraph 1(k) of Part 1 of that schedule. The answer to Q40 deals with the treatment of the commodity derivatives business of a firm relying on ~~article 2.1(d)~~ paragraph (1)(e). The answer to Q44C deals with the treatment of business within ~~article 2.1(d)~~ paragraph (1)(e) for a firm relying on the commodity derivatives exemption in ~~article 2.1(j)~~ paragraph (1)(k).

In certain cases a firm will not need to combine exemptions. For example an insurer relying on the exemption described in the answer to Q36 (We are an insurer. ~~Does MiFID apply to us~~ Are we exempt?) does not need to rely on any other exemption.

The answer to this question (Q46) is about whether there is a more general principle that ~~article 2~~ exemptions in paragraph 1 of Part 1 of Schedule 3 to the Regulated Activities Order can be combined.

There is an argument that the drafting of some of the exemptions does not allow this approach. For example, the group exemption (see the answer to Q37) says that the exemption is available to persons providing investment services exclusively for their fellow group members. However in the ~~FCA's~~ *FCA's* view it is generally possible to combine ~~article 2~~ exemptions~~.~~ in paragraph 1 of Part 1 of Schedule 3 to the *Regulated Activities Order*. There is no clear prohibition in Schedule 3. There is no reason apparent from the *Act*, the *Regulated Activities Order* or *UK law on markets in financial instrument* why combining exemptions should not be allowed. This approach has support from recital ~~Recital~~ 22 to MiFID, which says that exemptions apply cumulatively and that the ability to combine the exemptions in articles 2.1(d) (own account dealing) and 2.1(j) (commodity derivatives) is just an example of this principle. ~~This is consistent with the point that there is no reason apparent from MiFID why combining exemptions should not be allowed.~~

…

Treating an exempt activity as not being ~~a MiFID~~ an investment service or activity in this way only applies for the purpose of ~~article 2 of MiFID~~ paragraph 1 of Part 1 of Schedule 3 to the *Regulated Activities Order*, meaning that it is only relevant for deciding whether a person is ~~a MiFID~~ any of the types of investment firm listed at the start of this chapter.

Q46A. Is it possible to combine the Schedule 3 and the MiFID optional ~~article 2 and article 3~~ exemptions?

The FCA does not believe that it is generally possible to combine the Schedule 3 exemptions ~~in article 2~~ with the MiFID optional exemption ~~in article 3~~. However in the FCA's view, a firm that relies on the ~~article 2(1)(i)~~ paragraph 1(j) collective investment undertaking exemption (see Q43) can combine this with ~~article 3~~ the MiFID optional exemption in relation to business falling outside the ~~article 2(1)(i)~~ paragraph 1(j) exemption.

If however you are subject to the UCITS Directive or the AIFMD you may be restricted in your ability to carry out all the activities within the ~~article 3~~ MiFID optional exemption.

Locals

Q47. ~~We traded on an investment exchange as a local firm and were exempt from MiFID 1. Are we exempt under MiFID?~~

~~The exemption for locals in MiFID 1 no longer applies. It is unlikely that the own account exemption in article 2.1(d) will be available as that exemption does not apply to members of, or participants in, a regulated market (see Q40).~~ [Deleted]

The ~~article 3~~ MiFID optional exemption

Q48. ~~Article 3 is an optional exemption. Will the exemption apply to UK firms~~ What is this exemption?

~~Yes, in part. The exemption in articles 3.1(a) to (c) has been exercised by The Treasury.~~ It is an exemption provided for in regulations 6 to 8 of the *MiFI Regulations*. It applies to a *firm* whose permission permits it to carry on regulated activities as an exempt investment firm. The answers to Q49 to Q53 explain the exemption in more detail, including what the effect of the exemption is.

A *firm* with the benefit of this exemption is a *MiFID optional exemption firm* and the exemption is normally referred to as the MiFID optional exemption.

You will not benefit from this exemption unless you apply to the *appropriate regulator* for and are granted such permission. You will not be able receive such permission unless your business meets the conditions described in the answer to Q49.

The exemption corresponds to the optional exemption contained in article 3 of MiFID. Articles 3.1(d) and (e) of MiFID ~~provide~~ provided additional optional exemptions, but they ~~have not been~~ were never implemented in the UK and are not reflected in any of the UK provisions discussed in this chapter.

Q49. Which firms might fall within this exemption?

The exemption is likely to be relevant to many financial advisers (see Q50) including some corporate finance advisers. It may also be relevant to some venture capital *firms*.

~~The exemption applies to persons who meet~~ A *firm* with a permission described in the answer to Q48 is subject to a requirement under section 55L (Imposition of requirements by FCA) or 55M (Imposition of requirements by PRA) of the *Act* to comply with all the following ~~conditions~~:

- they ~~do~~ must not hold clients' funds or securities and ~~do~~ must not, for that reason, at any time, place themselves in debit with their clients;
- they ~~do~~ must not provide any investment service other than reception and transmission of orders or investment advice, or both, in relation to transferable securities and units in collective investment undertakings;
- they may transmit orders only to one or more of the following:
    - other ~~MiFID investment firms~~ *investment firms authorised* under the *Act* or MiFID;

- UK credit institutions authorised under the ~~*CRD*~~ *Act* excluding credit unions and friendly societies;

- credit institutions authorised under the *CRD*;

- branches of third country investment firms or credit institutions which are subject to, and comply with, prudential rules considered by the *appropriate regulator* to be at least as stringent as those laid down in *FCA rules* made under Part 9C of the *Act* (Prudential Regulation of FCA Investment Firms), *PRA rules* that are CRR rules as defined in section 144A of the *Act* (CRR rules), MiFID, ~~MiFID, the *CRD* or~~ the ~~*UK*~~ *EU CRR* or the Solvency 2 Directive;

- collective investment undertakings ~~or their managers~~ authorised under the law of the *United Kingdom* or of an EEA State to market units to the public and managers of such undertakings;

- ~~EU incorporated investment companies~~ a company that meets the following conditions (such as an investment trust company):

  - its exclusive object is to invest its funds in various stocks and shares, land or other assets with the sole aim of spreading investment risks and giving its shareholders the benefit of the results of the management of their assets; and

  - ~~the~~ its securities ~~of which~~ are listed or dealt in on a *United Kingdom regulated market*~~, for example investment trust companies~~ or a regulated market in an EEA State.

~~If you are a UK firm that meets these qualifying conditions, you will be exempt from regulations made by the European Commission under MiFID.~~

Where you provide *personal recommendations* or receive and transmit orders in relation to derivatives which are ~~MiFID~~ financial instruments but not transferable securities, you will fall outside the scope of this exemption. In our view, this would be the case, for example, if you provided either or both of these investment services in relation to OTC derivatives concluded by a confirmation under an ISDA master agreement (see *PERG* 13 Annex 2 Table 2).

Q50. We are ~~(or previously were)~~ an IFA and have a permission which covers (i) arranging (bringing about) deals in investments; (ii) making arrangements with a view to transactions; and (iii) advising on investments, in each case in relation to securities but not derivatives. We are not permitted to hold client money or investments and do not have dealing or managing permissions in relation to ~~MiFID~~ financial instruments. ~~Are we exempt~~ Do we meet the eligibility conditions for the exemption?

The ~~FCA~~ *FCA* expects so, assuming you do not:

…

- place ~~MiFID~~ financial instruments without a firm commitment basis (see Q22 and Q23).

We would generally not expect IFAs to be placing ~~MiFID~~ financial instruments without a firm commitment basis as we associate placing of financial instruments with situations where a company or other business vehicle wishes to raise capital for commercial purposes, and in particular with primary market activity.

…

Q53. What is the practical effect of exercising the optional exemption for those firms falling within its scope?

You ~~are not a firm to which MiFID applies and so~~ are not a *MiFID investment firm* for the purposes of the *Handbook*. Nor are you a *MIFIDPRU investment firm* subject to the prudential requirements in *MIFIDPRU*. You are also not an investment firm as defined in the *Act*.

However, you are still an investment firm as defined in the *Regulated Activities Order* and an *investment firm* as defined in the *Glossary*.

