

# Handbook Notice No.50

December 2017

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# 1 Overview

## Legislative changes

- 1.1 On 7 December 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>	Handbook Administration (MiFID 2) Instrument 2017	2017/65	3.1.18; 2.4.18
<u>17/28</u>	Conduct of Business Sourcebook (Insistent Clients) Instrument 2017	2017/66	3.1.18
<u>17/28</u>	Advising on Investments (Article 53(1) of the Regulated Activities Order) (Consequential Amendments) Instrument 2017	2017/67	3.1.18
<u>17/19</u>	Financial Services Compensation Scheme (Extension of Scope to Recognised Investment Exchanges) Instrument 2017	2017/68	3.1.18
<u>17/31</u>	Periodic Fees (2017/18) and Other Fees (No 2) Instrument 2017	2017/69	8.12.17; 3.1.18
<u>PS17/15</u>	Fees (Consumer Financial Education Body Levy) Instrument 2017	2017/70	8.12.17
<u>17/32</u>	Fees (Payment Services) (No 3) Instrument 2017	2017/71	8.12.17; 13.1.18
<u>17/30</u>	Fees (Payment Systems Regulator) Instrument (No 5) 2017	2017/72	15.12.17
<u>16/21</u>	Supervision Manual (Amendment No 23) Instrument 2017	2017/73	23.2.18
<u>17/34</u>	MiFID 2 Approved Persons and Senior Managers (Form Amendments) Instrument 2017	2017/74	3.1.18
<u>17/32</u>	Supervision Manual (Reporting No 7) Instrument 2017	2017/75	31.12.17; 1.9.18
<u>17/32</u>	Conduct of Business Sourcebook (Packaged Retail and Insurance-based Investment Products Regulation) (Amendment) Instrument 2017	2017/76	1.1.18; 3.1.18
<u>17/8; 17/19</u>	MiFID 2 (Deferred Matters) Instrument 2017	2017/77	3.1.18
<u>17/24</u>	Banking (Information About Current Account Services) Instrument 2017	2017/78	15.8.18
<u>17/2</u>	Client Assets (Indirect Clearing) Instrument 2017	2017/80	3.1.18



## Summary of changes

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

## Feedback on responses to consultations

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

## FCA Board dates for 2018

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

January	18
February	22
March	22
April	26
May	24
June	28
July	26
September	27
October	25
November	15
December	13

# 2 Summary of changes

- 2.1 This chapter describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 7 December 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/pr/Pages/publications/default.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/default.aspx)

### ***Handbook Administration (MiFID 2) Instrument 2017 (FCA 2017/65)***

- 2.2 The Board has made minor changes to various modules of the FCA Handbook, as listed below. These changes relate to the four instruments which were published in PS17/14<sup>1</sup>, the FCA's second policy statement concerning the implementation of the re-cast Markets in Financial Instruments Directive (MiFID 2). Apart from one minor change to COBS 16.1.2R (which was consulted on in Quarterly Consultation No 18, CP17/32)<sup>2</sup>, these changes were not consulted on because they are minor amendments which correct or clarify existing provisions so that those provisions accord with the original policy intent. The Board has also delayed the change to the definition of 'OPS firm' which was made in the Occupational Pension Scheme Firm (Conduct of Business and Organisational Requirements) Instrument 2017. This change will now come into force on 2 April 2018. None of these changes represents any alteration in FCA policy.

**Glossary**  
**SYSC 19F**  
**TC 4**  
**FEES 3 and TP15**  
**COBS 1, 2, 3, 6, 9, 9A, 10A, 11, 11A, 14, 16, 18 and**  
**Schedule 1**  
**CASS 7 and 9**  
**MAR 5, 5A, 7A and 9**  
**SUP 6 and 16**  
**REC 2 and 3**

- 2.3 In summary, the amendments are as follows:

- Insertion of a new definition of 'high-frequency algorithmic trading technique' which copies out the relevant definition contained in MiFID 2.
- Restoration of the Glossary definition of 'key individual' which was deleted by instrument FCA 2017/36.
- Amending the definitions of 'contract for differences', 'future' and 'option' to ensure that these definitions properly capture changes to these specified investments made by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (SI 2017/488).

1 PS17/14 'Markets in Financial Instruments Directive II implementation – Policy Statement II' (July 2017)  
2 CP17/32 'Quarterly Consultation Paper No. 18' (September 2017)



- Updating the definition of 'designated investment' to refer to binary bets.
- Correcting a reference to 'optional exemption business' in the definition of 'periodic statement' to refer to 'MiFID optional exemption business'.
- Deleting the definition of 'money-market instrument' on the basis that this term is adequately defined by the Glossary definition of 'money-market instruments'.
- Postponing to 2 April 2018 the commencement of a change to the definition of 'OPS firm' that was made in the Occupational Pension Scheme Firm (Conduct of Business and Organisational Requirements) Instrument 2017.
- Correcting the numbering of a series of provisions in SYSC 19F and TC 4 and updating related cross-references in MAR 5A.3.9R and the Glossary definition of 'remuneration'.
- Updating a number of references to 'MiFID II' in FEES 3 and TP15 to refer to 'MiFID'.
- Removing a note referring to FG14/1 at COBS 2.3A.9R.
- Clarifying the guidance at COBS 2.3A.20G.
- Correcting a reference to 'equivalent third country business' in COBS 3.1.4R to refer to the 'equivalent business of a third country investment firm'.
- Clarifying the application of the client category of elective eligible counterparty in COBS 3.6.
- Correcting the designation of COBS 3.7.3B.
- Re-numbering COBS 6.1ZA and updating a number of related cross-references in COBS 1 Annex 1, 2.3A, 9A.2, 10A.2 and 14.3A; CASS 7.10 and 9.4; and SUP 6.4 and SUP 6 Annex 4.
- Updating a number of cross-references to refer to COBS 6.2B rather than COBS 6.2A in COBS 9.6 and COBS 9 Annex 1.
- Clarifying the application of COBS 9A.3.2R.
- Updating the note at COBS 11.2.1R.
- Clarifying the application of the best execution rules in COBS 11.2A.



- Correcting the designations of COBS 11.2A.34 and 11A.1.9.
- Correcting the use of a number of defined terms in COBS 11.7A.2R and 18.3.3R.
- Correcting certain of the copied out text of the MiFID 2 Delegated Regulation in COBS 11.7A and 11A.
- Clarifying the application of COBS 16 in COBS 16.1.2R.
- Removing two notes referring to the superseded 'MiFID Implementing Directive' in the table at COBS 16 Annex 1.
- Correcting a number of cross-references in COBS Schedule 1.
- Inserting cross-references to the new definition of 'high-frequency algorithmic trading technique' in MAR 5.3A.12G, 5A.5.12G and 7A.3.8R.
- Removing incorrect cross-references to Glossary definitions in MAR 5.3A.14R, REC 2.5.1UK and the notes to REC 2.6.7EU, 2.6.8EU and 2.6.15EU.
- Deleting MAR 5.7.1R which implements the first Markets in Financial Instruments Directive and which is superseded by MiFID II.
- Clarifying MAR 5A.4.1R which copies out the requirement in Article 18(1) of MiFID 2.
- Clarifying the drafting of the guidance in MAR 9.3.11G.
- Inserting links to relevant forms in Annexes 3, 4, 5, 6, 8 and 9 to MAR.
- Correcting cross-references in REC 2.6.29G, 3.14.2AR, 3.15.2AR and 3.18.1G.

