



No.39

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# Handbook Notice

December 2016

Financial Conduct Authority





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## Handbook Notice 39

This Handbook Notice introduces the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative powers on 10 November and 8 December 2016, and rules and standard terms also made by the Financial Ombudsman Service on 23 November 2016. It also contains information about other publications relating to the Handbook.

Contact names for the individual modules are listed in the relevant Consultation Papers and Policy Statements referred to in this Notice.

General comments and queries on the Handbook can be addressed to:

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However, queries on specific requirements in the Handbook should be addressed first to your normal supervisory contact in the FCA. For most firms this will be the FCA's Contact Centre:

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# 1. Overview

## Legislative changes

- 1.1** On 10 November 2016, the Financial Conduct Authority made changes to the Handbook in the instrument listed below.

CP	Title of instrument	Instrument No.	Changes effective
16/15	Pension Schemes (Restrictions on Early Exit Charges) Instrument 2016	2016/72	31.3.17

- 1.3** On 23 November 2016, the Board of the Financial Ombudsman Service made the relevant changes to the Handbook in the instrument listed below. On 8 December 2016, the FCA Board made the relevant changes to the Handbook as set out in that instrument.

CP	Title of instrument	Instrument No.	Changes effective
16/23	Fees (Tariff Data for Insurers 2017/2018) Instrument 2016	2016/73	9.12.16

- 1.5** On 8 December 2016, the Board of the Financial Conduct Authority made changes to the Handbook in the instruments listed below.

CP	Title of instrument	Instrument No.	Changes effective
CP16/21	Recovery and Resolution Directive (Amendment) Instrument 2016	2016/74	9.12.16
CP16/16	Mortgage and Payment Shortfalls (Conduct of Business) Instrument 2016	2016/75	15.12.16

CP16/17	Credit Unions Sourcebook (Amendment No 9) Instrument 2016	2016/77	3.1.17
CP16/21	Consumer Credit (Total Charge for Credit) Instrument 2016	2016/78	9.3.17
GC16/5	Wind-down Planning Guide Instrument 2016	2016/79	9.12.16
CP16/22	Standards for Designated Guidance Providers (Amendment) Instrument 2016	2016/80	9.12.16

### Summary of changes

- 1.7** The legislative changes referred to above are listed and briefly described in Chapter 2 of this Notice.

### Feedback on responses to consultations

- 1.8** Consultation feedback is published in Chapter 3 of this Notice.

### FCA Board dates for 2016 and 2017

- 1.9** The table below contains a list of forthcoming FCA board meetings. These dates are subject to change without prior notice.

January	25
February	23
March	30
April	27
May	25
June	22
July	20
September	21
October	19
November	8 & 9
December	14

## 2. Summary of changes

- 2.1** This chapter briefly describes FCA Handbook changes made by the Board on 10 November and 8 December 2016. It also describes changes made by the Board of the Financial Ombudsman Service on 23 November 2016. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the Prudential Regulation Authority (PRA) please see <http://www.bankofengland.co.uk/pr/Pages/publications/default.aspx>

### ***Pension Schemes (Restrictions on Early Exit Charges) Instrument 2016 (FCA 2016/72)***

- 2.2** Following consultation in CP16/15<sup>1</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

#### **Glossary COBS 19 and TP 2**

- 2.3** In summary, this instrument makes changes to create rules in the Handbook that will enable us to cap early exit pension charges in new and existing stakeholder personal pensions.
- 2.4** This instrument comes into force on 31 March 2017. Feedback to this consultation was published in a separate Policy Statement.<sup>2</sup>

### ***Fees (Tariff Data for Insurers 2017/2018) Instrument 2016 (FCA 2016/73)(FOS 2016/10)***

- 2.5** Following consultation in CP16/23<sup>3</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

#### **FEES 4, 5 and TP 13**

- 2.6** The Financial Ombudsman Service Board has made these changes in relation to voluntary jurisdiction participants.
- 2.7** In summary, this instrument makes changes to introduce a 12-month transitional provision for calculating 2017/2018 periodic fees (and levies for the Financial Ombudsman Service) for directive and non-directive insurance firms. The changes will also enable us to collect our annual funding requirement according to timetable.
- 2.8** This instrument comes into force on 9 December 2016. Feedback to this consultation is published in Chapter 3 of this Notice.

<sup>1</sup> CP16/15 'Capping early exit pension charges' (May 2016)

<sup>2</sup> PS16/24 'Capping early exit charges' (November 2016)

<sup>3</sup> CP16/23 'FCA Regulated fees and levies: Insurers' tariff data for 2017/18' (September 2016)

***Recovery and Resolution Directive (Amendment) Instrument 2016 (FCA 2016/74)***

- 2.9** Following consultation in CP16/21<sup>4</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**IFPRU 11**

- 2.10** In summary, this instrument makes changes to clarify our Handbook provisions for RRD entities, making them easier to understand and aiding compliance.
- 2.11** This instrument comes into force on 9 December 2016. Feedback to this consultation is published in Chapter 3 of this Notice.

