

Brexit Policy Statement: Feedback on CP18/28, CP18/29, CP18/34, CP18/36 and CP19/2

Policy Statement

PS19/5

February 2019

This relates to

CP18/28, CP18/29, CP18/34, CP18/36 and CP19/2 which are available on our website at www.fca.org.uk/publications

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1 Summary

- 1.1** The United Kingdom (UK) is due to leave the European Union (EU) on 29 March 2019. We published a series of Consultation Papers (CPs) to ensure a functioning regulatory framework for financial services if the UK leaves the EU without a withdrawal deal or implementation period (a no-deal scenario). We also issued public statements on our proposed use of the temporary transitional power (TTP) delegated to us by the Government and on the treatment of Gibraltar-based firms under our Handbook after Brexit.
- 1.2** We received 92 responses to the Brexit CPs 18/28, 18/29, 18/36 and CP19/2.¹ 61 asked for their responses to be kept confidential. The list of respondents who did not ask for their responses to be kept confidential is provided at Annex 1.
- 1.3** This Policy Statement (PS) sets out our responses to the feedback on our proposals regarding:
- amendments to our Handbook to correct deficiencies created by Brexit
 - amendments to Binding Technical Standards (BTS) to correct deficiencies
 - establishment of a temporary permissions regime (TPR) for European Economic Area (EEA) entities operating in the UK and a financial services contracts regime (FSCR) for those EEA entities seeking to service existing business, but not undertake new business, in the UK after Brexit²
 - establishment of regulatory regimes for credit rating agencies (CRA), trade repositories (TR) and securitisation repositories (SR)
 - EU Level 3 material
 - guidance that sits outside our Handbook (non-Handbook guidance)
 - forms
- 1.4** The instruments in this PS are in near-final form. Many of the amendments in these instruments will be made using a power set out in secondary legislation³ made under the European Union (Withdrawal) Act 2018 (EUWA). Under this power, instruments can only be made if they have been approved by the Treasury. Therefore, it is possible that further changes will be made to these instruments. However, we have published the instruments in near-final form so that stakeholders are clear on the changes we expect to make to the regulatory framework. Based on Parliament's timetable, we expect our Board to make the final instruments on 28 March 2019 if a withdrawal agreement has not been ratified by the UK and EU.

1 [Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation, CP18/28, October 2018, https://www.fca.org.uk/publication/consultation/cp18-28.pdf](https://www.fca.org.uk/publication/consultation/cp18-28.pdf)
[Temporary permissions regime for inbound firms and funds, CP18/29, October 2018, https://www.fca.org.uk/publication/consultation/cp18-29.pdf](https://www.fca.org.uk/publication/consultation/cp18-29.pdf)
[Brexit: proposed changes to the Handbook and Binding Technical Standards – second consultation, CP18/36, November 2018, https://www.fca.org.uk/publication/consultation/cp18-36.pdf](https://www.fca.org.uk/publication/consultation/cp18-36.pdf)
[Brexit and contractual continuity, CP19/2, January 2019, https://www.fca.org.uk/publication/consultation/cp19-02.pdf](https://www.fca.org.uk/publication/consultation/cp19-02.pdf)

2 In this PS we also provide feedback on Q10 in Regulatory fees and levies: policy proposals for 2019/20, CP18/34 November 2018, <https://www.fca.org.uk/publication/consultation/cp18-34.pdf>

3 The Financial Regulators' Powers (Technical Standards etc.) (Amendments etc.) (EU Exit) Regulations 2018 (SI 2018/1115)

Further changes being made that were not addressed in the CPs

- 1.5** As far as possible, the Brexit CPs covered the changes we considered would need to be made in a no-deal scenario. However, some changes that we think it would be appropriate to make to ensure the Handbook is operable on exit day were not covered. For example, proposed amendments to legislation have been published since our Brexit CPs were published, requiring us to make consequential changes to our Handbook to reflect these legislative amendments.⁴
- 1.6** We have adopted the same approach to the additional changes presented in this PS as we did in our Brexit CPs – i.e. adopting our baseline approach of treating the EU⁵ and its Member States in the same way as non-EU or third countries after exit day.

Who this Policy Statement affects

- 1.7** Given the breadth of expected changes set out in this PS, we expect many of our stakeholders to be affected. To help readers navigate this PS, we set out in Annex 2
- a list of stakeholders by Handbook sourcebook, and
 - a list of the stakeholders by amendments to the BTS

Summary of consultation feedback

- 1.8** We received a total of 92 responses, including confidential responses, to the Brexit CPs 18/28, 18/29, 18/36 and CP19/2. We also received five responses to question 10 of CP18/34 (on which we provide feedback in the PS), of which four respondents asked that their response be kept confidential. We thank respondents for engaging with us and providing feedback.
- 1.9** The number of responses to each CP is set out below.

CP	Title	Number of responses
CP18/28	Brexit – Changes to Handbook and BTS – first consultation	27
CP18/29	TPR for inbound firms and funds	40
CP18/34	Regulatory fees and levies for 2019/20: Firms in the temporary permissions regime contribute to the devolved authorities debt advice levy (Q10)	5
CP18/36	Brexit – Changes to Handbook and BTS – second consultation	22
CP19/2	Brexit and contractual continuity	3

- 1.10** In Chapters 4 to 10 we set out the specific, substantive comments we received and how we have responded to them. In Chapter 2, we provide a more general overview of the feedback we received and how we have responded.

⁴ For example, the Statutory Instrument (SI) amending the Financial Services and Markets Act (Regulated Activities) Order 2001 was laid in Parliament on 31 January 2019, which requires us to make consequential amendments to our Perimeter Guidance Manual (PERG).

⁵ Or, where applicable, the EEA

Outcome we are seeking

1.11 In a no-deal scenario, we aim to:

- provide a clear and coherent legal and regulatory framework for firms and regulated entities operating in the UK and their customers
- ensure that our Handbook and BTS continue to work effectively
- ensure that a clear approach is established with respect to the treatment after Brexit of EU Level 3 material, non-Handbook guidance related to EU or EU-derived law and our forms.

Equality and diversity considerations

1.12 During the consultation periods for CP18/28, CP18/36 and CP19/2 we did not receive any feedback on our equality and diversity considerations. We received one item of feedback on CP18/29 noting that our approach to applying rules to firms in the regime would mean that some rules might apply to these firms that do not necessarily apply to third-country firms. We have addressed this in our responses in Chapter 7. We have continued to consider the implications on equality and diversity that may arise from the near-final amendments set out in this PS and no new issues have arisen.

Next steps

What you need to do next

1.13 Firms, regulated entities providing services within the UK's regulatory remit and other stakeholders should read our February 2019 statement⁶ on how we will use the TTP, which the Government has delegated to us, to ensure that firms and other regulated entities do not generally need to prepare now to meet the changes to their UK regulatory obligations that are connected to Brexit. In that statement, we set out the areas where we will not use the TTP. These are areas where it would not be consistent with our statutory objectives to grant transitional relief. In these areas, we expect firms and other regulated persons to start preparing now to comply with these post-exit regulatory obligations.

What we will do next

1.14 We will publish the final instruments on 28 March 2019 if the withdrawal agreement between the UK and the EU is not ratified.

6 <https://www.fca.org.uk/news/statements/brexit-what-we-expect-firms-now>

2 Adapting the financial services regulatory framework

2.1 This chapter summarises the key issues raised in response to the proposed changes set out in the Brexit CPs and how we have responded to that feedback. It outlines the main issues we consulted on and signposts the relevant chapters in the PS where we provide more detailed information.

Feedback to consultation on Handbook and BTS amendments (CP18/28 & CP18/36)

2.2 Most of the 49 respondents (including trade bodies) were supportive of our overall approach to fixing deficiencies in the regulatory framework. So, we will proceed with most of our proposals, broadly as consulted on.

2.3 Most of the feedback received focused on compliance and supervisory matters, including transitional relief. We also received feedback on technical and detailed amendments. In most cases, respondents asked for further clarification rather than suggesting a different approach. Where appropriate, we have amended the relevant instrument for clarity and included further explanatory text in this PS. Respondents also provided feedback where they identified minor drafting errors, such as incorrect cross-references. These errors have been fixed in the near-final instruments.

2.4 Where respondents raised substantive issues, we have set these out in the corresponding chapter of this PS and explained any associated changes. We do not discuss responses where stakeholders were simply in agreement with our proposals.

2.5 Some respondents addressed issues outside the scope of our Brexit onshoring exercise. For example:

- A few respondents observed that, in some cases, our Glossary definitions differed from definitions of the same terms used in onshored versions of EU legislation. There are precedents for differences to exist between the definition of a term in the Handbook and in EU legislation, reflecting the different contexts in which the terms are used and different drafting conventions. We do not, therefore, generally consider that these differences are deficiencies that require fixing as part of the Brexit onshoring exercise.
- We received feedback on the timing of the entry into force of the European Market Infrastructure Regulation (EMIR) Refit. Our intention is to continue to publish regular EMIR updates⁷ online, but the onshoring of EMIR Refit is intended to be dealt with through powers in the Financial Services (Implementation of Legislation) Bill which is currently being debated in Parliament and is outside the exercise we are currently undertaking.

⁷ <https://www.fca.org.uk/markets/emir>

Implementation challenges and the temporary transitional power (TTP)

2.6 In CP18/28 and CP18/36 we asked whether our proposed changes or those in the relevant SIs would present regulated entities with a significant risk of being unable to comply in time for exit day. We asked stakeholders to provide details of any compliance concerns, including the projected time needed to comply with requirements were they to come into effect on exit day. Respondents raised several issues. These are discussed in Chapter 3.

2.7 The Treasury has committed to provide us (and the Bank of England and Prudential Regulation Authority (PRA)) with a power to temporarily waive or modify regulatory obligations where those obligations have changed because of amendments made under the EUWA. If the UK leaves the EU without an implementation period in place and Parliament approves the SI, our intention is to use this temporary transitional power (TTP) broadly to ensure that firms and other regulated entities can generally continue to comply with their regulatory obligations as they did before exit day for a limited period. However, there are exceptions to the provision of this transitional relief. On 1 February 2019, we published a statement about our general approach to using this power.⁸

Cross-cutting issues

2.8 Respondents broadly supported our approach to resolving the issues we identified that would have an impact on multiple parts of our Handbook and BTS (so-called 'cross-cutting issues'), including where we proposed to deviate from the baseline approach.⁹ So, we will progress with the amendments associated with these cross-cutting issues. In Chapter 4 we discuss specific issues identified in the responses.

Other Handbook and BTS changes

2.9 After considering the responses received to the CPs, in most cases we are proceeding on the basis of the proposed changes. Chapters 6 and 8 set out where we have made amendments in response to feedback on our approach.

Guidance and forms

2.10 Respondents agreed with our proposed approach to EU-non-legislative materials, non-Handbook guidance where it relates to EU law or EU-derived law and forms after the UK's withdrawal from the EU.

2.11 We will proceed with our approach as set out in CP18/28 and CP18/36, with minor amendments. This is discussed in Chapter 10.

General continuity provisions

2.12 In CP18/36, we proposed general continuity provisions for all parts of the Handbook and BTS that are not covered by a specific transitional arrangement. Under these provisions, references in our Handbook and BTS should be read in a manner that preserves the continuity of regulatory requirements after Brexit.

⁸ <https://www.fca.org.uk/news/statements/brexit-what-we-expect-firms-now>

⁹ The Treasury has made it clear that in amending legislation under the EUWA it will work on the basis that, if there is no withdrawal agreement, the UK cannot rely on specific arrangements being in place between the UK and the EU. The Treasury will therefore, in general, treat the EU and its members in the same way it treats non-EU or third countries after exit day (the baseline approach).

- 2.13** All respondents providing feedback on this point (Question 2 in CP18/36) agreed with our approach. We are proceeding with the approach consulted on.

- 2.14** **Regulatory regimes for credit-rating agencies and trade repositories**
Parliament has passed legislation that makes us the supervisor responsible for credit-rating agencies (CRAs) and trade repositories (TRs) registered under the UK regime. In CP18/36 we proposed minor amendments to the Decision Procedure and Penalties Manual (DEPP) and the Enforcement Guide (EG). Other than making one minor change because of feedback, we will proceed with the proposed changes. See Chapter 9 for further details.

Feedback to consultation on the Temporary Permissions Regime (CP18/29 and Chapter 4 of CP18/36), the Devolved Authorities' debt advice levy for TP firms in CP18/34 and the Financial Services Contract Scheme (CP19/2)

- 2.15** Most of the respondents (including trade bodies) were supportive of our overall proposals. So, we will proceed with our proposals broadly as consulted on. Feedback on specific consultation questions and issues is covered in Chapter 7.

3 Implementation challenges and transitional arrangements

3.1 In CP18/28 and CP18/36, we explained that the Treasury intended to make legislation to allow regulators to phase in changes to firms' regulatory requirements. The Treasury has since laid its draft legislation for this before Parliament. We asked for feedback (Question 1 in both CPs) on areas where the proposed changes set out in the CPs or in the relevant SIs represented a significant risk to timely compliance for firms and regulated entities providing services within the UK's regulator remit. We also asked for indications of the time needed to comply with requirements, should they come into effect on exit day.

3.2 The main concern noted by most respondents was the limited time available to make the changes required. This was coupled with requests for regulatory forbearance. Issues relating to transaction reporting were noted several times. Apart from one response, no further indications of the time needed to comply with requirements were provided. We provide more detail on aspects of the responses to this question below. We have not covered responses that addressed challenges with complying with the new rules (such as documentation changes) which will be addressed through the temporary transitional power (TTP), in line with our February 2019 TTP statement.

Limited time available and temporary transitional relief

3.3 The main challenge raised by respondents was the limited time available to make the changes required to comply with the new requirements ahead of exit day. Some respondents also said that providing a clear idea of the time needed to comply would prove challenging. This was because of the cumulative effect of the onshored changes, the proposed legislative changes, the difficulty in producing impact assessments and the level of uncertainty regarding the nature of the UK's future legislative regime. Respondents also noted the need to make the required systems and operational changes, and to train staff. These respondents argued, therefore, that transitional relief or regulatory forbearance would be necessary.

Our response

We published a statement in February 2019 setting out our approach to using the TTP. We said that, with some exceptions, we would provide transitional relief to firms and other regulated entities needing to be fully compliant with the new regulatory obligations from exit day. This means firms and other regulated entities can generally continue to comply with their regulatory obligations as they did before exit day for a temporary period. Our directions giving effect to the waiving or modification of the relevant obligations are being published in parallel with this PS. There are some areas where it would not be consistent with our statutory obligations to grant transitional relief. These exceptions are set out in the cover sheet to the directions.

Transaction reporting obligations

3.4 Several respondents indicated that, in the limited time available, it would be challenging to comply with the new transaction reporting obligations from exit day due to

- the need to make systems changes
- firms, trading venues and approved reporting mechanisms (ARMs) needing to obtain additional information.