2.4 Apart from the change to the definition of 'OPS firm', this instrument comes into force on **3 January 2018**. The change to the definition of 'OPS firm' is delayed to come into force on **2 April 2018**.

***Conduct of Business Sourcebook (Insistent Clients) Instrument 2017 (FCA 2017/66)***

2.5 Following consultation in CP17/28<sup>3</sup>, the FCA Board has made changes to the FCA Handbook section listed below:

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3 CP17/28 'Financial Advice Market Review (FAMR): implementation Part II and insistent clients' (August 2017)

## COBS 9

- 2.6 In summary this instrument inserts new guidance which sets out how firms may comply with various conduct obligations when they deal with insistent clients. Among other things, the guidance explains what information a firm should communicate to the insistent client, what acknowledgement the firm should obtain from the client and what records the firm should retain.
- 2.7 This instrument comes into force on **3 January 2018**. Feedback will be published in a separate Policy Statement.

### ***Advising on Investments (Article 53(1) of the Regulated Activities Order) (Consequential Amendments) Instrument 2017 (FCA 2017/67)***

- 2.8 Following consultation in CP17/28<sup>4</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary**  
**TC 2.1, Apps 1 and 4**  
**COBS 1, 2, 4, 6, 16, 22**  
**ICOBS 4**  
**SUP 10A, 12 and App 3.9**  
**DISP 2**  
**COMP 5**  
**COLL 6**

- 2.9 It also makes changes to **PERG 2, 7 and 8 and RPPD**.
- 2.10 In summary this instrument makes a number of consequential changes to the Handbook as a result of the amendment to the regulated activity of advising on investments which is specified in article 53(1) of the Regulated Activities Order. The relevant amendments were made by HM Treasury in the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2017(SI 2017/500) and come into force on **3 January 2018**. In particular, the instrument clarifies the circumstances in which a complaint may be referred to the Financial Ombudsman Service in relation to non-personal recommendation advice, a claim may be made on the Financial Services Compensation Scheme in relation to such advice, and the training and competence requirements for employees of firms who provide such advice. The instrument also amends the inducements and adviser charging rules to prohibit a firm from receiving inducements in connection with its investment advice business.

4 CP17/28 'Financial Advice Market Review (FAMR): implementation Part II and insistent clients' (August 2017)



- 2.11 This instrument comes into force on **3 January 2018, immediately after the Conduct, Perimeter Guidance and Miscellaneous Provisions (Instrument) 2017**. Feedback will be published in a separate Policy Statement.

***Financial Services Compensation Scheme (Extension of Scope to Recognised Investment Exchanges) Instrument 2017 (FCA 2017/68)***

- 2.12 Following consultation in CP17/19<sup>5</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary  
FEES 6  
COMP 5 and TP 1**

- 2.13 In summary this instrument makes changes to the Handbook to bring the activity of an RIE operating an MTF or OTF into the scope of the FSCS while keeping the costs proportionate.
- 2.14 This instrument comes into force on **3 January 2018 immediately after those changes made by FCA 2017/58 that come into effect on 3 January 2018 have come into force**.
- 2.15 Note that the changes to 'financial year', FEES 6.4.5R and COMP 5.2.3R made with effect from 3 January 2018 replace those made in instrument FCA 2017/58<sup>6</sup> with effect from 1 April 2018, rendering the FCA 2017/58 changes obsolete.
- 2.16 Feedback is published in Chapter 3 of this Notice.

***Periodic Fees (2017/18) and Other Fees (No 2) Instrument 2017 (FCA 2017/69)***

- 2.17 Following consultation in CP17/31<sup>7</sup>, the FCA Board has made changes to the FCA Handbook section listed below:
- FEES 4**
- 2.18 In summary this instrument makes changes to the Handbook to enable the completion of the collection of the FCA's 2017/18 Annual Funding Requirement from recognised investment exchanges, benchmark administrators and data reporting services providers.

5 CP17/19 'Markets in Financial Instruments Directive II Implementation – Consultation Paper VI' (July 2017)

6 'Handbook Notice 48' (October 2017)

7 CP17/31 'Market Infrastructure Providers – 2017/18 fee rates' (August 2017)





- 2.19 Part of this instrument comes into force on **8 December 2017** and the remainder on **3 January 2018**. Feedback is published in Chapter 3 of this Notice.

***Fees (Consumer Financial Education Body Levy) Instrument 2017 (FCA 2017/70)***

- 2.20 Following consultation in chapter 9 of PS17/15<sup>8</sup>, the FCA Board has made changes to the FCA Handbook section listed below:

**FEES 7**

- 2.21 In summary this instrument makes changes to the Handbook to ensure that credit unions who we intended should have received a concession on the Money Advice debt service levy will do so as if it had been applied since 2014/15.
- 2.22 This instrument comes into force on **8 December 2017**. Feedback is published in Chapter 3 of this Notice.

***Fees (Payment Services) (No 3) Instrument 2017 (FCA 2017/71)***

- 2.23 Following consultation in CP17/32<sup>9</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**FEES 3 and TP 17**

- 2.24 In summary this instrument makes changes to the Handbook to ensure that authorised payment institutions and authorised electronic money institutions contribute towards our costs in processing their variations of permission.
- 2.25 The changes to TP 17 come into force on **8 December 2017** and the remainder of the instrument on **13 January 2018**. Feedback is published in Chapter 3 of this Notice.

***Fees (Payment Systems Regulator) Instrument (No 5) 2017 (FCA 2017/72)***

- 2.26 Following consultation in CP17/30<sup>10</sup>, the FCA Board has made changes to the FCA Handbook section listed below:

**FEES 9**

<sup>8</sup> PS17/15 'FCA regulated fees and levies 2017/18' (July 2017)

<sup>9</sup> CP17/32 'Quarterly Consultation Paper No. 18' (September 2017)

<sup>10</sup> CP17/30 'PSR regulatory fees 2018/19 and onwards' (August 2017)



- 2.27 In summary this instrument makes changes to the Handbook to enable the change in how PSR fees are collected. The FCA will calculate, bill and collect PSR fees from PSR fee payers directly, and the operators of payment systems will no longer be required to bill and collect fees from PSR fee payers.
- 2.28 This instrument comes into force on **15 December 2017**. Feedback will be published in a separate Policy Statement.

***Supervision Manual (Amendment No 23) Instrument 2017 (FCA 2017/73)***

- 2.29 Following consultation in CP16/21<sup>11</sup>, the FCA Board has made changes to the FCA Handbook section listed below:

**SUP 10C**

- 2.30 In summary this instrument makes changes to the Handbook to improve the fitness and propriety of individuals working in financial institutions.
- 2.31 This instrument comes into force on **23 February 2018**. Feedback is published in Chapter 3 of this Notice.

***MiFID 2 Approved Persons and Senior Managers (Form Amendments) Instrument 2017 (FCA 2017/74)***

- 2.32 Following consultation in CP17/34<sup>12</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary  
SUP 10A and 10C**

- 2.33 In summary this instrument makes changes to the Handbook to comply with the requirements of MiFID 2, as related to the authorisation of individuals working in financial institutions.
- 2.34 This instrument comes into force on **3 January 2018**. Feedback is published in Chapter 3 of this Notice.