***Mortgage and Payment Shortfalls (Conduct of Business) Instrument 2016 (FCA 2016/75)***

- 2.12** Following consultation in CP16/16<sup>5</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary  
MCOB 2 and 12**

- 2.13** In summary, this instrument makes minor changes to two Handbook provisions clarifying our expectations for firms dealing with customers with a payment shortfall on their mortgage or Home Purchase Plan.
- 2.14** This instrument comes into force on 15 December 2016. Feedback to this consultation will be published in a separate Policy Statement.

***Credit Unions Sourcebook (Amendment No 9) Instrument 2016 (FCA 2016/77)***

- 2.15** Following consultation in CP16/17<sup>6</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary  
COBS 4, 9 and 22  
SUP 16  
CREDS 3A, 9, 10 and Sch 1**

- 2.16** In summary, this instrument makes changes to ensure that individuals, small businesses and small charities are aware of the risks surrounding investing in subordinated debt and deferred shares and to increase consumer and investor protection.
- 2.17** This instrument comes into force on 3 January 2017. Feedback to this consultation is published in Chapter 3 of this Notice.

<sup>4</sup> CP16/21 'Quarterly Consultation Paper No. 14' (September 2016)

<sup>5</sup> CP16/16 'Minor Handbook changes related to mortgage borrowers with a payment shortfall' (June 2016)

<sup>6</sup> CP16/17 'Quarterly Consultation Paper No. 13' (July 2016)



***Consumer Credit (Total Charge for Credit) Instrument 2016 (FCA 2016/78)***

- 2.18** Following consultation in CP16/21<sup>7</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**CONC App 1**

- 2.19** In summary, this instrument makes changes to ensure that APRs are calculated in a consistent way that will promote the comparability of different offers.
- 2.20** This instrument comes into force on 9 March 2017. Feedback to this consultation is published in Chapter 3 of this Notice.

***Wind-down Planning Guide Instrument 2016 (FCA 2016/79)***

- 2.21** Following consultation in GC16/5<sup>8</sup>, the FCA Board has made the 'Wind-down Planning Guide' (WDPG) to form a new Regulatory Guide which does not form part of the Handbook.
- 2.22** The instrument also makes changes to the Glossary.
- 2.23** In summary, this instrument makes changes to enable a firm to put together an effective wind-down plan to cease its regulated activities and cancel its permissions with minimal impact on clients, counterparties and the wider market.
- 2.24** This instrument comes into force on 9 December 2016. Feedback to this consultation is published in Chapter 3 of this Notice.

***Standards for Designated Guidance Providers (Amendment) Instrument 2016 (FCA 2016/80)***

- 2.25** Following consultation in CP16/22<sup>9</sup>, the FCA Board has made changes to our Standards for Designated Guidance Providers. The standards are also converted to HTML and will now sit on the Handbook website. Note, however, that the standards still do not form part of the Handbook text.
- 2.26** In summary, this instrument makes small changes to the Pension Wise standards to reflect how consumers are currently using them and how the service itself has evolved since it was created.
- 2.27** This instrument comes into force on 9 December 2016. Feedback to this consultation is published in Chapter 3 of this Notice.

<sup>7</sup> [CP16/21 'Quarterly Consultation Paper No. 14' \(September 2016\)](#)

<sup>8</sup> [GC16/5 'Proposed guidance on wind-down planning' \(May 2016\)](#)

<sup>9</sup> [CP16/22 'Pension Wise standards: changes for secondary annuity market guidance' \(September 2016\)](#)

## 3. Consultation feedback

- 3.1** This chapter provides feedback on consultations that will not have a separate Policy Statement published by the FCA.

### **CP16/21 Quarterly Consultation No. 14 – Change to APR assumptions for consumer credit**

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#### ***Consumer Credit (Total Charge for Credit) Instrument 2016***

##### ***Background***

- 3.2** In September 2016<sup>10</sup> we consulted on an amendment to the Consumer Credit sourcebook (CONC) regarding the assumptions used to calculate the total charge for credit (TCC) and the annual percentage rate of charge (APR). This amendment is necessary in order to fully align wording in our Handbook with the relevant provisions of the Consumer Credit Directive (CCD).
- 3.3** Article 19 of the CCD sets out how to calculate an APR for credit agreements within the CCD, and Annex 1 to the CCD includes a number of additional assumptions that must be used where necessary. The provisions were implemented into UK law via the Consumer Credit (Total Charge for Credit) (Amendment) Regulations 2012 and carried across into FCA rules as part of the transfer of consumer credit regulation from the Office of Fair Trading on 1 April 2014.<sup>11</sup>
- 3.4** The APR assumptions are set out in CONC App 1.2.5R. However, assumption (d) of this provision is limited to open-end agreements (i.e. those with no fixed duration) and does not cover a situation in which different rates or charges apply to different amounts of credit (and not necessarily different periods). This does not accord with the wording of the CCD.

##### ***Feedback***

- 3.5** Two trade bodies and a legal firm responded to our consultation. One respondent was concerned about potential substantive effects of the proposed amendment, and was surprised at our statement in CP16/21 that we were not aware of any products currently on the market that would be impacted by the changes. Another noted the use of the words ‘where necessary’ in the CCD and interpreted the assumptions as not being applicable where the lender is able to calculate the APR without the need for assumptions. As such, it was unclear how assumption (d) of CONC App 1.2.5R could apply to fixed-duration agreements. The third respondent questioned whether our proposed changes altered the interpretation and application of other APR assumptions.