~~Article 3.2 of MiFID applies certain~~ Certain ~~MiFID~~ requirements of the *UK law on markets in financial instruments* apply to firms making use of the ~~article 3~~ exemption but a *firm* with the benefit of the exemption is excluded from others. ~~These are implemented in the *Handbook* and the *Act*.~~

13.5A Child trust funds and MiFID

…

Q53B. Will the operator of a CTF be carrying on investment services or activities?

Possibly, but it is likely that ~~he~~ it will ~~be exempt from the scope of MiFID~~ not be an investment firm as defined in the *Regulated Activities Order* or any of the other kinds of investment firm listed at the start of this chapter. Where the CTF is invested wholly or partly in *financial instruments*, the operator may be providing an *investment service* when ~~he~~ it executes the transaction or arranges to transfer funds to a new financial instrument (such as a security or collective investment scheme unit). However, in the ~~FCA's~~ *FCA's* opinion, the exemption in ~~article 2(1)(c) of MiFID~~ paragraph 1(d) of Part 1 of Schedule 3 to the *Regulated Activities Order* (see Q39) should be available to CTF operators ~~such that these activities will effectively be outside the scope of MiFID~~.

The key question in applying this exemption is whether the investment services are incidental to the other activities involved in operating a CTF when viewed on a global basis. In the ~~FCA's~~ *FCA's* view, this is likely to be the case as most CTFs do not involve active trading, such as day trading, by the account holder and, as a result, involve little or no ongoing investment service ~~within the scope of MiFID~~.

…

Q53C. Is a person who provides services relating to investments that underlie the CTF ~~within the scope of MiFID~~ an investment firm?

Possibly. Firms which provide *investment services* to the CTF operator in relation to financial instruments held within the CTF account (such as executing trades) will be ~~within the scope of MiFID~~ an investment firm unless an exemption applies to them.

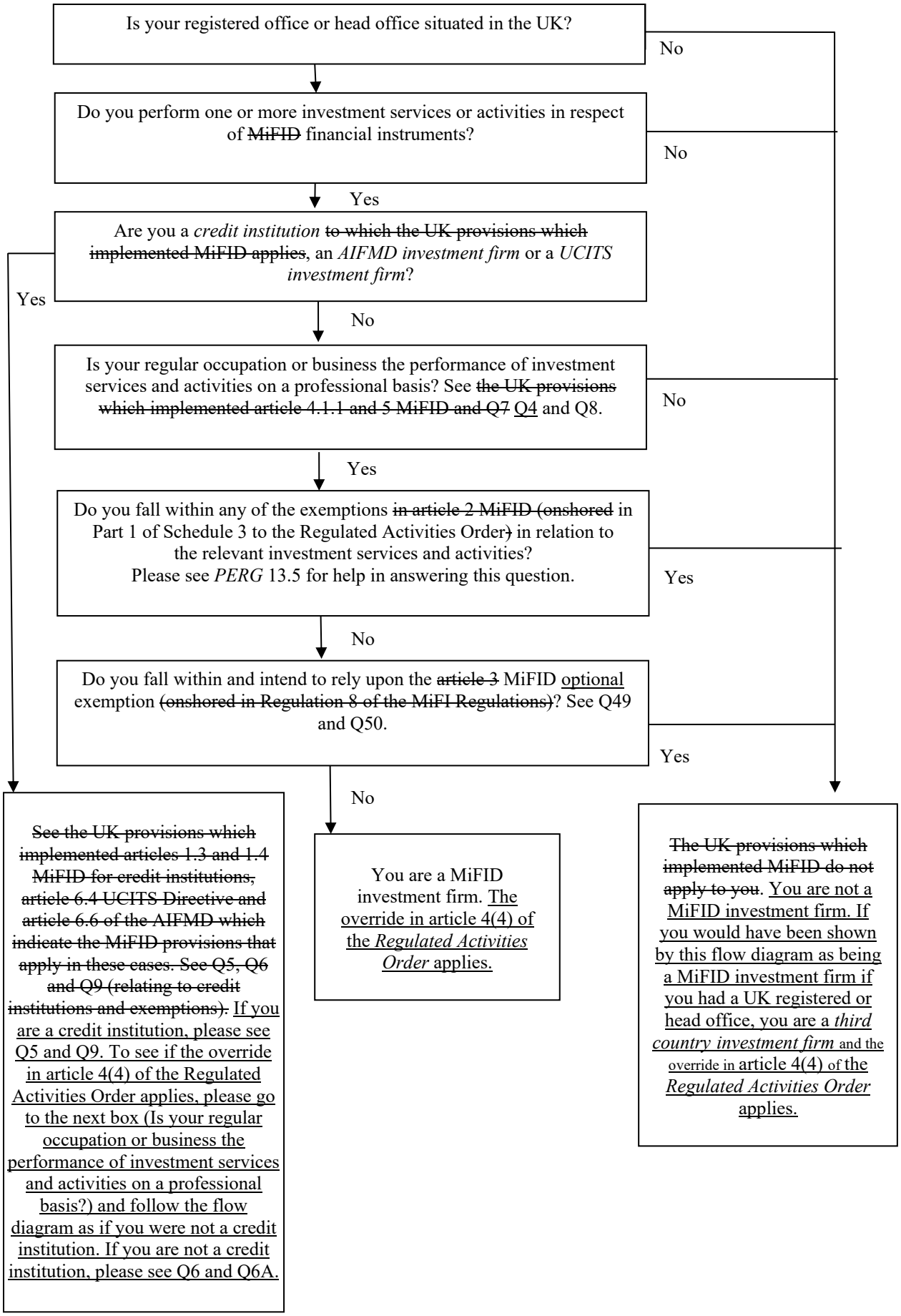
Q53D. Does the same analysis apply to other types of schemes where financial instruments may be held for the benefit of investors such as an ISA or a pension scheme?

This depends on the nature of the scheme in question. CTFs have very particular product features. Other types of schemes such as ISA accounts may simply be tax efficient ways to hold the beneficial interest in financial instruments which may, at the behest of the account holder, be transferred into his direct ownership. So, the beneficial interest that an investor acquires in a share, bond or collective investment scheme unit held under an ISA will be a financial instrument ~~for the purposes of MiFID~~. And the operation of an ISA will essentially be an investment service such that the exemption in ~~article 2.1(c) of MiFID~~ paragraph 1(d) of Part 1 of Schedule 3 to the *Regulated Activities Order* will not be relevant.

…

…

13 Annex 1 ~~Do the UK provisions which implemented MiFID apply to us~~ Am I a MiFID investment firm and how does the override in article 4 of the RAO apply?


Is your registered office or head office situated in the UK?
No
Do you perform one or more investment services or activities in respect of ~~MiFID~~ financial instruments?
No
Yes
Are you a *credit institution* ~~to which the UK provisions which implemented MiFID applies~~, an *AIFMD investment firm* or a *UCITS investment firm*?
Yes
No
Is your regular occupation or business the performance of investment services and activities on a professional basis? See ~~the UK provisions which implemented article 4.1.1 and 5 MiFID and Q7~~ Q4 and Q8.
No
Yes
Do you fall within any of the exemptions ~~in article 2 MiFID (onshored~~ in Part 1 of Schedule 3 to the Regulated Activities Order~~)~~ in relation to the relevant investment services and activities?
Please see *PERG* 13.5 for help in answering this question.
Yes
No
Do you fall within and intend to rely upon the ~~article 3~~ MiFID optional exemption ~~(onshored in Regulation 8 of the MiFI Regulations)~~? See Q49 and Q50.
Yes
No
~~See the UK provisions which implemented articles 1.3 and 1.4 MiFID for credit institutions, article 6.4 UCITS Directive and article 6.6 of the AIFMD which indicate the MiFID provisions that apply in these cases. See Q5, Q6 and Q9 (relating to credit institutions and exemptions).~~ If you are a credit institution, please see Q5 and Q9. To see if the override in article 4(4) of the Regulated Activities Order applies, please go to the next box (Is your regular occupation or business the performance of investment services and activities on a professional basis?) and follow the flow diagram as if you were not a credit institution. If you are not a credit institution, please see Q6 and Q6A.
You are a MiFID investment firm. The override in article 4(4) of the *Regulated Activities Order* applies.
~~The UK provisions which implemented MiFID do not apply to you~~. You are not a MiFID investment firm. If you would have been shown by this flow diagram as being a MiFID investment firm if you had a UK registered or head office, you are a *third country investment firm* and the override in article 4(4) of the *Regulated Activities Order* applies.