***Supervision Manual (Reporting No 7) Instrument 2017 (FCA 2017/75)***

11 CP16/21 'Quarterly Consultation Paper No. 14' (September 2016)

12 CP17/34 'Joint PRA and FCA form, PRA Rulebook, and FCA Handbook changes – MiFID II, IDD and BMR amendments' (October 2017)



- 2.35 Following consultation in CP17/32<sup>13</sup>, the FCA Board has made changes to the FCA Handbook section listed below:

**SUP 16**

- 2.36 In summary this instrument makes changes to the Handbook to make our reporting requirements more appropriate and make our supervision of firms more efficient and accurate.
- 2.37 Part of this instrument comes into force on **31 December 2017** and the remainder on **1 September 2018**. Feedback is published in Chapter 3 of this Notice.

***Conduct of Business Sourcebook (Packaged Retail and Insurance-based Investment Products Regulation) (Amendment) Instrument 2017 (FCA 2017/76)***

- 2.38 Following consultation in CP17/32<sup>14</sup>, the FCA Board has made changes to the FCA Handbook section listed below:

**COBS 13**

- 2.39 In summary this instrument makes changes to the Handbook to ensure firms can choose to provide projections in addition to the Key Information Document, for example where the client wants such projections.
- 2.40 Part of this instrument comes into force on **1 January 2018** and the remainder on **3 January 2018**. Feedback is published in Chapter 3 of this Notice.

***MiFID 2 (Deferred Matters) Instrument 2017 (FCA 2017/77)***

- 2.41 Following consultation in CP17/8<sup>15</sup> and CP17/19<sup>16</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary**  
**DEPP 2 and Schs 3 and 4**  
**PR 1 and App 1.1**  
**EG 19**

- 2.42 In summary this instrument makes changes to the Handbook to address the consequential changes arising out of the implementation of MiFID 2 and implement the remaining proposed changes to DEPP and EG first outlined in CP17/8 and CP17/19.

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13 CP17/32 'Quarterly Consultation Paper No. 18' (September 2017)

14 CP17/32 'Quarterly Consultation Paper No. 18' (September 2017)

15 CP17/8 'Markets in Financial Instruments Directive II Implementation – Consultation Paper V' (March 2017)

16 CP17/19 'Markets in Financial Instruments Directive II Implementation – Consultation Paper VI' (July 2017)



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

***Banking (Information About Current Account Services)  
Instrument 2017 (FCA 2017/78)***

- 2.44 Following consultation in CP17/24<sup>17</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**BCOBS 1, TP 1 and Sch 2**

- 2.45 It also adds a new chapter, **BCOBS 7**.
- 2.46 In summary this instrument makes changes to the Handbook to improve the availability of meaningful and comparable information about service to make it easier for customers to make an informed comparison. This will allow customers to choose the provider that best suits their needs based on the quality of the provider's service.
- 2.47 This instrument comes into force on **15 August 2018**. Feedback will be published in a separate Policy Statement.

***Client Assets (Indirect Clearing) Instrument 2017 (FCA 2017/80)***

- 2.48 Following consultation in CP17/2<sup>18</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary  
CASS 7, 7A and TP 1**

- 2.49 In summary this instrument makes changes to the Handbook to ensure that the CASS rules are consistent with the new European indirect client clearing requirements.
- 2.50 This instrument comes into force on **3 January 2018**. Feedback is published in Chapter 3 of this Notice.

## 3 Consultation feedback

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

<sup>17</sup> CP17/24 'Information about current account services' (July 2017)

<sup>18</sup> CP17/2 'CASS 7A and the special administration regime review' (January 2017)

## CP17/19: Markets in Financial Instruments Directive II Implementation – Consultation Paper VI

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### ***Financial Services Compensation Scheme (Extension of Scope to Recognised Investment Exchanges) Instrument 2017***

#### **Background**

- 3.2 The Markets in Financial Instruments Directive II (MiFID 2) imposes a requirement on firms conducting investment services and activities to join an investor compensation scheme to ensure that, when a firm is unable to pay claims against it, consumers can nonetheless obtain compensation. Otherwise, if a recognised investment exchange (RIE) running a multilateral trading facility (MTF) or organised trading facility (OTF) were unable to pay claims against it, users would have no recourse to a compensation scheme and could suffer financial distress. In Consultation Paper (CP)17/19 we therefore proposed to bring RIEs operating MTFs and OTFs into the scope of the Financial Services Compensation Scheme (FSCS). As such, we proposed FSCS base cost contributions for operators of regulated markets that operate an MTF or OTF, and proposed the funding class that such operators should be part of for the purpose of levies for compensation costs and specific costs directly related to the paying of compensation.

#### **Feedback**

- 3.3 We received no responses to our proposals and so will proceed to make the changes as proposed.

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

- 3.4 The cost benefit analysis remains as published in CP17/19. Also, our view on the compatibility statement remains unchanged.

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

- 3.5 We continue to believe that these changes do 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.
- 3.6 The changes made by this instrument are listed in Chapter 2 of this Notice.

## CP17/31 'Market Infrastructure Providers – 2017/18 fee rates'

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### ***Periodic Fees (2017/18) and Other Fees (No 2) Instrument 2017***



## **Background**

3.7 CP17/31 (August 2017)<sup>19</sup> completed the setting of the 2017/18 fee rates for:

- recognised investment exchanges (RIEs) and benchmark administrators (BAs) (two of the sub-sets of market infrastructure providers in the B fee-block), and
- data reporting services providers (DRSPs) in the G25 fee-block

## **RIEs and BAs**

3.8 From 2017/18 we will calculate the periodic fees for RIEs and BAs based on their size, as measured by their annual income from the activities that comprise a necessary part of their business as RIEs and BAs. We consulted on this way of calculating the fees in Chapter 4 of CP16/33 (November 2016)<sup>20</sup> and provided feedback on responses received in Chapter 10 of CP17/12 (April 2017)<sup>21</sup> together with made rules. These rules included the definition of annual income in FEES 4 Annex 11A<sup>22</sup>, with guidance provided in FEES 4 Annex 13G<sup>23</sup> and a transitional requirement for RIEs and BAs to submit their income tariff data based on this definition/guidance in June 2017. The rules also covered the band thresholds and minimum fees.

3.9 The proposed 2017/18 variable fee rates consulted on in CP17/31 were based on the tariff data we received in June. They also took account of the:

- increased allocation of the 2017/18 annual funding requirement (AFR) to the B fee-block consulted on in CP17/12 (feedback on responses received and made rules published in PS17/15 in July 2017)<sup>24</sup>, and
- an increased recovery from BAs reflecting the focus of our resources on this sector

3.10 The proposed variable fee-rates were:

- RIEs - £5.58 for every £ thousand or part thousand of annual income over £10m, and
- BAs - £28.90 for every £ thousand or part thousand of annual income above £3m

19 CP17/31 'Market infrastructure providers – 2017/18 fee rates' (August 2017)

20 CP16/33 'Regulatory fees and levies: policy proposals for 2017/18' (November 2016)

21 CP17/12 'FCA Regulated fees and levies: Rates proposals 2017/18' (April 2017)

22 <https://www.handbook.fca.org.uk/handbook/FEES/4/Annex11A.html>

23 <https://www.handbook.fca.org.uk/handbook/FEES/4/Annex13.html>

24 PS17/15 'FCA regulated fees and levies 2017/18: Including feedback on CP17/12 and 'made rules'' (July 2017)

## DRSPs

DRSPs will operate data reporting services (DRS) under MiFID II when the DRS Regulations come fully into effect on 3 January 2018. We originally consulted on their fees in CP15/34 (November 2015)<sup>25</sup> and summarised the responses in Handbook Notice 30 in February 2016<sup>26</sup>. In CP16/19 (July 2016)<sup>27</sup>, we confirmed our intention to implement the proposals as consulted on once the DRS Regulations gave us the power to do so. In July 2017, when the DRS Regulations gave us the power to raise fees, we confirmed the structure of periodic fees and set the application fees. This meant we could open the Gateway for applications to enable DRSPs to seek authorisation in time for January (PS17/14, July 2017)<sup>28</sup>.