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<sup>10</sup> CP16/21 Quarterly Consultation No.14 (September 2016)

<sup>11</sup> PS13/8 FCA regime for consumer credit: carrying across some Consumer Credit Act secondary legislation into FCA rules (August 2013)

### ***Our response***

- 3.6** The purpose of the APR assumptions is to ensure that APRs are calculated in a consistent way to promote the comparability of different credit offers.
- 3.7** Our changes are solely to align the wording in CONC with the CCD. The changes will affect open-end agreements where different interest rates or charges apply to different amounts of credit (and not different periods, as would be the case, for example, with an introductory rate on a credit card). In the case of fixed-duration agreements they will apply where the duration of the agreement is known but the period of application of particular rates or charges is not (or the amount of credit to which they apply is not known).
- 3.8** Our statement in CP16/21 that we were not aware of any products that would be impacted by the proposed changes referred in particular to the insertion of the words ‘or amounts’ – in other words, an agreement where different rates or charges apply to different amounts of credit and not different periods.
- 3.9** The changes do not alter in any way the application of the other APR assumptions in CONC App 1.2.5R. To clarify this we have added guidance which states that the assumptions in question apply only where necessary in relation to the specific agreement – for example, because key features, such as the amount or duration of credit, are uncertain. They will not apply where it is possible to calculate the APR based on the terms and conditions of the agreement in question. We have also added the words ‘where necessary’ to the wording of the APR assumptions which reflect those in Annex 1 to the CCD. This is in line with article 19(5) of the CCD and with the wording in the Commission’s working document on APR calculation.<sup>12</sup>
- 3.10** In our view the amendments we have made to the rules in light of the feedback to our consultation do not alter them significantly from the proposed rules published in Quarterly Consultation Paper CP16/21.

### ***Cost benefit analysis and compatibility statement***

- 3.11** This is a minor technical amendment to ensure full alignment with the CCD. We are not aware of any current products on the UK market that would be affected by the changes. However, as we cannot rule out the possibility that some may exist, we are providing a transitional period of three months before the changes come into force.
- 3.12** Our view remains that the changes will not impose any costs or that, if there are any costs, they will be of minimal significance.
- 3.13** The changes ensure that consumers receive consistent APR information that will help them to compare products more reliably, thereby promoting consumer protection. They are consistent with our competition duty and help promote effective competition in the interests of consumers by seeking to ensure that the offers of different providers are comparable. Our view remains that the changes will not have a significantly different impact on mutual societies.

### ***Equality and diversity issues***

- 3.14** Our view remains that our changes will not adversely impact any of the groups with protected characteristics, i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

<sup>12</sup> Commission Staff Working Document Guidelines on the application of Directive 2008/48/EC (Consumer Credit Directive) in relation to costs and the Annual Percentage Rate of charge (SWD 2012 128, dated 8 May 2012)

## CP16/17 Quarterly Consultation Paper No.13 – Distribution and promotion of credit union deferred shares and subordinated debt

### *Credit Unions Sourcebook (Amendment No 9) Instrument 2016*

#### **Background**

- 3.15** In Chapter 7 of CP16/17 Quarterly Consultation Paper No.13<sup>13</sup> we consulted on some proposed changes to our rules for credit unions. These changes build on rules we introduced in 2015 (in PS15/14<sup>14</sup>) for the distribution of regulatory capital instruments, including certain mutual society shares. Since 2015 these have applied to some credit union deferred shares (generally those that do not offer a fixed return).
- 3.16** In CP16/17 we proposed changes to modify and extend these rules to cover all credit union deferred shares. We also proposed rules on the financial promotion of credit union subordinated debt instruments, which, like deferred shares, contribute to a credit union's regulatory capital. These changes bring our rules for credit union regulatory capital instruments generally into line with our rules for other mutual societies.
- 3.17** While the size of the market is small (around £5m for subordinated debt and £1.5m for deferred shares) and there is limited evidence of actual consumer detriment to date, the consequences of making inappropriate investments can be substantial. Although credit union capital instruments are frequently targeted at sophisticated or non-retail investors (e.g. local authorities), there is a risk of these products being targeted at individuals, small businesses or small charities for whom they may not be appropriate.
- 3.18** We also proposed some amendments to update the Glossary and some minor changes to reporting requirements.

#### **Feedback**

- 3.19** The consultation closed on 1 September 2016. We received four responses. Of these, three were from credit union representative bodies. The fourth response was from an individual credit union. We also engaged with the sector via a short briefing session at a roundtable meeting with credit union representative bodies in London on 5 July 2016, which provided an opportunity for questions and answers.
- 3.20** One of the four responses agreed in full with our approach and did not suggest any changes to our proposed rules. The other three generally agreed with our aims but offered suggestions for change.
- 3.21** The feedback we received from these three respondents suggested:
- Amending the statements our rules will require firms to provide to potential purchasers. Two respondents stated that the tone could have a negative impact on the reputation of UK credit unions and that the statement text itself could be misleading.
  - Introducing a minimum amount below which a credit union would not be required to carry out an 'appropriateness test' (to assess whether the product is appropriate for the potential purchaser of deferred shares).

