

Handbook changes to reflect the new regulatory framework for Insurance-Linked Securities – Feedback to CP16/34 and CP17/3 and near-final rules

Policy Statement

PS17/24

November 2017

This relates to

Consultation Papers CP16/34 and CP17/3 which are available on our website at www.fca.org.uk/publications

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1 Overview

Introduction

- 1.1** Insurance-linked securities (ILS) are financial instruments where the value of the security is linked to an insurable loss event.
- 1.2** ILS are used to transfer risk to the capital markets through insurance special purpose vehicles (ISPVs)¹, as an alternative form of risk mitigation for insurance and reinsurance firms. In November 2016², Her Majesty's Treasury (the Treasury) proposed a new regulated activity of insurance risk transformation, as part of designing a new framework to attract ILS business to the UK.
- 1.3** We have published two consultation papers (CPs) proposing changes to our rules and setting out our authorisation and supervisory approach in relation to ISPVs. This Policy Statement (PS) sets out:
- our response to the feedback received to CP16/34³ and a near-final 'FCA Statement – authorising and supervising insurance special purpose vehicles' (see Chapter 2)
 - our response to the feedback received to CP17/3⁴ and the near-final rules that incorporate the new regulated activity of insurance risk transformation into our Handbook (see Chapter 3)
- 1.4** The Risk Transformation Regulations 2017 (RTR⁵) were laid before Parliament on 12 October 2017 and have not yet become law. So, in this PS we are publishing near-final, draft material because our rules must refer to that domestic legislation. We will finalise our rules when the parliamentary process is complete, taking into account any further changes to the RTR.

Who does this affect?

- 1.5** This PS will be of interest to:
- ISPVs and firms considering becoming involved in setting up ISPVs or issuing ILS
 - firms that undertake outsourced activities on behalf of ISPVs

1 ISPVs can be created for the purpose of a single contract of risk transfer. If they also concurrently take on more than one contract of risk transfer from one or more 'cedants' they are known as multi-arrangement ISPVs (MISPVs). The Treasury Regulations have proposed a new corporate structure, the Protected Cell Company (PCC), to facilitate MISPV business.

2 www.gov.uk/government/uploads/system/uploads/attachment_data/file/571091/Insurance_Linked_Securities_final_web.pdf

3 See CP16/34 'Authorisation and supervision of insurance special purpose vehicles': www.bankofengland.co.uk/prd/Documents/publications/cp/2016/cp4216.pdf

4 See CP17/3 'Proposed Handbook changes to reflect the new regulatory framework for Insurance Linked Securities': www.fca.org.uk/publication/consultation/cp17-03.pdf

5 www.gov.uk/government/uploads/system/uploads/attachment_data/file/651348/The_Risk_Transformation_Regulations_2017.pdf



- professional advisers to ISPVs
- insurers and reinsurers that want to use ISPVs as part of their risk mitigation strategy

Is this of interest to consumers?

1.6 The RTR restrict investment in ILS to qualified investors (QIs)⁶ only, so they should not be sold to retail consumers. The rules will be of interest to QIs who invest in, or will consider investing in ILS in the future.

Context

1.7 In the March 2015 Budget, the Treasury indicated its intention to work with the London insurance market to design a new framework to attract ILS business to the UK. The Financial Conduct Authority (FCA), along with the Prudential Regulation Authority (PRA), committed to work with the Treasury to examine possible approaches to the regulation of ILS business in the UK, within the constraints of the Solvency II regime.

1.8 The Treasury then issued two consultation documents (in February 2016⁷ and November 2016⁸) setting out details of its proposed approach, including the draft RTR. On 20 July 2017 the Treasury published the draft statutory instrument containing the RTR, the final version of which was laid before Parliament on 12 October 2017.

1.9 We consulted jointly with the PRA⁹ in November 2016 about the proposed authorisation and supervision regime for ISPVs in the UK. We then consulted separately in January 2017 on the changes required to the FCA Handbook.¹⁰

1.10 Our near-final rules are primarily intended to advance the FCA's operational objective of protecting and enhancing the integrity of the UK financial system. They are also designed to advance our consumer protection objective in a proportionate manner. The restriction on offering ILS to non-QIs significantly mitigates the risk that would have existed to our consumer protection objective if these products had been available to retail investors.

Summary of feedback and our response

1.11 We received 16 responses to CP16/34 and 6 responses to CP17/3. The responses came from firms, trade bodies and law firms. There was general support for most of our proposals and there are no significant differences between the proposals we consulted on and our near-final rules, except for the rule we had proposed regarding new cell notification for Protected Cell Companies (PCCs). This is no longer required due to a change in the RTR (see paragraphs 3.32 – 3.34 of this paper for further detail). There is also a minor administrative amendment to SUP 11 to reflect the content of the RTR.

6 See Qualified Investor definition at Regulation 10 of the RTR at www.gov.uk/government/uploads/system/uploads/attachment_data/file/651348/The_Risk_Transformation_Regulations_2017.pdf. In summary, this means only investors classified as professional clients or eligible counterparties can invest in ILS.

7 www.gov.uk/government/uploads/system/uploads/attachment_data/file/504046/Insurance_linked_securities_consultation.pdf

8 www.gov.uk/government/uploads/system/uploads/attachment_data/file/571091/Insurance_Linked_Securities_final_web.pdf

9 www.bankofengland.co.uk/pru/Documents/publications/cp/2016/cp4216.pdf

10 www.fca.org.uk/publication/consultation/cp17-03.pdf

- 1.12** Respondents did raise specific questions and concerns relating to various aspects of our proposals, which we address in this PS. In Chapter 2 we respond to the feedback received to CP16/34 and in Chapter 3 we address the feedback received to CP17/3.

Equality and diversity considerations

- 1.13** We have considered the equality and diversity issues that may arise from the proposals in this PS.
- 1.14** Overall, we do not consider that the proposals in this PS adversely impact any of the groups with protected characteristics.

Next steps

What do you need to do next?

- 1.15** If your firm is affected by these changes, you need to ensure compliance with the new ILS regime when it goes live, which the Treasury expects to be in 2017.

What will we do?

- 1.16** We will make our final rules when the RTR come into force, which the Treasury has stated is expected in 2017, so that the rules are in place for the start of the new ILS regime.



2 Response to feedback received to CP16/34

2.1 In this chapter we summarise and respond to the feedback received on CP16/34, our draft '*FCA Statement – authorising and supervising Insurance Special Purpose Vehicles*' that we consulted on in November 2016.

Draft FCA Statement – authorising and supervising Insurance Special Purpose Vehicles

2.2 In Appendix 2 of CP16/34 we published a draft statement setting out our approach and expectations when authorising and supervising ISPVs. This was published alongside a draft PRA supervisory statement as part of a joint consultation.

2.3 Sixteen responses – primarily focused on issues relating to the PRA proposals - were received to the consultation, which the PRA has responded to in Policy Statement 26/17 '*Authorisation and supervision of insurance special purpose vehicles*', published in November 2017.¹¹

2.4 No respondents objected to the draft FCA statement, or made any material comments in relation to it.

Our response

We are finalising the draft FCA statement that was consulted on, subject to some minor drafting amendments and revisions to reflect the updated RTR. These revisions are reflected the version of the statement at Appendix 1 of this PS.