- 3.11 The application and periodic fees for DRSPs follow the same structure. They pay a fee for one service category and an additional 50% for each additional category. In our original consultation in November 2015, we indicated that we expected the periodic fee to fall within the range of £20,000- £30,000. Now that we have more information about the number of businesses that are likely to apply to become DRSPs and the resources we expect to commit to regulating them, we consulted in CP17/31 on a flat-rate fee of £25,000 for one service category, making the fee for each additional category £12,500.

## Feedback

- 3.12 We received four responses in relation to the proposed variable fee rates for RIEs and BAs – from a RIE, an existing BA, an applicant BA and a bank. The applicant BA was supportive of the proposed fee rates. The issues raised by the other three respondents fall under three categories:

- level of income as a proxy for impact risk
- transparency of AFR allocation across the B fee-block, and
- how firms apply the definition of income

- 3.13 We received no responses on the DRSP fee rates and so have made the DRSP fee rates as consulted on.

## Level of income as a proxy for impact risk

- 3.14 The RIE respondent continued to express opposition to the move to the income model for calculating their fees within the B fee-block. They did not agree that the level of an RIE or BA's income represents an

25 CP15/34 'Regulatory fees and levies : policy proposals for 2016/17' (November 2015)

26 'Handbook Notice 30' (February 2016)

27 CP16/19 'Markets in Financial Instruments Directive II Implementation' (July 2016)

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



effective proxy for the supervisory impact risk that the organisations pose to the FCA's objectives.

#### Transparency of AFR allocation across the B fee-block

- 3.15 The RIE respondent highlighted the significant increase in their fees and the proportion their fees represents of the whole B fee-block. They also argued that they are now subsidising other sub-sets of the B fee-block. The BA respondent also highlighted the increase in the proportion of the B fee-block their fees now represent. Both respondents called for transparency around the allocation of costs across the sub-sets that make up the B fee-block.

#### How firms apply the definition of income

- 3.16 The bank respondent referred to our statement in paragraph 2.2 of CP17/31 that the FCA will calculate the periodic fees for BAs 'based on their size as measured by their annual income from the activities that comprise a necessary part of their business' as BAs. They asked for additional guidance that where revenue is generated from investment business by investment firms that are also BAs, this does not comprise a necessary part of their business as BAs. They felt such guidance would ensure that investment firms, in relation to fees for BAs, are not assessed and charged for activity for which fees are already assessed and paid in relation to a different regulated activity.
- 3.17 The RIE respondent argued that the income model provides an incentive for RIEs and BAs to organise their business in a way that removes elements of income from RIE or BA activities, and so avoid their inclusion in the calculation of income for the purposes of FCA fees.

### **Our response**

#### Level of income as a proxy for impact risk

- 3.18 We continue to believe that using income as a measure of size increases transparency and is an effective proxy for the impact risk RIEs and BAs pose to our objectives.
- 3.19 In our view, the larger and more diverse an RIE's markets, as indicated by the income they generate, the greater the potential for the poor operation or use of those markets to cause harm. Consequently, the work we do across our supervision, policy, competition and other functions to avoid and mitigate harm, and advance well-functioning markets, will seek to address the issues and risks we see in these markets as well as potential barriers to their future development. As our previous feedback statement concluded, we therefore consider the income based methodology on which we have based the calculations to be the most appropriate approach.

#### Transparency of AFR allocation across the B fee-block

- 3.20 The B fee-block has other sub-sets within it in addition to RIEs and BAs, for example, operators of multilateral trading facilities (MTFs) and



service companies. The distribution of the total AFR allocated within the B fee-block (£7.7m for 2017/18) takes account of the proportion of the total resources, covering all our functions, we have estimated will apply to each sub-set. This basis for distributing the AFR allocated to the B fee-block across the sub-sets has not changed with the introduction of the income model for RIEs and BAs. What has changed is the way the AFR allocated to the RIE and BA sub-sets is recovered from the individual RIEs and BAs in each sub-set. That recovery is now based on their size relative to each other as measured by the income from their activities as RIEs or BAs. The larger the individual RIE or BA is within the B fee-block sub-sets, the greater the contribution they will make to recovering the AFR allocated to those sub-sets.

### How firms apply the definition of income

- 3.21 We believe that the guidance provided in FEES 4 Annex 13G (table 1, paragraph (2)) already makes clear that when firms are reporting income relating to BA activities they should exclude from their calculation income:
- From any other activities they may be undertaking in the other sub-sets of the B fee-block.
  - Directly derived from the performance of regulated activities from other fee-blocks they may be in. Other fee-blocks include the A fee-blocks which include investment business activities. For example the A.10 fee-block which covers the investment activities of firms dealing as principal and A.13 covering the investment activities of advisory arrangers, dealers or brokers.
- 3.22 The guidance in FEES 4 Annex 13G also applies to RIEs.
- 3.23 RIEs and BAs are required to use the definition of annual income set out in FEES 4 Annex 11AR when calculating the annual income they report. That definition refers to the annual income as being the gross flow of economic benefits (ie cash, receivables and other assets) recognised in the firm's accounts during the reporting year in respect of, or in relation to, the activities that comprise a necessary part of their business as a RIE or BA. The definition also includes references to specific types of income. Further, the guidance in table 1, paragraph (6) of FEES 4 Annex 13G provides for the reporting of a 'fair value' price for any services for which the RIE or BA has made a business decision not to charge clients. Paragraph (7) also provides for the inclusion of any payment from a parent to facilitate the forgoing of any amounts that would otherwise be charged in full to a client, to the extent that the payment exceeds the 'fair value' price reported.



- 3.24 We believe that existing rules and guidance, together with the Principles for Businesses under PRIN 2.1.1R<sup>29</sup>, should prevent RIEs and BAs from organising their business to remove elements of income and so avoid including it in the income RIEs and BAs report for fees purposes.
- 3.25 We have made the RIE and BA fee rates as consulted on.

***Compatibility statement***

- 3.26 The compatibility statement set out in Annex 2 of CP17/31 remains unchanged.

***Equality and diversity issues***

- 3.27 The equality and diversity statement made in Annex 2 of CP17/31 remains unchanged.
- 3.28 The changes made by this instrument are listed in Chapter 2 of this Notice.