<sup>13</sup> CP16/17 'Quarterly Consultation Paper No.13' (July 2016)

<sup>14</sup> PS15/14 'Restrictions on the retail distribution of regulatory capital instruments' (June 2015)

- Changing COBS 10 (which contains our appropriateness test rules) to clarify the implications for a credit union if it was challenged in its assessment of appropriateness.
- Removing the rules restricting credit unions from requiring members to purchase deferred shares or subordinated debt on the basis that these were already implied by other requirements.
- Changing the record keeping requirement for subordinated debt from three years to five years to bring the minimum length into line with existing PRA rules on the minimum length of a subordinated loan.
- Requiring standing data updates to be provided on a quarterly rather than an annual basis.

### ***Our response***

**3.22** We have made our rules largely as proposed in our Consultation Paper (CP), after considering the changes that were recommended by respondents.

**3.23** We have decided not to make any changes as a result of feedback received for the reasons set out below. The sub-paragraphs summarising our responses below mirror those containing suggestions we received at paragraph 3.8 above.

- We do not think that the statements are misleading or will have a negative effect on the credit union sector. We have introduced similar requirements for other mutual societies' regulatory capital instruments and have aimed to maintain consistency in our rules.
- We do not believe that a minimum threshold for the use of the appropriateness test is necessary, as even the smallest amounts can be significant for vulnerable customers and so merit the protection afforded by our rules. We also do not provide a minimum threshold when using the appropriateness test elsewhere, including with other mutual societies.
- We do not believe that it is necessary to provide further clarification about the appropriateness test; good record keeping should help credit unions demonstrate compliance with the appropriateness test requirements.
- We want to introduce a rule that credit unions must not require members to purchase deferred shares or subordinated debt because we are aware of (limited) instances where this has happened and want to clarify that this is not acceptable. We also want to eliminate loopholes and increase consumer protection by encompassing all subordinated debt (including that which does not qualify as regulatory capital) and all members (including those exempt from our other rules on the distribution and financial promotion of credit union securities).
- We do not think there is a direct correlation between the length of time a credit union must keep records demonstrating compliance with the term of the product. For instance, deferred shares are perpetual instruments, but it would not seem necessary for credit unions to keep records regarding their distribution forever. We would also point out that credit unions may choose to retain records for longer than the three-year period provided that they ensure they are complying with data protection requirements.
- We do not believe mandating a quarterly check and update is appropriate. The rules require firms to check the accuracy of standing data annually as a minimum (as SUP 16.10.6G indicates firms are encouraged to check and update their standing data more frequently

if details change). Additionally, SUP 15.5 requires notifications of certain core data items relating to firms to be sent us no matter when the changes occur. We believe there are sufficient provisions in place to ensure our standing data is current.

#### ***Post-consultation changes and entry into force of new rules***

**3.24** The only post-consultation changes we are making are some minor clarifications to the statements. These small amendments are not due to feedback we received as part of our consultation and do not have a substantive impact on our requirements. Instead, the changes aim to bring our statements for credit unions' regulatory capital instruments into line with the changes we proposed in CP16/21. The amendments relate to the statement potential purchasers must provide in relation to such instruments and are meant to clarify the treatment of a primary residence and any mortgage on it in calculating net assets and debts.

**3.25** These rules come into effect on 3 January 2017.

#### ***Cost benefit analysis and compatibility statement***

**3.26** We consider that the cost benefit analysis and compatibility statement in our CP remain valid. No respondents made any specific comments about our compatibility statement.

**3.27** One respondent queried the adequacy of our cost benefit analysis in cases where credit unions were seeking to raise small sums from members, especially regarding the cost of the appropriateness test. We do acknowledge that in cases where the purchase price is low, the monetary cost may exceed the benefits for that particular sale. However, even the smallest amounts can be significant for vulnerable customers and we could not identify a clear level for a threshold below which a similar degree of consumer protection was not merited. If the costs are prohibitive for small sales, credit unions may want to consider other options to raise capital. We appreciate that credit unions may prefer to issue deferred shares rather than subordinated debt because of the perpetual nature of deferred shares. However, it is this perpetual nature that adds to the risk of consumer detriment. We do not expect that any credit unions will fail as a result of issuing subordinated debt rather than deferred shares in these instances. As indicated in our CP, the main cost is associated with the development of the test rather than its ongoing use.

**3.28** We continue to expect that the costs for credit unions to implement our rules on the distribution and promotion of capital instruments will be considerably lower than for other mutual societies, as credit unions tend to be smaller firms. We also recognise it is difficult to quantify the precise costs for credit unions.

#### ***Equality and diversity issues***

**3.29** As promised in our CP, we have reconsidered the equality and diversity issues that may arise from our proposals. As was the case at that time, we do not consider that the proposals adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment. We also note that no respondents raised any concerns about equality or diversity issues.