The statement is being published as near-final, to reflect the fact that it refers to domestic legislation (the RTR, which were laid before Parliament on 12 October 2017) that has not yet come into force. We will take account of any further changes to the legislation when we finalise the statement.

¹¹ PS26/17 '*Authorisation and supervision of insurance special purpose vehicles*' - www.bankofengland.co.uk/pr/Pages/publications/ps/2017/ps2617.aspx

3 Response to feedback received to CP17/3

3.1 In this chapter we summarise and respond to the feedback received on our proposals in CP17/3, 'Proposed Handbook changes to reflect the new regulatory framework for Insurance Linked Securities' (January 2017). We received six responses to CP17/3.

Our approach to regulating the ILS market

3.2 In CP17/3 we proposed to apply the high-level aspects of our regulatory regime to this market: threshold conditions for firms, approved persons regime, principles for businesses, and requirements regarding apportionment of responsibilities and systems and controls. We considered that this was a proportionate approach and did not propose to introduce more detailed conduct rules at this stage.

3.3 In CP17/3 we asked:

Q1: *Do you agree with our proposal to apply the high level aspects of our regulatory regime rather than create more detailed conduct rules at this stage? If not, please explain your particular concerns.*

3.4 No respondents objected to this proposal, and three supported it. One respondent did not object to the proposal as long as the high-level requirements were applied to the vehicle itself, rather than the individuals managing or directing the vehicle.

Our response

We are introducing this proposal as consulted on.

The high-level requirements apply to individuals as well as the vehicle. Some aspects of our current regime apply to firms (such as the FCA Principles for Businesses) rather than the individuals running it, however others (eg the Approved Persons' Regime) apply to individuals as well as firms. We believe it is appropriate and proportionate for some requirements to fall on individuals.

Principles for Businesses (PRIN)

3.5 In CP17/3 we proposed an amendment to PRIN so that the FCA Principles for Businesses (the Principles) apply to the carrying on of activities directly arising from the regulated activity of insurance risk transformation (as well as the regulated activity itself). We also proposed amendments to our Conduct of Business sourcebook (COBS)



regarding the application of the client definitions in COBS 3. We explained that applying the Principles to these firms and activities is consistent with effective regulation and will be helpful in setting out our broad expectations for this new market.

3.6 In CP17/3 we asked:

Q2: *Do you agree with our proposal to apply the Principles to the activities that directly arise out of the new regulated activity of insurance risk transformation, including the issuing of ILS? If not, please give reasons why.*

3.7 No respondents objected to this proposal. Two respondents supported the proposal.

3.8 One respondent who supported the proposal requested that the scope of the application of the Principles be limited to the ancillary activity of ILS issuance rather than to the activities of the ISPV generally. The same respondent also asked for clarification that issuing ILS is an ancillary activity to the regulated activity of insurance risk transformation and does not require separate permission.

Our response

We are introducing this proposal as consulted on.

Regarding the request that the scope of the application of the Principles be limited to the ancillary activity of ILS issuance, rather than to the activities of the ISPV generally, we have decided to retain the wording on which we consulted. As the market is new and likely to develop as it grows, we have deliberately worded the proposed rule broadly to ensure we are able to capture all relevant activities. This broad application will allow us to address issues where risk may potentially arise, and therefore we continue to consider this appropriate and proportionate in this new and growing market. This also aligns with the scope of the activities ISPVs can carry on.

We view the issuance of the ILS as being an ancillary activity to the regulated activity of insurance risk transformation (because it provides the funding that is necessary to enable the risk transformation activity to take place), and therefore it is not a regulated activity and so does not require separate permission.

Financial Ombudsman Service

3.9 The powers to make rules relating to the Financial Ombudsman Service are shared between the FCA and the Financial Ombudsman Service. This section is issued jointly by the FCA and the Financial Ombudsman Service and, where relevant, references to 'we' are to the FCA and the Financial Ombudsman Service.

3.10 In CP17/3, to provide clarity for the industry, and investors, we proposed to amend the Dispute Resolution: Complaints sourcebook (DISP) to bring offering and issuing of ILS in scope of the Financial Ombudsman Service's compulsory jurisdiction.

3.11 The Financial Ombudsman Service also consulted on bringing the offering and issuing of ILS within the scope of its voluntary jurisdiction, to potentially cover cases where a firm conducting ILS business might not fall within its compulsory jurisdiction. Firms would be able to sign up to be part of the Financial Ombudsman Service's voluntary jurisdiction.

3.12 In CP17/3 we asked:

Q3: *Do you agree with our proposal to bring the offering and issuing of ILS in scope of the financial ombudsman service's jurisdiction? If not, please give reasons why.*

3.13 Of the six respondents to the consultation, four commented on this proposal. One respondent supported the proposal. Two respondents objected to the proposal, and another did not expressly object to the proposal but did suggest some requirements that they considered should apply if the proposal proceeded.

3.14 Respondents who opposed this proposal did so on the grounds that it might deter potential sponsors from bringing ILS business to the UK (because of the perception of greater regulatory burden compared to other jurisdictions) and that the proposed rule should not be included now, but that the situation could be kept under review.

3.15 It was argued that it is 'highly unlikely' that these products would be sold to retail investors. It was also suggested that the complexity, high value and commercial nature of any complaints may impact the resources and technical expertise needed by the Financial Ombudsman Service. Concerns were raised regarding whether firms would incur costs as a result of this proposal.

3.16 Some respondents also requested that it should be made clear that persons claiming to be eligible complainants must prove that they are, indeed, eligible and that they have invested directly in securities issued by the ISPV before any complaint is considered to be within the jurisdiction of the Financial Ombudsman Service. It was also requested that, for these purposes, the ISPV should be entitled to rely on any confirmation given by a person at the time of the subscription that they were investing in a capacity which would not constitute them being an eligible complainant.

Our response

We are introducing this proposal as consulted on.

Our view remains that our approach is the most proportionate way of addressing the risk - even if industry participants consider it to be low - that ILS are sold to a retail investor, in breach of the QI restriction. It would mean that such investors would have some recourse to non-court resolution. We recognise that this may have a limited value where transactions are higher than the £150,000 limit for binding awards made by the Financial Ombudsman Service. The Financial Ombudsman



Service currently deals with cases involving significant complexity and has the resources and technical expertise to do so.

For ISPVs which do not deal with eligible complainants, there should be no additional costs as a result of our proposal. They should be able to use an exemption (as per DISP 1.1.12R and FEES 5.1.4R) from paying the Financial Ombudsman Service levy if they declare that they do not deal with eligible complainants. An ISPV would only become liable for the Financial Ombudsman Service levy retrospectively if they were found subsequently to have been dealing with an eligible complainant.

The Financial Ombudsman Service take all relevant factors and evidence into account when determining a case, which may include – where relevant - the due diligence undertaken by a firm. The determination in any case would be reliant on the particular factors in that case, so it is not possible to set out generic rules (such as being able to rely on a disclaimer signed by a customer) that would apply to all cases. However, provided the assessment has been done properly, and the investor is actually a QI, then this should not be burdensome for firms.