**PS17/15 FCA regulated fees and levies 2017/18: Including feedback on CP17/12 and 'made rules' - Debt advice levy concession for smaller credit unions (Chapter 9)**

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***Fees (Consumer Financial Education Body Levy) Instrument 2017***

***Background***

- 3.29 Credit unions are mutual organisations that offer basic savings and loan facilities to their members, many of which cannot obtain such services from mainstream banks, building societies or credit card companies.
- 3.30 In 2014/15 we made changes to how we collect the funding for the Money Advice Service's debt advice work. The changes led to a significant increase in the amount of funding recouped from firms under fee-block A1 deposit acceptors. This includes Credit Unions, so at the same time we consulted on a proposed concession to reduce the amount paid by smaller credit unions.
- 3.31 The underlying policy for this concession was consulted on in March 2014 through Consultation Paper (CP)14/6;<sup>30</sup> however, no rules were included and no rules subsequently made. This was an error, and as a consequence the concession has not been applied to any credit unions.

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29 <https://www.handbook.fca.org.uk/handbook/PRIN/2/?view=chapter> The Principles for Businesses are a general statement of the fundamental obligations of firms under the regulatory system which include conducting their business with integrity and dealing with its regulator in an open and cooperative way.

30 CP14/6 'FCA Regulated fees and levies: Rates proposals 2014/15' (March 2014)

To remedy this we consulted on the issue again in Chapter 9 of Policy Statement (PS)17/15<sup>31</sup>.

- 3.32 The draft rules proposed that smaller credit unions (i.e. those that reported unsecured debt of less than £250,000) would not pay the debt advice levy. We also proposed that if, following consultation the FCA Board made these rules, we would refund the debt advice levy paid by smaller credit unions that should have received this concession in fee-years 2014/15 to 2017/18.

### **Feedback**

- 3.33 We received one response - from the Association of British Credit Unions Ltd (ABCUL). ABCUL welcomed us addressing this error, and also welcomed our proposal to refund smaller credit unions that should have received the concession. However, on reviewing the text in CP14/16 they believed that our original policy intent was that the £250,000 represented a threshold below which all credit unions would not pay the levy on that part of their reported unsecured debt. They argued that refunds should be made to all credit unions on this basis.

### **Our response**

- 3.34 We have reconsidered the CP14/6 text, which is ambiguous on this point. Given that the concession consulted on in March 2014 is not clear, and in the light of ABCUL's response, we have amended the draft rules consulted on in PS17/15 so that all credit unions will pay no debt advice levy on the first £250,000 of their reported unsecured debt. Smaller credit unions below this level will not pay any levy and larger credit unions will only pay the levy on their reported unsecured debt above this level. We will also refund all credit unions for the debt advice levy they have paid so that they are in the same position as they would have been had the concession been applied in this way from 2014/15 to 2017/18.
- 3.35 In November 2017 we published CP17/38<sup>32</sup> proposing a revised basis for calculating the Money Advice Service unsecured debt advice levy from 2018/19. Under these proposals the levy will be paid by consumer credit firms through a new consumer credit lending fee-block (CC3), rather than through the A.1 deposit acceptors fee-block. This will better target the recovery of debt advice funding from all firms that undertake lending. These proposals also include a concession for credit unions on the same basis as above where credit unions are part of the proposed new CC3 fee-block.
- 3.36 The 2014/15 to 2017/18 refund for credit unions will be paid for by other firms who pay the debt advice levy in 2018/19 through their debt advice levy. We estimate that recovering this refund to credit unions from

31 [PS17/15 'FCA regulated fees and levies 2017/18: Including feedback on CP17/12 and 'made rules'' \(July 2017\)](#)

32 [CP17/38 'Regulatory fees and levies: policy proposals for 2018/19' \(November 2017\)](#)



other firms will mean that the levy rate they pay will increase from £121.21 per £1m of value of lending to £121.57 - an increase of 0.3%. This is equivalent to an increase in the largest levy payer from £3.037m to £3.046m - an increase of £9,000. These estimated impacts are based on the indicative 2018/19 CC3 levy rates set out in CP17/38 under Table 7.2 (Chapter 7).

### **Compatibility statement**

- 3.37 We have reassessed the compatibility statement provided in CP14/6 as follows:

*The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation*

- Applying a concession for credit unions in relation to the Money Advice Service debt advice levy recognises the nature of the lending these firms undertake.

### **Equality and diversity issues**

- 3.38 We do not believe that applying this concession for credit unions will raise any equality or diversity questions.
- 3.39 The changes made by this instrument are listed in Chapter 2 of this Notice.

## **CP17/32 Payment Services Directive 2: changes to fees for varying permission**

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### **Fees (Payment Services) (No 3) Instrument 2017**

#### **Background**

- 3.40 We consulted in September<sup>33</sup> on proposals for charging both authorised payment institutions (APIs) and authorised electronic money institutions (AEMIs) when they apply to vary their permissions to provide payment initiation services (PIS) and account information services (AIS). Most variations of permission (VoPs) are charged at 50% of the full application fee and we therefore applied the same formula. The full fee for AIS and PIS is £1,500 so the charge proposed was £750. If firms apply for both categories at the same time then, following our standard policy, they will just pay one fee.
- 3.41 The charges will come into effect from 13 January 2018. However, firms have been able to apply since 13 October 2017 and so we introduced

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33 [CP17/32 Quarterly Consultation \(September 2017\)](#)

transitional arrangements to cover the period between the Gateway for applications opening and the rules being introduced. Within one month of the rule being made, firms will pay an additional fee equivalent to the difference between the £750 VoP fee and the amount they were charged when they made the application. The additional charge will therefore be £500 for APIs whose VoP fee is £250 and £750 for AEMIs which at present do not pay any VoP fee.

- 3.42 The proposals do not affect small payment institutions or small e-money institutions, since they will not be permitted under the Payment Services Regulations to offer these services.

***Feedback***

- 3.43 We received no consultation responses and so we are proceeding with our proposals as consulted on.

***Cost benefit analysis, compatibility statement and equality and diversity issues***

- 3.44 Under section 138I of the Financial Services and Markets Act (FSMA), the FCA is not required to carry out a cost benefit analysis in relation to fees rules.
- 3.45 Since we are not making any changes, we continue to believe that our proposals are compatible with our general duties under section 1B of FSMA and that they raise no equality and diversity issues.
- 3.46 The changes made by this instrument are listed in Chapter 2 of this Notice.

## **CP16/21 Quarterly Occasional Consultation No. 14, September 2016**

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### ***Supervision Manual (Amendment No 23) Instrument 2017***

***Background***

- 3.47 The Senior Managers and Certification Regime (SM&CR) for deposit takers and the Senior Insurance Managers Regime (SIMR) for insurers came into force in March 2016. As part of these regimes, we introduced a requirement that deposit takers and insurers must undertake a criminal records check when seeking to appoint a new Senior Manager. This requirement was one of a number of changes which aimed to ensure that senior staff who perform key functions at firms are fit and proper to perform their roles.



3.48 Under the SM&CR and SIMR, Senior Managers must be approved by the regulator via submission of 'Form A'. This form comes in both a long and short version:

- Long Form A – which is used when the candidate has not previously been approved, or the candidate ceased to be approved more than 6 months ago
- Short Form A – which is a more streamlined version of the form, used where the candidate is already approved to undertake one Senior Manager function and is applying for another

3.49 In CP15/22, we amended the Long Form A for deposit takers and insurers, to ask if firms had completed a criminal records check for Senior Managers. We did not replicate the same change to our rules for Short Form A for deposit takers at that time. We consulted on correcting this in a Quarterly Consultation Paper (CP)16/21.