**3.30** The changes made by this instrument are listed in Chapter 2 of this Notice.

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**CP16/21 Quarterly Consultation Paper No. 14 – Changes to IFPRU 11 to clarify requirements arising from the RRD**

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***Recovery and Resolution Directive (Amendment) Instrument 2016******Background***

**3.31** The instrument makes changes to Chapter 11 of the Prudential sourcebook for Investment Firms (IFPRU 11) to implement the Recovery and Resolution Directive (RRD) and its related requirements contained in the relevant Regulatory Technical Standards (RTSs). The instrument is technical in detail and the changes promote clarity for firms and groups within the scope of IFPRU 11.

**3.32** The affected sections in IFPRU 11 are:

- IFPRU 11.2 and IFPRU 11.3 on solo and group recovery plans, respectively
- IFPRU 11.5 on intra-group financial support
- IFPRU 11.6 on contractual recognition of bail-in
- IFPRU 11 Annex 2R on information for resolution plans

***Feedback and our response***

**3.33** No feedback was received on the proposals, so we proceeded with the proposed changes to the Handbook as consulted on.

***Cost benefit analysis and compatibility statement***

**3.34** As set out in CP16/21, we believe that the proposed changes to IFPRU 11 are primarily technical changes clarifying our existing policy arising from the RRD. The changes will help relevant RRD entities meet their associated obligations and better understand the requirements of IFPRU 11 and the RRD. The proposed change to IFPRU 11.5.21R is necessary to make that provision compliant with the RRD.

**3.35** Given the nature of these proposed changes we did not carry out a cost benefit analysis because there will be no increase in costs for RRD entities resulting from these proposals. We believe that the changes proposed are in line with our objectives. The proposals will enable RRD entities to better meet their obligations by clarifying their obligations under IFPRU 11.

***Equality and diversity issues***

**3.36** We have considered the equality and diversity issues that may arise from the proposals, and do not consider that these proposals raise any equality or diversity concerns.

**3.37** The changes made by this instrument are listed in Chapter 2 of this Notice.

## CP16/23 FCA Regulated fees and levies: Insurers' tariff data for 2017/18

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### *Fees (Tariff Data for Insurers in 2017/2018) Instrument 2016*

#### **Background**

- 3.38** The FCA and the Financial Ombudsman Service calculate periodic fees and levies for insurers using tariff data (as a measure of size). For directive firms this is partly drawn from their regulatory returns which changed with the implementation of Solvency II from 1 January 2016. Non-directive firms will continue to report regulatory data on a similar basis to previous years.
- 3.39** The annual fee tariff data collection process begins each December for the following financial year, which means that for 2017/18 fees and levies we would have needed to consult on the revised Solvency II tariff data and finalise the rules by December 2016. However, we expect that around 80% of Solvency II year-end regulatory returns will not be submitted until 20 May 2017 (the deadline for submission). This would be too late to enable us to use this data to calculate draft fees and levy rates for consultation in March 2017.
- 3.40** In CP16/23 we and the Financial Ombudsman Service proposed a 12-month transitional provision whereby the calculations for our 2017/18 periodic fees (and the levies for the Financial Ombudsman Service compulsory jurisdiction and voluntary jurisdiction), for both directive and non-directive insurance firms, are based on the same tariff data used to calculate 2016/17 periodic fees and levies. This was subject to two adjustments relating to Part VII transfers and firms in run-off.

#### **Feedback**

- 3.41** We received three responses from individual insurance firms that were, in principle, supportive of the proposals. Two respondents commented that we should allow resubmissions of 2016/17 tariff data to be made in addition to those we proposed as a requirement in relation to Part VII transfers and on a voluntary basis in relation to run-offs. They believed we should also allow firms to make adjustments to account for significant acquisitions or disposals and other changes to their business models or business volumes (for example, portfolio transfers, sale of renewal rights and new reinsurance arrangements).

#### **Our response**

- 3.42** We acknowledged in CP16/23 that requiring firms to make adjustments to their 2016/17 tariff data to take account of Part VII transfers and on a voluntary basis in the case of run-offs will not accommodate all changes in firm size.
- 3.43** We are proceeding with the transitional provision as set out in CP16/23:
- Fees for firms are calculated on a legal entity basis, therefore the acquisition or disposal of a firm will not impact its reported data. For example (and under the transitional arrangement) if a firm was acquired between the end of its financial year ending in 2015 and 31 December 2016 we would use the same tariff data reported to calculate its 2016/17 fees to calculate its 2017/18 fees. This is the same treatment as for all the other firms that have not been acquired during that period.
  - Any widening of the criteria for submitting updated data would need to be a requirement (as with Part VII transfers) because we would need to capture both those firms which would benefit from a lower fee/levy and those which would be required to pay a higher fee/levy.



If we were unable to capture both, other fee payers would pay a higher proportion of the funding recovered through the fee/levy. To achieve this would have required a large number of firms to maintain 'Solvency I' systems which we have sought to avoid, given the potential burden on firms.

**3.44** We expect to publish a second Consultation Paper, during 2017, setting out our proposals on the tariff data that we will use for calculating 2018/19 fees and levies. In developing those proposals we will consider the following related points raised by respondents:

- Deadlines for submitting Solvency II data will continue to differ to the fees and levies timetable.
- Internal reinsurance within a group should be eliminated from the fees and levy calculation.