13 Annex 2

The list of ~~MiFID~~ investment services ~~in Section A of Annex 1 of MiFID, has been onshored~~ is set out in Part 3 of Schedule 2 to the Regulated Activities Order. It broadly corresponds to the list in Section A of Annex 1 of MiFID. ~~and the list of MiFID instruments in Section C of Annex 1 to MiFID has been onshored~~ The different kinds of financial instruments are listed in Part 1 of Schedule 2 to the Regulated Activities Order. ~~However, as explained in PERG 13.1 above, for ease of reference we have retained the references to the relevant MiFID provisions in this Annex.~~ The list of financial instruments broadly corresponds to the list of financial instruments in Section C of Annex 1 to MiFID.

Table 1 - ~~MiFID~~ Investment services and activities and the Part 4A permission regime

~~MiFID~~ Investment Services and Activities (references are to the applicable paragraph in Part 3 of Schedule 2 to the Regulated Activities Order and Section A of Annex 1 of MiFID)	**Part 4A permission**	**Comments**
Paragraph 1/A1- Reception and transmission of orders in relation to one or more financial instruments	…	… The activity of arranging (bringing about) deals in investments is wider than ~~A1~~ paragraph 1, so a firm carrying on this regulated activity will not always be receiving and transmitting orders. …
Paragraph 2/A2- Execution of orders on behalf of clients	…	…
Paragraph 3/A3- Dealing on own account	…	…

Paragraph 4/A4- Portfolio management	…	…
Paragraph 5/A5- Investment advice	…	…
Paragraph 6/A6- Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis	…	…
Paragraph 7/A7- Placing of financial instruments without a firm commitment basis	…	…
Paragraph 8/A8- Operation of Multilateral Trading Facilities	…	…
Paragraph 9/A9- Operation of organised trading facilities	…	…
Note: The activity of *bidding in emissions auctions* can form part of ~~A1, A2 or A3~~ paragraph 1, 2 or 3. In terms of the *permission* ~~*regime*~~ regime, *bidding in emissions auctions* does not form part of any other *regulated activity* (see ~~PERG~~ *PERG* 2.7.7CG) and so a *firm* must have a separate *permission* to undertake that activity.		

Table 2: ~~MiFID financial~~ Financial instruments and the Part 4A permission regime

~~MiFID financial~~ Financial instrument (references are to the applicable paragraph in Part 1 of Schedule 2 to the Regulated Activities Order and Section C of Annex 1 of MiFID)	Part 4A permission category	Commentary
Paragraph 1/C1- Transferable securities	…	The permission investment categories in column 2 (Part 4A permission category) are wider than the ~~MiFID~~ definition of transferable securities, as they comprise both securitised and non-securitised instruments. An instrument is not a transferable security ~~under MIFID~~ if it is not negotiable on the capital market. Therefore an investment listed in column (2) will not always be a transferable security. Firms with permissions containing any of the Part 4A permission investment categories in column (2) will fall outside the ~~article 3~~ MiFID optional exemption ~~as transposed in domestic legislation,~~ where they provide investment services in relation to financial instruments which are non-securitised investments (for example, OTC derivatives concluded by a confirmation under an ISDA master agreement). It is possible in theory that options, futures and contracts for differences under the RAO that are not mentioned in column (2) could be a ~~MiFID~~ transferable security. However column (2) includes the main RAO derivatives that the FCA thinks may in practice be transferable securities. For further guidance on the ~~article 3~~ MiFID optional exemption see Q49;

		for further guidance on transferable securities see Q28.
Paragraph 2/C2- Money market instruments	…	…
Paragraph 3/C3- Units in a collective investment undertaking	…	~~C3~~ This type of financial instrument includes units in regulated and unregulated collective investment schemes. This category also includes closed-ended corporate schemes, such as investment trust companies (hence the reference to shares in the adjacent column). …
Paragraph 4/C4- Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash	…	~~C4~~ This type of financial instrument includes in our view derivatives relating to commodity derivatives, for example options on commodity futures. …
Paragraph 5/C5- Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the	…	~~C5 instruments are~~ This type of financial instrument is generally a ~~contracts~~ contract for differences. Where ~~a C5~~ this type of financial instrument provides for the possibility of physical settlement, it may also be either a commodity future or commodity option, depending on its structure. …

parties (otherwise than by reason of a default or other termination event)		
Paragraph 6/C6- Options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a *United Kingdom* regulated market, a *UK* MTF or ~~an~~ a *UK* OTF	…	~~C6 instruments~~ This type of financial instrument will generally be either a commodity ~~futures~~ future or a commodity ~~options~~ option, depending on ~~their~~ its structure. Those instruments with a cash settlement option may also be contracts for differences. …
Paragraph 7/C7- Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in ~~C.6~~ paragraph 6. This category does not include spot contracts or contracts that meet certain conditions that are designed to exclude contracts for commercial purposes	…	…
Paragraph 8/C8- Derivative instruments for the transfer of credit risk	…	~~C8 derivatives~~ Derivatives of this type are financial instruments designed to transfer credit risk, often referred to as credit derivatives. …

Paragraph 9/C9- Financial contracts for differences	…	In our view, ~~C9~~ derivatives of this type could include those contracts for differences with a financial underlying, for example the FTSE index.
Paragraph 10/C10- Options, futures, swaps, forward rate agreements and any other derivative contracts relating to various specified underlyings that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event) …	…	…
Paragraph 11/C11- Emission allowances	…	…
Note: In our view, the categories of financial instrument ~~in C1 to C11~~ are not mutually exclusive, so a financial instrument may fall within more than one category. For example, an interest in an investment trust company falls within ~~C1~~ paragraph 1 and ~~C3~~ paragraph 3.		

…

16 Scope of the Alternative Investment Fund Managers Regime

…

16.2 What types of funds and businesses are caught?

G …

Question 2.23: What are financial assets for the purpose of Question 2.22?

Financial assets include ~~investments under the UK provisions which implemented *MiFID*~~ *financial instruments* and investment life insurance contracts; real estate is not considered a financial asset.

…

Question 2.57: Is a firm that deals in financial instruments on its own account caught?

As explained in the answer to Question 43 in *PERG* 13.5 (Exemptions from ~~MiFID~~ the definition of investment firm), *CIUs* are specifically exempt from the definition of investment firm. Hence they are exempt from the *UK* provisions which implemented *MiFID*, as are their depositaries and managers. An *AIF* is a *CIU* and an *AIFM* is a manager.

…

Other general points

Question 2.66: Does the interpretation of a CIU in PERG 16 apply ~~to MiFID~~ in other contexts?

PERG 16 is not intended to cover the meaning of a collective investment undertaking as used in the definition of *investment services and/or activities* and the exemptions from certain types of investment firm described in *PERG* 13 (Guidance on investment services and activities and investment firms) and the *UK* provisions which implemented other *EU* Directives. This reflects the fact that the *ESMA* AIFMD key concepts guidelines do not apply to the *UK* provisions that implemented *MiFID*.

Appendix 5

Notifying purchases of own securities under UKLR

UK LISTING RULES (NOTIFICATION OF PURCHASES) INSTRUMENT 2025

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 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 UK Listing Rules sourcebook (UKLR) is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the UK Listing Rules (Notification of Purchases) Instrument 2025.

By order of the Board
[*date*]

Annex

Amendments to the UK Listing Rules sourcebook (UKLR)

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

9 Equity shares (commercial companies): further issuances, dealing in own securities and treasury shares

…

9.6 Purchase of own equity shares

…

Notification of purchases

9.6.6 R Any purchase of a *listed company's* own *equity shares* by or on behalf of the *company* or any other member of its *group* must be notified to a *RIS* ~~as soon as possible, and in any event,~~ by no later than ~~7.30am on the *business day* following the calendar day on which the purchase occurred~~ the end of the 7th daily market session following the date of execution of such purchase. The notification must include:

(1) the date of purchase;

(2) the number of *equity shares* purchased;

(3) the purchase price for each of the highest and lowest prices paid, where relevant;

(4) the number of *equity shares* purchased for cancellation and the number of *equity shares* purchased to be held as *treasury shares*; and

(5) where *equity shares* were purchased to be held as *treasury shares*, a statement of:

(a) the total number of *treasury shares* of each *class* held by the *company* following the purchase and non-cancellation of such *equity shares*; and

(b) the number of *equity shares* of each *class* that the *company* has in issue less the total number of *treasury shares* of each *class* held by the *company* following the purchase and non-cancellation of such *equity shares*.