It should also be noted, for clarity, that as a result of our policy, a new eligible relationship has been added to the rules – 'the complainant is a client (where the respondent is an ISPV)'. We expect most clients of ISPVs to also be a 'customer' of the firm, an existing eligible relationship. However, this new eligible relationship has been added for the avoidance of any doubt that clients of ISPVs would have the necessary eligible relationship. The addition of this new eligible relationship is not intended to change the meaning of any existing eligible relationship in the rules.

Financial Services Compensation Scheme (FSCS) disclosure

- 3.17** In CP17/3 we proposed to make a rule that ISPVs must ensure the limitations of FSCS coverage in relation to these products are clearly disclosed to investors, as it is important that investors are fully aware that compensation from the FSCS will not generally be available.
- 3.18** In CP17/3 we asked:
- Q4:** *Do you agree with our proposal that ISPVs should be required to make clear the limitations of FSCS in relation to ILS? If not, please give reasons why.*
- 3.19** No respondents objected to this proposal. One respondent agreed with the proposal. One respondent did not object to the proposal, provided the disclosure can be done by a simple statement in a prospectus or subscription agreement.

Our response

We are introducing this proposal as consulted on.

We can confirm that the requirement is to include an appropriate disclosure in the investor documentation or other relevant communication a firm decides to use.

Governance requirements

- 3.20** In CP17/3 we proposed to make amendments to the Handbook so that ISPVs are subject to the requirements of SYSC 3 (that apply to insurers and reinsurers), rather than SYSC 4 to 10 (as is currently the case).
- 3.21** We also stated that Controlled Function (CF) 10 (the Compliance function) will not apply to general insurance business carried on by ISPVs but would be required for life insurance-related business; and clarified that CF11 (Money Laundering Reporting Officer) will not apply for ISPVs.
- 3.22** In CP17/3 we asked:
- Q5:** *Do you agree with our proposal to make ISPVs subject to the requirements of SYSC 3, rather than SYSC 4-10? If not, please give reasons why.*
- 3.23** Respondents generally agreed with the move from SYSC 4 to 10 to SYSC 3. However, some respondents questioned whether all the requirements of SYSC 3 should apply given, in their view, the non-complex nature of the business and the fact that, generally, ISPVs outsource their activities to firms that are also authorised entities.
- 3.24** One respondent expressed concern that the move to SYSC 3 appeared to reduce oversight slightly, with particular concern regarding less oversight of money laundering risk.
- 3.25** One respondent questioned whether a CF10 would be needed if a proposal that had been made separately (in response to CP16/34 and also in response to the Treasury's consultations) was adopted, that would require a new regulated activity to be created for managers of risk transformation, meaning an ISPV would have to be run by a regulated manager.

Our response

We are introducing this proposal as consulted on.

It should be noted that SYSC applies in a proportionate way. For example, SYSC 3.1.1R states that 'a firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business'. SYSC 3.1.2G also gives guidance saying that the 'nature and extent of the systems and controls' required will depend on a number of factors including 'the nature, scale and complexity of its business'.



As is the case with any regulated firm, ISPVs can outsource activities (including to other regulated firms). However, the directors of the ISPV remain responsible and accountable for the outsourced activity, regardless of the type of firm - regulated or un-regulated - to which the activity has been outsourced. SYSC requirements will apply to the ISPV regardless of whether or not activities have been outsourced.

In CP17/3, we stated that we considered the money laundering risk for ILS business to be relatively low, given the target market is likely to be institutional investors. However, it should be noted that the proposal to make ISPVs subject to the requirements of SYSC 3 rather than SYSC 4 to 10 is not intended to imply that firms do not need to manage their financial crime-related risks. A key mitigant against the risk that these vehicles could be used for money laundering is the fact that ISPVs will be subject to the requirements in SYSC 3 to have systems and controls that counter the risk that the firm might be used to conduct financial crime.

The request to create a new regulated activity for managers of risk transformation is a matter for the Treasury. In paragraphs 3.26 and 3.27 of its feedback statement,¹² the Treasury confirmed that it has considered the issue but has decided not to adopt the suggestion. The Treasury also confirmed that “as with any regulated activity under FSMA, the directors of an ISPV would still be wholly responsible and accountable for the activities of the PCC, regardless of whether the directors had contracted an external firm to provide management services for the ISPV.”

In relation to our proposals on the application of controlled functions to ISPVs, it should also be noted that the Approved Persons Regime will transition to the Senior Managers Regime (SMR). Further details can be found in the SMR CP that we published on 26 July 2017.¹³ - see particularly paragraphs 1.33 to 1.36 and Chapter 8 of CP17/26 ‘Individual accountability – extending the Senior Managers and Certification Regime to insurers’.

Client Assets (CASS)

3.26 In CP17/3 we did not propose any amendments to CASS, but set out our understanding of how ISPVs operate in relation to money received from investors and safeguarding of assets. We stated that, although an ISPV may conduct the designated investment business of arranging when accepting a risk from a life insurer, we did not expect an ISPV to receive or hold client money from investors or safeguard any custody assets; rather a trustee firm in the structure would be expected to conduct these activities. We therefore did not expect the ISPV to be subject to CASS.

12 See ‘Regulations implementing a new regulatory and tax framework for Insurance Linked Securities: response to the consultation’: www.gov.uk/government/uploads/system/uploads/attachment_data/file/630912/Insurance_Linked_Securities_consultation_response_document.pdf

13 See CP17/26 ‘Individual accountability – extending the Senior Managers and Certification Regime to insurers’, particularly paragraphs 1.33 to 1.36 and Chapter 8: www.fca.org.uk/publication/consultation/cp17-26.pdf

3.27 In CP17/3 we asked:

Q6: *Do you agree with our understanding of how ISPVs operate in relation to money received from investors and the safeguarding of assets? If not, please explain why.*

3.28 Both respondents to this question agreed with our understanding. One mentioned that the ISPV may hold expense and interest payments. This respondent also queried the application of CASS where the ISPV and its investors have a remainder interest in the trust assets once the cedant is satisfied. The same respondent noted the unlikely possibility of collateralising an ISPV's obligation through the granting of security instead of a trust structure. The other respondent commented that the ISPV would not typically receive or hold 'material' amounts of money from investors.

Our response

We are not making any amendments to CASS. Our understanding prior to consultation was that most ISPVs would not receive money from or hold money for investors. Such ISPVs will not be subject to CASS. However, if an ISPV does receive money from or hold money for investors **and** that money is held or received in the course of or in connection with designated investment business, it will be client money subject to CASS 7. We note that CASS does not set out a 'materiality' threshold below which firms need not protect client money.

The custody rules (CASS 6) apply to custody activities set out in CASS 6.1.1R and the client money rules (CASS 7) apply to investment activities set out in CASS 7.10.1R. Where the ISPV and its investors have a remainder interest in the trust assets once the cedant is satisfied, the application of CASS depends on the regulated activities that the entity holding the assets is carrying out in the UK.