***Compatibility statement***

**3.45** The rules we have now made do not differ in substance from those proposed in Appendix 1 of CP16/23 and therefore do not alter our compatibility statement. This also applies to the statement that we made in CP16/23 that we did not expect the proposals consulted on to have a significantly different impact on mutual societies when compared to other authorised persons.

***Equality and diversity issues***

**3.46** We continue to believe that the transitional provision for insurers does not raise equality or diversity questions.

**3.47** The changes made by this instrument are listed in Chapter 2 of this Notice.

**CP16/22 Pension Wise standards: changes for secondary annuity market guidance**

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***Standards for Designated Guidance Providers (Amendment) Instrument 2016***

***Background***

**3.48** The FCA is responsible for setting, maintaining and monitoring the standards that Pension Wise's designated guidance providers<sup>15</sup> must meet when providing guidance to consumers.

**3.49** In September 2016 we published CP16/22<sup>16</sup>, which set out proposed changes to the Pension Wise standards to take account of Pension Wise's extended remit of delivering guidance about selling an annuity income. We also took the opportunity to consult on minor changes to some of the existing standards to reflect how consumers approaching retirement are using Pension Wise and how the service has evolved since it began.

**3.50** On 18 October 2016 the Government announced that it will no longer take forward plans to introduce a secondary annuity market. This Notice therefore does not summarise the feedback received nor take forward those proposed changes.

<sup>15</sup> Bodies appointed by Government to give pensions guidance.

<sup>16</sup> CP16/22 'Pension Wise standards: changes for secondary annuity market guidance' (September 2016)

**3.51** This Notice summarises feedback received on the other minor changes to the standards to reflect how consumers approaching retirement are using Pension Wise and how the service has evolved. These were:

- removing the reference to HM Treasury to reflect the change in responsibility for Pension Wise from HM Treasury to the Department for Work and Pensions
- clarifying that only 'relevant' information from the consumer should be included in the record of the guidance session, and
- clarifying that a Pension Wise 'session' can cover more than one appointment

#### ***Feedback***

**3.52** We received 16 responses to CP16/22, of which 13 commented on our proposed changes to reflect how consumers are currently using Pension Wise. The responses came from a range of stakeholders who were supportive of the proposed changes.

**3.53** Respondents made the following points:

- Further clarification could be given as to what 'relevant information' means.
- While agreeing with the concept of flexible appointments, some respondents felt that further clarity was needed about what this meant with one respondent suggesting this should be tailored to the consumer's need. For example, some consumers may need the appointment to be paused while they can gather further information whereas other consumers may want a follow-up appointment after shopping around.

#### ***Our response***

**3.54** We do not consider that further changes are required to the standards. The standards are designed to be high-level and set the framework within which the guidance by designated guidance providers must be delivered. Pension Wise should work on the operational detail of the service and deliver this in line with the standards.

**3.55** 'Relevant information' is likely to mean information on benefits and pension income, debt and pensions, pensions and ill health. It can also refer to limited information on final salary or career average pensions (if these issues are raised by the consumer in a session). Pension Wise will continue to signpost to third party organisations such as Citizens Advice, the Pensions Advisory Service and the Money Advice Service. Contact details for these organisations are in the summary document.

**3.56** Having discussed 'flexible appointments' further with Pension Wise, operationally it is envisaged that flexible appointments will encompass the 'stop the clock' model so that consumers can gather further information if required and return to the service to complete a session with this information in hand. Additionally, consumers will be able to arrange a second Pension Wise appointment if they believe it would be helpful. Work on the delivery model for flexible appointments will continue as the service evolves to ensure that Pension Wise appointments remain relevant to the consumer and best meet their needs.

**3.57** The Pension Wise standards are not part of the Handbook, but from December they will be hosted on the Handbook website on a new 'standards' webpage to make them easier to access.

To enable this, the proposed final instrument (Standards for Designated Guidance Providers (Amendment) Instrument 2016) restates all of the standards by consolidating the minor changes we are taking forward from CP16/22 with the original standards.

***Cost benefit analysis and compatibility statement***

**3.58** In CP16/22 we concluded that the proposed changes to the standards to take account of how Pension Wise has evolved would result in an increase of costs of minimal significance. We did not receive feedback on our analysis and so consider that our conclusion remains valid.

**3.59** The compatibility statement set out in CP16/22 remains valid.

***Equality and diversity issues***

**3.60** We did not receive any comments from respondents on the equality and diversity considerations set out in CP16/22.

**3.61** We consider the minor changes to the Pension Wise standards to take account of how consumers currently use the service and how the service has evolved do not raise any equality and diversity issues.

**3.62** The changes made by this instrument are listed in Chapter 2 of this Notice.

**GC16/5 'Proposed guidance on wind-down planning'**

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**3.63** Wind-down Planning Guide Instrument 2016

***Background***

**3.64** In wind-down planning, a firm considers how it could close down its regulated business in an orderly manner, including under stressed conditions. An effective wind-down plan should help a failing firm to cease its regulated activities and have its permission cancelled with minimal adverse impact on its clients, counterparties and the wider markets.

