

Handbook Notice No.46

July 2017

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1 Overview

Legislative changes

- 1.1 On 30 June 2017, 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
	Glossary (MiFID 2) Instrument 2017	2017/36	3.7.17; 3.1.2018
	Fees (Data Reporting Applications) Instrument 2017	2017/37	3.7.2017
<u>15/43;</u> <u>16/19;</u> <u>16/29;</u> <u>16/43; 17/8</u>	Markets and Organisational Requirements (MiFID 2) Instrument 2017	2017/38	3.7.2017; 31.7.2017; 4.12.2017; 3.1.2018; 31.3.2018; 3.3.2019; 3.9.2019
	Conduct, Perimeter Guidance and Miscellaneous Provisions (MiFID 2) Instrument 2017	2017/39	3.7.2017; 3.1.2018

- 1.2 On 6 July 2017, the Board of the Financial Conduct Authority made changes to the Handbook in the instrument listed below.

CP	Title of instrument	Instrument No.	Changes effective
<u>17/6</u>	Prospectus Rules (Miscellaneous Amendments) Instrument 2017	2017/40	20.7.2017

- 1.3 On 20 July 2017, 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
<u>N/A</u>	Approved Persons (Amendment to Application Forms) Instrument 2017	2017/41	12.9.2017
<u>17/9</u>	Fees (Payment Systems Regulator) Instrument (No 4) 2017	2017/42	21.7.2017
<u>16/39</u>	Conduct of Business Sourcebook (Pension Projections) Instrument 2017	2017/43	24.7.2017
<u>17/2</u>	Client Assets (Client Money and Custody Assets Distribution and Transfers) Instrument 2017	2017/44	26.7.2017



<u>17/6</u>	Trading Venues Instrument 2017	2017/45	1.9.2017
<u>17/14</u>	Client Assets Supervision (P2P CASS Audits) Instrument 2017	2017/46	21.8.2017
<u>17/6</u>	Immigration Regulations (Amendment) Instrument 2017	2017/47	1.1.2018
<u>16/36</u>	Retirement Income Data (Regulatory Return) Instrument 2017	2017/48	30.9.2018
<u>17/13</u>	Fourth Money Laundering Directive (Enforcement and Consequential Amendments) Instrument 2017	2017/49	21.7.2017

- 1.4 On 20 July 2017, the Board of the Financial Conduct Authority approved the fixing and variation of standard terms as proposed by the Board of the Financial Ombudsman Service. The Board of the Financial Ombudsman Service plans to make the relevant changes to the Handbook in the instrument listed below, on 26 July 2017.

CP	Title of instrument	Instrument No.	Changes effective
<u>CP</u>	Dispute Resolution: Complaints (Payment Protection Insurance Complaints) (Voluntary Jurisdiction) Instrument 2017	FOS 2017/3	29.8.2017

Summary of changes

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

Feedback on responses to consultations

- 1.6 Consultation feedback is published in Chapter 3 of this Notice or in a separate Policy Statement.

FCA Board dates

- 1.7 The table below lists forthcoming FCA board meetings. These dates are subject to change without prior notice.

September	11 and 12
October	19
November	8 and 9



December	6 and 7
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2 Summary of changes

- 2.1 This chapter briefly describes FCA Handbook changes made by the Board on 30 June and 6 and 20 July 2017. It also describes changes due to be made by the Board of the Financial Ombudsman Service to its standard terms on 26 July 2017. 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 www.bankofengland.co.uk/pru/Pages/publications/default.aspx

Glossary (MiFID 2) Instrument 2017 (FCA 2017/36)

- 2.2 Following consultation, the FCA Board has made changes to the FCA Handbook module listed below:

Glossary

- 2.3 In summary, this instrument makes changes to the Glossary necessary to implement the Markets in Financial Instruments Directive II.
- 2.4 Part of this instrument came into force on **3 July 2017** and Part 2 comes into force on **3 January 2018**. Feedback was published in a separate Policy Statement.¹

Fees (Data Reporting Applications) Instrument 2017 (FCA 2017/37)

- 2.5 Following consultation, the FCA Board has made changes to the FCA Handbook module listed below:

FEES

- 2.6 In summary this instrument makes changes to the Fees manual necessary to collect fees for authorisation, verification or variation of permission from Data Reporting Services Providers to implement the Markets in Financial Instruments Directive II.

¹ [PS17/14 'Markets in Financial Instruments Directive II Implementation – Policy Statement II' \(July 2017\)](#)



- 2.7 This instrument came into force on **3 July 2017**. Feedback was published in a separate Policy Statement.²

Markets and Organisation Requirements (MiFID 2) Instrument 2017 (FCA 2017/38)

- 2.8 Following consultation, the FCA Board has made changes to the FCA Handbook modules listed below:

**PRIN
SYSC
APER
FIT
GEN
FEES
IFPRU
IPRU(INV)
COBS
ICOB
MAR
SUP
DEPP
CONC
REC**

- 2.9 This instrument also makes changes to material outside the Handbook, namely the Service Companies Handbook Guide (**SERV**) and the Enforcement Guide (**EG**).
- 2.10 In summary this instrument makes changes to the FCA Handbook necessary to implement, in the main, the markets and systems and controls requirements in the Markets in Financial Instruments Directive II.
- 2.11 This instrument comes into force on **3 January 2018**, with the exception of some material coming into force on **3 July 2017, 31 July 2017, 4 December 2017, 31 March 2018, 3 March 2019** and **3 September 2019**. Feedback was published in a separate Policy Statement.³

² PS17/5 'Markets in Financial Instruments Directive II Implementation – Policy Statement II' (March 2017)

³ PS17/5 'Markets in Financial Instruments Directive II Implementation – Policy Statement II' (March 2017)



Conduct, Perimeter Guidance and Miscellaneous Provisions (MiFID 2) Instrument 2017 (FCA 2017/39)

2.12 Following consultation, the FCA Board has made changes to the FCA Handbook modules listed below:

**PRIN
SYSC
FIT
TC
GEN
COBS
BCOBS
CASS
MAR
SUP
DEPP
DISP
COLL
FUND
PROF
REC
LR
PR
DTR**

2.13 This instrument also creates a new Handbook module, the Product Intervention and Product Governance sourcebook (**PROD**).