We note the comments on collateralisation of an ISPV's obligation.

Decision Procedure and Penalties Manual (DEPP)

3.29 In CP17/3 we proposed to make amendments to DEPP, to reflect that decisions to refuse proposed amendments to PCCs' instruments of incorporation, as well as decisions to refuse PCC registration applications, should be made solely under executive procedures (defined in the Handbook¹⁴), and therefore, without involvement of the Regulatory Decisions Committee (RDC).

3.30 In CP17/3 we asked:

Q7: *Do you agree with our proposed amendments to DEPP? If not, please explain why.*

¹⁴ See executive procedures definition at www.handbook.fca.org.uk/handbook/glossary/?starts-with=E



- 3.31** Two respondents stated that they did not object to the proposal. One respondent objected to the proposal because they questioned whether the removal of the appeals process was appropriate.

Our response

We are introducing this proposal as consulted on.

The use of executive procedures does not remove the appeals process. In addition, regulations 22(2)(b) and 28(3)(b) of the RTR specifically states that these matters may be referred to the Tribunal.

New cell notification for PCCs

- 3.32** When CP17/3 was published, the PRA was consulting on draft rules that proposed to require firms to submit a new cell notification form to the PRA 10 working days prior to the proposed effective date for establishing a new cell. The intention was that the PRA would consider the notification of the new cell in consultation with the FCA, and the PRA draft rule envisaged that either regulator could raise objections within the 10 working days. Therefore we proposed a rule that firms must submit a new cell notification form to the FCA at the same time as the PRA.

- 3.33** In CP17/3 we asked:

Q8: *Do you agree with our proposal that firms must submit a new cell notification form to the FCA at the same time as the PRA? If not, please give reasons why.*

- 3.34** One respondent agreed with the proposal. One respondent objected to the proposal. Two respondents did not object to the proposal itself, but made clear they objected to the PRA proposal to require pre-notification, that formed the basis of our proposal.

Our response

Responses to the PRA and the Treasury's consultations raised concerns about the proposal to require pre-transaction notification of new cells to the PRA. After consideration of the consultation feedback, following consultation with the PRA, the Treasury has decided to provide for a post-transaction notification regime in the RTR. Therefore there is no longer a requirement for the rule we proposed.

PCC registration fee

- 3.35** The FCA will take on responsibility for registering PCCs and changes to registration arising from subsequent cells that may be created as well as other related activities, including liaison with Companies House.
- 3.36** In CP17/3 we proposed to introduce a new registration fee of £500. We explained that this would be a one-off fee to cover all registration and related administrative activities undertaken by the FCA in relation to PCCs, and that we were not proposing to introduce ongoing fees for PCCs at this time.
- 3.37** In CP17/3 we asked:
- Q9:** *Do you agree with our proposal to introduce a new PCC registration fee of £500? If not, please give reasons why.*
- 3.38** Respondents did not object to this proposal. Two respondents asked for clarification that the £500 fee would only apply once, on registration of the PCC, and that each subsequent cell registration would not incur a separate fee. One respondent asked whether faster processing of applications will require more fees or whether fees are expected to remain the same.

Our response

We are introducing this proposal as consulted on.

The £500 fee is a one-off fee for the initial registration of the PCC, and there is no charge for any subsequent activity relating to that PCC, including the creation of new cells.

It should also be noted that the existing FCA fees for ISPV authorisations (£2,500) and ongoing periodic fees (£471 in 2017/18), are separate to the registration fee for the PCC and will continue to apply.

As this is a new regime, and the registration of PCCs will be a new activity, there is limited information currently available about the cost to the FCA of performing this activity. The £500 fee represents our best estimate of anticipated costs, based on the processing timescales set out in CP16/34. We will keep our resources under review as we gain experience of the new regime and any proposed changes would be subject to separate consultation.



Annex 1

List of non-confidential respondents

CP16/34

Association of British Insurers (ABI)

Arca PRM

Ashurst LLP

City of London Law Society

Institute and Faculty of Actuaries

London and International Insurance Brokers' Association (LIIBA)

Lloyd's

Lloyds Banking Group

Maples Fiduciary

Milliman LLP

Norton Rose Fulbright LLP

Securis Investment Partners LLP

Simmons & Simmons LLP

Vario Global Capital Limited

Willkie Farr & Gallagher (UK) LLP

CP17/3

Association of British Insurers (ABI)

Institute and Faculty of Actuaries

Lloyd's

London and International Insurance Brokers' Association (LIIBA)

Willkie Farr & Gallagher (UK) LLP

Annex 2

Abbreviations used in this paper

CASS	Client Assets sourcebook
CF	controlled function
CP	Consultation Paper
DEPP	Decision Procedure and Penalties manual
DISP	Dispute Resolution: Complaints sourcebook
FCA	Financial Conduct Authority
FEES	Fees manual
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
ILS	Insurance-linked securities
ISPV	insurance special purpose vehicle
MISPV	multi-arrangement ISPV
PCC	protected cell company
PRA	Prudential Regulation Authority
PRIN	Principles for Businesses
QI	qualified investor
RDC	Regulatory Decisions Committee
RTR	Risk Transformation Regulations 2017
SYSC	Senior Management Arrangements, Systems and Controls sourcebook



We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

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Appendix 1

Near-final 'FCA Statement - authorising and supervising insurance special purpose vehicles'

FCA Statement – authorising and supervising insurance special purpose vehicles

November 2017



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1 Introduction

- 1.1** In this Statement the Financial Conduct Authority (FCA) sets out its approach and expectations when authorising and supervising insurance special purpose vehicles (ISPVs) in line with the FCA's objectives and Threshold Conditions. This statement should be read in conjunction with our Policy Statement 17/24 '*Handbook changes to reflect the new regulatory framework for Insurance-Linked Securities – Feedback to CP16/34 and CP17/3 and near-final rules*' (November 2017).
- 1.2** This is relevant to parties who wish to apply to the Prudential Regulation Authority (PRA) for, or have obtained, authorisation as an ISPV. You should read it in conjunction with the PRA Supervisory Statement, PS8/17 '*Authorisation and supervision of insurance special purpose vehicles*' published in November 2017¹, which addresses ISPVs.²
- 1.3** You should also read this statement in conjunction with the proposed Risk Transformation Regulations 2017 (RTR)³ (which is subject to parliamentary approval⁴).

1 SS8/17 'Authorisation and supervision of insurance special purpose vehicles' - www.bankofengland.co.uk/pr/Pages/publications/ss/2017/ss817.aspx

2 Further information can be found on the PRA's website regarding ISPVs - www.bankofengland.co.uk/pr/Pages/authorisations/ispvs.aspx

3 www.gov.uk/government/uploads/system/uploads/attachment_data/file/651348/The_Risk_Transformation_Regulations_2017.pdf

4 References throughout this document to the RTR are to the version of the regulations laid before parliament on 12 October 2017.