…

Appendix 6

Amendments to implement the Berne Financial Services Agreement (BFSA)

BERNE FINANCIAL SERVICES AGREEMENT INSTRUMENT 2025

Powers exercised

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

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

(a) section 137A (The FCA's general rules);
(b) section 137D (FCA general rules: product intervention);
(c) section 137T (General supplementary powers);
(d) section 138D (Actions for damages); and
(e) section 139A (Power of the FCA to give guidance); and

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

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

Commencement

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

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
General Provisions (GEN)	Annex B
Conduct of Business sourcebook (COBS)	Annex C
Insurance: Conduct of Business sourcebook (ICOBS)	Annex D
Supervision manual (SUP)	Annex E

Amendments to material outside the Handbook

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

New Handbook guide

F. The FCA makes the 'Berne Financial Services Agreement Guide' to form a Handbook Guide in accordance with Annex F to this instrument. This Handbook Guide does not form part of the Handbook.

Notes

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

Citation

H. This instrument may be cited as the Berne Financial Services Agreement Instrument 2025.

I. The guide in Annex F to this instrument may be cited as the Berne Financial Services Agreement Guide (BFSAG).

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

Annex 5 BFSA activity	a *BFSA registered service* that: (a) is provided to an *Annex 5 BFSA client* by a *registered BFSA investment firm*; (b) relates to *Annex 5 BFSA financial instruments* and *Annex 5 BFSA clients* specified in the *registered BFSA investment firm's* entry in the *BFSA register*; and (c) is supplied from Switzerland into the *UK* (as that phrase is construed in Annex 5 of the *BFSA*).
Annex 5 BFSA financial instrument	means 'relevant financial instrument' as defined in regulation 7 of the *BFSA Regulations*.
Annex 5 BFSA client	means 'relevant client' as defined in regulation 7 of the *BFSA Regulations.*
Berne Financial Services Agreement	the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Mutual Recognition in Financial Services concluded on 21 December 2023 at Berne.
BFSA	the *Berne Financial Services Agreement*.
BFSA register	the register maintained by the *FCA* under regulation 8 of the *BFSA Regulations.*
BFSA registered service	means 'registered service' as defined in regulation 1(4) of the *BFSA Regulations*.
BFSA Regulations	the Financial Services and Markets Act 2023 (Mutual Recognition Agreement) (Switzerland) Regulations [2025] [*Editor's note*: these regulations are not yet made].
BFSAG	the Berne Financial Services Agreement Guide (BFSAG).
registered BFSA investment firm	a *person* whose name is included in the *BFSA register*.

Annex B

Amendments to the General Provisions (GEN)

Insert the following new section, GEN 2.4, after GEN 2.3 (General saving of the Handbook for Gibraltar). The text is all new and is not underlined.

2.4 Application of the Handbook to persons exercising market access rights under the Berne Financial Services Agreement

2.4.1 R (1) A *person* is not subject to any *Handbook* provision to the extent that it would be contrary to the *UK's* obligations under the *BFSA*.

(2) This *rule* does not apply to provisions made by *FOS Ltd*.

2.4.2 G (1) The principal purpose of *GEN* 2.4.1R is to give effect to the requirement in Annex 5, Section VIII, paragraph A.1 of the *BFSA* that the *UK* defer to domestic authorisation and prudential (within the meaning of the *BFSA*) measures of Switzerland that apply where Swiss firms provide investment services from Switzerland into the *UK* under Annex 5 of the *BFSA*.

(2) The exclusion in Article 72ZA of the *Regulated Activities Order* means that *Registered BFSA investment firms* do not require a *permission* insofar as they are exercising rights under Annex 5 of the *BFSA* (see *PERG* 2.9.31G to *PERG* 2.9.33G). As a result, such firms will not generally be subject to the *Handbook* where they are carrying on activities under the *BFSA*.

(3) Article 73ZB of the *Financial Promotion Order* also creates an exemption for certain financial promotions relating to *Annex 5 BFSA activities* (see *PERG* 8.14.40EG for more information).

(4) Further, many provisions of the *Handbook* will not apply to *Annex 5 BFSA activities* because of the territorial scope of those provisions. For instance, *CASS* generally applies to *regulated activities* carried on from an establishment in the *United Kingdom*.

(5) However, Swiss firms exercising rights under Annex 5 of the *BFSA* will still be subject to the *Handbook* where they have a *permission* to carry on other *regulated activities* which are not carried on under the *BFSA*.

(6) *GEN* 2.4.1R is therefore intended to ensure that the *Handbook* does not apply to a *registered BFSA investment firms* where deference applies.

(7) Further detail about the *BFSA* and deference is contained in *BFSAG*.

2.4.3 G (1) As explained in *GEN* 2.4.2G(6), *GEN* 2.4.1R is of relevance to Swiss *firms* that are both *authorised* and also carry on *Annex 5 BFSA activities*.

(2) The main practical effect of *GEN* 2.4.1R is to disapply *Handbook* provisions which would generally otherwise apply to *authorised persons* engaging in *Annex 5 BFSA activities*. The *FCA* considers that this would result in the disapplication of the provisions in the table below in relation to *Annex 5 BFSA activities.*

Sourcebook	Provisions
PRIN	*PRIN* 2, *Principles* 1, 2, 3, 5, 6, 7, 8, 9, 10, 11 and 12 (including any *rule* in *PRIN* applying those principles)
SYSC	The entire sourcebook (excluding *SYSC* 12)
COCON	The entire sourcebook
APER	The entire sourcebook
COBS	The entire sourcebook (excluding *COBS* 22.4 to *COBS* 22.6)
PROD	*PROD* 3
SUP	*SUP* 3.10, *SUP* 3.11, *SUP* 10A, *SUP* 10C, *SUP* 11, *SUP* 15 (excluding *SUP* 15.10) and *SUP* 16
DISP	The entire sourcebook
COMP	The entire sourcebook

(3) Another practical effect of *GEN* 2.4.1R is that, unless the contrary intention appears, a *Handbook* provision relating to a designated activity and made under powers conferred by sections 71N or 71O of the *Act* does not apply in relation to *Annex 5 BFSA activities*.

(4) However, the disapplication referred to in paragraphs (2) and (3) does not prevent *Annex 5 BFSA activities* from being taken into account for other purposes – for instance, if the *Annex 5 BFSA activities* might have an effect on a Swiss *firm's* financial resources or an assessment of its conduct or fitness and probity in relation to other *regulated activities*.

(5) The disapplication also does not extend to any provisions that apply directly or indirectly to a *registered BFSA investment firm* as a result of it being an affiliate or controller of an *authorised person*.

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

1 Application

1.1 General application

…

Modifications to the general application rule

…

1.1.3 R …

Firms providing investment services into Switzerland under the BFSA

1.1.3A R *COBS* 6.1ZB applies only in accordance with *COBS* 6.1ZB.1R.

…

Insert the following new section, COBS 6.1ZB, after COBS 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions). All the text is new and is not underlined.

6.1ZB Information about the firm (firms providing investment services through a client adviser in Switzerland under the BFSA)

6.1ZB.1 R (1) Paragraph (2) applies to a UK investment services supplier that supplies relevant investment services through a client adviser in Switzerland to a Swiss high net worth client under access rights derived from Annex 5 of the *BFSA*.

(2) Before the supplier commences the supply of the services, it must provide the client with a disclosure document in which the following is clearly and prominently stated:

(a) that the supplier is:

(i) an entity incorporated in, or formed under, the domestic law of the *UK*; and

(ii) authorised and supervised by the *PRA* and/or the *FCA* (as appropriate) under the domestic law of the *UK*;

(b) that the supplier's duty to register as a client adviser in relation to article 28, paragraph 1 of the Swiss Financial Services Act (FinSA) is disapplied in accordance with Annex 5 of the *BFSA*; and

(c) if appropriate, information relating to the affiliation of the supplier to an ombudsman in accordance with article 77 of FinSA.