3.5 These respondents generally requested a phased approach and a period of regulatory forbearance. Many raised questions about how they could get instrument reference data, noting that this would cause issues for their reporting obligations if they were unable to get this by exit day. Respondents also said that, in some cases, they were dependent on third parties, such as data suppliers, to comply with the new requirements. Most respondents did not provide a specific time needed to comply with the changes proposed, although one stated six months as a minimum testing period. Others simply said that there was not enough time to implement changes.

Our response

We recognise the challenges in making the necessary systems and operational changes required. However, receiving complete and accurate transaction reporting is critical to our ability to ensure market oversight and integrity. So, we expect firms and other regulated entities to undertake reasonable steps to comply with the changes to their regulatory obligations by exit day. Firms that are not able to comply fully with the regime on 29 March 2019 will need to be able to back-report missing, incomplete or inaccurate transaction reports as soon as possible. We set out further details on this in the February statement.

Contractual recognition of bail-in terms

3.6 With respect to contractual recognition of bail-in, two respondents welcomed our proposal to amend IFPRU 11.6.3R (the associated rule) so that the requirement does not apply to EEA law governed liabilities that were created before exit day. They also asked if we intend to use the TTP to delay the obligation to include a contractual recognition of bail-in terms in EEA law governed liabilities that are created or materially amended after exit day.

Our response

We consider that granting transitional relief with respect to liabilities that are intended to count towards a firm's minimum requirement for own funds and eligible liabilities would undermine resolvability. At the same time, we recognise that we should apply the TTP with respect to unsecured liabilities that are not debt instruments as these have a lower potential impact on resolvability. So, we do not intend to grant transitional relief in relation all the changes to IFPRU 11.6, but we will apply the TTP in relation to unsecured liabilities that are not debt instruments. This aligns with the PRA's approach with respect to the TTP.

Ratings issued by EEA External Credit Assessment Institutions (ECAIs)

- 3.7** Two respondents asked whether the TTP could be used so that firms currently relying on credit assessments made by EEA ECAIs for regulatory purposes could continue to do so, rather than those ratings immediately becoming ineligible.

Our response

In our February 2019 statement on the use of the TTP, we clarified that, after exit day, all credit ratings will need to be issued or endorsed by a CRA established in the UK and registered with us for them to be eligible for regulatory use. To help provide continuity to users of credit ratings in the UK, a transitional arrangement has been introduced in the Credit Rating Agencies Regulation SI allowing ratings issued or endorsed in the EU before exit by a CRA with an affiliate registered/ applying for registration with us to be used for regulatory purposes in the UK for up to one year after Brexit. In addition, the TTP will be used to provide a one year run-off period for ratings issued in the EU before exit day by a CRA that does not have a group affiliate which is registered/applying for registration as a credit rating agency in the UK on exit day. This run-off period will provide the relevant UK regulated entities with up to one year from exit day to find alternative credit ratings for regulatory use.

Reporting to trade repositories (TRs)

- 3.8** One respondent highlighted the operational challenges that TRs and their users might face as part of the introduction of a new UK reporting regime that mirrors the current EU EMIR reporting regime.

Our response

We do not intend to provide transitional relief for TRs or TR users. This is because UK authorities must have access to UK derivatives data from exit day so that they can continue to have oversight of derivative markets and effectively monitor systemic risks. However, we are aware of the operational changes that TRs and their users will have to implement to comply with the new requirements, particularly where firms are required to register with a new TR. We have provided for a transitional regime for existing TRs to facilitate continuity and minimise disruption. As explained in the February TTP statement, we will not take a strict liability approach and do not intend to take enforcement action against firms and other regulated entities for not meeting all requirements straight away, where there is evidence they have taken reasonable steps to prepare to meet the new obligations by exit day.

4 Changes to the Handbook and BTS: cross-cutting issues

- 4.1** In Chapter 3 of CP18/28 and Chapter 2 of CP18/36, we outlined a range of issues that would affect multiple parts of our Handbook and BTS in the event of a 'no deal' Brexit. We termed these 'cross-cutting issues' and set out our proposals for resolving each, including where we proposed to deviate from the baseline approach of treating EU/EEA states as we would any other third country.
- 4.2** Details of the Handbook chapters and BTS affected by each type of amendment were provided in the CPs. We have made equivalent amendments, where applicable, to the Handbook chapters and BTS we had not previously consulted on, as discussed in Chapter 5.
- 4.3** In CP18/28 and CP18/36 we asked: Do you agree that we have correctly identified all relevant amendments in our draft Handbook and BTS text related to the cross-cutting issues set out above? Do you have any other points you wish to raise regarding our approach to these cross-cutting issues?
- 4.4** Respondents broadly supported our approach to resolving the cross-cutting issues we identified, including where we proposed to deviate from the baseline approach. Some respondents asked us to ensure that the changes were applied in a manner consistent with corresponding changes to government legislation and that they were made correctly across all our instruments.

Our response

We will proceed with the proposed changes. We have sought to ensure consistency with related legislation and across our near-final rules instruments.

- 4.5** In the rest of this chapter, we discuss where respondents provided comments on specific cross-cutting issues.

Cross-cutting amendments to the Handbook and BTS

Position of EU law and how it relates to our Handbook and BTS

- 4.6** We have amended our Handbook to remove references to EU law that will no longer apply after Brexit and have replaced them with references to UK law. References to EU law have been retained only where there is a specific reason. Similarly, references to the Treaty on the Functioning of the European Union have been removed, unless still applicable.

4.7 A small number of respondents questioned whether having references in the Handbook to both UK and EU laws going forward would be sufficiently clear, including where reference was made to 'implementing measures'. We judge the updated references to laws are sufficiently clear.

4.8 Two respondents also asked for clarity regarding the status of the recitals to EU law and whether they were being onshored. Under the EUWA, recitals are being onshored. Recitals will continue to be interpreted as they were before Brexit. They will, as before, be capable of casting light on the interpretation to be given to a legal rule. We and the Government are not amending the recitals as they do not have the status of a legal rule.

Loss of passporting rights

4.9 We have amended our Handbook to remove passporting provisions that will no longer apply after Brexit and have made other related amendments (such as removing references to 'home' and 'host' state regulators). We have also amended or deleted Glossary terms accordingly.

References to EU institutions

4.10 We have removed or replaced references in our Handbook and BTS to European institutions (such as the European Commission) to ensure they are aligned with UK law, unless there was a specific reason not to do so.

References to 'other member/EEA states' and 'other competent authorities'

4.11 References in our Handbook and BTS to 'other member/EEA states', 'another member/EEA state' (and their variants) have been removed. Where we have considered it necessary to keep these references, we have amended them to 'EU member states' or 'EEA member states', as appropriate. We have also made corresponding changes to references to competent authorities.

References to information sharing with the European Supervisory Authorities or 'other competent authorities'

4.12 The obligation to share information or data with the European Supervisory Authorities (ESAs) and EU/EEA competent authorities will fall away after Brexit. While we may continue to share information and cooperate with these bodies, we have removed the references to compulsory sharing of information.

4.13 A small number of respondents noted the obligations under the onshored legislation to disclose information to the UK's regulators and asked: (i) how the UK's statutory confidentiality regime will operate in relation to such information; and (ii) how the 'confidentiality gateways' will operate where a UK regulator proposes to disclose information to a regulator elsewhere in the EU.

4.14 Since our consultations closed, the Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019 have been laid in Parliament.¹⁰ Interested stakeholders should review the draft SI and its

¹⁰ http://www.legislation.gov.uk/ukdsi/2019/9780111178942/pdfs/ukdsi_9780111178942_en.pdf

accompanying explanatory information to understand how provisions regarding the confidential handling of information will operate after Brexit.

Distance Marketing Directive (DMD)

4.15 In amending our DMD-related Handbook provisions, we have not departed from our baseline approach. These provisions will generally no longer apply to UK firms' distance marketing activity with respect to consumers in EEA states, for which UK firms may need to be authorised in the relevant states.

4.16 The Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019 make some changes to the application of the existing DMD Regulations. In addition, it should be noted that our proposed rules for temporary permission (TP) firms (including supervised run-off firms under the Financial Services Contracts Regime) would apply UK distance marketing rules to TP firms (subject to substituted compliance) from exit day. These Regulations will apply after Brexit to:

- EEA e-money and payment services firms which enter the TPR
- EEA firms that enter the TPR or which are in supervised run-off under the FSCR, where the relevant requirements are not applied through our Handbook
- EEA AIFMs which benefit from temporary marketing permissions
- operators, trustees and depositaries of UCITS which benefit from temporary recognition

E-Commerce Directive (ECD)

4.17 As part of its changes for Brexit, the Treasury has proposed to revoke legislation, or parts thereof, relating to the cross-border provision of financial services via the exemption from host state regulation in the ECD. We have made consequential amendments to our Handbook to reflect this, without affecting provisions in the Handbook regarding e-commerce activity within the UK. However, the amendments to legislation to make those revocations are likely to come into force a short time after exit day, and so the changes to our Handbook relevant to cross-border services will be timed to come into force at the same time as those revocations. In contrast, we understand that the revocation of the exemption from the financial promotion restriction in article 20B of the Financial Promotion Order¹¹ is likely to come into force on exit day. Our e-commerce rules will apply to EEA-based firms which enter the TPR.

References to the official language of the Member State or to information being submitted in languages other than English

4.18 We made a cross-cutting amendment for Brexit, so that language requirements referring to the official language or languages of member states or the EEA State or States now refer to the official language or languages of the United Kingdom.

11 http://www.legislation.gov.uk/uksi/2005/1529/pdfs/ukxi_20051529_en.pdf

- 4.19** We received six comments from stakeholders on this cross-cutting approach. Two respondents proposed that the existing provisions remain unchanged but did not identify specific problems our proposal would cause. Four responses supported our approach.

Our response

Our proposal is in line with our baseline approach. The intention is that we retain the same language requirements as currently apply in relation to the UK and that we treat the EU and its member states in the same way as any other third country. So, we consider it appropriate to proceed with our proposed change.

5 Changes to Handbook and BTS not consulted on

5.1 To ensure that the Handbook continues to work effectively after exit day, Handbook provisions made and in force since the publication of the CPs have been amended to address deficiencies. This includes, for example, the parts of the Handbook implementing the Insurance Distribution Directive. These changes were consequential in nature and are in line with the cross-cutting issues set out in Chapter 4. We have also updated the Handbook to address deficiencies in instruments coming into force during April 2019. Some of this material was included in our CPs such as SM&CR. Amendments to address the deficiencies in those parts of the Handbook implementing the Claims Management Companies (CMC) Regulations were not included in our CPs addressing deficiencies and are addressed in this PS (please see below).

Gibraltar

5.2 In December 2018, we published a statement on the treatment of Gibraltar under our Handbook after exit day where consistent with HM Treasury legislation.¹² We stated that we will maintain the current regulatory position on Gibraltar in our Handbook. The statement was accompanied by draft rules which will allow Gibraltar-based financial services firms to have, until the end of 2020, the same market access to the UK as they have now.

5.3 We did not receive any comments disagreeing with our proposal. So, we will proceed with making these rules.

5.4 In addition, to support market access between the UK and Gibraltar, the Treasury has published two Statutory Instruments (SIs).¹³ The first relates to the continuation of the deemed passport rights of Gibraltar-based firms into the UK. The second preserves the overall pre-Brexit regulatory position, notwithstanding the legislative changes made under the EUWA.

Claims Management Companies

5.5 On 1 April 2019, we will become the regulator of claims management companies (CMCs). In readiness for the transfer of CMC regulation, we published new rules and fees rules in December 2018.¹⁴ These will apply to firms that are set up or serving customers in England, Scotland and Wales.

5.6 We are amending references to the General Data Protection Regulation (EU) No 2016/679 (GDPR) as this legislation is being onshored under the EUWA by the Government.¹⁵ References to the EU GDPR will be amended to read '*the UK version*

¹² <https://www.fca.org.uk/news/statements/statement-treatment-gibraltar-our-handbook-after-brexit>

¹³ <https://www.gov.uk/government/publications/draft-eu-exit-legislation-relating-to-the-financial-services-framework-between-the-uk-and-gibraltar>

¹⁴ <https://www.fca.org.uk/publication/policy/ps18-23.pdf>

¹⁵ <http://www.legislation.gov.uk/ukdsi/2019/9780111178300/contents>

of *General Data Protection Regulation (EU) No 2016/679*'. These amendments will not affect relevant stakeholders' obligations to comply with GDPR requirements.

5.7 Our new rules include references to EEA states which we are not changing. CMCOB 2.2.2R(1)(b)(ii) places a requirement on CMCs that accept sales referrals, leads or data from a lead generator established in an EEA State and which has no establishment in the UK. These CMCs must satisfy themselves that the lead generator complies with the legislation in that EEA State which is equivalent to the UK's Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426). We are retaining the reference to 'equivalent legislation' as it will help limit the ability of CMCs to use leads generated by lead generators when they cold-call UK consumers.

5.8 As part of our cross-cutting work, we have amended deficiencies in other parts of our Handbook and certain Glossary terms so that to ensure that our regulatory framework continues to function in a no-deal scenario. These amendments were consulted on in CP18/28 and CP18/36, and CMCs should familiarise themselves with them, as necessary.

Perimeter Guidance (PERG)

5.9 We have amended PERG to reflect the amendments to FSMA 2000, the Regulated Activities Order (RAO), the Financial Promotions Order (FPO), other legislation that defines the regulatory perimeter and, where relevant, the onshoring of particular pieces of legislation.

The Markets in Financial Instruments Regulation (MiFIR): associated BTS

5.10 We did not include a draft of the MiFID II BTS 2017/2417, which sets the scope of the derivatives trading obligation, in either of last year's consultation papers. However, we are including it in this policy statement. The changes being made relate solely to the cross-cutting issues discussed in Chapter 4. These highlight the scope of application, which is set in the onshored MiFIR, and reliance on definitions in the onshored MiFIR.

6 Other changes to the Handbook

Introduction

- 6.1** This chapter provides an overview of the feedback we received in relation to non-cross-cutting changes we proposed making to the Handbook. As explained in Chapter 2, we confirm proposals where we did not receive material comment are being confirmed and are not discussed below.
- 6.2** Many of the Handbook amendments we proposed in CP18/28 and CP18/36 related to our Glossary. We expect all stakeholders to have an interest in these changes, as they affect the scope and application of provisions across the Handbook, even if no changes might have been proposed to a chapter or sourcebook in a separate instrument.
- 6.3** Annex 4 provides a list of the SIs that have either been laid before Parliament or have been made by Parliament that are relevant to our Handbook amendments and to this PS.
- 6.4** Appendix 1 contains the instruments setting out the near-final amendments to various sourcebooks and the Glossary. Stakeholders should read this appendix for a full understanding of all the changes we expect to make to the Handbook.