2.14 Further, it amends material outside the Handbook, namely the Perimeter Guidance manual (**PERG**).

2.15 In summary this instrument makes changes to the FCA Handbook, in the main covering conduct of business and client asset rules, necessary to implement the Markets in Financial Instruments Directive II.

2.16 This instrument comes into force on **3 January 2018**, with the exception of some material coming into force on **3 July 2017**. Feedback was published in a separate Policy Statement.⁴

Prospectus Rules (Miscellaneous Amendments) Instrument 2017 (FCA 2017/40)

2.17 Following consultation in CP17/6⁵, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary
PR 1 and App 1**

4 PS17/14 'Markets in Financial Instruments Directive II Implementation – Policy Statement II' (July 2017)

5 CP17/6 'Quarterly Consultation Paper No. 16' (March 2017)



- 2.18 In summary, this instrument makes changes to the Prospectus Rules (PR) for Prospectus Regulation measures which applied immediately from the date the Prospectus Regulation entered into force. Those measures relate to exemptions from the obligation to publish a prospectus when seeking admission of securities to trading on a regulated market. The instrument also updates definitions in the PR and Glossary.
- 2.19 This instrument came into force on **20 July 2017**. Feedback is published in Chapter 3 of this Notice.

Approved Persons (Amendment to Application Forms) Instrument 2017 (FCA 2017/41)

- 2.20 The FCA Board has made minor administrative changes to some of the application forms contained in SUP 10A Annex 4D and 8D to align with changes made by the PRA to its versions of the forms in May 2017.
- 2.21 In summary this instrument makes changes to align these FCA Handbook forms with those contained in the PRA Rulebook.
- 2.22 This instrument comes into force on **12 September 2017**.

Fees (Payment Systems Regulator) Instrument (No 4) 2017 (FCA 2017/42)

- 2.23 Following consultation in CP17/9⁶, the FCA Board has made changes to the FCA Handbook section listed below:

FEES 9 Annex 1R

- 2.24 In summary this instrument makes changes to set final fees rates to enable the PSR to collect the funding it needs to operate and deliver its objectives.
- 2.25 This instrument comes into force on **21 July 2017**. Feedback will be published in a separate Policy Statement.

Conduct of Business Sourcebook (Pension Projections) Instrument 2017 (FCA 2017/43)

- 2.26 Following consultation in CP16/39⁷, the FCA Board has made changes to the FCA Handbook sections listed below:

Glossary

6 CP17/9 'PSR regulatory fees 2-17/18' (March 2017)

7 CP16/39 'Quarterly Consultation Paper No. 15' (December 2016)



COBS 13 Annex 2

- 2.27 In summary this instrument makes changes to enable firms to prepare risk warnings under proposed new regulations without being in breach of our rules. It will also reduce the risk that firms provide a projection for an annuity with a guaranteed annuity rate (GAR) that drives the customer to exercise the GAR at an earlier date than they need to.
- 2.28 Part 1 of this instrument comes into force on **24 July 2017** and Part 2 comes into force on **6 April 2018**. Feedback is published in Chapter 3 of this Notice.

Client Assets (Client Money and Custody Assets Distribution and Transfers) Instrument 2017 (FCA 2017/44)

- 2.29 Following consultation in CP17/2⁸, the FCA Board has made changes to the FCA Handbook sections listed below:

Glossary
CASS 1A, 6, 7, 7A, 9, TP 1 and Sch 1
SUP 3

- 2.30 In summary this instrument makes changes to provide a complete regime for an investment firm entering the Special Administration Regime (SAR) in the event of its failure and following lessons learned from past insolvencies.
- 2.31 This instrument comes into force on **26 July 2017**. Feedback will be published in a separate Policy Statement.

Trading Venues Instrument 2017 (FCA 2017/45)

- 2.32 Following consultation in CP17/6⁹, the FCA Board has made changes to the FCA Handbook sections listed below:

MAR 5 and Sch 2
REC 2 and 3

- 2.33 In summary this instrument makes changes to introduce a standard template for the notification of liquidity incentive schemes, and to change the prudential supervision cycle of UK recognised investment exchanges (RIEs) from 12 months to 24 months to align with the prudential cycles of other FCA regulated firms. In addition, we have made some minor changes to the wording in response to the feedback received.

⁸ CP17/2 'CASS 7A and the special administration regime review' (January 2017)

⁹ CP17/6 'Quarterly Consultation Paper No. 16' (March 2017)



- 2.34 This instrument comes into force on **1 September 2017**. Feedback is published in Chapter 3 of this Notice.

Client Assets Supervision (P2P CASS Audits) Instrument 2017 (FCA 2017/46)

- 2.35 Following consultation in CP17/14¹⁰, the FCA Board has made changes to the FCA Handbook sections listed below:

SUP 3 and TP 1

- 2.36 In summary this instrument makes changes to ensure that fully authorised firms operating loan-based crowdfunding platforms will be required to obtain and submit a client assets report.