2 Authorisation of ISPVs and Protected Cell Companies (PCCs)

- 2.1** ISPVs are used to facilitate the transfer of risk from an insurer or reinsurer to the capital markets via the issuance of insurance-linked securities. ISPVs can take different forms. They can be created for the purpose of a single contract of risk transfer, or an ISPV may concurrently take on more than one contract of risk transfer from one or more cedants (referred to as a multi-arrangement ISPV (MISPV)). The concept of an MISPV is permitted within the Solvency II framework provided that it complies with the requirements of Articles 318-324 and 326-327 of the Commission Delegated Regulation (EU) 2015/35 (the Delegated Regulation) (and is capable of meeting the requirements of Article 325 of the Delegated Regulation).⁵
- 2.2** A single contract ISPV may use existing corporate structures. However, in accordance with the RTR, Her Majesty's Treasury has provided for a new corporate structure, the protected cell company (PCC), to facilitate MISPV business.
- 2.3** A PCC allows each contract for risk transfer to be established as a separate cell within the PCC, with each cell having its own pool of assets and liabilities which are segregated and in insolvency are remote from the other cells and the core (which administers the PCC). The cells and core do not have legal personality distinct from the PCC.

Authorisations process

- 2.4** ISPVs will be subject to dual regulation by the PRA and FCA. The PRA will lead the authorisation process but will require the FCA's consent before granting approval.
- 2.5** The FCA will assess each application against the Threshold Conditions for which it is responsible in relation to PRA-authorized persons, as set out in Part 1C of Schedule 6 to the Financial Services and Markets Act 2000 (FSMA). In giving our consent to an application, section 55B of FSMA requires us to ensure that the applicant will satisfy and continue to satisfy the Threshold Conditions. We consider that the application of the FCA's Threshold Conditions to ISPVs is consistent with the requirements on ISPVs in the Solvency II framework.
- 2.6** In summary, the Threshold Conditions⁶ are:
- **COND 2.3 Effective supervision**
It is a requirement that an entity must be capable of being effectively supervised by the FCA. This includes consideration of the nature of its business, complexity of products, how business is organised and whether membership of a group affects supervision.

⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2015:012:TOC>

⁶ For further detail see the Threshold Conditions (COND) Sourcebook of the FCA Handbook: www.handbook.fca.org.uk/handbook/COND/2/?view=chapter

- **COND 2.4 Appropriate resources**
The resources of a firm (for example, staff and systems) must be appropriate in relation to the regulated activities that it carries on or seeks to carry on.
- **COND 2.5 Suitability**
The entity must be a fit and proper person, having regard to the FCA objectives in relation to adequate skills and experience on the Board, appropriate governance and internal controls over such areas as risk management and money laundering.
- **COND 2.7 Business Model**
The strategy of the firm for doing business must be suitable for a person carrying on the stated regulated activities. Such activities have to be conducted in the interest of consumers and maintain the integrity of the UK financial system.

Pre-application

- 2.7** The FCA will participate with the PRA in any pre-application discussions with firms to facilitate early, coordinated engagement and feedback in order to help applicants provide complete, good quality applications.

Applications for authorising an ISPV/MISPV

- 2.8** The PRA will be the lead regulator when authorising ISPVs and MISPVs but will carry out any assessment alongside the FCA with particular regard to each regulator's individual Threshold Conditions. Once satisfied that the firm meets the Threshold Conditions the FCA will give the PRA consent for its authorisation. The PRA will be responsible for communicating the overall decision to the firm.

Controlled functions

- 2.9** The FCA and PRA require individuals who perform certain governance functions, so are 'effectively running' the ISPV, to be approved prior to taking up a role (see also PRA Supervisory Statement 35/15 'Strengthening individual accountability in insurance' and the Solvency II EIOPA guidelines refer). Such roles are referred to as Controlled Functions (CF) by the FCA and the roles that arise from the Senior Insurance Manager Regime (SIMR) are referred to as Senior Insurance Management Functions (SIMFs) by the PRA. ISPVs will have three mandatory PRA SIMR roles and there are also FCA controlled functions that could apply depending on the type of business undertaken and size of the board.
- 2.10** For simple structures, where the business ceded to the ISPV is restricted to general insurance, firms should be able to organise their governance arrangements so they do not need to apply for approval for any additional FCA controlled functions. Life insurance 'transformation' ISPVs will need to seek approval for CF10 (Compliance).



- 2.11** Additional FCA controlled functions may be required in certain circumstances, for example Director (CF1) if the firm has directors who are not approved as PRA SIMFs. The systems and controls (CF28) and senior management (CF29) roles may also be relevant depending on how the firm proposes to allocate its governance responsibilities.
- 2.12** It should also be noted that the Approved Persons Regime will transition to the Senior Managers Regime (SMR). Further details can be found in the SMR CP that was published on 26 July 2017.⁷

Fit and proper requirements for shareholders or members with a qualifying holding

- 2.13** Pursuant to the RTR, the FSMA Controller Regime will not apply to ISPVs. Part 12 of FSMA (control over authorised persons) does not apply in relation to a person who decides to acquire or increase control, or reduce or cease control, over an undertaking carrying out the activity specified in Article 13A of the RAO. However, the FCA will work with the PRA in assessing whether the ISPV complies with Article 323 of the Delegated Regulation.

Timelines

- 2.14** The FCA will work with the PRA to ensure that applications are assessed in a robust and timely manner. We believe that it will be possible to determine applications that represent a relatively straightforward proposal, are supported by good quality documentation and allow for an appropriate level of pre-application engagement within a 6-8 week period. However, we recommend that applicants engage with the PRA/FCA at an early stage as it may not be possible to meet this timeframe without pre-application discussions. Where applications are complex or innovative, applicants should allow for additional review time.

Decisions

- 2.15** The PRA will lead in assessing the application, but will require the consent of the FCA before granting authorisation.

⁷ See CP17/26 'Individual accountability – extending the Senior Managers and Certification Regime to insurers: www.fca.org.uk/publication/consultation/cp17-26.pdf

3 Registering of MISPVs as PCCs

- 3.1** Under the Companies Act 2006, most companies are required to apply directly to Companies House for registration and incorporation. However, the FCA will be responsible for registering PCCs in order to provide a more streamlined process. The FCA will also register new cells and record details of any cells that are dissolved. The FCA will work with Companies House to ensure that limited details are recorded on the Companies House website with full details on the FCA website; www.fca.org.uk.
- 3.2** The FCA's responsibilities for the registration of PCCs are set out in the RTR (subject to parliamentary approval). In summary, once the FCA has decided that the company satisfies requirements for registration (which includes the receipt of notification from the PRA that, upon registration, it will authorise the PCC), the FCA will:
- inform the PRA
 - register the documents delivered to it
 - issue a certificate that the PCC is incorporated
- 3.3** Authorisation of the PCC as an MISPV by the PRA will be dependent on the FCA registering it, but in practice the FCA and PRA will coordinate the two processes.

Amending registration details

- 3.4** A PCC must give the FCA written notice of a proposed amendment to its instrument of incorporation. The RTR allow the FCA to rely on a statement signed by the solicitor or counsel for the PCC confirming that the proposed change does not affect the PCC's compliance with the regulations.