Application of baseline approach

- 6.5** In CP18/36, we asked if there were any proposed changes that should not follow the baseline approach of treating the EEA as a third country (Question 17). Most respondents supported our proposals. One respondent queried our proposal to exclude EEA UCITS from the scope of the definition of 'key investor information'. This respondent thought this was odd, given our stated intent that EEA UCITS could continue to use UCITS key investor information documents (KIIDs).

Our response

EEA UCITS can continue to use the existing UCITS KIID, as prepared under the EU Regulation and translated into English where necessary. We will include provisions in the General Provisions sourcebook (GEN) to provide that an EEA firm marketing under the TPR must comply with the disclosure rules as they had effect immediately before exit day.

- 6.6** A respondent also suggested the removal of the definitions of 'UCITS merger' and 'domestic UCITS merger', along with COLL 7.7 (UCITS mergers). This respondent explained that any cross-border marketing notifications made by a UK UCITS will be

void post-exit, making these provisions redundant and the rules in COLL 7.6 (Schemes of arrangement) applicable instead.

Our response

The 'domestic UCITS merger' concept will be retained in the interest of EEA-based investors who have bought into passported funds pre-exit. This will ensure these investors retain the same consumer rights post-exit.

Conduct rules with prudential aspects for insurers and friendly societies

Amendments to the term 'regulated market' as it relates to INSPRU

- 6.7** In CP18/28, we proposed to amend the definition of 'regulated market' in the Prudential sourcebook for Insurers (INSPRU) to refer to markets outside the UK and to require the market to have comparable requirements to a UK market. Respondents providing feedback on this point agreed with our approach.
- 6.8** Some respondents made the more general observation that, in some cases, our Glossary definitions differed from definitions of the same terms used in onshored versions of EU legislation. They said this had the potential to cause confusion. One respondent queried that the amendments to the definition of regulated market now only referred to UK recognised investment exchanges, removing recognised overseas investment exchanges from the definition, and therefore could exclude EU markets from Handbook references or requirements referring to regulated markets, such as those in Conduct of Business sourcebook (COBS) or the Supervision manual (SUP).

Our response

There are precedents for differences to exist between the definition of a term in the Handbook and in EU legislation, reflecting the different contexts in which the terms are used and different drafting conventions. We do not, therefore, generally consider that these differences are deficiencies that require fixing as part of the Brexit onshoring exercise. Recognised overseas investment exchanges do not currently fall within the definition of 'regulated market' and this will remain the case. However, for insurers to continue to have access to EU regulated markets and to ensure consistency with the approach used in the Collective Investment Schemes sourcebook (COLL) and the Investment Funds sourcebook (FUND), we are amending the definition of 'regulated market' so that it includes an EU-regulated market as well as a UK recognised investment exchange for the purposes of COBS 21 (long-term linked insurance business).

Business standards

Conduct of Business sourcebook

- 6.9** We received a few comments on our proposed amendments to the Conduct of Business sourcebook (COBS). The substantive comments and queries we received regarding COBS are set out below.
- 6.10** *Interaction of COBS rules and the TPR*
Some respondents expressed the view that the baseline approach in relation to COBS appears to be inconsistent with the central premise of the TPR.
- 6.11** Firms in the TPR will be required to comply with COBS rules to the extent they currently apply to incoming EEA firms or implement a requirement of an EU directive which is currently reserved to the firm's Home State in accordance with the general approach outlined in CP18/29.
- 6.12** These rules will apply with the changes made to them for Brexit. However, in the case of Home State rules, we will accept 'substituted compliance' where firms can demonstrate that they continue to comply with the equivalent Home State rules in respect of their UK business (as explained in CP18/29). Where rules already apply to incoming EEA firms, the TTP will provide relief from these changes in the same way as for UK firms. As TPR firms should not be required to make any changes in advance of exit day because of our proposals, and will have time to comply with the amendments, we do not consider that the amendments to the COBS rules are inconsistent with the central premise of the TPR.
- 6.13** *Reliance on information and recommendations from other investment firms*
In CP18/28, we proposed to amend the text of COBS 2.4.4R and COBS 2.4.5G in line with our baseline approach of treating EEA firms as we would any other third-country firm. The proposed change would prevent a UK firm from being able to rely on information about a client provided by non-UK EEA investment firms, including any suitability or appropriateness assessments they had conducted. This approach recognised the possibility that EU rules and supervisory approaches could diverge from the UK over time as a result of the UK leaving the EU. The proposals would ensure that EEA firms are treated in the same way as third-country firms, which permits a UK firm to rely on information where it is reasonable to do so, but does not allow a UK firm to specifically rely on suitability or appropriateness assessments conducted by a non-UK firm.
- 6.14** A few respondents suggested that the proposals would be likely to result in greater costs and operational complexity for firms taking on new clients if they could no longer rely on assessments conducted by EEA firms, without providing additional consumer protection. However, respondents did not provide evidence of the likely scale of disruption to businesses or materiality of the costs. One respondent also viewed such changes as unnecessary since divergence in requirements will not take place as of exit day. One respondent suggested a transitional period before making the change, whilst another suggested we reject the change and retain the status quo and the current language. A further response sought clarification as to whether UK firms could still rely on information provided by an EEA firm under COBS 2.4.4R and COBS 2.4.5G prior to the UK's exit from the EU.

Our response

We can clarify that firms currently relying on a suitability or appropriateness assessment performed by an investment firm authorised in an EEA state will be able to continue to rely on those assessments and will not be required to revisit those assessments solely because they were performed by an investment firm authorised in an EEA state prior to exit day. In line with our general approach to transitional arrangements and recognising the potential costs or operational disruption suggested by respondents, firms will also be able to continue to comply with their regulatory obligations as they did before exit for the transitional period. This will enable firms to adjust to post-exit requirements in an orderly period. During this time, firms can continue to rely on information and recommendations provided by EEA firms. We will publish more information on how firms should comply with post-exit rules before exit-day. We will also give further consideration to ongoing reliance on information provided after the transitional period.

Client categorisation

- 6.15** In CP18/28, we also proposed amending the test regarding elective professional clients set out in COBS 3.5.3ER to remove the distinction between EEA and non-EEA local public authorities. Doing so would result in EEA public authorities being treated in the same way as third-country public authorities. We were asked to clarify whether firms categorised as a local public authority or municipality before Brexit will be able to continue with these categorisations after exit day, or will be required to be re-categorised because of Brexit. One respondent asked us to confirm that any client categorisations determined under the existing Markets in Financial Instruments Directive (MiFID) rules will remain valid and that there is no requirement for firms to reassess or to re-execute any associated documentation. Our view is that, in line with our general approach to transitional arrangements, until further notification from us, there is no requirement to undertake a further assessment.

Our response

As the comments received regarding our proposed changes to COBS only required points to be clarified, we will proceed with our proposals.

Non-recognised EEA UCITS schemes

- 6.16** Currently, non-recognised EEA UCITS schemes are exempt from the restriction on promoting non-mainstream pooled investments (NMPI) where certain conditions relating to suitability and product information are satisfied. We have considered whether to maintain this exemption in the future and have concluded that, to do so, would not be compatible with related changes to fund regulation. This is because, after exit, all non-UK funds (including EEA UCITS) will be treated as third-country AIFs. To maintain this exemption from the NMPI marketing restriction, therefore, would be inconsistent with the requirement that, after exit, non-recognised EEA UCITS are marketed through the UK's national private placement regime, unless they have been individually recognised for the purposes of section 272 of FSMA. So, we are deleting this exemption.

Section 4.5 Specialist sourcebooks

FUND & COLL

- 6.17** In CP18/28, we set out the key changes made by the Treasury to the regulatory framework for fund management. These changes were reflected in amendments to the FUND and COLL sourcebooks.
- 6.18** The rules related to the Alternative Investment Fund Managers Directive (AIFMD) and to the Undertakings for Collective Investments in Transferable Securities (UCITS) Directive are largely set out in the FUND and COLL sourcebooks, respectively. The changes we proposed to these sourcebooks relate to the loss of single market authorisation and passporting rights, and reflect changes that were made by the Treasury.
- 6.19** Although not directly in response to a consultation question, several respondents suggested drafting amendments to instruments to clarify policy intent. In some instances, respondents highlighted there appeared to be discrepancies between our stated objective and the Handbook text. Where these were made in error, corrections have now been made to the rules instruments.

UCITS investment powers

- 6.20** In CP18/28, we proposed to allow UK UCITS schemes to continue to have the freedom to invest in EEA (non-UK) assets, and asked for stakeholders' views. The eight respondents to this question agreed with our proposal. Some respondents argued that we should allow UK UCITS schemes to invest in other (non-EEA) third-country assets on the same terms as for EEA assets.
- 6.21** We recognise that some respondents are calling for greater investment powers to be given to UK UCITS. However, our current exercise focused purely on correcting deficiencies arising from Brexit in the Handbook and in BTS. A change to the investment powers of UK UCITS beyond those of UCITS before Brexit is outside the scope of the Brexit onshoring exercise.

Our response

We will proceed with the proposed change.

Depositories of UK authorised funds (relevant for AIFs and UCITS)

- 6.22** In CP18/28, we explained that after Brexit the concept of being established in the UK will, for a depository of UK authorised funds, be limited to an entity incorporated in the UK. Depositories of authorised funds structured as UK branches of EEA firms prior to exit day would have a transitional period in which to restructure their operations. Some respondents disagreed with the Treasury's decision to require the depository of an authorised fund to be an entity incorporated in the UK. This is a matter for the Treasury in the first instance, rather than us. Most respondents welcomed a transitional period for depositories using a UK branch model prior to exit day to help minimise disruption.
- 6.23** Some respondents asked for confirmation that it will be possible for a UK branch of an EEA firm to hold a Part 4A permission to act as a depository for unauthorised AIFs after exit day.

- 6.24** Two respondents asked for clarification on transitional relief mechanisms, including the length of the transition period and how the TPR would act to protect depositaries of funds.

Our response

We will proceed with the proposed changes. We confirm that it will be possible for a UK branch of an EEA firm to hold a Part 4A permission to act as a depositary for unauthorised AIFs after exit day. Section 71 of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019 sets out the proposed transitional arrangements for non-UK depositaries of authorised funds.

Other issues raised

- 6.25** In CP18/28, we proposed amendments to the definition of a 'securities financing transaction' through the Exiting the European Union: Glossary (Amendments) Instrument 2019. One respondent queried our reference to the EU version of the Securities Financing Transactions Regulation (SFTR) as it had effect immediately before exit day, instead of to the onshored version of the SFTR.

Our response

We have amended our definition of a 'securities financing transaction' to refer to the onshored version of the SFTR. The definition provided in the onshored SFTR has the same scope as the EU version of the regulation pre-exit.

Listing, Prospectus and Disclosure

Primary markets

- 6.26** In CP18/36, we set out the key changes to the Prospectus Rules (PR), the Listing Rules (LR) and parts of the Disclosure Guidance and Transparency Rules sourcebook (DTR).¹⁶ Respondents were generally supportive of the changes we proposed, with only two proposals giving rise to broader comments. These are discussed below.

Dissemination of regulated information

- 6.27** DTR 6 sets out, among other things, the requirements that issuers need to comply with when disseminating regulated information. Currently issuers can choose between using a primary information provider (PIP) or an incoming information society service. In CP18/36, we proposed to amend DTR 6 so that, after exit, issuers will only be able to use a PIP to disseminate this information.
- 6.28** We received eight responses, seven of which agreed with our proposal. Three respondents suggested we either give issuers which do not currently disseminate regulated information through a PIP transitional relief or we highlight this change

¹⁶ DTR 1A, 4-6, 1B, 7, 1C, 8 and TP 1, App 1 and Schedules only

early to allow them enough time to set up the relevant arrangements with a PIP. One respondent disagreed with our proposal on the basis that the proposed approach would result in a reduction in choice and competition.

Our response

We will proceed with the proposed change. We considered giving transitional relief to issuers which do not currently disseminate regulated information through a PIP. However, we have decided against this because most issuers with securities admitted to trading on regulated markets in the UK already use a PIP to disseminate regulated information. Furthermore, we understand that the set-up process can be completed quickly.

Audit committees

- 6.29** DTR 1B and 7.1 set out requirements in relation to audit committees. DTR 1B.1.3R provides an exemption from DTR 7.1 for an issuer which is a subsidiary undertaking of a parent undertaking, where the parent undertaking is subject to DTR 7.1 or to requirements implementing article 39 of the Audit Directive in any other EEA State.
- 6.30** In CP18/36, we proposed to amend this exemption so that such an issuer will only be exempt from DTR 7.1 where the parent undertaking is subject to DTR 7.1. However, we proposed that the existing exemption will continue to apply regarding a financial year beginning before exit day.
- 6.31** Generally, respondents were supportive of our proposals, although concerns were raised that the transitional arrangements were not enough to allow issuers caught by the removal of the current exemption to put the necessary arrangements in place. In considering what transitional allowances should be made, we have deliberately applied the same arrangements to audit committees as we have applied under DTR 4.1.6R for accounts preparation and under DTR 4.1.7R for auditor registration.

Our response

Considering the feedback received, we will proceed with the proposed change. There is nothing in our rules that prevent issuers from using the same audit committee arrangements for the subsidiary as the current rules would already require them to have in place for the parent company.

7 Applying our rules to the temporary permissions regime (TPR) and contractual continuity

7.1 In this chapter, we look at feedback from several consultation papers (CP18/29, CP18/34, CP18/36 and CP19/2). Feedback we received on the TPR and fees is grouped together by theme. The final section of this chapter looks at contractual continuity and the Financial Services Contract Regime (FSCR).

The general approach for firms in the TPR (TP firms)

7.2 Under our 'general approach', described in paragraphs 4.11 to 4.16 of CP18/29, TP firms must comply with all our rules which currently apply to them, together with our rules which implement a requirement of an EU directive which is currently reserved to the firm's home state (but on the basis that we will accept substituted compliance with the rules in the TP firm's home state in respect of those home state rules). Most respondents supported our proposed rule changes to give effect to our general approach. Two respondents thought that our approach was too complex, that it would be challenging for firms to implement and would involve significant compliance costs (including putting systems and controls in place to demonstrate substituted compliance).

7.3 One of these respondents believed that TP firms would have to go through various steps to determine which rules applied and put procedures in place to continue to apply an existing rule following deletion or amendment from the Handbook (to comply with GEN 2.2.27R(1)(b)).

7.4 This respondent suggested that it would be preferable to take a simple approach to the obligations of TP firms by way of substituted compliance based on their continued compliance with home state rules in the areas covered by the EU directives, backed up by reliance on the Principles.

7.5 One respondent suggested maintaining a register of where a rule specifically states that a different provision (i.e. other than the general approach) applies for TP firms.

7.6 Respondents requested further information on how our use of the proposed temporary transitional power allowing us to waive or modify firms' regulatory obligations following exit day would apply to TP firms' obligations.