- 2.37 This instrument comes into force on **21 August 2017**. Feedback is published in Chapter 3 of this Notice.

Immigration Regulations (Amendment) Instrument 2017 (FCA 2017/47)

- 2.38 Following consultation in CP17/6¹¹, the FCA Board has made changes to the FCA Handbook section listed below:

SUP 16

- 2.39 It also makes changes to **EG**.

- 2.40 In summary this instrument makes changes to require all firms that are subject to sections 40A, 40B and/or 40G of the Immigration Act to tell us each year that they have complied with their obligations in these sections.

- 2.41 This instrument comes into force on **1 January 2018**. Feedback is published in Chapter 3 of this Notice.

Retirement Income Data (Regulatory Return) Instrument 2017 (FCA 2017/48)

- 2.42 Following consultation in CP16/36¹², the FCA Board has made changes to the FCA Handbook section listed below:

SUP 16

10 CP17/14 'Quarterly Consultation Paper No. 17' (June 2017)

11 CP17/6 'Quarterly Consultation Paper No. 16' (March 2017)

12 CP16/36 'Regulatory reporting: Retirement income data' (November 2016)



- 2.43 In summary this instrument makes changes to introduce two new data items on retirement income into the FCA Handbook.
- 2.44 This instrument comes into force on **30 September 2018**. Feedback will be published in a separate Policy Statement.

Fourth Money Laundering Directive (Enforcement and Consequential Amendments) Instrument 2017 (FCA 2017/49)

- 2.45 Following consultation in CP17/13¹³, the FCA Board has made changes to the FCA Handbook sections listed below:

Glossary
SYSC
FEES
SUP
DEPP 2

- 2.46 It also makes changes to **EG 19**.
- 2.47 In summary this instrument makes changes to provide guidance on the use of our enforcement powers and set out a decision-making mechanism for the use of these new powers. It also makes consequential amendments to change references to the Money Laundering Regulations 2017 rather than the now revoked Money Laundering Regulations 2007.
- 2.48 This instrument comes into force on **21 July 2017**. Feedback is published in Chapter 3 of this Notice.

Dispute Resolution: Complaints (Payment Protection Insurance Complaints) Instrument 2017 (FOS 2017/3)

- 2.49 Following consultation in *amendment to rules - changes to the time limits for PPI complaints*¹⁴, the Board of the Financial Ombudsman Service plans to make¹⁵, and the FCA Board has approved, changes to the FCA Handbook section listed below:

DISP 2

- 2.50 The Financial Ombudsman Service considers that aligning the Voluntary Jurisdiction with the Compulsory Jurisdiction will help to avoid business and consumer confusion regarding PPI time limits.
- 2.51 This instrument comes into force on **29 August 2017**. Feedback will be published by the Financial Ombudsman Service.

13 [CP17/13 'Fourth money laundering directive and fund transfer regulation implementation \(DEPP and EG\)' \(June 2017\)](#)

14 <http://www.financial-ombudsman.org.uk/publications/consultations/consultation-amendment-to-rules-PPI-time-limits-june-2017.pdf>

15 The Board of the Financial Ombudsman Service is due to sit on 26 July 2017.

3 Consultation feedback

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

CP17/6 Quarterly Consultation Paper No. 16 - Minor amendments to the PR

Prospectus Rules (Miscellaneous Amendments) Instrument 2017

Background

- 3.2 In Chapter 5 of our March 2017 Quarterly Consultation Paper¹⁶ we consulted on a number of proposed changes to the FCA Handbook, including:

- amending the Glossary, and
- amending the Prospectus Rules (PR)

- 3.3 We are now providing feedback on these proposals. We are not in this Notice addressing the proposed changes to the Listing Rules (LR) on which we also consulted in Chapter 5 of the Consultation Paper (CP).

Summary of proposals

- 3.4 In our consultation, we proposed amending the PR to accommodate the immediate application measures set out in Regulation (EU) 2017/1129 ('the Prospectus Regulation'). We also proposed updating definitions.
- 3.5 The new Prospectus Regulation was published in the EU Official Journal on 30 June 2017. It entered into force 20 days later, on 20 July 2017. Most of its measures apply 24 months after the entry-into-force date. However, a few measures apply either immediately or after 12 months. We consulted on the immediate application measures as they impact our PR. We did not consult on the measures which apply after 12 months as they impact the Financial Services and Markets Act 2000 (FSMA) and are, therefore, a matter for HM Treasury.
- 3.6 The Prospectus Regulation measures which apply immediately are three exemptions from the obligation to publish a prospectus when an application is

16 [CP17/6 'Quarterly Consultation Paper No 16' \(March 2017\)](#)



made for securities to be admitted to trading on a regulated market. In summary they:

- double the existing 10% exemption threshold to 20% and extend it beyond shares to all securities
- restrict the currently uncapped conversion exemption for shares to 20%, and
- create a new exemption for securities arising from conversion by a resolution authority under the Bank Recovery and Resolution Directive¹⁷ (BRRD)

3.7 To accommodate the immediate application measures in the Prospectus Regulation, we proposed:

- amending PR 1.2.3R to accommodate the changes as exemptions from section 85(2) of FSMA, and
- inserting PR 1.2.3AEU to reproduce for the convenience of the reader the text of these directly applicable Prospectus Regulation measures

3.8 As the Prospectus Regulation does not fully apply until 24 months after its entry-into-force date, the new measures are applied in our PR as exemptions from the requirements of the existing Prospectus Directive.¹⁸

3.9 We also proposed updating:

- the Glossary of definitions to insert a new definition of 'Prospectus Regulation'
- a definition in the Glossary relating to an updated European Securities and Markets Authority (ESMA) publication, and
- PR Appendix 1 for these changes to the Glossary definitions

Feedback

3.10 We received two responses to our consultation on the proposed changes to the PR. One supported and the other noted the changes to the PR.