**3.65** We published our Guidance Consultation (GC16/5) Proposed guidance on wind-down planning in May 2016. The objective of the guide is to provide helpful suggestions to firms that want to strengthen their approach to wind-down planning.

**3.66** This Handbook Notice sets out our response to the feedback we received and the changes that we have made as a result. The final guidance is now referred to as our Wind-down Planning Guide (the guide) and is available on the Handbook website at <https://www.handbook.fca.org.uk/handbook/WDPG/>.

***Feedback***

**3.67** During the two month consultation period we received nine written feedback responses. We also met with three trade bodies for a roundtable discussion. We found strong support for a guide to help plan for winding down a firm, especially from industry bodies.

**3.68** We were asked if the guide is intended to cover Electronic Money Institutions which are solely regulated by the FCA but are authorised under the Electronic Money Regulations 2011 rather than the Financial Services and Markets Act 2000 (FSMA).

**3.69** We were also asked to clarify whether the objectives of wind-down planning are limited to retail consumers.

- 3.70** Two respondents requested that we make wind-down planning mandatory and we were asked to give greater prominence to the obligations to treat customers fairly.
- 3.71** One respondent asked for clarification on triggering a wind-down plan and the scenarios in which it occurs. Another respondent suggested highlighting the importance of early engagement with the FCA.
- 3.72** We were asked to provide more clarity on the interaction between regulated and unregulated activities where firms or their groups carry out both.
- 3.73** In addition, we received some queries relating to the time horizon schedule for winding down and how it impacts exiting the regulatory perimeter.
- 3.74** We were asked about the handling of 'long-tail' events whose resolution extends beyond an average wind-down cycle.
- 3.75** In addition, we were asked whether during the wind-down period various FCA prudential and reporting requirements could fall away.
- 3.76** A few responses asked for more guidance on the interaction between insolvency and winding down, and we received a suggestion that the guide should include a summary of the principles underpinning insolvency law. We were asked to clarify whether a firm was a 'going' or 'gone' concern after beginning to wind down. We also received some suggestions that we should include more discussion in the guidance on dealing with insolvent scenarios.
- 3.77** We were asked to give practical advice on client assets and money issues in a wind down scenario.
- 3.78** A number of responses asked for further clarity on some of the logistical steps involved in a wind-down plan and the wind-down planning process.
- 3.79** We have taken into account the respondents' suggestions when finalising the guide and the changes we have made are addressed in more detail below.

#### ***Our response***

- 3.80** Scope: we have clarified the scope of the document by making it clear that it aims to assist FCA regulated firms authorised with a Part 4A permission under FSMA for which the FCA is the home state regulator with their wind-down planning. As such, the guide is not intended to cover Electronic Money Institutions who are authorised under the Electronic Money Regulations 2011, although the general principles may still be relevant to them.
- 3.81** Objectives of wind-down planning: we have amended the guide to make it clear that wind-down planning is intended to benefit market participants as well as consumers.
- 3.82** Nature: we received suggestions that it should be mandatory for firms (especially the higher impact ones) to have wind-down plans in place. After consideration, we have decided not to introduce such a rule or obligation on firms at this stage. This is to recognise that different firms operate under different circumstances and may need different approaches to mitigate their risks when winding down, and that a formal wind-down plan may be unnecessarily burdensome for smaller firms. This flexible approach received support from some other respondents.
- 3.83** Treatment of customers: we have amended the guide to make it clear that the obligation on firms to treat customers fairly continues to apply during the wind-down period. This includes,

where relevant, considerations relating to client monies and custody assets or the needs of potentially vulnerable customers. We have also added this to the quick reference guide.

- 3.84** Initiation of wind-down plan: we have provided further emphasis on scenario analysis and the importance of not waiting until Threshold Conditions are breached before taking action. We have also added a statement about the importance of early engagement with the FCA.
- 3.85** Interaction between regulated and unregulated activities: a firm carrying out both regulated and unregulated activities may choose to wind-down its regulated activities but continue with the unregulated ones. To this end, we have suggested in the guide that firms think more about the inter-connectedness between regulated and unregulated activities, e.g. whether the activities share the same infrastructure and whether closing the regulated activities would impact the remaining unregulated ones.
- 3.86** Handling of 'long-tail' events whose resolution extends beyond an average wind-down cycle: an important feature of the guide is the use of a time horizon for planning purposes (see Chapter 3.2 of the guide). The guide assumes that a firm is planning for an orderly wind-down of its regulated business until its permissions are cancelled, but it is possible that a firm may still have unregulated business after the cancellation of permissions. It is also prudent to consider any long tail claims or obligations which may affect the approval of the cancellation application, and the guide now reflects this.
- 3.87** Continuing requirements during wind-down: the wind-down plan does not create an exception for complying with Threshold Conditions or our rules during the wind-down period. We have now emphasised this in additional wording in the guide.
- 3.88** Insolvency context: wind-down could occur during insolvency, but there are other scenarios that are equally possible. For this particular scenario, it would be logical for a firm to consider any implications of company and insolvency laws, but this guide does not seek to be a primer on those matters or give guidance on when to appoint an insolvency practitioner. We have clarified that the guide is not relevant where a firm is already in administration or liquidation, and that it is also not directly relevant to recovery strategies a firm may engage in as part of its recovery plan.
- 3.89** We received a related query concerning how a firm in wind-down should balance pursuing a continued income stream from maintaining its customer activities with the need to ensure that it is not acting to the detriment of its creditors. Our guidance does not address this point as it is covered by insolvency law and practice, which this guide does not seek to replicate.
- 3.90** Going or gone concern: to avoid confusion, we have removed the use of the term 'going concern' from the guide.
- 3.91** CASS: we consider that the emphasis on CASS issues is sufficient in the guide and do not believe it necessary for the guide to replicate CASS rules.
- 3.92** One trade body noted that our examples of effective approaches in the Quick Reference Guide were skewed towards the capabilities of larger firms – we have amended this to provide examples that are more size-neutral.
- 3.93** In response to a range of requests, we have expanded the guide contents or added emphasis on:
- disposal of fixed assets