7.7 Another respondent was concerned that different consumer protections will exist under the general approach because of substituted compliance. This respondent believed that a better approach would be for all UK business to be covered by UK consumer protection, making the rules clearer to all.

Our response

The general approach is intended to preserve the status quo as much as possible. Generally, TP firms will simply need to continue to comply with

the rules which currently apply to them for their UK business, either in the UK or (using substituted compliance) in their home state.

We do not believe that relying on the Principles alone is enough for the purposes of consumer protection or providing clarity for TP firms or their customers, given their high-level nature. We felt it was necessary for these firms to switch on home state rules which implement EU directives as a matter of UK law (and then allow substituted compliance with the UK requirements). This would ensure appropriate protections for UK consumers during the TPR where home state supervision does not extend to UK business.

The general approach is subject to some limited areas where we proposed additional requirements, which are now listed in GEN 2.2.37G(2) for clarity. We are only applying additional requirements where we believe these to be necessary.

We recognise that, on paper, this increases the complexity of the approach and that it would require additional work to determine the exact rules that apply to TP firms. However, firms can take as their starting point that they can generally keep complying with the rules as they do now. We do not expect firms to undertake an extensive implementation exercise on entering the TPR. Firms will only be required to make changes to reflect the limited additional requirements we proposed, assuming their existing systems and controls comply with the rules that already apply.

While TP firms are required to apply these rules with the changes which are being made to them to take account of Brexit, temporary relief will be provided from these changes through our use of the temporary transitional power (TTP). We published a statement on our use of this power, and included information on our website about how it will apply to TP firms, in February 2019. We have included new provisions in GEN 2.2.27R(3) and (4) to give effect to this for Handbook rules and have also included similar provisions for fund marketing in the TPR in GEN 2.2.33R(3).¹⁷ GEN 2.2.28R(1) and (3) are also included to provide flexibility for TP firms in circumstances where they identify that it is problematic to comply with a particular rule after exit day, rather than imposing additional obligations.

As explained in CP18/29, we considered applying all rules which apply to current third-country firms to TP firms so that all UK business was covered by UK consumer protection. We concluded that this would be difficult for TP firms to comply with in time and could cause potential disruption for consumers and other market participants. We also believe that this approach would not be appropriate given the temporary nature of the TPR. The different protections which will exist under the general approach reflects the current position under the EU passporting regime. As firms leave the TPR they will come

17 We have included our assessment of the impact of these changes on the Cost Benefit Analysis and Compatibility Statements included in CP18/29 and CP19/2 below.

into compliance with UK rules so that, in due course, all UK business is afforded UK consumer protection.

Divergence after Brexit

- 7.8** Two respondents raised the issue of how the general approach would operate when the UK and EU rules begin to diverge. One respondent asked for clarity about whether deleted rules continue to apply to TP firms and suggested maintaining a register of amendments as they specifically relate to TP firms.

Our response

We do not believe that it is appropriate to try to address future rules changes in advance, rather than considering this on a case-by-case basis as the need arises.

- 7.9** We expect firms to always have procedures in place to monitor ongoing changes to rules and believe this is appropriate to expect of TP firms. We do not believe it necessary for us to maintain a register of such changes.

Substituted compliance

- 7.10** Two respondents thought that substituted compliance might not always be available for home state rules. One respondent thought it was unclear whether a TP firm could rely on substituted compliance to meet requirements under our rules which implement a discretion conferred by an EU directive where the UK and the home state of a firm differ on how such discretion is exercised. They also thought it was not clear whether TP firms could disregard gold-plating where our rules go beyond the requirements of an EU directive when this is expressly permitted by an EU directive.
- 7.11** One respondent requested more clarity about our supervisory and evidentiary approach to substituted compliance.

Our response

Substituted compliance is always available for home state rules which are switched on by the general approach, provided the firm can demonstrate compliance in accordance with GEN 2.2.26R(5). This applies even where compliance with the relevant rule in the home state regarding UK business is voluntary, rather than required.

Our proposals are intended to allow TP firms to rely on substituted compliance where the firm's home state has exercised a discretion afforded by an EU directive in a different way to the UK. This includes where the discretion has been exercised not to implement any requirement at all (where this is a permitted option). We have clarified this in GEN 2.2.26R(6), GEN 2.2.26R(7) and GEN 2.2.37G(6).

Similarly, where we have exercised a discretion expressly permitted by an EU directive to go beyond what is required by a EU directive to gold-plate a home state rule, the intention of our proposals was that TP

firms should be able to rely on substituted compliance with their home state implementation of that EU directive. We have included additional guidance on this in GEN 2.2.37G(6).

Services firms

- 7.12** Some respondents thought that the approach should take account of the different position of EEA service firms¹⁸, which are currently subject to limited UK rules and supervision as they do not have a UK presence. Two respondents thought it unreasonable to expect such firms to establish systems and controls to meet the UK implementation of UK directives given the time-limited nature of the TPR, as many EEA services firms may be seeking only to service existing clients or may not need authorisation at all. These respondents thought that it would be preferable for us to apply a simple regime under which inbound firms' policies and procedures continue to apply, supplemented by the Principles and any other additional requirements where there are clear market failures associated with the position after Brexit.
- 7.13** Two respondents also noted that the general approach would mean that EEA services firms would become subject to UK regulation for all areas reserved to home state authorities. They were concerned that this would include conduct obligations and all other regulatory obligations under an EU directive (other than prudential requirements specifically switched off by GEN 2.2.30R) which do not necessarily apply to other third-country firms of this type.
- 7.14** One respondent asked whether a TP firm which operates from a UK branch but which also operates on a cross-border services basis would be subject to the rules applicable to EEA services firms (particularly fees). The same respondent suggested that compliance would be complicated where a TP firm provided services in the UK from different EEA branches.

Our response

If an EEA services firm believes it does not require authorisation to operate in the UK, it may well decide not to enter the TPR. Where a firm is seeking only to service existing clients and exit the UK market, they will be able to make use of the FSCR rather than enter the TPR if they believe this to be appropriate for their business.

In line with the position for TP firms with UK branches, we do not expect that EEA services firms will be required to make significant changes to meet the requirements which apply to them while they are in the TPR. We believe the regime we have proposed for EEA services firms is an appropriate balance between protection for UK consumers during the TPR and a regime which they can comply with from exit day. However, an EEA services firm seeking UK authorisation to exit the TPR will also need to be working to comply with UK requirements if it is granted UK authorisation by us or the PRA.

The overall intention of the general approach is not to switch on the full third-country regime for TP firms, as it would be difficult for firms to

18 i.e. EEA firms operating in the UK on a cross-border services basis

comply with this for exit day. So, it is inevitable that there will be some areas where different rules apply for the temporary period before UK authorisation, including areas where rules which do apply to third-country firms do not apply to TP firms. We believe that the proposed approach represents the appropriate balance between the factors we considered when designing the regime, as discussed in CP18/29.

The effect of the general approach is that a TP firm that operates on both a branch and a cross-border services basis, or on a cross-border services basis from more than one EEA country, should only need to keep complying with:

1. the relevant rules with which it currently complies in relation to each aspect of its business
2. the limited additional requirements we are applying to TP firms.

The position for fees is addressed separately in this chapter.

Reporting

- 7.15** Respondents wanted to avoid duplication of reporting and filing requirements and suggested that we should take advantage of cooperation arrangements. Some respondents also sought clarity on what matters we expect firms to notify us of under Principle 11 and suggested that it would be preferable for us to state specific requirements for TP firms.

Our response

Substituted compliance under the general approach will generally mean that TP firms can continue to report or provide information to their home state regulator, subject to Principle 11. The only change TP firms will be required to make is to comply with the specific additional instances where we believe that additional reporting to us is vital, for example under CASS 14. This is not dependent on whether there are cooperation arrangements in place with other EEA regulators.

- 7.16** Principle 11 will apply to TP firms in the same way as it applies to any other firms. Guidance on Principle 11 is included in SUP 15.3.7G to SUP 15.3.10G. The detailed provisions for regulatory reporting in SUP 16 will only apply to TP firms to the extent it is given effect by the general approach. We do not believe it is appropriate to create a specific reporting regime for TP firms for the temporary period they are in the regime.

Other issues raised

- 7.17** Some respondents sought clarity on when TP firms would cease to be subject to the rules for TP firms proposed in CP18/29 and CP18/36, and would need to comply with our Handbook as it applies to other third-country firms. One respondent asked about the effect of the UK and the EU agreeing an implementation period on our proposals.

- 7.18** One respondent thought it was unclear why rules that are deleted on exit day should continue to apply to TP firms by virtue of GEN 2.2.27R(2) when they will not apply to other firms.

Our response

TP firms will need to comply with our Handbook as it applies to third-country firms from the point at which they are granted authorisation by the PRA or us (as applicable). The TPR provides a bridge to authorisation in the UK on a firm-by-firm basis, rather than a three-year transitional period for all TP firms.

If an implementation period is agreed between the UK and the EU, EEA firms will continue to have access to the same passporting arrangements as they do now, and the TPR will not come into effect on exit day.

GEN 2.2.27R(2) gives effect to the intention of the general approach that TP firms should continue to comply with the requirements which currently apply to them. Rules which currently only apply to EEA passporting firms (and not to any other firms) are being deleted from our Handbook because there will be no passporting firms after exit day. However, given the ongoing existence of TP firms after exit day, GEN 2.2.27R(2) preserves these rules during the TPR. These rules will no longer be relevant when TP firms are granted UK authorisation and the Handbook applies to them as third-country firms.

Additional guidance on MiFID tied agents

- 7.19** Proposed legislative changes mean that MiFID tied agents of TP firms and firms which enter the supervised run-off mechanism of the FSCR (SRO firms) will need to be entered on the UK Financial Services Register (to the extent that they are not already). We have included guidance to remind firms of the need to meet this requirement by notifying us both of the appointment of, and termination of relationships with, tied agents which conduct activity in the UK. However, since there is no requirement for SRO firms to notify us to enter the FSCR, we will apply the TTP so that SRO firms are not required to have their tied agents included on the Register for the duration of the transition period to which the TTP applies. However, to protect consumers we think it makes sense for us to seek to obtain and publish details of the tied agents of SRO firms during this period.

Impact on the Cost Benefit Analysis and Compatibility Statement included in CP18/29 and CP19/2 of giving effect to the TTP in relation to the TPR and SRO

- 7.20** We have considered the impact of giving effect to the TTP in our rules in relation to the TPR and SRO as described above¹⁹ on those parts of the CBA contained in CP18/29 and CP19/2 relating to the general approach. This change will mean that firms and operators, depositaries and trustees of EEA funds are in the same position as everyone else subject to our Handbook as regards use of the TTP. The use of the TTP generally for Part 4A firms and fund marketing means that the baselines explained in the CBAs in CP18/29 and CP19/2 remain the same, but now with the possibility of

¹⁹ See GEN 2.2.27R(3) and (4) and GEN 2.2.33R(3).

complying with the pre-Brexit version of relevant rules because of the TTP. We believe that the analysis of the costs and benefits of the general approach for TP firms and in respect of fund marketing in CP18/29 and SRO firms in CP19/2 still applies when these amendments to our rules to give effect to the TTP are taken into account. Where the general approach applies rules that don't apply in the baseline scenario, or disapplies rules that do, firms will be (or would have been in the baseline scenario) able to comply with a different version of the rules from the one envisaged in the original CBAs for the period that relief under the TTP is available, but the analysis of the cost and benefits arising as a result of applying or disappling rules remains the same. We consider that the Compatibility Statements included in CP18/29 and CP19/2 are not impacted by this amendment, noting that the change is in line with our proposal to create a regime which firms and operators, depositaries and trustees of EEA funds can comply with from exit day.

Principles for Businesses

- 7.21** Most respondents to our proposal to apply the Principles to TP firms supported our proposed rule changes. We have addressed respondents' comments regarding notification under Principle 11 above.

Prudential sourcebooks

- 7.22** Respondents to our proposals on prudential rules supported our proposed rule changes. One respondent queried how we intend to exercise our statutory responsibility for incoming firms' financial soundness without the framework provided by EU single market legislation.

Our response

We will implement our approach to applying the Prudential sourcebooks as consulted on in CP18/29 without amendments.

We have now agreed Memoranda of Understanding (MoUs) with ESMA and EU securities regulators covering cooperation and exchange of information in the event that the UK leaves the EU without a withdrawal agreement and implementation period. Further details are available on our website.²⁰ We are continuing to negotiate MoUs with other relevant EEA authorities and expect to reach agreement before the end of March.

The general approach for fund marketing

- 7.23** The respondents who felt the general approach was complex for firms raised the same points in response to this question. Some respondents raised a concern that if new sub-funds are unable to enter the TPR regime this would cause a burdensome and disruptive outcome to firms, and limit competition and investor choice.
- 7.24** Some respondents submitted that section 272 of FSMA, being the only route through which firms would be allowed to market their non-UK EEA funds to retail investors after Brexit, would be unfit for purpose. Respondents based these concerns on section 272

²⁰ <https://www.fca.org.uk/news/press-releases/fca-agrees-mous-esma-and-eu-regulators-allow-cooperation-and-exchange-information>

being onerous and time consuming and not being a viable option for the large volumes of EEA funds expected to seek recognition. Some respondents requested an urgent review of section 272.

7.25 A few respondents raised an issue that funds which are currently marketed into the UK under the National Private Placement Regime (NPPR) will need to re-register due to the amendments of the AIFM Regulations 2013. Some firms would need to re-register funds immediately after Brexit to avoid disruption of their marketing into the UK.

7.26 Finally, one respondent requested we re-consider the requirement that non-UK EEA funds submit information to us, that currently is sent to the fund's home state regulator.

Our response

Where the points on the general approach in response to this question that were the same as those made in response to Q1 of CP18/29, our responses to the feedback for that question apply here. We will not apply home state rules to fund marketing activities in the TPR, so substituted compliance is not relevant in this context.

We will amend our rules so that the general approach that we consulted on in CP18/29 also applies to sub-funds which enter the TPR after exit day. This reflects changes made by the Treasury to the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2018 (as laid before Parliament).²¹ In our view, the costs and benefits of the rules which will apply for the marketing of such new sub-funds are the same as the costs and benefits applied for the marketing of all recognised funds which enter the TPR, as covered in CP18/29. We believe that the CBA set out in Annex 2 of CP18/29 and the Compatibility Statement set out in Annex 3 of CP18/29, to the extent they relate to fund marketing, equally apply to this proposal.

The Government has committed to undertaking a review of section 272 of FSMA in light of the issues raised by the asset management industry. We will consider feedback on section 272 when we contribute input to the Treasury's review.

For firms which will need to re-register AIFs for the NPPR, we intend to use the temporary transitional power to ensure that firms do not need to re-register AIFs immediately after Brexit.

We will require firms to submit information about non-UK EEA funds directly to us, as the fund's home state regulator may not be obliged or allowed to send this information to us. As we are not requiring any different or additional information to be provided, merely requesting a copy of this information. We do not believe this obligation is excessively burdensome for firms wanting to market their funds in the UK.