Cells

- 3.5** To create or dissolve cells, the information that the firms are required to provide to the FCA is set out in the RTR and includes:
- a. the names or numbers of the cells which have been created by the PCC;
 - b. for each cell, the date on which it was created;
 - c. if a PCC intends to dissolve a cell, the date on which the notification is sent



4 Supervision of ISPVs

4.1 ISPVs will be subject to ongoing supervision by the PRA and FCA and will need to comply with both regulators' Threshold Conditions on an ongoing basis. The FCA's supervisory approach will be proportionate and risk-based, in line with the risks of harm to consumers, market integrity and/or competition that the ISPV poses to the FCA's objectives. This is designed to support the FCA's judgement-based and pre-emptive approach. The model involves building the FCA's supervision around three clear pillars, each of which has a distinct purpose:

- **Pillar I. Proactive Firm Supervision (Firm Systematic Framework)**

The purpose of the Firm Systematic Framework is to assess whether the firm is being run, currently and prospectively, in a way that results in the fair treatment of customers, minimises risks to market integrity, and does not impede effective competition.

- **Pillar II. Event-driven work**

The purpose of event-driven supervision is to deal with issues that are emerging or have happened and are unforeseen in their nature.

- **Pillar III. Issues and products**

The purpose of issues and products work, or thematic supervision, is to allow the FCA to address its key conduct priorities at the issue and product level.

4.2 The supervision of ISPVs is likely to include aspects of each or all of the Pillars, dependent on the risk to the FCA's objectives arising from each individual firm.



Annex 1

Abbreviations used in this paper

CF	FCA controlled function
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
ISPV	Insurance Special Purpose Vehicle
MISPV	Multi-arrangement ISPV
PCC	Protected Cell Company
PRA	Prudential Regulation Authority
RAO	Regulated Activities Order
RTR	Risk Transformation Regulations 2017
SIMF	Senior Insurance Manager Function
SIMR	Senior Insurance Manager Regime
SMR	Senior Managers Regime
the Delegated Regulation	Commission Delegated Regulation (EU) 2015/35

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS



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Appendix 2

Near-final rules (legal instrument)

**RISK TRANSFORMATION REGULATIONS 2017 (CONSEQUENTIAL
AMENDMENTS) INSTRUMENT 2017**

Powers exercised by the Financial Ombudsman Service

- A. The Financial Ombudsman Service Limited makes this instrument amending the rules, guidance and standard terms for Voluntary Jurisdiction participants as set out in Annex H to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
 - (2) paragraph 8 (Guidance) of Schedule 17;
 - (3) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (4) paragraph 22 (Consultation) of Schedule 17.
- B. The making (and amendment) of the rules and standard terms for Voluntary Jurisdiction participants in Annex H by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 226 (Compulsory jurisdiction);
 - (5) paragraph 23 (Fees) in Part 3 (Penalty and Fees) of Schedule 1ZA (The Financial Conduct Authority); and
 - (6) paragraph 13 (FCA’s rules) of Schedule 17;
- D. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority approves the rules and standard terms for Voluntary Jurisdiction participants made (and amended) by the Financial Ombudsman Service Limited in Annex H to this instrument.

Commencement

- F. This instrument comes into force on [date] 2017.

Amendments to the Handbook

- G. The modules of the FCA Handbook listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Fees manual (FEES)	Annex D
Conduct of Business sourcebook (COBS)	Annex E
Supervision manual (SUP)	Annex F
Decision Procedure and Penalties manual (DEPP)	Annex G
Dispute Resolution: Complaints sourcebook (DISP)	Annex H

Citation

- H. This instrument may be cited as the Risk Transformation Regulations 2017 (Consequential Amendments) Instrument 2017.

By order of the Board of the Financial Ombudsman Service Limited
[date] 2017

By order of the Board of the Financial Conduct Authority
[date] 2017

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical position. This text is not underlined.

<i>cell</i>	a cell of a <i>protected cell company</i> .
<i>insurance risk transformation</i>	the <i>regulated activity</i> specified in article 13A of the <i>Regulated Activities Order</i> (Transformer vehicles: insurance risk transformation) which is, in summary, the activity of an <i>undertaking</i> ('A') assuming a risk from an <i>undertaking</i> ('B') where: (1) B assumes a risk under a <i>contract of insurance</i> ('the underlying risk'); and (2) the assumption of risk by A has the legal or economic effect of transferring some or all of the underlying risk to A.
<i>protected cell company</i>	a company formed as a protected cell company under the <i>Risk Transformation Regulations</i> .
<i>Risk Transformation Regulations</i>	the Risk Transformation Regulations 2017 (SI 2017/[XXXX])

Amend the following definitions as shown.

<i>client</i>	... (B) in the <i>FCA Handbook</i> : (1) (except in <i>PROF</i> , in relation to a <i>credit-related regulated activity</i> and <u>in relation to a home finance transaction and in relation to insurance risk transformation and activities directly arising from insurance risk transformation</u>) has the meaning given in <i>COBS</i> 3.2, that is (in summary and without prejudice to the detailed effect of <i>COBS</i> 3.2) a <i>person</i> to whom a <i>firm</i> provides, intends to provide or has provided a service in the course of carrying on a <i>regulated activity</i> , or in the case of <i>MiFID</i> or equivalent <i>third</i>
---------------	--

country business, an ancillary service:

...

...

(9) (in relation to insurance risk transformation and activities directly arising from insurance risk transformation) has the meaning given in COBS 3.2 as modified by COBS 18.6A.3R(2).

*eligible
counterparty*

(1) ...

(2) (for the purposes of *PRIN*, in relation to activities other than *designated investment business*, insurance risk transformation and activities directly arising from insurance risk transformation) a *client* categorised as an *eligible counterparty* in accordance with *PRIN* 1 Annex 1.

insurer

a *firm* with *permission* to *effect or carry out contracts of insurance* ~~(other than an *ISPV*).~~

regulated activity

...

(B) in the *FCA Handbook* (in accordance with section 22 of the *Act* (Regulated activities) the activities specified in Part II of the *Regulated Activities Order* (Specified Activities) which are, in summary:

...

(ca) insurance risk transformation (article 13A)

...

UK ISPV

an *ISPV* with a *Part 4A permission* to ~~*effect or carry out contracts of insurance*~~ carry on the activity of *insurance risk transformation*.

Delete the following definition. The text is not shown struck through.

EEA ISPV

an *ISPV* (including a *UK ISPV*) whose head office is in any *EEA State* and which has received authorisation pursuant to article 46 of the *Reinsurance Directive* from its *Home State Regulator*.

Annex B

Amendments to the Principles for Businesses sourcebook (PRIN)

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

1 Introduction

...

1.2 Clients and the Principles

...