(3) In this *rule*:

(a) 'client adviser' has the meaning given in Annex 5, Section IV, paragraph B.2 of the BFSA;

(b) 'UK investment services supplier' means a *person* who meets the requirements in Annex 5, Section IV, paragraph B.2. of the *BFSA*.

(c) 'relevant investment service' means a service specified in Annex 5, Section III, paragraph B.a of the *BFSA*.

(d) 'Swiss high net worth client' means a *person* specified in Annex 5, Section V paragraph B.3 of the *BFSA*.

[**Note**: this *rule* implements Annex 5, Section IX, paragraph B.2 of the *BFSA*.]

Amend the following as shown.

[*Editor's note*: The amendment to COBS 22.6.1R shown below takes into account the changes introduced by the Conduct of Business (Cryptoasset Products) Instrument 2025 (FCA 2025/37), which come into force on 8 October 2025.]

22 Restrictions on the distribution of certain complex investment products

…

22.4 Prohibition on the retail marketing, distribution and sale of derivative contracts of a binary or other fixed outcomes nature

Application

22.4.1 R (1) This section applies to:

~~(1)~~ (a) *MIFID investment firms* with the exception of *collective portfolio management investment firms*; ~~and~~

~~(2)~~ (b) *branches* of *third country investment firms*; and

(c) *registered BFSA investment firms*,

in relation to the marketing, distribution or sale of *investments* specified in articles 85(4A) and 85(4B) of the *Regulated Activities Order* in or from the *United Kingdom* to a *retail client*.

(2) In this section, *firm* includes a *registered BFSA investment firm*.

…

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

Application

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

(a) *MIFID investment firms* with the exception of *collective portfolio management investment firms*; ~~and~~

(b) *branches* of *third country investment firms*; and

(c) *registered BFSA investment firms*,

in relation to the marketing, distribution or sale of *restricted speculative investments* in or from the *United Kingdom* to a *retail client*.

…

(3) In this section, *firm* includes a *registered BFSA investment firm*.

…

22.6 Prohibition on the retail marketing, distribution and sale of cryptoasset derivatives and cryptoasset exchange traded notes

Application

22.6.1 R (1) This section applies to:

~~(1)~~ (a) *MIFID investment firms* with the exception of *collective portfolio management investment firms*;

~~(2)~~ (b) *branches* of *third country investment firms*;

~~(3)~~ (c) *MiFID optional exemption firms*; ~~and~~

~~(4)~~ (d) *TP firms* which are *EEA MiFID investment firms* with the exception of *collective portfolio management investment firms*; and

(e) *registered BFSA investment firms*,

in relation to the marketing, distribution or sale of *cryptoasset derivatives* and *non-UK RIE cryptoasset exchange traded notes* in or from the *United Kingdom* to a *retail client*.

(2) In this section, *firm* includes a *registered BFSA investment firm*.

…

Annex D

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

1 Application

…

1 Annex 1 Application (see ICOBS 1.1.2R)

…

Part 3: Where?			
Modifications to the general rule of application according to location			
…			
3		…	
4		Firms providing services into Switzerland under Annex 4 of the BFSA	
4.1	R	(1)	*ICOBS* 4.7 applies only in accordance with *ICOBS* 4.7.1R.
	G	(2)	*ICOBS* 4.7.1R provides that *ICOBS* 4.7 applies to *firms* providing insurance services into Switzerland under Annex 4 of the *BFSA*. That includes those *firms* to which this sourcebook may otherwise not apply because of their reliance on an exemption or exclusion (for example article 72D of the *RAO)*.

…

Insert the following new section, ICOBS 4.7, after ICOBS 4.6 (Commission disclosure for pure protection contracts sold with retail investment products). The text is all new and is not underlined.

4.7 Information provided by insurance intermediaries or insurers supplying services into Switzerland under Annex 4 of the BFSA

Application

4.7.1 R This section applies to the supply of relevant insurance services into Switzerland to a Swiss insurance client by a UK insurance supplier under access rights derived from Annex 4 of the *BFSA*.

4.7.2 R The other provisions of this sourcebook do not apply to this section except as indicated in *ICOBS* 4.7.3R.

Pre-contractual disclosures

4.7.3 R (1) Within a reasonable time before the conclusion of an initial *contract of insurance* and, if necessary, within a reasonable time before its amendment or renewal, the supplier must:

(a) in the case of a supplier that is an *insurer*, provide the client with the information specified in Annex 4, Section VII, paragraph 1.a. of the *BFSA*; or

(b) in the case of a supplier that is an *insurance intermediary*, provide the client with the information specified in Annex 4, Section VII, paragraph 1.b of the *BFSA*.

(2) The information in paragraph (2) must be:

(a) clearly drafted; and

(b) provided in accordance with *ICOBS* 4.1A.2R.

Ad-hoc disclosures

4.7.4 R (1) Paragraph (2) applies where the client asks the supplier to provide copies of any files held by the supplier relating to that client or any other documents within the scope of the client and supplier's business relationship.

(2) The supplier must, within 30 days, provide the client with the documents requested under paragraph (1) unless to do so would put the supplier in breach of any data protection or confidentiality obligation to which they are subject.

Interpretation

4.7.5 R In this section:

(1) 'relevant insurance services' means the services specified in Annex 4, Section III, paragraph B of the *BFSA*;

(2) 'Swiss insurance client' means the *persons* specified in Annex 4, Section V, paragraph B of the *BFSA*; and

(3) 'UK insurance supplier' means the *persons* specified in Annex 4, Section IV, paragraph B of the *BFSA*.

[**Note**: this section implements Annex 4, Section VII, paragraphs 1 to 2 of the *BFSA*.]

Annex E

Amendments to the Supervision manual (SUP)

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

15 Notifications to the FCA

…

15.8 Notification in respect of particular products and services

…

Credit institutions providing account information services or payment initiation services

…

15.8.15 D …

Notification in respect of investment services provided by client advisers in Switzerland under the BFSA

15.8.16 R (1) A BFSA UK investment services supplier that supplies relevant investment services:

(a) through a client adviser in Switzerland;

(b) to a Swiss high net worth client; and

(c) under access rights derived from Annex 5 of the *BFSA*,

must notify the *FCA* of its intention to provide such services before the first time it commences their supply.

(2) In this *rule*:

(a) 'BFSA UK investment services supplier' means a *person* who meets the criteria in Annex 5, Section IV, paragraphs B.2.a to B.2.e. of the *BFSA*;

(b) 'client adviser' has the meaning given in Annex 5, Section IV, paragraph B.2 of the *BFSA*;

(c) 'relevant investment services' means a service specified in Annex 5, Section III, paragraph B.a of the *BFSA*;

(d) 'Swiss high net worth client' means the persons specified in Annex 5, Section V, paragraph B.3 of the *BFSA*.

[**Note:** this *rule* implements Annex 5, Section IX, paragraph B.1 of the *BFSA*.]

Annex F

Berne Financial Services Agreement Guide (BFSAG)

In this annex, all text is new and is not underlined. Insert the following new guide, the Berne Financial Services Agreement Guide (BFSAG).

1 Application and purpose

1.1 Overview

1.1.1 G This special guide is for *persons* who are exercising market access rights under the *BFSA*. Its purpose is to help those *persons* find their way around the *Handbook* by:

(1) setting out which parts of the *Handbook* apply to *registered BFSA investment firms* providing services from Switzerland into the *UK* under Annex 5 of the *BFSA*; and

(2) setting out specific *Handbook* provisions which are relevant to:

(a) *UK insurers* and *insurance intermediaries* providing services from the *UK* into Switzerland under Annex 4 of the *BFSA*; and

(b) *firms* providing investment services in Switzerland through a client adviser in accordance with Annex 5, Section IV, paragraph B.2 of the *BFSA.*

1.1.2 G In *BFSAG*, 'client adviser' has the meaning in Annex 5, Section IV, paragraph B.2 of the *BFSA*.

1.2 The BFSA

1.2.1 G The *BFSA* is an agreement between the *UK* and Switzerland governing market access rights for and cooperation in relation to the supervision of financial services suppliers established in the *UK* and Switzerland. The *BFSA* applies to 5 sectors, as set out in Annexes 1 to 5 of the *BFSA.*

1.2.2 G The *BFSA* provides for enhanced cooperation arrangements in relation to the sectors covered by Annexes 1 and 2. It confers some additional market access rights for some of the sectors covered by Annex 3. Annex 4 confers new markets access rights for *UK insurers* and *insurance intermediaries.* Annex 5 confers new market access rights for *registered BFSA investment firms*.