- outsourcing
- data privacy
- communication plans
- consistency of other planning exercises with a wind-down plan
- migration of customers, and
- the designation of a point person to act as project manager for the wind-down and who may not necessarily be the owner of the wind-down plan

**3.94** We have also made a number of minor amendments to reflect comments received in the feedback.

***Cost benefit analysis and compatibility statement***

**3.95** As we are not introducing a new rule or new obligations on firms, we did not carry out a cost benefit analysis. In line with the Small Business, Enterprise and Employment Act 2015 (the Enterprise Act), however, we have carried out an impact assessment.

**3.96** The main conclusions of the impact assessment are:

- i. Given it does not impose any obligations on firms to have a wind-down plan in place and it is not prescriptive, we believe the costs to business of this guidance will be nil.
- ii. We also believe it could generate a Business Net Present Value of £2.24m in industry savings over a ten year policy period. This is based on the assumption that some firms will be self-sufficient in producing or revising wind-down plans with the aid of this guidance, and hence save on professional advisors' fees.

***Compatibility statement***

**3.97** Section 1B of FSMA requires the FCA, when discharging its general functions, as far as is reasonably possible, to act in a way that is compatible with our strategic objective and advances one or more of our operational objectives. We also need to, as far as is compatible with acting in a way that advances our consumer protection objective or the integrity objective, carry out our general functions in a way that promotes effective competition in the interests of consumers. Our general functions include our functions in relation to giving general guidance.

**3.98** We believe the guidance is compatible with our duties under section 1B of FSMA. Guidance for wind-down planning will help firms consider how to wind down their business in an orderly manner and how to decide to wind down in a timely manner. It will also help firms explore how winding down will affect various stakeholders (including consumers and market participants). This in turn advances our objectives of protecting consumers' interests and market integrity.

**3.99** We have considered the regulatory principles set out in section 3B of FSMA. In formulating our proposals, we adhered to the principle of proportionality. Our suggested approach to wind-down planning contributes to a better regulatory outcome, while not imposing a burden on

firms. The proposals are also consistent with the principle that we should exercise our functions as transparently as possible.

***Equality and diversity issues***

- 3.100** We have considered whether there might be any equality and diversity issues arising from our guidance. Overall, we do not believe our proposals raise concerns regarding equality and diversity issues.
- 3.101** We do not consider that the proposals in this consultation adversely impact any of the groups with protected characteristics, i.e., age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 3.102** The changes made by this instrument are listed in Chapter 2 of this Notice.

## 4. Additional information

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### Making corrections

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- 4.1** The FCA reserves the right to make correctional or clarificatory amendments to the instruments made at the Board meeting without further consultation should this prove necessary or desirable.

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### Publication of Handbook material

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- 4.2** This Notice is published on the FCA website and is available in hardcopy.
- 4.3** The formal legal instruments (which contain details of the changes) can be found on the FCA's website listed by date, reference number or module at <https://www.handbook.fca.org.uk/instrument>. The definitive version of the Handbook at any time is the version contained in the legal instruments.
- 4.4** The changes to the Handbook are incorporated in the consolidated Handbook text on the website as soon as practicable after the legal instruments are published.
- 4.5** The consolidated text of the Handbook can be found on the FCA's website at <https://www.handbook.fca.org.uk/>. A print version of the Handbook is available from The Stationery Office's shop at <https://www.tsoshop.co.uk/Financial-Conduct-Authority-FCA/>.
- 4.6** Copies of the FCA's consultation papers referred to in this Notice are available on the FCA's website.

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### Obligation to publish feedback

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- 4.7** This Notice, and the feedback to which paragraph 1.4 refers, fulfil for the relevant text made by the Board the obligations in sections 138I(4) and (5) and similar sections of the Financial Services and Markets Act 2000 ('the Act'). These obligations are: to publish an account of representations received in response to consultation and the FCA's response to them; and to publish (where applicable) details of any significant differences between the provisions consulted on and the provisions made by the Board, with a cost benefit analysis and a statement under section 138K(4) of the Act if a proposed altered rule applies to authorised persons which include mutual societies.



### Comments

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- 4.8** We always welcome feedback on the way we present information in the Handbook Notice. If you have any suggestions, they should be sent to [handbookproduction@fca.org.uk](mailto:handbookproduction@fca.org.uk) (or see contact details at the front of this Notice).



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