Approach to client categorisation

1.2.2 G *Principles 6, 8 and 9 and parts of Principle 7, as qualified by PRIN 3.4.1R, apply only in relation to customers (that is, clients which are not eligible counterparties). The approach that a firm (other than for credit-related regulated activities in relation to which client categorisation does not apply) needs to take regarding categorisation of clients into customers and eligible counterparties will depend on whether the firm is carrying on designated investment business, insurance risk transformation and activities directly arising from insurance risk transformation, or other activities, as described in PRIN 1.2.3G.*

1.2.3 G (1) *In relation to the carrying on of designated investment business, insurance risk transformation and activities directly arising from insurance risk transformation, a firm's categorisation of a client under the COBS client categorisation chapter (COBS 3) will be applicable for the purposes of Principles 6, 7, 8 and 9.*

(1AA) In relation to the carrying on of insurance risk transformation and activities directly arising from insurance risk transformation, the COBS client categorisation chapter (COBS 3) applies as modified by COBS 18.6A.3R.

...

(3) *In relation to carrying on activities other than designated investment business, insurance risk transformation or activities directly arising from insurance risk transformation (for example, general insurance business or accepting deposits) the firm may choose to comply with Principles 6, 7, 8 and 9 as if all its clients were customers. Alternatively, it may choose to distinguish between eligible counterparties and customers in complying with those Principles. If it chooses to make such a distinction, it must comply with PRIN 1 Annex 1 in determining whether that client is an eligible counterparty (see PRIN 3.4.2R). In doing so, the requirements in SYSC will apply, including the requirement to make and retain*

adequate records.

...

3 Rules about application

...

3.2 What?

3.2.1A R *PRIN* applies with respect to the carrying on of:

- (1) *regulated activities*;
- (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); ~~and~~
- (3) *ancillary activities* in relation to *designated investment business*, *home finance activity*, *credit-related regulated activity*, *insurance mediation activity* and *accepting deposits*; and
- (4) activities directly arising from insurance risk transformation.

...

3.4 General

Clients and the Principles

...

3.4.3 G (1) *COBS 3* (Client categorisation) applies to a *firm* intending to conduct, or conducting, *designated investment business* (other than giving *basic advice*), ~~and~~ *ancillary activities* relating to *designated investment business* and to a firm intending to carry on, or carrying on, insurance risk transformation and activities directly arising from insurance risk transformation. Any *client* categorisation established in relation to such business will be applicable for the purposes of *Principles 6, 7, 8 and 9.*

Annex C

Amendments to Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

1 Application and purpose

...

1.1A Application

...

- 1.1A.1 G The application of this sourcebook is summarised at a high level in the following table. The detailed application is set out in SYSC 1 Annex 1 and in the text of each chapter.

Type of firm	Applicable chapters
<i>Insurer, <u>UK ISPV</u></i>	Chapters 2, 3, 12 to 18, 21, 22
<i>Managing agent</i>	Chapters 2, 3, 11, 12, 18, 21, 22
<i>Society</i>	Chapters 2, 3, 12, 18, 21, 22
Every other <i>firm</i>	Chapters 4 to 12, 18, 19D, 21, 22

Firms that SYSC 19D applies to should also refer to the Remuneration part of the ~~PRA Rulebook~~ Rulebook.

...

1 Annex 1 Detailed application of SYSC

Part 1	Application of SYSC 2 and SYSC 3 to an insurer, <u>a UK ISPV</u> , a managing agent and the Society	
	Who?	
1.1	R	SYSC 2 and SYSC 3 only apply to an <i>insurer</i> , <u>a UK ISPV</u> , a <i>managing agent</i> and the <i>Society</i> except that:
		...
...		
	What?	

1.3	R	SYSC 2 and SYSC 3 apply with respect to the carrying on of:	
		...	
		(2)	activities that constitute <i>dealing in investments as principal</i> , disregarding the exclusion in article 15 of the <i>Regulated Activities Order</i> (Absence of holding out etc); and
		(3)	<i>ancillary activities</i> in relation to <i>designated investment business</i> , <i>home finance activity</i> and <i>insurance mediation activity</i> ; <u>and</u>
		(4)	<u>activities directly arising from <i>insurance risk transformation</i></u> ;
		except that SYSC 3.2.6AR to SYSC 3.2.6JG do not apply as described in SYSC 1 Annex 1.1.4R.	
1.4	R	SYSC 3.2.6AR to SYSC 3.2.6JG do not apply:	
		...	
		(2)	in relation to the following <i>regulated activities</i> :
		(a)	<i>general insurance business</i> ;
		(aa)	<u><i>insurance risk transformation</i></u> ;
		...	
		(3)	to a <i>pure reinsurer</i> ; <u>or</u>
		(4)	in relation to <u>activities directly arising from <i>insurance risk transformation</i></u> .
...			
Part 2	Application of the common platform requirements (SYSC 4 to 10)		
	Who?		
2.1	R	The <i>common platform requirements</i> apply to a <i>firm</i> apart from an <i>insurer</i> , a <u>UK ISPV</u> , a <i>managing agent</i> and the <i>Society</i> unless provided otherwise in a <i>specific rule</i> .	
...			
Part 3	Tables summarising the application of the common platform requirements to different types of firm		
...			
3.3	G	For all other <i>firms</i> apart from <i>insurers</i> , <u>UK ISPVs</u> , <i>managing agents</i> , the <i>Society</i> and <i>full-scope UK AIFMs</i> of <i>unauthorised AIFs</i> , they apply in	

		accordance with Column B in the table below. For these <i>firms</i> , where a <i>rule</i> is shown modified in Column B as ‘Guidance’, it should be read as <i>guidance</i> (as if ‘should’ appeared in that rule instead of ‘must’) and should be applied in a proportionate manner, taking into account the nature, scale and complexity of the firm’s <i>firm’s</i> business.

Editor’s note: From 3 January 2018, SYSC 1 Annex 1 3.3G is amended as shown in PS17/14: Markets in Financial Instruments Directive II Implementation – Policy Statement II. Part of the amendment is shown here for information only.

3.3	G R	For all other <i>firms</i> apart from insurers, UK ISPVs managing agents, the Society and full-scope UK AIFMs of unauthorised AIF, they:
		(1) ...
		...

Editor’s note: From 3 January 2018, SYSC 1 Annex 1 3.2ER is amended as shown below.

		Other firms	
3.2E	R	SYSC 1 Annex 1 3.3R does not apply to the following:	
		(1)	<i>insurers and ISPVs;</i>
		...	
...			

Amend the following as shown. These changes come into force on [date] 2017.

Provision SYSC 4	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, <u>UK ISPVs</u> , managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
Provision SYSC 5	COLUMN A Application to a	COLUMN A+ Application to a	COLUMN A++ Application to a	COLUMN B Application to all

	common platform firm other than to a UCITS investment firm	UCITS management company	full-scope UK AIFM of an authorised AIF	other firms apart from insurers, <u>UK ISPVs</u> , managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
Provision SYSC 6	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, <u>UK ISPVs</u> , managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
Provision SYSC 7	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, <u>UK ISPVs</u> , managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
Provision SYSC 8	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, <u>UK ISPVs</u> , managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
Provision SYSC 9	COLUMN A Application to a common platform	COLUMN A+ Application to a UCITS	COLUMN A++ Application to a full-scope UK	COLUMN B Application to all other firms apart

	firm other than to a UCITS investment firm	management company	AIFM of an authorised AIF	from insurers, <u>UK ISPVs</u> , managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
Provision SYSC 10	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, <u>UK ISPVs</u> , managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				

3 Systems and Controls

...