2 Market access rights and rules for UK insurers and insurance intermediaries

2.1 Annex 4 of the BFSA

2.1.1 G (1) Under Annex 4 of the *BFSA*, *UK insurers* and *insurance intermediaries* are entitled to provide certain insurance services to certain categories of client in Switzerland on a cross-border basis,

provided they meet the eligibility requirements in Annex 4. Those requirements include being included in the register maintained by the Swiss regulator (FINMA) for the purpose of the *BFSA*.

(2) Where *UK insurers* exercise market access rights under Annex 4, Switzerland has committed to defer to *UK* authorisation procedures and prudential rules. That means that those *firms* are not required to be authorised in Switzerland and are not required to comply with the prudential rules covered by the agreement (for these purposes, 'prudential rules' is wider than rules relating to capital requirements).

(3) In accordance with Annex 4, Section VI, paragraph A.b.ii of the *BFSA*, where untied insurance intermediaries exercise market access rights under Annex 4, they are relieved of the obligation to comply with the localisation requirement in article 41, paragraph 2.a of the Swiss Insurance Supervision Act of 17 December 2004. They remain subject to other requirements governing untied insurance intermediaries under Swiss law.[1]

2.2 Additional Handbook provisions relevant to UK firms exercising rights under Annex 4 of the BFSA

2.2.1 G (1) UK *firms* exercising the right to provide cross-border insurance services into Switzerland in accordance with Annex 4 of the *BFSA* are still required to comply with the *Handbook* provisions where those provisions would otherwise apply to the activities the *firm* is carrying on in Switzerland.

(2) Those *firms* are also subject to additional *rules* which give effect to notification and disclosure requirements under the *BFSA*. Those rules are in *ICOBS* 4.7.

(3) *Firms* are also reminded of the need to comply with any applicable *PRA* rules and guidance.

3 Market access rights for registered BFSA investment firms

3.1 Annex 5 of the BFSA

3.1.1 G (1) Under Annex 5 of the *BFSA*, *registered BFSA investment firms* are entitled to provide certain investment services to certain categories of client in the *UK* on a cross-border basis from Switzerland, provided they meet the eligibility requirements in Annex 5. Those requirements include being included in the register maintained by the *FCA* for the purpose of the *BFSA* (the *BFSA register*).

[1] **Footnote**: as noted in the QCP Addendum published on the FCA's website on 30 September 2025 (https://www.fca.org.uk/publications/consultation-papers/cp25-24-quarterly-consultation-paper-no-49), we are proposing an amendment to BFSAG 2.1.1G to clarify how deference applies to untied insurance intermediaries. Accordingly, this version of the draft instrument has been updated and the words 'and insurance intermediaries' which appeared in the first sentence of BFSAG 2.1.1(2)G in the original instrument have been removed and a new BFSAG 2.1.1(3)G has been added. The original version of BFSAG 2.1.1G should be disregarded.

(2) Under Annex 5, each party commits to deferring to certain regulatory and supervisory rules of the other party for certain investment services.

(3) For *registered BFSA investment firms* carrying on *Annex 5 BFSA activities*, this means that they are relieved from complying with 'authorisation and prudential measures of the *United Kingdom* that apply solely to financial service suppliers'. Annex 5, Section VIII, paragraph A.1.b of the *BFSA* lists those measures. The above means that these firms:

(a) are not required to apply for *authorisation* to carry on *regulated activities* to the extent that they are exercising rights under the *BFSA*; and

(b) are not required to comply with the prudential rules covered by the agreement (for these purposes, 'prudential rules' is wider than rules relating to capital requirements).

3.2 Deference

3.2.1 G (1) The areas to which deference applies are set out in Annex 5, Section VIII, paragraph A.1.b of the *BFSA*.

(2) Certain measures are expressly excluded from the *UK's* deference commitment in Annex 5 and Swiss firms providing services in accordance with that Annex will need to comply with these. These are:

(a) *UK* product intervention measures (Annex 5, Section VIII, paragraph A.1.b.ii.13 of the *BFSA*) set out in the *Handbook* in *COBS* 22.4, *COBS* 22.5 and *COBS* 22.6 (see *BFSAG* 3.5.1G); and

(b) obligations in relation to, or arising from, trading on a trading venue under the domestic law of the *UK*. The trading venue is not relieved of obligations under the domestic law of the *UK* to report transactions of the *registered BFSA investment firms* to the *FCA* (Annex 5, Section VIII, paragraph A.1.c of the *BFSA*). This limitation covers, in particular, rules imposed by the trading venue relating to a firm which is also a *registered BFSA investment firm* for the purpose of the *BFSA*.

(3) Measures of general application are not subject to deference – for example, criminal law, market abuse and insider trading rules, anti-money laundering rules and sanctions law.

(4) Any provisions that do or may apply directly or indirectly to a *registered BFSA investment firm* as a result of it being an affiliate or controller of a *UK authorised person*, or which do or may apply to the *registered BFSA investment firm* only on the basis that they do not apply solely to financial services suppliers, continue to apply.

3.2.2 G (1) The deference provisions referred to above are implemented by:

(a) Article 72ZA of the *Regulated Activities Order* which, in summary, provides an exclusion in respect of certain *regulated activities* for *registered BFSA investment firms* where the firm is exercising rights under Annex 5 of the *BFSA*;

(b) Article 73ZB of the *Financial Promotion Order* which, in summary, provides an exemption for communications which are communicated by a *registered BFSA investment firm* where the firm is exercising rights under Annex 5 of the *BFSA*; and

(c) *GEN* 2.4, which deals with the application of the *Handbook* to *registered BFSA investment firms*.

(2) There is further *guidance* on Articles 72ZA and 73ZB of the *Regulated Activities Order* in *PERG* 2.9.31G to *PERG* 2.9.33G and in *PERG* 8.14.40EG.

(3) *PERG* 2.9.17CG deals with the application of the exclusion for *overseas persons* to *registered BFSA investment firms.*

3.3 Activities carried on by employees of a registered BFSA investment firm on a temporary basis

3.3.1 G (1) Annex V, Section VIII, paragraph A.1.d of the *BFSA* provides that deference under that section extends, without the need for further authorisation, to activities relating to the cross-border supply of a *BFSA registered service* by a *registered BFSA investment firm* of Switzerland to an *Annex 5 BFSA client* carried out in the territory of the *United Kingdom* by its employees on a temporary basis, which is not such as to amount to a permanent establishment of the *registered BFSA investment firm* of Switzerland in the *United Kingdom*.

(2) However, Annex V, Section VIII, paragraph A.1.d of the *BFSA* clarifies that deference does not extend to:

(a) employees of a branch of the *registered BFSA investment firm* located in the *United Kingdom* and authorised under Part 4A of the *Act*; or

(b) the supply of a *BFSA registered service* on a temporary basis in the territory of the *United Kingdom* by *persons* other than employees of a *registered BFSA investment firm* of Switzerland. For this purpose, an 'employee' includes any *person* acting in that capacity on behalf of the *registered BFSA investment firm*.

(3) The deference provisions in Annex V have been implemented in part by Article 72ZA of the *Regulated Activities Order.* Accordingly, the

FCA considers that the exclusion in article 72ZA of the *Regulated Activities Order* extends to the circumstances described in (1).

3.4 Handbook provisions relevant to registered BFSA investment firms exercising rights under Annex 5 of the BFSA

3.4.1 G (1) *Registered BFSA investment firms* exercising rights under the *BFSA* are not required to obtain a *Part 4A permission*. As a result, the *FCA Handbook* does not generally apply to *registered BFSA investment firms* insofar as they are exercising rights under the *BFSA*.

(2) Where a *registered BFSA investment firm* carries on some activities in the *UK* under a *Part 4A permission* and carries on other activities under the *BFSA*, deference will only apply to its *Annex 5 BFSA activities*.

(3) *GEN* 2.4 (among other things) deals with the application of the *Handbook* where deference under the *BFSA* applies.