3.11 One respondent suggested that the definition which we are updating in the Glossary and PR Appendix 1 could refer to the latest ESMA publication being accessible via a specified ESMA webpage, rather

17 2014/59/EU

18 2003/71/EC

than updating the definition to a specific new version of the ESMA publication.

Our response

- 3.12 We are making our changes to the PR as proposed in the CP.
- 3.13 Our PR changes came into force on 20 July 2017, the date on which the Prospectus Regulation entered into force.
- 3.14 The PR changes include reproducing, for the convenience of the reader, text from the Prospectus Regulation on those exemptions from the obligation to publish a prospectus for an admission to trading on a regulated market that will apply immediately the Prospectus Regulation enters into force. In our consultation we explained that we had drafted the proposed changes in accordance with the text of the draft Prospectus Regulation approved by the Council of the EU on 20 December 2016. We also explained in our consultation that if the final text of the relevant provisions of the Prospectus Regulation differed from the Council text used in the CP, we would amend our final rules accordingly. This we have now done.
- 3.15 We note that in the final text of the Prospectus Regulation the exemption for securities arising from conversion under the BRRD now applies from the entry-into-force date. In Paragraph 5.13 of our consultation paper we highlighted that it had, at that time, not been included in the immediate application measures in the draft Council text of the Regulation. We have amended our final rules accordingly.
- 3.16 A consultation response suggested we create a dynamic reference to the ESMA publication so that it will always be up-to-date whenever ESMA publishes fresh versions of its publication. However, we have decided to maintain our practice of considering afresh whether to update the PR each time a defined ESMA publication is amended, as this avoids the PR containing measures which are updated by ESMA rather than by the FCA.

Cost benefit analysis and compatibility statement

- 3.17 In Chapter 5 of the CP we provided a statement on cost benefit analysis and a compatibility statement.
- 3.18 We consider that our assessments remain valid. Therefore, in relation to the PR, the cost benefit analysis and compatibility statement published in the consultation paper remain unchanged.

Equality and diversity issues

- 3.19 We continue to consider that the changes outlined in Chapter 5 of the consultation paper in relation to the PR do not give rise to any equality or diversity concerns.



- 3.20 The changes made by this instrument are listed in Chapter 2 of this Notice.

CP16/39 Quarterly Consultation Paper No. 15 - Pension projections for risk warnings

Conduct of Business Sourcebook (Pension Projections) Instrument 2017

Background

- 3.21 In September 2016, the Department for Work and Pensions (DWP) consulted on proposals¹⁹ to require a risk warning when a pension scheme member seeks to transfer or convert defined contribution (DC) benefits with a retirement income guarantee that would be lost should they proceed. This includes, for example, DC benefits with a Guaranteed Annuity Rate (GAR).
- 3.22 The risk warning will be provided to scheme members when they first seek to transfer or convert DC benefits with a guarantee. It will comprise a like-for-like comparison of:
- the projected income if the guarantee is exercised, and
 - the projected annuity income that the pension savings could buy on the open market
- 3.23 Preparation of the risk warning requires projections of estimated benefits. The DWP proposed to allow firms to use either assumptions based on the same assumptions used for statutory money purchase illustrations (SMPI), which are required annually for money purchase benefits, or the assumptions in our projection rules in COBS 13 Annex 2.
- 3.24 In December 2016, in Chapter 2 of CP16/39 Quarterly Consultation Paper No.15, we consulted on proposed changes to our rules²⁰ to enable firms to provide the new risk warning without being in breach of our projection rules in COBS 13 Annex 2. We consulted on:

19 DWP, Consultation on valuing pensions for the advice requirement and introducing new consumer protections (September 2016)

20 CP16/39 'Quarterly Consultation Paper No.15' (December 2016)



- extending our existing exemption for SMPIs to risk warnings prepared using the same assumptions as SMPIs, and
- a minor change to our projection rules so that firms could, as an alternative, follow the assumptions in our projection rules in COBS 13 Annex 2 without having to provide higher and lower rate projections, which are not permitted for the risk warning

3.25 We also consulted on removing a point of guidance in paragraph 3.4 of COBS 13 Annex 2, which says that firms should show a projected GAR at the earliest age at which it can be taken. Since GARs may also be exercisable at a customer's normal or stated retirement date, showing the projected GAR at an earlier date might drive some customers to exercise the GAR and purchase an annuity earlier than they need to.

Feedback

3.26 We received five responses to our consultation.

Rules changes to enable the DWP risk warning

3.27 Respondents were generally supportive of our proposed approach.

3.28 Two respondents raised concerns about the ability of firms to make changes to their systems in time for the proposed in force date of the regulations, which was to have been either April 2017 or October 2017.

3.29 Two respondents sought clarification on the format of the risk warning prepared using FCA assumptions. One respondent considered that customers may want to see projections at the lower and higher rates, as well as at an intermediate rate.

GAR guidance

3.30 Respondents expressing an opinion generally welcomed the added flexibility in how they meet their customers' information needs.

Comments on the CBA

3.31 One respondent commented that disapplying FCA rules would not be cost free. Any amendments to planned systems build would generate additional costs.

Our response

3.32 We welcome the general agreement with our proposals. The DWP risk warning is intended to inform pension savers of the existence of a guarantee, its value, and that they would lose this guarantee should they choose to proceed with a pension transfer or conversion. Our proposals will enable firms to prepare the risk warning without being in breach of our rules.