²¹ Treasury's changes enable sub-funds which become authorised by its home state regulator on or after exit day (new sub-funds) to enter the TPR, if at this time at least one other sub-fund of the new sub-fund's umbrella scheme is covered by the TPR and the FCA is notified of the new sub-funds addition to the TPR.

Safeguarding client money and custody assets

7.27 Most respondents supported our proposals on protecting client assets. We received the following suggestions and comments.

Application of CASS

7.28 Two respondents suggested that client assets would be adequately protected by TP firms if they complied with their MiFID 2 obligations in home states, instead of the proposed rules. They felt it would be operationally challenging for TP firms to separate client assets held in reliance on their home state authorisation from those held in reliance on their TP and that the proposals would subject services TP firms to more burdensome regulation than third-country firms. Another asked how the SM&CR CASS responsibilities align with the proposals. Others queried whether the proposed rules would apply to credit institutions holding deposits and UCITS-firms.

Our response

The application of the general approach to CASS allows firms to comply with their equivalent MiFID II and IDD obligations in their home states (substituted compliance). CASS 14 applies in addition to these requirements to enable us to obtain information on and adequately supervise client assets held by TP firms. The final rules require TP firms to distinguish client assets held for activities in reliance on their temporary permission from assets held in reliance on their home state authorisation for the purposes of complying with the reporting and disclosure requirements in CASS 14. We do not believe the final rules to be more burdensome than the application of CASS to third-country firms given that third-country firms must comply with the full CASS sourcebook.

We expect TP firms to comply with their existing obligations for SM&CR for incoming EEA firms and MiFID obligations for appointing a single officer for client assets.²²

The final rules do not apply to assets or money held by a TP firm that are not client assets for the purposes of CASS, consistent with the scope of MiFID II and IDD. For example, deposits held by a CRD credit institution will not be considered client assets by that CRD credit institution.²³

Reporting of client assets arrangements

7.29 One respondent felt that it would be challenging for TP firms to implement the proposal. Another suggested that the proposal should not be mandatory if a TP firm is able to comply with existing CASS reporting requirements²⁴ (where the firm has existing FCA-authorised business and is subject to CASS). One respondent queried whether a firm's head office can put forward their global client assets arrangements to comply with the proposal.

²² GEN 2.2.26R will require firms subject to MiFID II to comply with CASS 1A.3.1R and CASS 1A.3.1AR

²³ CASS 7.10.16R, article 16(9) of MiFID and article 4(1) of the MiFID Delegated Directive

²⁴ Client money and asset return (CMAR) under SUP 16.14 and classification requirements under CASS 1A.

Our response

We disagree that the reporting requirement would be challenging for firms to implement. Firms should already have the reported information available under their existing client assets obligations. We think the additional costs will be relatively small²⁵ and we did not receive any evidence suggesting otherwise. The final rules will allow firms to comply with existing CASS reporting requirements if they are able to do so and notify us of this. Firms must report their client assets arrangements for the TP business and not their global arrangements.

CASS assets audit report

- 7.30** One respondent asked for TP firms to be able to request an extension to the proposed one-month requirement of producing an English translation of the audit report. Another suggested we obtain the original audit report in addition to the English translation.

Our response

The final rules will enable us to obtain the original client assets audit report in addition to the English translation. We did not receive any evidence that one month was insufficient for a firm obtaining an English translation of the client assets audit report. So, we will proceed with the rule as consulted on.

Disclosure of client assets' treatment on insolvency

- 7.31** One respondent queried whether they needed to give more than a simple statement to clients that they would be treated differently from their other customers and whether a statement would be required for each jurisdiction in which the firm held client assets. They also suggested that the proposal could be replaced by existing disclosure requirements.²⁶

Our response

The final rules require firms to disclose a simple statement to clients if there is a possibility that there may be a difference in how client assets are treated for different customers of TP firms. We expect a TP firm to consider the applicable law and insolvency rules in question when deciding whether a statement must be given.²⁷ We also expect a TP firm to undertake separate analysis for the relevant jurisdictions in which it would likely be subject to insolvency proceedings, but this could be covered by one disclosure providing it is clear to clients. We do not agree that the disclosure can be replaced with existing

²⁵ See paragraphs 44 to 46 of the cost benefit analysis in CP18/29

²⁶ CASS 9.4 and COBS 6.1.7R. These requirements require a firm to disclose (where assets are held with a third party in a third country) if it is not possible under national law for client assets held with a third party to be separately identifiable from the proprietary assets of that third party or of the firm.

²⁷ CASS 14.5.3G(2)

disclosure requirements as these rules do not require firms to disclose the same information.

Funding the temporary permissions regime, the Single Financial Guidance Body (SFGB), the Illegal Money Lending (IML) levy and the TPR Devolved Authorities debt advice levy

Periodic fee payable by firms in TPR

- 7.32** One respondent did not agree that TP firms should pay fees on the same basis as UK firms. They did not agree that we will be responsible for regulating absolutely every aspect of TP firms, as some aspects will be covered by home state regulation. They expected fee discounts that properly reflect the nature and scope of the regime.

Our response

The general approach means that our powers under FSMA and other relevant legislation will apply to TP firms. In addition, we will also become responsible for the supervision of the home state rules which will apply following exit day regarding UK activities.

We proposed to continue to give branch firms a 100% discount from paying prudential fees and proposed the same discount for services firms. This was in recognition that we will not apply to TP firms any home state rules which relate to capital adequacy (including both capital resources and liquidity resources) and related requirements. This is because it would require us to oversee the firm's worldwide capital position, rather than just supervise its UK business, which we do not believe to be practical or appropriate.

Non-refundable periodic fees

- 7.33** One respondent thought that periodic fees should be refundable. TP firms will be given landing slots that may not end on 31 March and therefore should be given a refund of the relevant part of the TPR periodic fee paid (or they should be offset against the periodic fees payable under the new authorisation arrangements).

Our response

The periodic fees paid by firms under the TPR will cover the full fee-year – 1 April 2019 to 31 March 2020. If a firm's landing slot occurs during the fee-year and they become authorised they will not be required to pay any additional periodic fees for the remainder of that fee-year. They will then pay periodic fees for all subsequent years they are authorised.

Where a TP firm does not apply for authorisation during its landing slot, withdraws its application without submitting another or where its application is unsuccessful, we will have the ability to cancel the firm's temporary permission. In these circumstances, any periodic fee due will have to be paid or any periodic fee already paid will not be refundable, any application fees paid will also not be refundable. This is in line with the approach we take for UK firms.

Tariff data for cross-border service firms

- 7.34** Two respondents asked for clarity on the tariff data (measures of size) to be supplied by service firms. One highlighted that the proposed TPR tariff data rules cross-refer to existing tariff data rules which refer to such tariff data as relating to business undertaken from an establishment in the UK or from people ordinarily based in the UK. The other respondent also highlighted that many EEA firms will be providing services both from a UK establishment and on a cross-border services basis. They asked for confirmation that EEA branch firms will also be subject to the rules applicable to EEA services firms if they carry on both services (particularly fees). They also questioned whether requiring large numbers of service firms with limited run-off business in the UK to identify their UK business for fees purposes was proportionate. They believed that the cost to such firms of putting procedures in place to identify UK business may substantially exceed the fees paid.
- 7.35** One respondent asked for clarification on whether UK assets under management (AUM) or total AUM should be included for fees calculation purposes.

Our response

We agree that many EEA firms currently have branch and cross-border service passports for the same equivalent regulated activities covered by fee-blocks.

FEES 4 Annex 1A Part 3 covers the type of tariff data that firms are required to provide for the purposes of calculating their fees. Total tariff data prescribes the overall fee-rate per unit of tariff data for each fee-block and individual firms' fees are calculated by multiplying that fee-rate by their individual units of tariff data.

FEES 4 Annex 1A Part 3 is incorporated into TPR tariff data rules through FEES 4A.2.3R(2)(a). As one respondent has pointed out the specific tariff data definition in FEES 4 Annex 1A Part 3 relating to the A.1 (Deposit acceptors) fee-block refers to the tariff data of modified eligible liabilities (essentially UK deposits) as relating to business conducted out of offices in the UK. Also, the A.10 (firms dealing as principal) fee-block refers to the tariff data of the number of traders as ordinarily acting within the UK. The A.7 (Portfolio managers) fee-block refers to the tariff data of funds under management as relating to assets that are managed from an establishment in the UK.

EEA branch firms currently supply tariff data in accordance with the definitions in our existing fees rules and will be able to continue to do so under the TPR. However, we accept that where TPR firms do business in the UK through a branch passport and cross-border service passport, as well as cross-border service only firms, they will need to put procedures in place to identify the cross-border service business they carry out for UK customers. We also acknowledge that, to meet our Threshold Conditions, firms that exit the TPR through obtaining authorisation under Part 4A of FSMA will carry on their UK business from an establishment in the UK. So, if we were to require TPR firms to report tariff data that included cross-border service business they carry out for

UK customers such a requirement could only be for the interim period they are in the TPR.

We have therefore decided not to require TP firms to report tariff data relating to the business they under take on a cross-border service basis. TPR branch firms will continue to pay the minimum fees and variable fees on the tariff data above the minimum size thresholds. TPR cross-border service firms will only pay the minimum fees. We have made the necessary amendments to the TPR fees rules.

In reaching this decision we were also conscious that, since CP18/29 was published, we have developed our policy for cross-border service firms that do not enter TPR. In CP19/2²⁸ we consulted on the proposal that these firms should not pay any periodic fees under contractual run-off (CRO).

Special Project Fees (SPFs)

- 7.36** One respondent asked for greater clarity on what 'restructuring transactions' meant in relation to SPFs. Another respondent was unclear on the context of the SPFs and was concerned that TP firms might have to pay double regulatory fees – one to the FCA and one to their home state regulator.

Our response

SPF restructuring transactions for TP firms are the same as for UK firms and were set out in the draft TPR rules in Appendix 1 of CP18/29. Such restructuring transactions may be linked to the TP firm's application for authorisation or variation of permission (VoP). For TP firms, the work carried out on such a restructuring transactions may be interconnected with the work on the authorisation or VoP application for which a separate authorisation fee is charged. Under such circumstances we would look to use our relieving provisions to consider not charging the authorisation or VoP fee to avoid double charging.

The work we would carry out on the authorisation application and/or the SPF will only relate to that necessary to meet our responsibilities in regulating the TP firm which would not duplicate any work undertaken by the home state regulator.

Periodic fees payable by funds in the TPR

- 7.37** One respondent asked for clarification on the basis for the calculation of periodic fees for funds – including whether these relate to UK AUM only or a fund's total worldwide AUM.

- 7.38** Another respondent asked for clarity on:

- whether other fees currently payable by EU UCITS and AIFs will continue to be payable or whether such fees will be replaced by these periodic fees

- how these fees would be apportioned on a pro-rata basis should a fund close or otherwise be withdrawn from the TPR before it transfers to section 272. Also, whether any exit fees will be charged
- the periodic fees to be paid under section 272 as currently the periodic fees for funds under section 272 are considerably higher than those under section 264.

They also requested clarification that no further application fees would be payable for an existing fund on its application under section 272.

Our response

The basis for calculating periodic fees was explained in Table C of Annex 4 provided in CP18/29. In addition, our proposals for periodic fees for funds were aligned to the existing basis of calculating these fees which has not changed. AUM is not used for the purposes of calculating periodic fees for funds.

The requested clarifications are as follows:

- The rules covering the basis for periodic fees for funds in the TPR under Part 1 FEES 4A Annex 2R in Appendix 1 (draft instrument) of CP18/29 replace the current rules in Part 1 FEES 4 Annex 4R relating to section 264 schemes.
- As stated in CP18/29 the periodic fee rates provided in Table C of Annex 4 were indicative based on 2018/19 fee-rates and we will be proposing the actual fee-rates in our April 2019 fees-rates CP.
- As stated in CP18/29, periodic fees payable by funds in the TPR relate to the whole of any fee year (1 April to 31 March) and are not refundable which is in line with the approach for UK funds. Therefore for 2019/20, funds in the TPR will pay periodic fees on the basis set out in FEES 4A Annex 2R and the fee-rates to be consulted on in our April 2019 fees-rates CP. These funds will not additionally pay periodic fees under section 272 during 2019/20.
- Following the review of the recognition process for funds in the TPR discussed above and ahead of 2019/20, we will consult on any necessary changes to the basis for periodic fees under section 272.
- As stated in CP18/29, application fees will be aligned to the current application fees and any changes will be consulted on in our April 2019 fees-rates CP.

Single Financial Guidance Body (SFGB)

7.39

Respondents broadly supported our proposals. Some respondents asked for clarification about the status of the levy for funds and cross-border service firms. One respondent raised issues about the challenges of putting procedures in place to identify UK business to report the data we would need to calculate a firm's levy amount.

- 7.40** The responses on tariff data for cross-border service firms described above are also relevant to firms' ability to provide the tariff data that would enable us to charge the SFGB levy to service firms in the TPR.

Our response

It was not our intention to charge the levy to funds. For the reasons explained above, we will not require cross-border service firms to provide the tariff data that would enable us to charge the SFGB levy to cross-border service firms in the TPR. So, we will not implement the rules to require cross-border service firms in the TPR to contribute to the SFGB levy on the same basis as UK firms.

In line with our policy for the FCA periodic fee, we will charge the minimum fee for service firms in the TPR. In the SFGB levy, there is a minimum fee for the money advice levy. There is no minimum fee for the debt advice levy or the pensions guidance levy. So, the only element of the SFGB levy to be paid by service firms in the TPR will be the minimum fee for the money advice levy.

We will still implement the rules to remove discounts for EEA branch firms in the TPR so that EEA branch firms will contribute to the SFGB levy on the same basis as UK firms.

Illegal money lending (IML) levy

- 7.41** One respondent asked for clarity on the tariff data (measures of size) to be supplied by service firms. Additionally, they raised the same point about requiring large numbers of service firms with limited run-off business in the UK to identify their UK business for fees purposes, as for FCA periodic fees. These responses are described above.

Our response

The IML levy tariff data rules mirror those of the FCA fees and so our response to the issues raised is the same as set out above. As a result, TPR branch firms will continue to pay the minimum IML levy and the variable fees on the tariff data above the minimum size threshold. TPR cross-border service firms will only pay the minimum IML levy, which for 2018/19 was £10. We have made the necessary amendments to the TPR IML levy rules.

TPR Devolved Authorities debt advice levy

- 7.42** All respondents supported our rule changes consulted on in CP18/34.

Our response

Considering the feedback above, we decided not to require cross-border service firms to provide tariff data. So, we will not implement the rules to require cross-border service firms in the TPR to contribute to the

Devolved Authorities debt advice levy on the basis of their cross-border service business. Because there is no minimum fee for the debt advice levy, we will also not charge a minimum fee to TPR service firms for the Devolved Authorities debt advice levy.