***Feedback and our response***

3.50 No feedback was received on the proposal, so we have made the proposed change to the Handbook as consulted on.

***Cost benefit analysis***

3.51 The changes to Short Form A do not change the underlying rules or require firms to submit additional information than was previously required. As such, we believe the overall impact is cost neutral.

***Equality and diversity issues***

3.52 The FCA has considered the equality and diversity impact of the rules change. The FCA does not believe the amendments raise concerns in this regard. The FCA does not believe that the proposals in this consultation result in direct discrimination for any of the groups with protected characteristics: that is, age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender.

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

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**CP17/34: Occasional Consultation Paper October 2017**

***MiFID 2 Approved Persons and Senior Managers (Form Amendments) Instrument 2017***

***Background***

3.54 In Consultation Paper (CP)17/34, we sought feedback on changes to:



- the forms used by Firms to request authorisation of an Approved Person or Senior Manager
- the forms submitted by Firms when a person ceases being a member of the management body (or to effective directorship of the business)
- an extension of the deadline for notifying the FCA that a person has ceased to be a member of the management body (or to effective directorship of the business)
- minor word and punctuation changes to the Handbook

3.55 These amendments are necessary to transpose the second Markets in Financial Instruments Directive (MiFID II) into the UK regulatory system and were consulted on jointly with the Prudential Regulation Authority (PRA) to ensure our proposals were proportionate and consistent. The changes are only relevant to firms which come under the scope of MiFID II.

3.56 From 3 January 2018, there will be common criteria for assessing relevant management bodies and key function holders across EU Member States. As part of this, firms will be required to submit further information:

- during the authorisation of an individual who has been appointed to the management body (or to effective directorship of the business), the firm will be required to submit two new forms
- during the authorisation of an internal transfer or change of role for a Senior Manager or Approved Person, the firm will be required to submit two new forms
- when a person ceases being a member of the management body (or to effective directorship of the business), the firm will be required to submit one new form
- the deadline for notifying the FCA that the individual is leaving the firm is extended from seven days to ten days.

3.57 The aim of introducing these changes across the EU is to ensure that firms:<sup>34</sup>

- assess the individual and collective knowledge, skills and experience of members of the management body, as well as the good repute, honesty and integrity, and independence of mind of members of the management body

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34 Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders, 28 October 2016



- require members of the management body to commit sufficient time to perform their duties
- set out how different aspects of diversity, educational and professional background, age and gender have been taken into account in the recruitment process, and
- highlight the importance of induction and training to ensure the initial and ongoing suitability of members of the management body, and call for institutions to establish training policies and to allocate appropriate financial and human resources to induction and training

3.58 Minor formatting and grammatical changes to the Handbook have also been made, as well as an addition is made to the Glossary, to include the definition of MiFID II's Technical Standards.

#### ***Feedback and our response***

3.59 No feedback was received on the proposal, so we have made the proposed change to the Handbook as consulted on.

#### ***Cost benefit analysis***

3.60 Section 138I of FSMA requires the FCA to publish a cost benefit analysis of proposed rules. However, if the increase in costs from proposed rules is expected to be of minimal significance, the FCA is not under an obligation to publish such an analysis.

3.61 CP17/34 contained a high level cost benefit analysis, which concluded we do not consider the rule changes to impose an additional cost on firms. Where this is the case, we do not expect this cost to be significant.

3.62 There has been no change to our proposals or to the cost benefit analysis outlined in CP17/34.

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

3.63 The FCA has considered the equality and diversity impact of the rules change. The FCA does not believe the amendments raise concerns in this regard. The FCA does not believe that the proposals in this consultation result in direct discrimination for any of the groups with protected characteristics: that is, age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender.

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





## CP17/32: Quarterly Consultation Paper No.18

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### *Supervision Manual (Reporting No 7) Instrument 2017*

#### **Background**

3.65 In September 2017 we proposed amendments to parts of Chapter 16 of the Supervision manual (SUP). Chapter 8 of Consultation Paper (CP)17/32<sup>35</sup> sought to improve the efficiency of our supervision by introducing new questions regarding firms' annual reports and accounts and to remove an unnecessary reporting requirement that was unintentionally in effect on some mutual insurers.

3.66 Specifically, we consulted on:

- adding new questions to Form FIN-A and updating the associated guidance in SUP 16 Annex 1BG, and
- introducing a new exception from controllers reporting (Form REP002) for some mutual insurers

#### **Feedback**

3.67 We received one response about our proposals in CP17/32. The respondent was supportive of both the proposed FIN-A change and the REP002 change, and was appreciative that we had responded to industry feedback promptly when altering the reporting requirements around REP002.

#### **Our response**

3.68 We are making no alterations to our proposed changes as set out in CP17/32 as a result of feedback to the consultation. However we have decided that the changes to Form FIN-A proposed in both CP17/32 and CP17/6<sup>36</sup> (related to changes in the Immigration Act) should come into effect at the same time (on 31 December and not 1 January 2018 as originally stated in both CP17/32 and Handbook Notice 46<sup>37</sup>). We have altered the instrument to reflect the new commencement date, and this means both sets of changes will happen in FIN-A simultaneously in Gabriel, ready for completion by firms in their future data reporting.

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

3.69 The cost benefit analysis and compatibility statement from the consultation paper has not changed because we have made no substantive alterations following the consultation process.

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

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35 CP17/32 Quarterly Consultation (September 2017)

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

37 'Handbook Notice 46' (July 2017)



- 3.70 We continue to believe these changes do not give rise to any equality and diversity issues nor do they give rise to unfair discrimination against protected groups as set out in the consultation paper.
- 3.71 The changes made by this instrument are listed in Chapter 2 of this Notice.

## **CP17/32 'Quarterly Consultation Paper No. 18'**

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### ***Conduct of Business Sourcebook (Packaged Retail and Insurance-based Investment Products Regulation) (Amendment) Instrument 2017***

#### **Background**

- 3.72 The Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation and Regulatory Technical Standards (RTSs) come into force on 1 January 2018. From that date, firms advising on or selling PRIIPs will have to provide retail investors with a standardised key information document (KID) compiled in line with methodologies set out in the RTSs. The KID will replace existing disclosure material, including (where relevant) projections that are currently required to be produced in line with our Conduct of Business sourcebook (COBS) rules.
- 3.73 In CP17/32 we proposed that firms would have the option, but not the obligation, to continue to provide projections outside of the PRIIPs KID, if they are produced in line with the relevant rules or requirements<sup>38</sup>. These rules or requirements set out how a firm must prepare such a projection. If firms choose to provide a projection alongside the PRIIPs KID, then they will need to explain the difference between the figures shown in the two documents, in line with the 'fair, clear and not misleading rule'.
- 3.74 In CP17/32, we also invited views on an alternative approach. We asked whether firms should prepare projections using the PRIIPs RTSs performance scenario methodologies rather than our current COBS assumptions.

#### **Feedback**

- 3.75 There were 11 responses to the consultation and these presented diverse views. Most respondents agreed with the proposed approach but two firms were concerned about the costs of maintaining the functionality to provide projections. We can clarify that firms can choose to, but are no longer required to, provide any projections for

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38 COBS 13 for 'non-financial instrument PRIIPs' and COBS 4 or the MiFID Org Regulation for 'financial instrument PRIIPs'.