3.5 Product intervention rules relevant to Swiss firms exercising rights under Annex 5 of the BFSA

3.5.1 G (1) The *BFSA* excludes certain areas from the scope of deference. Those areas include product intervention measures. Some *Handbook rules* dealing with product intervention measures apply to *registered BFSA investment firms* when exercising rights under the *BFSA*. Those are listed below:

(a) *COBS* 22.4;

(b) *COBS* 22.5; and

(c) *COBS* 22.6.

(2) *Registered BFSA investment firms* are reminded that they are still required to comply with measures of general application including, for example, criminal law, market abuse and insider trading rules, anti-money laundering rules and sanctions law.

4 Market access rights for UK investment firms

4.1 Annex 5 of the BFSA

4.1.1 G (1) In accordance with Annex 5, Section IV, paragraph B.2 of the *BFSA*, UK *firms* are entitled to provide certain investment services in the territory of Switzerland on a temporary basis acting through an employee (a "client adviser" as defined in *BFSAG* 1.1.2G). The *firm* must meet the eligibility requirements in Annex 5, Section IV, paragraph B.2 of the *BFSA*, including the requirement to notify the *FCA*.

(2) Annex 5, Section VIII, paragraph A.2.b.i. of the *BFSA* provides that client advisers referred to in (1) are not required to register as client advisers under relevant Swiss law.

(3) *Firms* are reminded of the exceptions to deference specified in Annex 5, Section VIII. Paragraph A.2.c. of the *BFSA.*

4.2 Additional Handbook provisions relevant to UK firms exercising rights under Annex 5 of the BFSA

4.2.1 G (1) UK *firms* exercising the right to provide investment services in Switzerland through a client adviser in accordance with Annex 5, Section IV, paragraph B.2 of the *BFSA* are still required to comply with relevant *Handbook* provisions where those provisions would otherwise apply to the activities the *firm* is carrying on in Switzerland.

(2) Those *firms* are also subject to additional *rules* which give effect to notification and disclosure requirements under the *BFSA*. Those requirements are set out in:

(a) *COBS* 6.1ZB; and

(b) *SUP* 15.8.

Annex G

Amendments to the Perimeter Guidance manual (PERG)

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

2 Authorisation and regulated activities

…

2.9 Regulated activities: exclusions applicable in certain circumstances

…

Overseas persons

…

2.9.17B G …

2.9.17C G (1) In line with article 72(13) of the *Regulated Activities Order*, the exclusion for *overseas persons* described in *PERG* 2.9.17G does not apply to the carrying on by an *overseas person* of any *regulated activity* ('the RAO activity') specified for the purposes of that exclusion where:

(a) the *overseas person* is a *registered BFSA investment firm*; and

(b) the activity which the *registered BFSA investment firm* may carry on by virtue of its registration as such is, in substance, the same as the RAO activity, taking account of the *Annex 5 BFSA financial instrument*, in relation to which, and the clients in relation to whom, the RAO activity may be carried out.

(2) The effect of the above is that a *registered BFSA investment firm* cannot rely on the exclusion for *overseas persons* when it is exercising market access rights under the *BFSA*. However, such firms can still rely on that exclusion for any activities which are not included in the firm's entry on the *BFSA register* provided that the firm meets the applicable conditions for that exclusion.

(4) Where a *registered BFSA investment firm* is carrying on a particular activity under the *BFSA* and it wishes, instead, to rely on the exclusion for *overseas persons*, it must cancel its registration under the *BFSA* for that particular activity before it can rely on the exclusion.

(5) There is further information about the *BFSA* in *BFSAG*.

…

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

2.9.30 G …

Swiss mutual recognition firms

2.9.31 G (1) The exclusion in Article 72ZA of the *Regulated Activities Order* relates to *person*s exercising market access rights under Annex 5 of the *BFSA*. There is further information about the *BFSA* in *BFSAG*.

(2) This exclusion applies to:

(a) *dealing in investments as principal*;

(b) *dealing in investments as agent*;

(c) *arranging deals in investments*;

(d) *managing investments*;

(e) *safeguarding and administering investments*;

(f) *advising on investments (except P2P agreements)*; and

(g) *agreeing to carry on specified kinds of activity.*

2.9.32 G The exclusion described in *PERG* 2.9.31G is only available:

(1) to a *registered BFSA investment firm*; and

(2) to the extent that the *regulated activity*:

(a) is being carried on for the purpose of providing a *BFSA registered service*:

(i) to the *Annex 5 BFSA clients*; and

(ii) in relation to the *Annex 5 BFSA financial instruments*,

specified in the entry for that *registered BFSA investment firm* in the *BFSA Register*; and

(b) is being carried on from Switzerland.

2.9.33 G (1) The effect of the exclusion described in *PERG* 2.9.31G is that a *person* who is exercising rights under Annex 5 of the *BFSA* does not require *permission* for the purpose of carrying on *regulated activities* to the extent that that *person* is exercising rights under the *BFSA*. There is further *guidance* on this exclusion in *BFSAG* 3.3G.

(2) The exclusion described in *PERG* 2.9.31G is limited to *regulated activities* which are carried on for the purpose of providing the services listed in that *person's* entry on the *BFSA register* in relation to the categories of client and the categories of financial instrument listed in that entry.

(3) Hence, the exclusion will not apply where a *person* is included in the *BFSA register* and carries on one of the services listed in the register but does so in relation to a client or financial instrument which falls outside the categories of client or financial instrument listed in that *person's* register entry.

(4) Where a *registered BFSA investment firm* carries on *regulated activities* which fall outside the scope of their entitlement under the *BFSA*, that person will only be able to carry on those *regulated activities* if that *person*:

(a) has obtained *authorisation* for those activities; or

(b) is able to rely on another exclusion or an exemption under the *Act.*

(5) *PERG* 2.9.33G(2) means that, in some cases, a *registered BFSA investment firm* may carry on some *regulated activities* under the *BFSA* and carry on other *regulated activities* under its *authorisation*.

(6) Where a *person* has a *permission* to carry on a *regulated activity*, that *person* cannot register to carry on the same activity under the *BFSA* (see regulation 8(6) of the *BFSA Regulations*).

(7) The exclusion for *overseas persons* referred to in *PERG* 2.9.17CG does not apply where the exclusion described in *PERG* 2.9.31G applies.

…

8 Financial promotion and related activities

…

8.14 Other financial promotions

…

Promotions of qualifying cryptoassets by registered persons (article 73ZA)

8.14.40 G … D

Berne Financial Services Agreement suppliers

8.14.40E G (1) Article 73ZB exempts any *communication* which is communicated:

(a) by a *registered BFSA investment firm* in relation to *BFSA registered services*;

(b) to *persons* whom the *registered BFSA investment firm* reasonably believes are *Annex 5 BFSA relevant clients*; and

(c) in relation to any of the financial instruments listed in Annex 5, Section VI, paragraphs A(a), (b) and (d) of the *BFSA*,

where the *BFSA registered services*, *Annex 5 BFSA relevant clients* and the financial instruments referred to in *PERG* 8.14.40EG(1)(c) are all included in the entry for that *registered BFSA investment firm* in the *BFSA register*.

(2) The exemption described in (1) does not apply where the communication is communicated in relation to the financial instruments listed in Annex 5, Section VI, paragraph A(c) of the *BFSA* namely, collective investment schemes (CIS) or alternative investment funds (AIFs), including money market funds (MMFs). Accordingly, the exemption does not apply where the communication relates to a CIS, AIF or MMF. For these purposes, CIS, AIF and MMF have the meaning in Annex 5, Section VI, paragraph A(c) of the *BFSA*.

…

Appendix 7

Contactless payment limits - Proposed technical standards

TECHNICAL STANDARDS (STRONG CUSTOMER AUTHENTICATION AND COMMON AND SECURE METHODS OF COMMUNICATION) (AMENDMENT) INSTRUMENT 2025

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 Regulations of the Payment Services Regulations 2017:

(a) Regulation 106A (Technical standards); and
(b) Regulation 120 (Guidance); and

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

(a) section 137T (General supplementary powers);
(b) section 138F (Notification of rules);
(c) section 138I (Consultation by the FCA);
(d) section 138P (Technical standards);
(e) section 138Q (Standards instruments);
(f) section 138R (Treasury approval); and
(g) section 138S (Application of Chapters 1 and 2).