We will still implement the rules to omit discounts for EEA branch firms in the TPR. This means that EEA branch firms will contribute to the Devolved Authorities debt advice levy on the same basis as UK firms.

Additional information for electronic money institutions (EMI), payment institutions and registers account information services providers

Requests for clarification

7.43 Chapter 5 of CP18/29 also set out additional information for EMIs, payment institutions and registered account information services providers, as there are some aspects of the Payment Services Regulations and E-Money Regulations (as amended to incorporate the TPR) which require a specific approach for TPR. We did not consult on this chapter, as no changes to our Handbook are required.

7.44 However, one respondent queried whether a UK branch of an EEA authorised EMI can obtain authorisation in the UK when its temporary permission ends.

Our response

UK legislation does not prevent EEA EMIs which only provide payment services related to e-money issuance (and EEA registered account information services providers (RAISPs)) from becoming authorised or registered without setting up a UK subsidiary when their temporary permission ends. However, in accordance with regulations 6(4) and 32(4) of the Electronic Money Regulations 2011, an authorised EMI must be a UK body corporate with a head office and registered office (if it has one) in the UK to obtain authorisation when its temporary permission ends, unless it only provides payment services related to the issuance of electronic money.

How the temporary permission regime will work for firms

7.45 Although we did not formally consult on our proposals for how we expect the regime will work for TP firms, several respondents had questions or sought clarifications in this area.

Landing slots

7.46 We received feedback from several respondents about the allocation of landing slots, particularly for firms with similar business models, and whether firms could indicate preferences for a particular landing slot based on their varying operational needs and demands. One respondent asked whether all TP firms will be notified of their landing slot at the same time and whether details of all TP firms' landing slots will be made available on our website.

Our response

We understand the concerns expressed around ensuring firms have enough time to prepare their applications and any competitive advantage that may be gained from earlier or later landing slots.

While we do not plan to invite firms to express a preference for a particular landing slot or make the details of each firm's landing slot publicly available, we intend to inform all TP firms of their landing slots promptly after exit day. This will be published in a direction.

As we indicated in our CP, we expect the first landing slot will be October to December 2019. This will give the TP firms in this first landing slot at least eight months to prepare and submit their applications. That said, we encourage all firms that plan to use the TPR to start considering what they will need to do to prepare their applications for authorisation.

Leaving the TPR

7.47 Six respondents had questions related to subsequent applications for full authorisation in the UK. One respondent sought clarification regarding the point at which TP firms seeking full authorisation in the UK would cease to be subject to the TPR. Another respondent noted that the extension to the statutory deadline for applications for authorisation from TP firms could result in them waiting for up to 30 months for a decision. In a similar vein, a further respondent queried whether we would be required to determine applications within the prescribed three-month landing slot or by the end of another defined period. One respondent asked whether we are intending to require services firms to establish a branch in the UK on their exit from the TPR.

7.48 Lastly, four respondents had questions about the consequences of firms failing to apply during their landing slot and the fact that, under these circumstances, we will have the ability to cancel the firm's temporary permission. In particular, we were asked if we were to cancel a firm's temporary permission what the notice period would be, whether firms would be in breach of the general prohibition during the notice period and the impact of this action on a firm's existing contracts.

Our response

If their application is approved, TP firms will leave the regime at the point at which we have determined their application (the day before the day stated in the written notice we are required to give the firm) and they are fully authorised in the UK rather than at some other point after authorisation. We generally expect to determine all applications in a timely manner and not to rely on the extended statutory deadline. However, where we think our assessment may take longer we will discuss this with the firm in question.

Firms will be required to submit their application within their three-month landing slot. Our assessment will start once an application has been received but we will not be required to complete our assessment before the landing slot ends.

We acknowledge that to meet our Threshold Conditions, firms that exit the TPR through obtaining authorisation under Part 4A of FSMA will carry on their UK business from an establishment in the UK. We appreciate that firms will be looking to us to provide further information in the months ahead about the options that they will face when it comes to applying for permanent authorisation (for example, some firms may be looking to us to clarify what we would expect of third-country branches, while others may be considering business model changes that will involve setting up a UK subsidiary). If necessary we will provide that guidance in due course.

Should a firm fail to apply (or withdraw its application without submitting another), we would generally expect to start the formal procedure to cancel the firm's Part 4A permission. This process allows the firm to make representations to FCA but if we do cancel the firm's permission, it would enter the FSCR, which is intended to allow firms to run off their existing contracts with UK customers and exit the market in an orderly manner.

The Treasury has laid before Parliament the draft Financial Services Contracts (Transitional and Saving Provision)(EU Exit) Regulations 2019 (the FSCR Regs²⁹). These would have the effect that a firm in this scenario would be deemed to continue to have a Part 4A permission limited to carrying activities necessary for the performance of a pre-existing contract.

Senior Managers & Certification Regime (SM&CR) and Approved Persons Regime (APR)

- 7.49** Most respondents agreed with the proposed approach of applying the SM&CR to EEA branches while they are in the TPR. Some respondents called for greater alignment between our approach and the PRA's, with one respondent asking for us and the PRA to ensure a consistent supervisory approach is taken to applying the SM&CR under the TPR.
- 7.50** A few respondents suggested that, as the first slot for firms in the TPR to apply for full UK authorisation will be October to December 2019, it would be unlikely firms' authorisations will be in place ahead of the SM&CR commencement date for solo-regulated EEA branches on 9 December 2019. To ensure firms have the correct approval in place ahead of receiving full authorisation, respondents suggested firms should be able to apply for SM&CR controlled functions as part of their third-country branch application.
- 7.51** One respondent asked whether an individual's deemed approval for a PRA function would subsume or supersede their approval for an FCA function during the TPR.
- 7.52** A respondent also asked whether EEA branches in the TPR would be required to maintain two sets of Management Responsibilities Maps and Statements of Responsibilities to reflect the regulatory expectations of the EEA and third-country branch SM&CR regimes.

²⁹ <https://www.gov.uk/government/publications/draft-financial-services-contracts-transitional-and-saving-provision-eu-exit-regulations-2019>

Our response

We will implement our rules to apply the SM&CR to EEA branches during the TPR as consulted on. We note some respondents suggested greater alignment between us and the PRA. We have worked with the PRA to clarify the interaction between our respective policy proposals, including through a note published by the PRA on 7 January. The PRA has also addressed other feedback relating to the application of the SM&CR to firms in the TPR in its policy statement.

We recognise that the first landing slot of October to December 2019 for firms in the TPR to submit their application for full authorisation is close to the SM&CR commencement date for solo-regulated firms. We expect the new SM&CR regulatory forms for solo-regulated firms to be available ahead of these landing slots. This will mean that firms in the TPR can apply for SM&CR functions as part of their applications for full authorisation.

We expect individuals who carry out FCA functions during the TPR to continue to be approved for their FCA function. Firms can decide whether they wish to maintain two separate Management Responsibilities Maps or a 'hybrid' one. However, we expect an individual's Statement of Responsibilities to be a single document that includes all of the individual's senior management functions.

We understand firms seeking full authorisation will need time to prepare to comply with the additional Senior Management Functions that apply to third-country branches. We believe that our approach for firms in the TPR, whereby they are subject to the requirements that currently apply to EEA branches, will give firms a smooth and proportionate transition to the third-country branch regime. We will also be communicating with solo-regulated firms over the coming year as part of our wider SM&CR work to help them prepare for the commencement of the regime.

Financial Services Compensation Scheme (FSCS) ***Extension of FSCS to consumers of EEA firms in the TPR with UK establishments***

- 7.53** Most respondents agreed with our proposed approach. One respondent raised the possibility of waivers from the FSCS or exclusions for firms that will continue to provide UK consumers with compensation protection under home state schemes after Brexit. They suggested that it would be disproportionate for firms, as they would have to pay levies twice, and consumers would be able to make two separate claims for one loss in the event of firm failure (one from the FSCS and one from the home state compensation scheme).
- 7.54** One respondent asked whether the proposal is intended to restrict the FSCS to UK risks only for insurance purposes, and asked that we liaise with the PRA on this point to ensure a consistent policy approach from the regulators.

Our response

We will implement the proposals we consulted on. EEA firms covered by the FSCS in the TPR will be required to contribute to the FSCS levy from 1 April 2019, even if they were not covered by the FSCS before exit.

There is currently no guarantee that home state compensation schemes will continue to cover consumers of UK business (where eligible) after Brexit. Our changes will help to ensure that customers continue to have coverage, now through the FSCS rather than the home state compensation scheme, during the TPR when dealing with UK establishments.

The FSCS must take into account payments already made to the claimant.³⁰ The possibility of a consumer trying to access compensation from two different schemes already exists. So, the proposed approach is not a change in policy.

The PRA have set out in their policy statement their approach to insurance providers in the TPR. For insurance advisors and intermediaries which are FCA-regulated for advising and intermediating insurance, the FSCS relates only to the UK activities.

FSCS cover for activities of certain incoming fund managers without an establishment in the UK during TPR

7.55

The majority either agreed with our proposed approach or had no comments on it. One respondent did not agree, stating that there is no need for incoming TPR firms to be covered by the FSCS as no claim has been made to the FSCS regarding an incoming fund itself (other than for mis-selling claims against distributors). The respondent also suggested that an increase in FSCS participants will drive up levies and this should not drive the policy approach. One respondent also suggested that any FSCS levies collected should be calibrated to only protect UK investors in those funds.

Our response

We will proceed with the proposal as consulted on. The proposed approach will not alter the current policy intention nor the range of firms that are covered by this rule change. The approach here will not affect or change which firms participate in the scheme.

Proposed guidance for incoming EEA-based firms relating to material changes in home state compensation scheme coverage

7.56

The majority agreed with our proposed guidance. A few respondents asked for clarification on what would constitute 'material changes' in home state investor compensation scheme coverage. One suggested that now is not the appropriate time for us to take a final decision on what information firms should send to customers. They feel the proposal does not make it clear what information we require to be sent to

30 See COMP 12

consumers and we should not mandate that firms send consumers information that is not relevant or useful to them.

Our response

We have considered the comments from respondents and have updated the wording of the guidance to make it clearer by including an example of what 'material change' can mean. We will include the following line in the guidance: 'An example of a material change in home state investor compensation scheme coverage is where that coverage is removed from the UK activities of incoming EEA-based firms as a result of the UK's withdrawal from the EU.'³¹ This example is not intended to be exhaustive.

Financial Ombudsman Service

7.57 In consultation, we set out our proposal that services firms in the TPR should be included in the Compulsory Jurisdiction (CJ) of the Financial Ombudsman Service and our complaints-handling rules and guidance. The Financial Ombudsman Service is also making changes to its voluntary jurisdiction (VJ) rules (see below), issued jointly by us and the Financial Ombudsman Service.

7.58 Most respondents agreed with our proposal. Two respondents questioned the need for EEA services firms to join the CJ, where business conducted with UK consumers is covered by their home state alternative dispute resolution (ADR) scheme. One suggested that waivers should be made available to firms to ensure that they are not subject to duplicative costs. Another felt that the proposal was disproportionate if services firms are covered by numerous ADR schemes in different jurisdictions, which could lead to inconsistent outcomes for consumers. One respondent suggested that services firms may need to make significant changes to their processes to be included in the CJ.

Our response

We will introduce this proposal as consulted on with minor amendments. It is not clear whether UK consumers of EEA services firms will continue to be able to access ADR schemes in other EEA member states if the UK leaves the EU without an agreement. Including EEA services firms in the CJ will provide certainty that UK consumers of these firms will not lose their rights to refer complaints to an ADR scheme after Brexit.

Regarding duplicative costs, although the current rules allow the Financial Ombudsman Service to dismiss a complaint if it has been or is being considered by a comparable ADR scheme³², we accept that services firms may be in a position of having to pay levies and case fees

31 The guidance will therefore read: "We expect incoming EEA-based firms in the TPR or SRO to consider and communicate to their customers any material changes in home state investor compensation scheme coverage, as a result of UK withdrawal from the European Union. We would also expect such a firm to provide, on a customer's request, information concerning the firm's inclusion in any compensation schemes, including the firm's home state scheme. An example of a material change in home state investor compensation scheme coverage is where that coverage is removed from the UK activities of incoming EEA-based firms as a result of the UK's withdrawal from the EU."

32 DISP 3.3.4R

into two ADR schemes to protect UK consumers. As stated above, this would give a guarantee that UK consumers would have access to an ADR scheme after exit, in this case UK consumers could potentially use both schemes. This is already the position for incoming EEA services firms that are part of the VJ and provide access to their home state ADR scheme. In addition, the basis upon which the Financial Ombudsman Service determines complaints and its powers will not be identical to that of EEA ADR schemes.

In CP 18/29 we noted that there is a minimum Financial Ombudsman Service levy in each industry block and, that in most cases, the levy then increases in proportion to the amount of 'relevant business' that each firm does. Following the consultation and the broader feedback received, as set out above, as a general approach we have decided not to require services firms to report tariff data relating to UK business that they undertake on a cross-border basis. Consequently, services firms will be required to pay the minimum fee block levies set out in the rules or flat fees where these apply, as well as case fees. This will mean that the costs to services firms, that may have been required to pay variable fees in addition to minimum fees, will be reduced. The Financial Ombudsman is currently considering the impact that this revised approach may have on the proposed discount for firms in the VJ set out in FEES 5.3.8B R, and may decide to consult if any amendments are required.

While we appreciate that firms may need to implement changes to their processes, we believe that firms should already follow similar complaints handling processes and procedures with respect to UK and EEA consumer complaints under their home state ADR schemes due to the implementation of the ADR directive. As mentioned, there is no certainty that UK consumers will have access to an ADR scheme after Brexit and so, to ensure that there is protection for UK consumers, firms will need to comply with all requirements and timings when they enter TPR.

The final rules include a transitional provision to clarify that the rules applicable to EEA services firms in the TPR will only apply to any post-Brexit acts or omissions that are the subject of complaints under the CJ.

We note that the Brexit rule changes relating to the Financial Ombudsman Service (which come into force on exit day) delete or remove provisions in the rules being introduced for claims management companies (CMCs) (FCA 2018/56) (which comes into force on 1 April 2019). To address this, we have also introduced an amending instrument which corrects the inoperability brought about by the interaction between the Brexit and CMC rule changes. As the in-force date of these final rules will be 1 April 2019, this will ensure that CMC firms are within the CJ for all acts or omissions after Brexit.

Proposals for EEA services firms in the TPR who are already members of the VJ

7.59

Most respondents agreed with our proposed approach. One respondent asked for clarity regarding firms that are already covered by home state ADR schemes and queried whether consumer access to multiple ADR schemes could cause confusion.

Our response

We will implement this proposal as consulted on. EEA services firms currently in the VJ will have to apply for authorised status as TP firms and join the CJ if they want to continue operating in the UK for all acts or omissions after Brexit. If firms decide to stay in the VJ after Brexit, they will be limited to all acts or omissions that are pre-Brexit unless they have notified the Financial Ombudsman Service that they wish to leave, following the process set out in DISP 4.2.7R.