PRIIPs as a result of these rules. This means they will not have to maintain the functionality to provide projections nor bear the costs of doing so. Three firms noted the potential for consumers to be confused. Given the requirement that communications should be fair, clear and not misleading we expect firms may need to explain the differences between 'performance scenarios' in the KID and any projection provided, to avoid confusion.

- 3.76 One respondent agreed with our current approach in terms of allowing projections to be provided in addition to the mandated PRIIPs KID. This was because they were otherwise concerned that the introduction of the KID would result in the loss of personalised projections, which they consider a valuable planning tool.
- 3.77 Another respondent supported an alternative approach. They considered that the RTS methodologies could be used as a basis to give a personalised potential performance. While we accept that this would be possible in theory, the PRIIPs RTSs would require some adaptations depending on the form of the PRIIP and its charging structure. This could result in costly systems development for firms if mandated in FCA rules.
- 3.78 One firm noted that if we required the use of PRIIPs RTSs methodologies for projections we would also need to develop a dynamic template. They did not think this could be achieved by January 2018. There will be no such requirement.

### ***Our response***

- 3.79 Although we note the diverse views, we believe the approach proposed will ensure firms can choose to provide projections, in addition to the KID, from 1 January 2018. This approach is cost-effective and provides the clarity needed in time for the application of the PRIIPs Regulation. So, we will make the changes as proposed in the CP with one additional change<sup>39</sup>.

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

- 3.80 In CP17/32 we explained why we considered the costs involved in amending our rules as proposed to be of no or minimal significance, and why we considered that no CBA is required. This view remains unchanged. Further, in CP17/32 we explained why we believe our proposed rules to be compatible with our strategic objectives and duties under FSMA. This view also remains unchanged.

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

- 3.81 In CP17/32 we explained that in developing this proposal we considered any potential equality or diversity implications and took the view that

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39 We have made a change to a cross-reference in the instrument consulted on so as to take account of forthcoming changes to the Handbook to implement MiFID II.



it does not impact on any of the groups with protected characteristics. This view remains unchanged.

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

## **CP17/8: Markets in Financial Instruments Directive II Implementation – Consultation Paper V and CP17/19: Markets in Financial Instruments Directive II Implementation – Consultation Paper VI**

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### ***MiFID 2 (Deferred Matters) Instrument 2017***

#### ***Background***

- 3.83 In Consultation Paper (CP)17/19 we proposed some small changes to the Prospectus Rules (PR) sourcebook and the Glossary of our Handbook consequent to changes made to the Financial Services and Markets Act (FSMA) to implement the Markets in Financial Instruments Directive II (MiFID 2). These changes arise from the implementation of MiFID 2 rather than being required to implement the Directive.
- 3.84 The main change reflects the amendments to the definition of a 'qualified investor' in section 86(7)(d) of FSMA in relation to an offer of transferable securities. That amendment means that a 'qualified investor' for the purposes of when an approved prospectus is required can continue to include a person automatically transferred to the new category of 'professional clients' at the time when MiFID was implemented (a provision was included in MiFID to allow this but it is not specifically included in MiFID 2). This category of clients may include former 'intermediate customers' (a category of clients from the UK's pre-MiFID client categorisation regime) who remain clients of the firm who did the grandfathering assessment.
- 3.85 As our Handbook Glossary definition of 'qualified investor' is closely aligned with the definition in s.86(7) of FSMA we proposed aligning it to the s.86(7) definition. We also proposed: (1) amending the definition of 'qualified investor' in our Prospectus Rules (PR) sourcebook (which uses the Glossary definition); and (2) amending PR 1.2.1UK which reproduces s.86(7) FSMA for the convenience of the reader of the PR.
- 3.86 In CP17/19 we also consulted on our proposed amendments to the Decision Procedure and Penalties Manual (DEPP) and Enforcement Guide (EG). This was a re-consultation on changes to DEPP and EG originally proposed in CP17/8. We had consulted in CP17/8 on the basis of the consultation versions of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (MiFI Regulations)

and the Data Reporting Services Regulations 2017 (DRS Regulations) published on 16 February 2017. As these differed from the final statutory instruments published, we decided to re-consult on modified amendments to DEPP and EG, except as to those proposals relating to the authorisation and verification of data reporting service providers, which were finalised in PS17/14.

**3.87** In CP17/8 and CP17/19 we proposed the following changes to EG:

- Amend Chapter 19 of EG to describe our approach to conducting investigations and enforcing the applicable requirements imposed by or under the MiFI Regulations. This approach will broadly mirror how the FCA investigates, imposes sanctions and exercises its other FSMA regulatory powers.
- Amend Chapter 19 of EG to add high-level guidance on how the FCA will exercise its power, under Regulation 40 of the MiFI Regulations, to require the removal of persons from the management board of an investment firm, credit institution or recognised investment exchange.
- Amend Chapter 19 of EG to describe our approach to the conduct of investigations and enforcing the applicable requirements imposed by or under the DRS Regulations. This approach will broadly mirror how the FCA investigates, imposes sanctions and exercises its other FSMA regulatory powers.

**3.88** Other than those changes published in PS17/14, which set out our final rules on MiFID 2 conduct of business, client assets and certain other matters, we also proposed the following changes to DEPP:

- Amend DEPP 2.5.18G to state that the FCA is only required to give a single supervisory notice when exercising its powers under Regulations 28 and 36 of the MiFI Regulations, and that no representations can be made to the FCA after the issuing of this notice, but that the matter can be referred to the Tribunal.
- Amend DEPP 2 Annex 1G to specify the decision making procedures that will apply when the FCA is proposing or deciding to issue a public censure under Paragraph 10, to impose a financial penalty under Paragraphs 11 and to require restitution to be paid under Paragraph 21 of Schedule 1 to the MiFI Regulations.
- Amend DEPP 2 Annex 1G to specify the decision making procedures that will apply when the FCA is proposing or deciding to issue a public censure under Regulation 23, to impose a financial penalty under Regulation 24 and to require restitution to be paid under Regulation 36 of the DRS Regulations.



- Amend DEPP 2 Annex 2G to specify the decision making procedures that will apply when the FCA is proposing or deciding to exercise its intervention powers with respect to third country firms under Regulations 10 and 12 of the MiFI Regulations.
- Amend DEPP 2 Annex 2G to specify the decision making procedures that will apply when the FCA is exercising its powers to limit the ability of a person to enter a contract for a commodity derivative, or to impose restriction or requirement on the size of a position, under Regulation 28 of the MiFI Regulations.
- Amend DEPP 2 Annex 2G to specify the decision making procedures that will apply when the FCA is exercising its powers to impose a requirement under Regulation 36 of the MiFI Regulations.
- Amend DEPP 2 Annex 2G to specify the decision making procedures that will apply when the FCA is exercising its powers to require the removal of a person from a management board under Regulation 40 of the MiFI Regulations.
- Amend DEPP 2 Annex 2G to specify the decision making procedures that will apply when the FCA is exercising its powers to impose a limitation or other restriction on a data reporting service provider under Regulation 22 of the DRS Regulations.