3.2 Areas covered by systems and controls

...

The compliance function

...

3.2.8 R (1) *A firm which carries on designated investment business with or for retail clients or professional clients and a UK ISPV which carries on insurance risk transformation with respect to long-term insurance contracts must allocate to a director or senior manager the function of:*

...

...

...

12 Group risk systems and controls requirements

12.1 Application

12.1 R Subject to SYSC 12.1.2R to SYSC 12.1.4R, this section applies to each of the following which is a member of a *group*:

(1)

...

(ca) a UK ISPV;

...

...

...

14 Risk management and associated systems and controls for insurers

14.1 Application

...

14.1.2AA R This section applies to a UK ISPV.

...

Annex D

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text.

3 Application, Notification and Vetting Fees

...

3.2 Obligation to pay fees

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	Due date
...
<u>(zz) an applicant for registration under regulation 14 of the Risk Transformation Regulations as a protected cell company.</u>	500	<u>On or before the date the application is made.</u>
...		

...

4 Periodic fees

...

**4 Annex FCA activity groups, tariff bases and valuation dates
1AR**

Part 1	
This table shows how the <i>FCA</i> links the <i>regulated activities</i> for which a <i>firm</i> has <i>permission</i> to activity groups (fee-blocks). A <i>firm</i> can use the table to identify which fee-blocks it falls into based on its <i>permission</i> .	
Activity group	Fee payer falls in the activity group if
...	...

<p>A.3 Insurers – general and UK ISPVs</p>	<p>its <i>permission</i> includes one or more of the following:</p> <ul style="list-style-type: none">- <i>effecting contracts of insurance</i>;- <i>carrying out contracts of insurance</i>; <p>in respect of <i>specified investments</i> that are:</p> <ul style="list-style-type: none">- <i>general insurance contracts</i>; or- <i>long-term insurance contracts other than life policies</i> <p><u>OR</u></p> <p>it has <i>permission to carry on insurance risk transformation</i>.</p>
<p>...</p>	

...

Annex E

Amendments to the Conduct of Business sourcebook (COBS)

Insert the following new section after COBS 18.6 (Lloyd's). The text is not underlined.

18.6A Insurance Special Purpose Vehicles (ISPVs)

Application

18.6A.1 R This section applies to *UK ISPVs*.

COBS rules that apply to insurance risk transformation and activities directly arising from insurance risk transformation

18.6A.2 R *COBS 3* applies (subject to *COBS 18.6A.3R*) when a *firm* is carrying on *insurance risk transformation* and/or activities directly arising from *insurance risk transformation*.

Definitions and modifications

18.6A.3 R When a *firm* is carrying on *insurance risk transformation* and/or activities directly arising from *insurance risk transformation*:

(1) The general definition of *client* in *COBS 3.2.1R* is modified as set out in *COBS 18.6A.3R(2)* below.

(2) Any reference to the term *client* is to be taken to include:

(a) a *person* to whom the *firm* provides, intends to provide or has provided a service in the course of carrying on activities directly arising from *insurance risk transformation* (including the offer of *investments* issued by the *firm*); or

(b) (in *DISP* only) a *person* who is holding or has held an *investment* issued by the *firm*.

(3) *COBS 3.6.1R(2)* does not apply. A client can be an *eligible counterparty* in relation to *insurance risk transformation* and activities directly arising from *insurance risk transformation*

18.6A.4 G For the avoidance of doubt, the remainder of *COBS 3.2* and *COBS 3.6* applies.

Communications with clients

18.6A.5 R Before an *investment* issued by an *ISPV* is sold to a *client* (that is not an *eligible counterparty*), the *ISPV* must ensure that the *client* is informed that compensation will not be available from the *FSCS* if the *ISPV* cannot meet

its liabilities.

- 18.6A.6 R A statement that compensation will not be available from the *FSCS* must be included in any brochure or other written communication by which an *ISPV* offers *investments* to *clients*.
- 18.6A.7 G For the avoidance of doubt, *COBS* 18.6A.5R and *COBS* 18.6A.6R do not exhaust or restrict the scope of *Principle 7*.

Annex F

Amendments to the Supervision manual (SUP)

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

11 **Controllers and close links**

11.1 **Application**

Application to firms

11.1.1 R This chapter applies to every *firm* except:

...

~~(7)~~ a UK ISPV;

as set out in the table in *SUP* 11.1.2R.

...

Application to controllers

11.1.4 D *SUP* 11.1, *SUP* 11.2.1G, *SUP* 11.3 and *SUP* 11.7 apply to a *controller* or a proposed *controller* of a *UK domestic firm* not listed in *SUP* 11.1.1R(1) to ~~*SUP* 11.1.1R(6)~~ *SUP* 11.1.1R(7).

...

Annex G

Amendments to Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Statutory notices and the allocation of decision making

...

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

...

The Small and Medium Sized Business (Finance Platforms) Regulations 2015	Description	Handbook reference	Decision maker
...

<u>The Risk Transformation Regulations 2017</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 22</u>	when the <i>FCA</i> is <u>proposing or deciding to refuse an application to register a <i>protected cell company</i></u>	<u>Not applicable</u>	<u><i>Executive procedures</i></u>
<u>Regulation 28</u>	when the <i>FCA</i> is <u>proposing or deciding to refuse approval of a proposed amendment to a <i>protected cell company's instrument of incorporation</i></u>	<u>Not applicable</u>	<u><i>Executive procedures</i></u>

Annex H

Dispute Resolution: Complaints sourcebook (DISP)

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

2 Jurisdiction of the Financial Ombudsman Service

...

2.3 To what activities does the Compulsory Jurisdiction apply?

Activities by firms

- 2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

...

(7) offering and/or issuing of investments by ISPVs;

or any ancillary activities, including advice, carried on by the *firm* in connection with them.

...

2.5 To which activities does the Voluntary Jurisdiction apply?

- 2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

...

(2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

...

(c) activities which (at ~~1 October 2016~~ [date] 2017) would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1G*);

...

(1) offering and/or issuing of investments by ISPVs;

or any ancillary activities, including advice, carried on by the *VJ participant* in connection with them.

...

...

2.7 Is the complainant eligible?

...

2.7.6 R To be an *eligible complainant* a person must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

(16) the complainant is a *client* (where the *respondent* is an *ISPV*).

...

2 Annex 1G Regulated Activities for the Voluntary Jurisdiction at ~~1 October 2016~~ [date] 2017

...

The activities which were covered by the *Compulsory Jurisdiction* (~~at 1 October 2016~~ [date] 2017) were:

(1) for *firms*:

...

(j) offering and/or issuing of *investments* by *ISPVs*;

...

The activities which (at ~~1 April 2016~~ [date] 2017) were *regulated activities* were, in accordance with *section 22* of the *Act* (The classes of activity and categories of investment), any of the following activities specified in *Part II* of the *Regulated Activities Order*:

(1) ...

...

(4) *carrying out contracts of insurance* (article 10(2));

(4A) *insurance risk transformation* (article 13A);

...