Disclosure of TP firm's authorisation status (status disclosure)

- 7.60** Most respondents supported our proposed rule changes on status disclosure. Two respondents stressed the practical implications of amending communications as it is not yet confirmed that the TPR is going to come into effect, so that firms do not yet know whether they will need to change their documentation. They asked for flexibility in relation to documents in circulation on or shortly after exit day so that firms have enough time and notice to make the necessary changes.
- 7.61** One respondent suggested that the same flexibility should be shown in relation to the status disclosure changes required at the time a firm leaves the TPR. Another respondent thought that the prescribed wording ought to mention the home state regulator and suggested that it was unclear what is meant by 'deemed' authorisation. Another respondent thought it would be preferable for the disclosure to cover all eventualities, rather than requiring more than one update over time.

Our response

We will implement the rules we consulted on, but will allow firms a three-month period after entering the regime to make the changes required to update their status disclosure wording. However, during that period, firms will need to continue to comply with the status disclosure requirements which applied to them immediately before exit day and should also note that Principle 7 will apply. We also remind firms of the guidance for incoming EEA-based firms relating to material changes in home state compensation scheme coverage in this context.

- 7.62** We do not believe that a similar period is required when firms leave the TPR, as there will be enough lead-in time during the authorisation/landing slot process for firms to make the necessary changes in advance.
- 7.63** Our proposed wording for solo-regulated firms does not include reference to the home state regulator on the basis that, after exit day, some protections which are currently applied and supervised in the firm's home state may fall away for UK business, so we believe the key point for consumers is that firms are subject to our rules and supervision. The disclosure directs consumers to our website, where further details of what deemed authorisation means will be available.

- 7.64** It is not possible to prescribe wording which covers multiple situations, as then the disclosure will not achieve the aim of allowing consumers to understand the status of the firm at the time they are dealing with it.

Feedback to Financial Services Contracts Regime (FSCR)

The general approach for SRO firms

- 7.65** The majority of respondents supported our proposed rule changes to give effect to our 'general approach' of applying TPR rules to SRO firms, as described in paragraphs 3.3 to 3.7 of CP19/2.
- 7.66** One respondent raised the same issues in relation to the application of the general approach and underlying rules to SRO firms as they did for TP firms. These issues are addressed as part of our response to the feedback on CP18/29 above. They also raised the issue of the different approaches taken by us and the PRA in relation to the SM&CR which is addressed above.
- 7.67** Therefore, we are implementing the proposals with minor amendments, subject to the changes being made to the rules as they also relate to TP firms described above. This includes allowing firms in SRO a three-month period to come into compliance with the status disclosure requirements, in line with what we are proposing for TP firms. This change addresses one respondent's concern that firms may not be aware of their status as an SRO firm at exit day.
- 7.68** In addition, one respondent asked for further clarification on the notification requirement for CRO firms. After exit day, the status of those firms eligible for CRO will be reflected on the Financial Services Register.

FCA fees

- 7.69** Respondents generally supported our proposed rule changes, although one respondent raised the same issues in relation to services firms discussed above. Therefore, rules on CRO fees and fees for firms moved between CRO and SRO will be implemented as proposed. The proposals for SRO will be implemented subject to the amendments explained above.

8 Binding Technical Standards

- 8.1** We have made changes to the BTS using the powers given to us by the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018. As explained in Chapter 1, all changes made using this delegated power are subject to approval by the Treasury.
- 8.2** Some BTS within the Capital Requirements Directive (CRD), the Capital Requirements Regulation (CRR), European Market Infrastructure Regulation (EMIR), the Financial Conglomerates Directive (FICOD), Markets in Financial Instruments Directive (MiFID) and the Markets in Financial Instruments Regulation (MiFIR) are relevant to firms and people supervised by us, the Bank of England and the PRA. The SI giving us the power to amend BTS designates an appropriate regulator for each BTS and, in some cases, this is shared between two regulators. The approach we, the Bank of England and the PRA are taking in preparation for exit day is that one regulator will take the lead in making corrections, based on which regulator's remit and objectives are most relevant. Where this is the case, we have collaborated with the other designated regulator to make the amendments and shared consultation responses with one another. The full list of BTS we are amending is provided at annex 3.
- 8.3** The SI giving us the power to amend BTS sets out two procedures for addressing changes to 'shared' BTS: one regulator may split the BTS into two parts or the regulators may keep the BTS intact and agree on amendments. For existing BTS that accompany EMIR and MiFIR, we, the Bank of England and the PRA have agreed that any changes to these BTS will be made using the second option both before and after exit day, that is, with each other's consent. Changes to BTS should be read alongside the amendments made to the onshored Level 1 legislation. Stakeholders may also find it useful to refer to the amendments to our Handbook where Handbook provisions and BTS interrelate.
- 8.4** Stakeholders may wish to note that we received several responses that proposed policy changes beyond our deficiency-fixing powers or that related to amendments consequential to Government legislation. An example is the treatment of exchange-traded derivatives traded on EU regulated markets which would become OTC derivatives from exit day in the absence of equivalence. This could have an effect on certain products and market participants. However, these are not issues that can be addressed by changes to our BTS.

Amendments to existing BTS

- 8.5** In CP18/28 and CP18/36 we consulted on amendments to EU BTS to address deficiencies arising from the UK's withdrawal from the EU and thereby make the BTS functional under UK law from exit day. All the BTS were linked to either an SI or Government policy note that addressed deficiencies in the relevant level 1 EU legislation and had been published by the Government up to and including 22 November 2018. This chapter sets out our response to the feedback received on the proposals to amend those BTS.

Amendments to BTS published after our consultations

8.6 We will seek to amend deficiencies in any BTS that are published between 22 November 2018 and exit day, where time allows the changes to be drafted and submitted to the Treasury. As BTS can be published at any point in this period, we will publish our approach 'as and when'. We will give stakeholders as much notice as possible and will ensure that our approach is reasonable and proportionate.

'In-flight' BTS

8.7 Under the EUWA, directly-applicable EU legislation will be incorporated into UK law only in so far as it is operative immediately before exit day. We refer to these as 'in-flight' BTS. There are several provisions of BTS which will not meet this test as they will only start to apply after exit day and, so, will not form part of UK law. We have recently consulted on incorporating certain provisions of in-flight BTS under the revised Payment Services Directive (PSD2) into UK law in CP18/44; our response to that CP will be set out in a separate policy statement. We will set out our approach to further in-flight BTS on a case-by-case basis.

8.8 There are also several EU BTS that have yet to be formally made within the EU legislative process, such as those under the Securitisation Regulation and amendments to BTS anticipated under MiFID. We will, subject to the timing of when these BTSs are operative, either make appropriate amendments to deal with deficiencies arising from withdrawal or exercise our powers under the EUWA, as appropriate, to incorporate new standards.

Feedback on BTS and our response

8.9 Most respondents agreed with our overall approach to amending the BTS, including that towards cross-cutting amendments. We will make some minor changes for consistency to all the BTS that were included in the CPs. However, we will make further minor amendments for clarification purposes to BTS under the following pieces of EU Level 1 legislation:

- Credit Rating Agencies Regulation (CRAR)
- Short Selling Regulation (SSR)
- Packaged Retail and Insurance-based Investment Products Regulation (PRIIPs)
- MIFID and MIFIR
- EMIR

8.10 Considering the feedback received, we confirm the proposed amendments set out in CP18/28 and CP18/36 to the other BTS under the following pieces of EU Level 1 legislation:

- Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
- Alternative Investment Fund Managers Directive (AIFMD)

- CRD
- CRR
- Payment Accounts Directive (PAD)
- Payment Services Directive (PSD)
- Insurance Distribution Directive (IDD)
- Market Abuse Regulation (MAR)
- Money Market Funds Regulation (MMFR)
- Prospectus Directive (PD)
- European Long-Term Investment Fund Regulation (ELTIF)
- European Venture Capital Funds Regulation (EuVECA)
- European Social Entrepreneurship Funds Regulation (EuSEF)
- Transparency Directive (TD)
- Benchmarks Regulation (BMR)

Comments in relation to consultation responses

MiFID/MiFIR BTS

- 8.11** We proposed correcting deficiencies in MiFID RTS 22 Commission Delegated Regulation (EU) No 2017/590 and RTS 23 Commission Delegated Regulation (EU) No 2017/585 which deal with transaction reporting and reporting of instrument reference data. Our proposed amendments to RTS 22 maintain the application of reporting requirements on the same categories of UK firms. For RTS 23, we proposed not to follow the general approach of replacing references to Central European Time (CET) with references to Greenwich Mean Time (GMT).

Regulator cooperation after exit and scope changes

- 8.12** Some responses demonstrated a degree of confusion about the onshoring of transaction reporting, such as our sharing of transaction reports with EEA regulators and the scope of transaction reporting in the UK after Brexit.
- 8.13** Both the SI onshoring MiFIR³³ and our proposed amendments to the BTS for transaction reporting are drafted on the basis that the UK no longer shares transaction reports with EEA regulators through the European Securities and Markets Authority (ESMA). The Transaction Reporting Exchange Mechanism (TREM) facilitates sharing of reports amongst EEA regulators who are members of ESMA and after Brexit the

33 The Markets in Financial Instruments (Amendment)(EU Exit) Regulations 2018 No. 1403:
<http://www.legislation.gov.uk/ukdsi/2018/9780111173480/contents>

UK will not be in the EEA and will not be a member of ESMA. The Memorandum of Understanding agreed between ESMA and us covering supervisory cooperation, enforcement and information exchange does not apply to the exchange of transaction reports through TREM. The changes to the existing arrangements for transaction reporting that we highlighted in paragraph 5.30 of CP18/28 flow from the assumption of not sharing transaction reports.

- 8.14** The scope of the transaction reporting obligation in the onshored version of MiFIR is linked to instruments traded on UK and EEA trading venues. The scope of reportable instruments is the same as the scope of instruments in the onshored MAR. This is designed to ensure that we can seek to identify market abuse across the full scope of the market abuse regime. ESMA publishes a database of instruments traded on trading venues in the EEA (the Financial Instruments Reference Data System (FIRDS)). In a no-deal scenario, we will operate our own equivalent of FIRDS, which will be based on the functionality of ESMA's FIRDS. This is so that market participants can have access to reference data for instruments that are traded on trading venues in the UK and in the EEA.

Operational challenges

- 8.15** Respondents expressed significant concerns about the operational challenges that firms and trading venues would face in relation to transaction reporting if the UK leaves the EU at the end of March without an implementation period. There were several requests for forbearance in these circumstances. We do not propose to waive transaction reporting obligations in these circumstances using the TTP. We explain this further in Chapter 3 and in our statement on the use of the TTP.
- 8.16** UK branches of EEA firms that are in the TPR and are acting as Systematic Internalisers in the UK will need to report instrument reference data to us under Article 27 of the onshored MiFIR. Some respondents asked whether the scope of the existing obligation would be extended to cover not only instruments mentioned in Articles 26(b) and (c) of MiFIR, but also instruments admitted to trading or traded on UK and EEA trading venues whose identifying reference data has been provided by those trading venues. The scope of the obligation is not being extended beyond what is set out in Article 27 of the MiFIR onshoring SI.

Reporting by branches of EEA firms in the TPR

- 8.17** We received questions about transaction reporting by branches of EEA firms that have entered the TPR. These focused on how to determine when the branch is executing a transaction and the need for Approved Reporting Mechanisms (ARMs) and trading venues to know when a transaction has been executed by a branch, as opposed to a firm's head office. We do not currently intend to provide guidance on when branches have executed a transaction. We are open to individual firms submitting queries or industry groups talking to us about issues of concern among their members.
- 8.18** Firms need to determine whether they have a transaction reporting obligation in relation to a trade. We expect them to inform ARMs of the transactions they consider must be reported to us (and/or to EEA regulators). We also expect firms to inform trading venues of those transactions executed by the UK branch of the firm (where the firm will have reporting obligations to us the trading venue will not have to report the transaction to us under Article 26(5) of the onshored MiFIR). We also expect trading venues to ask their member firms whether they must make transaction reports to us for a given transaction.

CET, national identifiers and validation rules

- 8.19** In line with respondents' preferred approach to RTS 23, we have maintained the drafting of the BTS related to transaction reporting in CP18/28 which left references to CET unchanged.
- 8.20** Our proposed change to Annex III of RTS 22 was to have the effect that the UK national identifier should be used for persons of dual nationality, rather than the identifier for whichever country of the dual nationality comes first in the alphabetical ordering. Respondents felt this change would cause significant work to obtain the new identifiers for the individuals affected. As a result, we have decided not to make the change we proposed in Annex III.
- 8.21** Respondents stressed that they did not want any differences between the validation rules for reports submitted to EEA regulators and those submitted to us. We confirm that it is our intention, as far as is practical, to keep the validation rules for transaction reports and instrument reference data aligned with the ESMA validation rules for transaction reports and instrument reference data.

Scope of application of the terms 'regulated market', 'MTF', 'OTF' and 'trading venues'

- 8.22** Some respondents raised concerns about potential confusion regarding the scope of application of the terms 'regulated market', 'MTF', 'OTF' and 'trading venues'. This was because these terms could refer to UK or EU entities or be territorially neutral. Our approach in the MiFIR BTS follows that in the onshored MiFIR. There is a provision in the definitions that specifies that unless the context otherwise requires, the references to these terms are to UK entities. So, we have decided to confirm our proposed changes.

Short Selling Regulation BTS

- 8.23** We received requests for Chapter V of Commission Implementing Regulation (EU) No 827/2012 to explicitly state when principal trading venue calculations will take place under the new UK regime. We have amended the text to make clear the date of application and when subsequent calculations should commence.

Credit Rating Agencies Regulation BTS

- 8.24** In CP18/28, we proposed amendments to four BTS associated with the CRAR. Following comments from one respondent on the initial reporting requirements contained in Commission Delegated Regulation (EU) No 2015/2 (in Annex D of Appendix 2 of CP18/28), we have amended Article 11(1) to require a first report to be reported to us 'on exit day or on such later day as notified by the FCA'. Articles 8, 9 and 11 of that Delegated Regulation set out what information is required in the initial report. We continue to engage with CRAs to provide further clarification on reporting requirements.
- 8.25** The provisions for endorsement and certification in CRAR will apply after exit, modified to work in a UK context, allowing ratings issued in third countries (and which meet certain conditions) to be used for regulatory purposes in the UK. To ensure continuity at the point of exit, existing decisions made by the Commission and ESMA on non-EU countries on certification and endorsement will be retained. The CRAR SI also includes a transitional period to allow for ratings issued or endorsed in the EU before exit day by a CRA with a group affiliate that registers/applies for registration with us to be used in the

UK for regulatory purposes for up to one year. After this time, all ratings will need to be issued or endorsed into the UK to be eligible for regulatory use in the UK.