### **Feedback**

- 3.89 One professional body responded to our proposals to amend the Prospectus Rules and the Glossary to confirm that they had no comments on these proposals.
- 3.90 We received two responses to CP17/8 relating to our proposals to amend DEPP and EG. One respondent did not disagree with what was proposed. The second respondent welcomed our proposed guidance in EG 19 about the way in which our power to require removal of persons from a management board may be exercised, but asked for further details to provide clarity on the criteria outlined. The second respondent also stated that, in its view, whether a director possesses “sufficient knowledge, skills and experience to perform their duties” would be better assessed by the firm and its management team as they are much closer to the business and its needs.
- Our response to feedback on CP17/8**
- 3.91 We have carefully considered the responses. We continue to believe that our proposed guidance in EG 19 on how we would exercise our power to require the removal of a person from a management board is sufficient and appropriate.
- 3.92 We will therefore proceed to make the changes as proposed.

**Cost benefit analysis and compatibility statement**

- 3.93 The cost benefit analysis remains as published in CP17/19. Also, our view on the compatibility statement remains unchanged.

**Equality and diversity issues**

- 3.94 We continue to believe that these changes do 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.
- 3.95 The changes made by this instrument are listed in Chapter 2 of this Notice.

**CP17/2 CASS 7A and the special administration regime review**

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**Client Assets (Indirect Clearing) Instrument 2017****Background**

- 3.96 In CP17/2 we proposed minor consequential changes to the Client Assets sourcebook (CASS) to address the forthcoming indirect clearing requirements under the European Market Infrastructure Regulation (EMIR) and the Markets in Financial Instruments Regulation (MiFIR) Regulatory Technical Standards (RTS)<sup>40</sup>. The requirements apply directly to clearing members and their clients who are acting on behalf of their indirect clients.
- 3.97 An indirect clearing arrangement is an arrangement under which a clearing member is prepared to facilitate the clearing of positions of its client's clients, i.e. its indirect clients (see Fig. 1 below).

Figure 1



40 Commission Delegated Regulation (EU) No 2017/2155 of 22 September 2017 amending Commission Delegated Regulation (EU) No 149/2013 (EMIR RTS) and Commission Delegated Regulation (EU) No 2017/2154 of 22 September 2017 supplementing Regulation (EU) No 600/2014 (MiFIR RTS)





- 3.98 The current CASS regime ensures that there are no conflicts between CASS and the indirect clearing requirements for over the counter (OTC) derivatives under the existing EMIR RTS<sup>41</sup>. These requirements set out the obligations on clearing members and clients when managing the default of a client providing indirect clearing services. The requirements are relevant to CASS to the extent that the clearing member receives or holds client money from the client.
- 3.99 The MiFIR RTS were introduced to ensure that the same protections are given to indirect clients in the context of exchange traded derivatives (ETDs) as they are given in the context of OTC derivatives under the existing EMIR RTS. The MiFIR RTS have been developed in line with industry feedback and the EMIR RTS have been updated to ensure both RTS are consistent with each other.
- 3.100 To address the requirements in the new EMIR and MiFIR RTS, we proposed to update definitions in the FCA Handbook Glossary and existing cross-references referring to indirect clearing arrangements, including a cross-reference in the client transaction account acknowledgement letter template<sup>42</sup>.

### **Feedback**

- 3.101 We received four responses, including submissions from central counterparties (CCPs), trade bodies and consulting firms. Respondents agreed with, and supported, the proposed changes.
- 3.102 One respondent questioned whether there should be any grandfathering provisions for existing acknowledgement letters so that firms could avoid the need to repaper these, and questioned whether the acknowledgement letter template could be amended to 'future-proof' it so that repapering would not be required in the event of further relevant legislation amendments. Some respondents queried how the CASS rules should be interpreted in the context of indirect client clearing arrangements, including in relation to the treatment of client money in the event of a clearing member default. Some respondents requested that CASS be amended to permit sub-pools<sup>43</sup> for indirect client clearing arrangements and to apply the custody rules (CASS 6) to assets provided as collateral in a clearing arrangement so that these are ring-fenced in the event of a clearing member default.

### **Our response**

- 3.103 The final rules update the acknowledgement letter template that the CASS rules may, where applicable, require to be put in place between a clearing member and a client providing indirect clearing services<sup>44</sup>. We

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41 Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 609/2012. The consequential changes to CASS came into force on 1 October 2013

42 CASS 7 Annex 3R

43 CASS 7.19

44 CASS 7 Annex 3R



are not making any changes to the acknowledgement letter template that, where relevant, should be put in place between a clearing member and an authorised CCP<sup>45</sup>.

- 3.104** If a firm (e.g. the Client in Fig. 1) currently has in place an acknowledgement letter that refers to the existing EMIR RTS (because that firm is providing clearing to indirect clients for OTC derivatives) then, if the firm is going to continue providing this business, the new EMIR RTS are relevant and the letter will need to be replaced to reflect the updated template (see also the transitional provision explained below). We understand that very few (if any) such indirect clearing arrangements exist in the market. If a firm is going to start providing clearing to indirect clients for ETDs in accordance with the MiFIR RTS, then to the extent those arrangements between the firm and its clearing member are caught by CASS<sup>46</sup>, the acknowledgement letter in place must reflect the updated template. Generally speaking, when completing the acknowledgement letter, a firm must ensure that the square bracketed text on indirect clearing arrangements in paragraph (d) of the template letter is removed, included or amended as appropriate<sup>47</sup>.
- 3.105** The new EMIR and MiFIR RTS apply to firms from 3 January 2018. For firms that would find themselves in breach of CASS from that date as a result of the changes to the template, we are introducing a transitional provision to allow such firms two months to make the necessary arrangements for a compliant letter. We have also amended the acknowledgement letter template to 'future-proof' it so that repapering should not be required in the event of further relevant legislation amendments.
- 3.106** The EMIR requirements govern the failure of a clearing member and the CASS rules reflect EMIR process. In the event of a clearing member firm failure, pursuant to CASS a primary pooling event occurs and, to the extent that porting fails or there is excess client money in accounts at the CCP, client money may be remitted directly to the clearing member firm for the account of its clients or directly to the clients from the authorised CCP as part of its default management procedures in accordance with EMIR. As such, any remittance for an individual client account may be distributed directly from the CCP to the relevant client and any remittance for an omnibus client account is either pooled or distributed to the relevant clients.
- 3.107** The proposed changes in CP17/2 and final rules address only those matters necessary to ensure that CASS does not conflict with the provisions of the new EMIR and MiFIR RTS. We are not amending the

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45 CASS 7 Annex 4R

46 CASS 7.18.3R

47 CASS 7.18.6R(2) and CASS 7 Annex 5(30)



CASS rules to allow sub-pool rules to apply to indirect client clearing arrangements or to introduce custody asset distribution rules in CASS 6.

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

- 3.108 We received no comments during the consultation period on either the cost benefit analysis or compatibility statement relating to these changes. As the final rules do not materially differ from the draft on which we consulted, we believe the cost benefit analysis and compatibility statement set out in Annex 3 and Annex 4 to CP17/2 remain valid.

***Equality and diversity issues***

- 3.109 We received no comments during the consultation period on any equality and diversity issues. As stated in Chapter 1 of CP17/2, we do not foresee any negative equality and diversity impacts resulting from the rule changes.
- 3.110 The changes made by this instrument are listed in Chapter 2 of this Notice.

## 4 Additional information

### **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.

### **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 [www.handbook.fca.org.uk/instrument](http://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/](http://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/](http://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**

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- 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**

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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 on the back cover).

## Handbook Notice 50

This Handbook Notice describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 7 December 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](mailto: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](mailto:firm.queries@fca.org.uk)

Post: Contact Centre

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