- 3.33 On 6 July 2017, the DWP published the government response following its consultation, in which it confirmed that it is proceeding with regulations to require risk warnings.²¹
- 3.34 Rather than referring in their regulations to the assumptions in our projection rules, the DWP will now reflect the relevant assumptions directly in the regulations. It intends to update the reflected assumptions whenever we update our assumptions.
- 3.35 Therefore, we are proceeding as we consulted but with the following simplifications:
- the rule change disapplying our projection rules will apply regardless of which assumptions are used, and
 - the rule change on the format of risk warnings prepared using FCA assumptions is not being taken forward, since it is no longer needed
- 3.36 Since our CP was issued, the DWP has put back the proposed in force date to 6 April 2018. This gives firms more time to make changes to their systems. Our in force date for disapplying our projection rules is also 6 April 2018, to align with the DWP's requirements.
- 3.37 The format of the risk warning will be as prescribed in the new DWP regulations, including where prepared with assumptions that reflect FCA assumptions. We do not consider that the added complexity of including projections at higher and lower rates would improve a consumer's understanding of the value of the guarantee that they would be giving up.
- 3.38 We are proceeding with the change to guidance on GARs. This will improve how information about GARs is disclosed to customers in some circumstances. We do not consider that the added flexibility poses a risk to consumers, since we have other rules and guidance on what firms must/should do when providing projections of an annuity with a GAR.

Cost benefit analysis and compatibility statement

- 3.39 We received one comment during the consultation period that disapplying FCA rules would not be cost free and that any amendments to planned systems build would generate additional costs.
- 3.40 The requirement to provide risk warnings will be imposed by legislation. In CP16/39, we said that we did not consider that there is a cost imposed directly by the FCA as a result of the disapplication of our projection rules. This remains our position.

²¹ [Government response: consultation on valuing pensions for the advice requirement and introducing new consumer protections \(July 2017\)](#)



- 3.41 The removal of guidance on showing a projected GAR at the earliest age it can be taken gives firms more flexibility in how they meet their customers' information needs. We do not consider that this added flexibility imposes a cost on firms.
- 3.42 The compatibility statement in Chapter 2 of CP16/39 remains valid and unchanged.

Equality and diversity issues

- 3.43 We received no comments during the consultation period on any equality and diversity issues. As stated in Chapter 2 of CP16/39, we do not foresee any negative equality and diversity impacts resulting from the rule change.
- 3.44 The changes made by this instrument are listed in Chapter 2 of this Notice.

CP17/6 Quarterly Consultation Paper No. 16 - Changes to REC 3.9 and MAR 5.6; minor amendments to REC 2.3

Trading Venues Instrument 2017

Background

- 3.45 In Chapter 6 of the March 2017 'Quarterly Consultation Paper' (QCP)²², we proposed a number of minor changes to our Handbook. We consulted on changes to:
- REC 3.9 and MAR 5.6: to reflect our proposal to introduce a standard template for the notification of liquidity incentive schemes by recognised investment exchanges (RIEs) and multilateral trading facilities (MTFs), and
 - REC 2.3: to change how often we will provide an RIE with individual guidance on the amount of eligible financial resources that it needs to meet the recognition requirements

Feedback

- 3.46 We received responses from three trading venues.

Introduction of a standard template

- 3.47 In question 6.1, we asked if trading venues agreed with our proposal to introduce a standard template for the notification of liquidity incentive schemes as outlined in Chapter 6. All three respondents were supportive of the proposal. They believed that the proposed template

22 [CP16/17 'Quarterly Consultation Paper No. 16' \(March 2017\)](#)



would help clarify our expectations about the information that needs to be submitted by trading venues and also help to improve the current non-objection process.

- 3.48 Two respondents suggested that we provide guidance about the time it will take us to review the notifications. Given the varying degrees of complexity associated with incentive schemes, we have decided it is not sensible to provide definitive timelines for review. However, we expect that a complete incentive scheme template submitted by trading venues with adequate details and a comprehensive regulatory analysis will assist us in concluding our review in an efficient manner. We suggest that trading venues liaise with their respective FCA supervision teams well in advance of the intended launch dates for incentive schemes.
- 3.49 There was also a suggestion that we adopt a self-certification regime instead of the current non-objection process. In view of the harm poorly designed incentive schemes could cause, and new provisions that will be introduced by MiFID II relating to incentive schemes, we do not consider it appropriate to move away from our current non-objection process at this stage. However, we hope that the template will lead to an improvement in the regulatory analysis carried out by trading venues over time, resulting in more complete notifications. This will help us to streamline our non-objection process and cut down the time currently spent on requesting further information. Following the implementation, depending on the quality of notifications we receive, we hope to carry out an assessment of alternative options to the current non-objection process (including a self-certification regime) and of their associated costs and benefits.
- 3.50 One respondent said that market-making schemes under MiFID II should be exempt from the requirement to complete the template. However, we do not agree with the suggestion that these incentive schemes entered into under MiFID II should be exempt from the requirement to complete this template. This is because we do not believe that they pose a lesser risk of harm to fair and orderly markets if designed poorly. Accordingly, notifications should be made using the proposed template for both the introduction and renewal of such market-making schemes.

Feedback on the content of the standard template

- 3.51 In question 6.2, we asked trading venues whether they supported the structure and content of the proposed standard template. Feedback has been categorised according to the template headings below:

Purpose of the scheme

- 3.52 We received several comments regarding the information sought on how trading venues intend to measure the success of each incentive scheme. One respondent preferred to list qualitative rather than quantitative indicators and another suggested we take into account that



it may be difficult to isolate the effect of a scheme from effects of other factors.