B. The provisions referred to above are specified for the purpose 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.

Modifications

E. The following technical standard is amended in accordance with the Annex to this instrument.

Technical Standards on Strong Customer Authentication and Common and Secure Methods of Communication

Commencement

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

Citation

G. This instrument may be cited as the Technical Standards (Strong Customer Authentication and Common and Secure Methods of Communication) (Amendment) Instrument 2025.

By order of the Board
[*date*]

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

Annex

Technical Standards on Strong Customer Authentication and Common and Secure Methods of Communication

…

Chapter -1 Guidance

…

11. Exemptions for ~~low-value~~ low-risk contactless payments at points of sale~~, which also take into account a maximum number of consecutive transactions or a certain fixed maximum value of consecutive transactions without applying strong customer authentication,~~ allow for the development of user-friendly ~~and low-risk~~ payment services and should therefore be provided for. It is also appropriate to establish an exemption for the case of electronic payment transactions initiated at unattended terminals, where the use of strong customer authentication may not always be easy to apply due to operational reasons (e.g. to avoid queues and potential accidents at toll gates or for other safety or security risks).

12. Similar to the exemption for ~~low-value~~ low-risk contactless payments at the point of sale, a proper balance needs to be struck between the interest in enhanced security in remote payments and the needs of user-friendliness and accessibility of payments in the area of e-commerce. In line with those principles, thresholds below which no strong customer authentication needs to be applied should be set in a prudent manner, to cover ~~only~~ online purchases of low value. The thresholds for online purchases should be set ~~more~~ prudently, considering that the fact that the person is not physically present when making the purchase poses a slightly higher security risk.

…

14. In the case of real-time transaction risk analysis that categorises a remote electronic payment transaction as low risk, it is also appropriate to introduce an exemption for the payment service provider that intends not to apply strong customer authentication through the adoption of effective and risk-based requirements which ensure the safety of the payment service user's funds and personal data, as provided for under Article 18 (Transaction risk analysis) of these standards. ~~Those~~ For the purpose of Article 18, those risk-based requirements should combine the scores of the risk analysis, confirming that no abnormal spending or behavioural pattern of the payer has been identified, taking into account other risk factors including information on the location of the payer and of the payee with monetary thresholds based on fraud rates calculated for remote payments. Where, on the basis of the real-time transaction risk analysis, a payment cannot be qualified as posing a low level of risk, the payment service provider should revert to strong customer authentication. The maximum value of such risk-based exemption should be set in a manner ensuring a very low corresponding fraud rate, also by comparison to the fraud rates of all the payment transactions of the

payment service provider, including those authenticated through strong customer authentication, within a certain period of time and on a rolling basis.

…

…

Chapter 3 Exemptions from strong customer authentication

…

Article 11 Contactless payments at point of sale

~~Payment service providers shall be allowed not to apply strong customer authentication, subject to compliance with the requirements laid down in Article 2, where the payer initiates a contactless electronic payment transaction provided that the following conditions are met:~~

~~(a) the individual amount of the contactless electronic payment transaction does not exceed £100; and~~

~~(b) the cumulative amount of previous contactless electronic payment transactions initiated by means of a payment instrument with a contactless functionality from the date of the last application of strong customer authentication does not exceed £300; or~~

~~(c) the number of consecutive contactless electronic payment transactions initiated via the payment instrument offering a contactless functionality since the last application of strong customer authentication does not exceed five.~~

Subject to compliance with Article 2, payment service providers shall be allowed not to apply strong customer authentication where the payer initiates a contactless electronic payment transaction identified by the payment service provider as posing a low level of risk.

Appendix 8

Contactless payment limits - Proposed amendments to the Approach Document

Proposed amendments to the Approach Document

20 Authentication

...

General provisions (Note: There are no changes to paragraph 20.6, it is included for the convenience of readers)

20.6 All PSPs are required to establish transaction monitoring mechanisms (specified in SCA-RTS Article 2) to enable them to detect unauthorised or fraudulent payment transactions. While not required, we encourage PSPs to consider adopting a real-time risk analysis approach on a similar basis to that described in SCA-RTS Article 18(2)(c) for the purpose of meeting the requirement of SCA-RTS Article 2.

...

20.48 ...

~~Contactless payments at point of sale and low-value transactions (SCA-RTS Articles 11 and 16)~~ Contactless payments at point of sale (SCA-RTS Article 11)

20.49 ~~In the context of contactless payments at point of sale (SCA-RTS Article 11) and low-value transactions (SCA-RTS Article 16), in addition to the monetary limit of £100 on the individual transaction, PSPs can apply either the cumulative monetary amount of £300 or the limit on the number of consecutive transactions but not both. It may be preferable for PSPs to decide which one of these measures to use in all cases to avoid confusing customers.~~ PSPs are allowed not to apply strong customer authentication at the point of sale where the payer initiates a contactless electronic payment transaction identified by the payer's PSP as posing a low level of risk. This exemption is subject to compliance with SCA-RTS Article 2. Guidance around the application of SCA-RTS Article 2 is provided at paragraph 20.6 above.

20.50 ~~In relation to the contactless exemption (article 11), firms may monitor their compliance with the cumulative thresholds using different methods. For example, firms may rely on a host-based solution or a chip-based solution where the payment instrument contains a 'chip' that calculates when the relevant threshold is met. Whichever method is chosen, firms should consider the risk of unauthorised or noncompliant contactless transactions being made and monitor the implementation of their solution.~~ In addition to the factors outlined under SCA-RTS Article 2(2), the PSP may consider additional risk-based factors which may help it to identify whether a transaction is low risk. Such factors may include, for example, normal spending or behavioural pattern of the payer, or location of the payer.

20.51 Subject to compliance with SCA-RTS Article 2, PSPs may also identify that a transaction is low risk according to the amount of the individual contactless electronic payment transaction in question as well as the cumulative amount of previous contactless electronic payment transactions or the number of consecutive contactless electronic payment transactions made since the last application of strong customer

authentication. Whilst not required to do so, PSPs may apply limits on the use of contactless payments to reflect the above factors, and we consider that this can provide a clear and effective way of identifying transactions that may fall within the exemption. We note that limits are easily understood by customers and can help them know when they can make contactless payments.

20.52 PSPs should consider their overall fraud rate for in-person contactless payments. A significant increase in such fraud rates could indicate that the PSP is processing payments that fall outside the scope of the exemption. PSPs can also refer to industry intelligence-sharing initiatives to help benchmark performance and manage fraud rates.

20.53 Where PSPs opt to rely upon this exemption, they should do so in a manner which is compliant with their obligations under the Consumer Duty. Allowing consumers the ability to set individual personal limits on the contactless payment functionality (including the ability not to allow contactless functionality) could be seen as delivering good outcomes for consumers. Any such change in individual personal limits would still need to be within a level the PSP identifies to be of a low risk. For clarity, liability provisions continue to apply, regardless of whether a customer has set an individual personal limit or not.

20.54 If a PSP makes any changes to how it applies the exemption, such as any changes to its contactless limits, it must consider its obligations under the Duty when doing so. It should take reasonable steps to ensure their customers understand how those changes could impact them. It must also monitor outcomes that customers are receiving, in line with the Duty, and consider impacts on different groups of customers, including those with protected characteristics.

Unattended terminals for transport fares and parking fees (SCA-RTS Article 12)

~~20.51~~20.55 PSPs are allowed not to apply strong customer authentication where a payer initiates an electronic payment transaction to pay a transport fare or parking fee at an unattended payment terminal, subject to compliance with the general authentication requirements set out in SCA-RTS Article 2. Where unattended terminals enable contactless payments but the PSP chooses to apply the transport exemption (SCA-RTS Article 12), ~~such activity does not count towards the value and volume limits set by the contactless exemption (SCA-RTS Article 11) since all exemptions are separate and independent.~~ the PSP does not need to rely upon the contactless exemption (SCA-RTS Article 11) since all exemptions are separate and independent.

Previous 20.52 – 20.61 (now 20.56 – 20.61)

...

20.61 ...

Low-value transactions (SCA-RTS Article 16)

20.62 In the context of low-value remote transactions (SCA-RTS Article 16), in addition to the monetary limit of £25 on the individual transaction, PSPs can apply either the cumulative monetary amount of £85 or the limit on the number of consecutive transactions but not both. It may be preferable for PSPs to decide which one of these measures to use in all cases to avoid confusing customers.

...

Previous 20.58 – 20.78 (now 20.63 – 20.83)

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