- 3.53 We value quantitative success criteria as they are clear and objective. However, we recognise that qualitative criteria can also be important. Where possible, we expect trading venues to provide quantitative success measures, and to provide qualitative measures in addition. The existence of other factors which may affect a scheme's success should not prevent trading venues from assessing the performance of their schemes.

Transparency of the scheme

- 3.54 We received one response which recommended removing item (ii), the requirement to provide a copy of any proposed communications with applicants, and item (iii), the requirement to provide the amount of notice these applicants will be given prior to the scheme launch. The respondent suggested that the former will create an additional notification requirement, which could prevent the issuance of market notices in a prompt manner.

- 3.55 The requirement to provide us with a copy of any proposed communications to applicants of a scheme is aimed at ensuring that trading venues provide adequate information to these applicants. We do not consider this requirement to pose an additional burden on firms, since trading venues currently provide us with copies of this information. In addition, under item (i), we will expect trading venues to inform us of how the terms of the scheme will be made available to potential applicants, for example by publishing the scheme on the trading venue's website. The proposal to include items (i)-(iii) in this section will therefore be implemented as proposed.

Fair and orderly trading

- 3.56 One respondent considered this section to be too prescriptive and suggested that the template leave room for trading venues to discern for themselves the relevant aspects of the regulatory analysis to be shared for each incentive scheme.
- 3.57 We consider that taking this approach could mean that incomplete information is submitted and so the process becomes iterative. This negates the benefits of introducing the template.
- 3.58 Respondents also requested greater clarity about the information required under items (iii), the relationship between the scheme's benefit and the costs which it is intended to alleviate; (iv) any risks that could arise if the scheme enables participants to use the benefits of the scheme, in trading any other instrument other than the instrument to which the scheme relates; and (v) any risks that could arise in the event that a scheme participant is eligible to simultaneously take part in any other incentive arrangement offered by the trading venue. They



also asked why these particular factors could result in fee arrangements that may infringe the relevant rules. With respect to item (vi) we also received a request to clarify whether all market participants should receive the same benefit irrespective of whether they perform market making activities, or whether it is intended to refer only to the specific scheme about which we are being notified.

3.59 We decided to proceed with the proposed template with respect to items (iii)-(v), but with minor changes. Item (iii) on the relationship between the scheme's benefit and the costs which it alleviates is intended to address proportionality. If the benefits of an incentive scheme are disproportionately large compared with the costs incurred by participants of the scheme in terms of rebates or other reward, this may encourage trading which is not related to genuine supply and demand, and therefore could have a negative impact on price formation. We have combined item (ii), which concerns any risk that the scheme could distort the price formation process and (iii) to make this clear. We consider item (iv) and (v) above to be self-explanatory.

3.60 Regarding item (vi) specifically, this item is intended to ensure that incentive schemes are non-discriminatory and that the eligibility criteria for each incentive scheme are objective with regard to the purpose of the scheme. All users who are part of the incentive scheme should receive equivalent benefits when carrying out equivalent activities and performing to a comparable standard.

Incentive scheme renewals

3.61 One respondent suggested that the requirement to provide information on rebates provided to scheme participants goes beyond the notification requirements in REC and MAR, and that such a request asks for commercially sensitive information.

3.62 We do not consider this requirement to be unreasonable. Such information helps to understand if the scheme has achieved its purpose and its impact on fair and orderly markets. We therefore decided to keep this requirement unchanged.

3.63 We also received a request to amend the template to clarify that only the 'Incentive Scheme Renewals' section needs to be completed for schemes which are being extended. Another respondent suggested that the requirement to inform us of any instances of improper or disorderly trading over the last period of operation of the scheme be restricted to the instruments affected by the scheme or otherwise connected with the scheme.

3.64 Renewal of an existing incentive scheme without any changes requires trading venues to complete only the renewal section of the form. We made minor changes to the template to make this clear. In addition, we amended the scope of the question on improper trading to make



it clear that information sought under this section relates only to the instruments covered under the incentive scheme.

Proposed changes to REC 2.3

- 3.65 In question 6.3, we asked whether trading venues agreed with the proposed amendment to the wording in REC 2.3 to reduce the frequency of prudential reviews for UK RIEs from once every 12 months to once every 24 months. We received one response to this question which strongly supported the proposal. We intend to proceed with the proposal.

Cost benefit analysis and compatibility statement

- 3.66 In Chapter 6 of the QCP, regarding the proposed change to REC 2.3, we explained that we did not anticipate the proposal to have any significant cost to RIEs. In relation to the proposal to change REC 3.9 and MAR 5.6, we do not anticipate this to result in any significant additional costs to trading venues. It is our expectation that the total benefits from implementing the template outweigh any marginal costs arising from integrating the template in trading venues' reporting framework.

- 3.67 Additionally, we stated that we considered our proposals to be compatible with our strategic and operational objectives, and with the regulatory principles in section 3B of FSMA. These statements remain valid.

Equality and diversity issues

- 3.68 In the consultation, we explained that we did not consider the proposals to 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 stated we would continue to consider the equality and diversity implications of the proposals during the consultation period, and would revisit them when publishing the final rules.

- 3.69 Having reflected further on the implications of the proposals, we believe that the rules do not adversely impact any of the groups with protected characteristics.

- 3.70 The changes made by this instrument are listed in Chapter 2 of this Notice.

CP17/14 Loan-based crowdfunding platforms and the client assets report

Client Assets Supervision (P2P CASS Audits) Instrument 2017



Background

- 3.71 When firms operating loan-based crowdfunding platforms came into the scope of FCA regulation, we published various papers on the requirements for these firms. In these papers we set out our intention for these firms to be subject to our client assets regime, including the Client Assets sourcebook (CASS) and the requirement to appoint an auditor to prepare and submit a client assets report (SUP 3)²³. However the latter requirement is not clearly stated in the current rules.
- 3.72 In CP17/14, we proposed a rule change to make it clear that fully-authorised firms operating loan-based crowdfunding platforms are subject to SUP 3 and the requirement to appoint an auditor to prepare and submit a client assets report. We also proposed to allow these firms to continue an existing audit period (for example, one started under interim permission), or to begin a new audit period, at the date the rule change comes into force.

Feedback

- 3.73 We received no responses to this consultation.

Our response

- 3.74 We are going ahead with no changes to the instrument consulted on in CP17/14. The changes will come into effect one month after publication of the rule change, which would mark the start of the first audit period under the amended rules.

Cost benefit analysis and compatibility statement

- 3.75 We received no comments during the consultation period on the cost benefit analysis or compatibility statement relating to this proposal. As the amended rule does not differ from the draft on which we consulted, we believe the cost benefit analysis and compatibility statement set out in Chapter 3 of CP17/14 remain valid.

Equality and diversity issues

- 3.76 We received no comments during the consultation period on any equality and diversity issues. As stated in Chapter 3 of CP17/14, we do not foresee any negative equality and diversity impacts resulting from the rule change.
- 3.77 The changes made by this instrument are listed in Chapter 2 of this Notice.

23 [CP13/13 'The FCA's regulatory approach to crowdfunding \(and similar activities\)' \(October 2013\)](#), [PS14/4 'The FCA's regulatory approach to crowdfunding over the internet, and the promotion by non-readily realisable securities by other media' \(March 2014\)](#), [CP15/8 'Quarterly Consultation Paper No. 8' \(March 2015\)](#) and ['Handbook Notice 21' \(April 2015\)](#)



CP17/6 Quarterly Consultation Paper No. 16 - Changes to Immigration Act compliance reporting

Immigration Regulations (Amendment) Instrument 2017

Background

- 3.78 Section 40 of the Immigration Act 2014 (IA) came into force in December 2014. SUP 16.19 (Immigration Act compliance reporting) requires firms to attest to their compliance with the IA using reporting form Fin-A.
- 3.79 The IA has since been amended by the IA 2016. In CP17/6²⁴ we proposed some minor changes to SUP 16.19 to require banks and building societies to attest their compliance with new requirements in sections 40A, 40B, and 40G of the IA as amended. We also proposed amendments to Chapter 19 of the Enforcement Guide to allow us to enforce the new requirements.

Feedback

- 3.80 We received four responses to our consultation from impacted firms and their representative bodies. Respondents supported the proposals.
- 3.81 An organisation representing firms asked for clarity on the period of the SUP 16 attestation.
- 3.82 One firm highlighted that compliance with the new requirements in the IA as amended will be complex and, at least initially, of a largely manual nature. This firm asked us to add a free entry text field to cater for responses that require qualification. They asked us to reconsider the wording of the attestation so that it asks whether firms had taken 'reasonable steps' to comply with the legislation instead of asking whether firms had complied.
- 3.83 Respondents agreed that costs resulting from our proposals would be low. An organisation representing firms raised concerns about the costs to firms of complying with the requirements of the IA as amended. Their concerns related to compliance with the Act as amended generally rather than our proposals. One firm explained that they were unable to confirm costs at this time, as they were yet to finalise their processes.

Our response

- 3.84 The period of attestation remains unchanged from existing reporting. Firms will continue to attest to their compliance annually. Attestation relates to the firm's compliance during the reporting period (ie not the date of attestation). Firms' attestation only applies to the provisions of the IA as amended that apply to them during the reporting period.

24 CP17/6 'Quarterly Consultation Paper No. 16' (March 2017)



In the first year of reporting, firms may only be subject to the new provisions in the IA as amended (40A, 40B and 40G) for part of their reporting period.

- 3.85 We do not consider it appropriate to change the wording of the attestation as suggested. The purpose of the form is to enable us to monitor whether firms have complied with the IA as amended, and a statement, related to the steps taken to comply, would not allow us to do this. We have considered the request to add a free text entry field but do not consider this necessary. As stated in CP17/6, firms will have to notify their normal supervisory contact as soon as reasonable practicable if they are unable to comply with the requirements in the legislation. Supervisors may ask firms to provide additional information in response to any notification or as part of their general monitoring activities.

Cost benefit analysis and compatibility statement

- 3.86 The cost benefit analysis from CP17/6 remains unchanged.
- 3.87 The compatibility statement from CP17/6 also remains unchanged.

Equality and diversity issues

- 3.88 The equality and diversity assessment in CP17/6 remains unchanged. The Government has considered issues of equality and diversity prior to the introduction of the amendments to the IA. We do not believe that our arrangements to monitor or enforce compliance with the amended IA will have any additional impacts on protected groups, as our proposals impose reporting requirements on firms and not on any protected groups. We did not receive any responses challenging this view.
- 3.89 The changes made by this instrument are listed in Chapter 2 of this Notice.

CP17/13 Fourth Money Laundering Directive and Fund Transfer Regulation Implementation (DEPP and EG)

Fourth Money Laundering Directive (Enforcement and Consequential Amendments) Instrument 2017

Background

- 3.90 On 22 June 2017, the regulations implementing the Fourth Money Laundering Directive and the Fund Transfer Regulation - the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLR2017) - were laid before Parliament. The MLR2017 came into force on 26 June 2017 and



replaced the Money Laundering Regulations 2007 and the Transfer of Funds (Information on the Payer) Regulations 2007 (the MLR2007).

- 3.91 In CP17/13 we proposed to apply our existing policy and procedure to the exercise of our enforcement powers under the MLR2017, and amend DEPP and EG accordingly. This mirrored the current approach under the MLR2007. In addition, we proposed to make some consequential amendments to DEPP and EG as a result of changes introduced by the MLR2017.
- 3.92 We are now providing feedback on responses to our consultation and publishing our final amendments.
- 3.93 We also want to take the opportunity to correct outdated references in the Handbook to the MLR2007. This includes updating the Glossary in the Handbook, amendments to the interpretation provisions in SYSC 1 Annex 1, FEES and updating an existing reporting requirement in SUP 15.8 for authorised firms providing certain activities.

Feedback

- 3.94 We received five responses. Three respondents agreed with all of our proposals. One respondent disagreed with our proposal to apply DEPP 6.2.1, DEPP 6.5 to DEPP 6.5D and DEPP 6A when imposing a civil penalty and our proposed amendments to DEPP and EG relating to decision-making procedure under the MLR2017. One respondent agreed with our proposals in general but raised the following issues:
- The respondent has asked that 'responsible officer' is limited to those persons falling within the FCA's Senior Managers Regime.
 - The respondent asked for more clarity around parameters and limitations applicable to civil penalties against officers.
 - The respondent asked for clarification of the obligations set out in the Fund Transfer Regulation, particularly to verify the information on the payee of a wire transfer.

Our response

- 3.95 We have carefully considered all the responses and we continue to believe that our approach is the most appropriate one. We will therefore proceed as proposed in our consultation, except where indicated otherwise below. In addition, we will make the consequential changes referred to in Paragraph 4.4 above.

Clarification on liability of officers

- 3.96 Under the MLR2017 we have certain civil and criminal enforcement powers over officers of relevant persons. The term 'officer' is defined in regulation 3 of the MLR2017. The requisite level of culpability is also specified in the relevant provisions of the MLR2017. We do not think it



would be appropriate for us, the FCA, to fetter our discretion by stating that we will only take action against a subset of the persons falling within the scope of these powers. However, our approach will continue to be proportionate and we will consider the full circumstances in each case when deciding what action to take. This may in a particular case include the level of seniority of the individual concerned and the scope of their responsibilities within the relevant person. In addition, we have decided to amend our proposed changes to DEPP and EG with respect to civil penalties, to more closely reflect the drafting in the MLR2017, by making it clear that the powers apply to officers who have been 'knowingly concerned' in the relevant breach.

Clarification on civil penalties

3.97 We confirm that our approach to the exercise of the power will be proportionate and in line with our policy in DEPP. DEPP 6.2.1 sets out how we determine whether or not to publicly censure an individual or to impose a financial penalty on them. DEPP 6.5B sets out how we determine the amount of financial penalty to be imposed on an individual. DEPP 6A sets out how we decide whether to impose a prohibition on an individual (as a sanction) and the duration of any such prohibition. In applying DEPP when determining the type of sanction and level of any civil penalty, we will have regard to all relevant circumstances, including, where relevant, the matters specified in regulation 81 of the MLR2017. We therefore are of the view that the parameters and limitations that apply to the imposition of civil penalties are clear, and we are not proposing to provide additional guidance.

Clarification on obligations set out in the Fund Transfer Regulation

3.98 The requested guidance fell outside the scope of this consultation. However firms should note that:

- Shortly before our consultation closed the Joint Money Laundering Steering Group (JMLSG) published the final version of their guidance²⁵ to the industry including Part III of that guidance that includes wire transfer obligations. When this guidance is approved by the Treasury we must have regard to it when considering any supervisory or enforcement action.
- The European Supervisory Authorities (ESAs) are required by article 25 of regulation 2015/847 to produce guidelines addressed to competent authorities and payment service providers on compliance with obligations on the payment service provider of the payee. These guidelines²⁶ were published for consultation on 5 April 2017 and are likely to be published in final version shortly. Once the ESA guidelines are published, regulation 64(1) requires firms to take into account

25 <http://www.jmlsg.org.uk/news/jmlsg-revised-guidance>

26 https://www.eba.europa.eu/news-press/calendar?p_p_id=8&_8_struts_action=%2Fcalendar%2Fview_event&_8_eventId=1807811



these guidelines when determining what measures are required to comply with the obligations. We are also required, when considering imposing civil penalties or criminal action for breaches of the Fund Transfer Regulation, to consider whether a firm has followed those guidelines.

Cost benefit analysis and compatibility statement

- 3.99 The cost benefit analysis and compatibility statement in our CP17/13 remain unchanged.

Equality and diversity issues

- 3.100 We continue to believe the changes do not cause discrimination as stated in our CP17/13.
- 3.101 The changes made by this instrument are listed in Chapter 2 of this Notice.

4 Additional information

Making corrections

- 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.

Publication of Handbook material

- 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 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 www.handbook.fca.org.uk/. A print version of the Handbook is available from The Stationery Office's shop at 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.

Obligation to publish feedback

- 4.7 This Notice, and the feedback to which Paragraph 1.3 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

- 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 (or see contact details on the back cover).

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This Handbook Notice introduces the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative powers on 30 June and 6 and 20 July 2017. It also describes changes due to be made by the Board of the Financial Ombudsman Service to its standard terms on 26 July 2017.

It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

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:

Emily How

Tel: 020 7066 2184

Email: emily.how@fca.org.uk

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:

Tel: 0300 500 0597

Fax: 0207 066 0991

Email: firm.queries@fca.org.uk

Post: Contact Centre

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