- 8.26** Respondents were concerned that, as part of the proposed amendments to Commission Delegated Regulation (EU) 2015/2 of 30 September 2014, we were omitting text in the recitals and Annex referring to use of the Legal Entity Identifier (LEI). However, the relevant text does not appear in the draft instrument in CP18/28 because no amendments are being made to it, not because it is being omitted. This is consistent with our general approach in the CP and FCA instruments to present only the proposed changes to the Handbook and BTS.

Capital Requirements BTS

- 8.27** Following our review of stakeholder feedback, we do not propose making any changes to the onshoring amendments of the BTS adopted under CRD IV and CRR. However, we intend to make the same changes as the PRA have made after considering their CP responses. This will result in separate but identical onshored BTS applying to PRA-authorized and FCA-authorized firms, respectively.

Market Abuse Regulation BTS

- 8.28** A small number of respondents asked how the reference to 'competent authority' in BTS 2016/958 Article 2(2) should be read – ie whether it includes only EU competent authorities or also third-country competent authorities. For the avoidance of doubt, stakeholders should refer to the MAR SI which provides a definition of 'competent authority'. This includes both EU and third-country competent authorities. This is applicable for BTS 2016/958. A person or firm making an investment recommendation could be from a third-country and so would have a third country competent authority in that instance. We do not propose to amend the relevant BTS, as we consider the MAR SI definition sufficiently clarifies this point.

European Market Infrastructure Regulation BTS

- 8.29** We note the concerns that some respondents raised regarding changes to the operational standards for trade repositories. However, these changes are critical for exit day as they enable us to perform our supervisory functions in relation to TR's. We are confirming our proposed changes to BTS 151/2013.
- 8.30** We also note that new transitional provisions in relation to certain margin requirements have been included in BTS 2016/2251 (for which the PRA is the lead regulator). We refer market participants to the PRA Policy Statement for further details.
- 8.31** We have amended references in EMIR technical standards to accounting standards, so that they are consistent with the onshoring of relevant EU accounting law.³⁴

Benchmarks Regulation BTS

- 8.32** We have made minor amendments to the BMR BTS in line with our baseline approach. We were asked whether the BTS that fall within the Technical Standards (Benchmark Regulation) (EU Exit) Instrument 2019 will apply exclusively to UK benchmark

³⁴ See The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019.

administrators. To clarify, there are provisions of the onshored BMR which will apply regarding entities other than UK benchmark administrators. For example, third-country benchmark administrators that wish their benchmarks to be used by UK supervised entities will need to apply under the Recognition or Endorsement regimes which will involve them opting into, and complying with, the relevant BMR requirements.

PRIIPS BTS

- 8.33** One respondent suggested that, when onshoring the methodology that a PRIIP manufacturer must follow when assessing the credit risk of a PRIIP, we should not disempower the UK from being able to deem non-UK jurisdictions equivalent under UK law. We accept this and have amended the text in Annex II so that in paragraph 43 where the default credit assessment is detailed, paragraph (a)(iii) will now also refer to a legal framework that may be deemed equivalent under either UK or EU law. This approach also reflects our position of maintaining operable equivalence with the calculation methodologies in the EU PRIIP RTS.
- 8.34** The respondent also suggested that the statement in the PRIIPs KID referring to the potential effect of tax legislation on pay-out should refer to both UK tax legislation and other applicable legislation. We consider it to be unlikely that most UK consumers will be subject to non-UK tax, so we have decided not to change the approach set out in the CP.

9 Credit rating agencies, trade repositories and securitisation repositories

9.1 Parliament has passed legislation that makes us the supervisor responsible for CRAs and TRs registered under the UK regime. This legislation also allows us to apply our existing supervisory and enforcement processes as necessary to enable us to fulfil these new roles effectively.

9.2 When the Securitisation Regulation came into effect on 1 January 2019, firms wishing to establish SRs could apply to be regulated by the ESMA. After Brexit, we expect to become their regulatory authority in the UK.

9.3 On 2 January 2019, we issued final rules that implement the Securitisation Regulation and an associated CRR amendment. The final rules amended various parts of our Handbook, including:

- the Fees sourcebook
- the Investment Funds sourcebook (FUND)
- the Collective Investment Schemes sourcebook (COLL)
- the Prudential sourcebook for Investment Firms (IFPRU)
- the Decision Procedure and Penalties manual (DEPP)
- the Enforcement Guide (EG)

9.4 We are making minor consequential changes to the parts of the Handbook listed above to remain consistent with wider UK legislation and the UK's future position outside the EU.

Feedback on CP18/36

9.5 In CP18/36, we proposed minor amendments to DEPP and EG. These amendments were to reflect the changes made by the legislation and to describe our enforcement powers and processes in relation to CRAs and TRs. We asked: Do you agree that the proposals to amend DEPP and EG reflect the changes made by legislation? If not, why?

9.6 All respondents to this question agreed with our proposed changes, subject to one point. Two respondents noted that we proposed a change to EG 19.15.5 (the conduct of investigations under the Money Laundering Regulations). This states that when deciding whether a person has failed to comply with the Money Laundering Regulations, we must consider whether he or she followed any of the relevant guidance set out under EG 19.15.53. We proposed that 'must consider' should be replaced by 'may have regard to, as appropriate'. We have considered the suggestion that the current wording should be retained and agree that we will not amend EG 19.15.5.

Our response

Subject to keeping the original wording of EG 19.15.5, we will proceed with the proposed changes.

Fees proposals for credit rating agencies, trade repositories and securitisation repositories

- 9.7** In Chapter 2 of our fees policy CP18/34, published in November 2018, we set out our proposed fees structure for CRAs and TRs after regulation passes to us from ESMA. We consulted on three proposals, covering application fees, the structure of periodic fees and fees for third-country firms. In CP19/1 we consulted on similar proposals for SRs. The consultation period for CP19/1 closed on 11 February and we will provide feedback on all these proposals at the end of March.

Future consultation on DEPP and EG

- 9.8** In March we will consult on proposed amendments to the DEPP and EG to reflect changes required as a result of the Securitisation (Amendment) (EU Exit) Regulations 2019 and the Securitisation Regulations 2018.

10 Guidance on European non-legislative materials, non-Handbook guidance and forms

Our proposed guidance

- 10.1** This chapter sets out the feedback we received to the proposals in CP18/28 and CP18/36 on our approach to EU Level 3 material, non-Handbook guidance and forms. We also set out the decisions we have taken to finalise this guidance.

General approach to EU Level 3 materials and non-Handbook Guidance

- 10.2** In CP18/28, we explained that the broad range of non-legislative material produced by the ESAs or their predecessor bodies – known as EU Level 3 material – would not be incorporated into UK law by the EUWA. We noted that the EU-derived law to which the non-legislative material relates has largely been retained. We consider that the EU non-legislative material will remain relevant after Brexit – especially for market participants in their compliance with regulatory requirements, including provisions in our Handbook.
- 10.3** We proposed issuing non-Handbook guidance on our approach after exit day to existing EU Level 3 material. We also said we would not carry out a detailed line-by-line review of all existing EU Level 3 materials.
- 10.4** In CP18/36, we also set out our general approach to non-Handbook guidance, including how existing non-Handbook guidance should be interpreted where it related to EU law or EU-derived law for matters arising on or after exit day.
- 10.5** Our expectation was that financial institutions and other market participants would interpret non-Handbook guidance sensibly and purposively, considering the provisions of the EUWA and any changes made to the underlying requirement as it is preserved or converted into UK law. We set out in the CP³⁵ proposed guidance on our approach to non-Handbook guidance. We asked for stakeholders' views on this guidance. We also asked whether they thought any non-Handbook guidance should be specifically reviewed and amended because the interpretive approach would not be enough to ensure the regulatory framework remained fit for purpose.
- 10.6** *Feedback received*
We received 19 responses on our approach to EU Level 3 materials. We received a further six responses on our approach to non-Handbook guidance. In both cases, the responses indicated broad support for our proposed approach and no one requested that we review any specific guidance before exit day. Some highlighted instances where stakeholders place reliance on EU Level 3 material to interpret and apply EU requirements (for instance, with respect to some reporting requirements). These are covered by our general approach.

35 See Appendix 1 at <https://www.fca.org.uk/publication/consultation/cp18-36.pdf>

10.7 Many responses raised specific points or questions on different aspects of the proposed non-Handbook guidance on EU Level 3 materials and/or our approach to our existing non-Handbook Guidance related to EU law or EU-derived law. These are set out below.

- A small number of respondents were concerned about the uncertainty our approach to EU Level 3 materials and existing non-Handbook Guidance would involve and the risk of inconsistencies emerging. We were asked to be ready to clarify where difficulties in interpretation arose and that any divergence from the existing EU Level 3 material should be flagged to stakeholders.
- Linked to this, a small number of respondents asked that we adopt a pragmatic and flexible approach to supervising adherence to EU Level 3 material and that we clarify whether we would take enforcement action against regulated entities with respect to their interpretation of EU Level 3 material.
- We were asked to ensure that a repository or list of all relevant EU Level 3 material was available and that we clarify whether ESA consultation documents should be considered EU Level 3 material.
- A small number of respondents recommended that we undertake a review of EU Level 3 material as soon as possible after Brexit, focusing on the material considered to be of greatest relevance to the sound functioning of UK markets. Respondents noted that stakeholders did not always agree that EU Level 3 materials produced by the ESAs were legally sound and that some were contradictory or beyond their powers.
- One respondent asked that we clarify how EU Level 3 material that the ESAs withdraw or amend after Brexit should be treated.

Our response

10.8 Given the broad agreement reflected in the responses we received, we confirm our general approach to EU Level 3 material and to non-Handbook guidance related to EU law or EU-derived law. The finalised non-Handbook guidance can be found at Appendices 3 and 4.

10.9 With respect to the additional points raised in the responses:

- As explained in our draft guidance on our approach to EU non-legislative materials (Appendix 3 to CP18/28), we expect firms and market participants to continue to apply ESA Guidelines to the extent that they remain relevant, as they did before exit-day. They will need to interpret them considering Brexit and the associated legislative changes that are being made to ensure the regulatory framework operates appropriately. Queries regarding Level 3 material can continue to be raised with us as they are currently.
- We confirm that we will adopt a pragmatic approach to the supervision and enforcement of adherence to EU Level 3 materials. We appreciate there may be some challenges for stakeholders in interpreting EU Level 3 material.
- We will be providing a repository of the EU Level 3 material in effect at the point of Brexit on our Handbook website. We do not consider that ESA consultation

documents constitute EU Level 3 material, as such material is not finalised. We will continue to have regard to material such as consultation papers where and if relevant – for example, in the clarification of the intention of the final material it relates to.

- We do not expect to review EU Level 3 materials and/or guidance. Instead, we anticipate that our individual policy teams will review content as and when EU or domestic legislation changes.

Remuneration requirements in SYSC 19

- 10.10** In CP18/28, we proposed to change how we refer to the European Banking Authority (EBA) Guidelines on Applicable Notional Discount Rate for variable remuneration, as published on 27 March 2014.
- 10.11** Our Handbook currently makes it mandatory for firms wishing to apply the discount rate to apply the methodology set out in the EBA Guidelines. We proposed to remove the requirement to discount variable remuneration in the way specified in the EBA Guidelines and to replace this with a Handbook note reference.
- 10.12** We received no feedback on this proposal and, therefore, we confirm our proposed change.

Forms

- 10.13** In CP18/36, we proposed not to carry out a detailed line-by-line review of all our Handbook forms to identify and resolve provisions that would no longer have their intended effect after Brexit. Instead, we produced a guide that set out the approach we expected users of our Handbook forms to take to interpret and complete the Handbook forms sensibly and purposively. In that guide, we noted that we expected to issue interpretative guidance regarding non-Handbook forms (hosted on our website) and that the guidance would be similar to that for Handbook forms. We also noted that CRR BTS forms would not be changed for exit day and should be read in line with separate FCA interpretative guidance that would be published in due course.
- 10.14** We received no feedback but we have changed the Forms guide to:
- Include non-Handbook forms.
 - Clarify the approach in respect of Gibraltar, TPR firms and the interaction with the transitional directions.
 - Add more explanatory text about BTS forms.
- 10.15** For Gibraltar-based firms able to exercise passport rights, the Government's commitment means they continue to be able to exercise such rights after exit day. This means that applicable forms pre-exit may continue to be relevant. Gibraltar-based firms should consider whether EU-based references remain applicable to them.

- 10.16** For TP firms, some references within forms to passporting firms (and related concepts) may still be relevant. For example, although there are no longer 'incoming EEA firms' on exit day there are TP firms which used to be incoming EEA firms or incoming Treaty firms (some of whom may still be operating without a UK branch), and such firms should consider whether EU-based references remain applicable to them. Applicable forms pre-exit may also continue to be relevant on exit day.
- 10.17** Forms included in EU BTS and now incorporated into UK law (BTS forms), other than the reporting and disclosure requirements based on the Capital Requirements Regulation (CRR BTS forms), have all been amended to address EU-based references. The forms guide gives a brief explanation what to do when stakeholders complete BTS forms. The online tool for reporting suspicious transactions and orders under MAR will continue to be used in place of the template form in the relevant BTS.
- 10.18** As suggested in CP18/36, we will be adding a banner to our website where all Handbook forms are listed, directing users to the guide. The finalised guide can be found at Appendix 5 and on our website.

Annex 1

List of non-confidential respondents

CP	Title	Non-confidential Respondents
CP18/28 & 18/36	Brexit: Changes to Handbook and BTS – first & second consultations	Association of Financial Markets of Europe *Responded to both CPs Association of Foreign Banks *Responded to both CPs Association of Professional Compliance Consultants Cboe Europe Chase de Vere *Responded to both CPs Company Finance and Leasing Association European Venues and Intermediaries Association Global Legal Entity Identifier Foundation (GLEIF) International Swaps and Derivatives Association *Responded to both CPs REGIS-TR Institutional Relations *Responded to both CPs Rodhouse Compliance Services Limited *Responded to both CPs
CP18/29	Temporary permissions regime for inbound firms and funds	Amundi Asset Management Caixabank Asset Management Luxembourg Company Finance & Leasing Association Ersel Gestion Internationale S.A European Venues and Intermediaries Association Fitzgerald Brennan Asset Management DAC Institutional Money Market Funds Association Limited Miss Cherie Nelson Munich Re Group Portland Hill Asset Management Limited TheCityUK Union Investment Institutional GmbH Zeidler Legal Services
CP18/34	Regulatory fees and levies for 2019/20 Responses to Q10 only Firms in the temporary permissions regime to contribute to the devolved authorities' debt advice levy (Q10)	Olan Homes Limited
CP19/2	Brexit and contractual continuity	Association of Professional Compliance Consultants

Annex 2 Overview of sourcebooks, BTS & stakeholders

These tables are provided as a guide and do not necessarily capture all interested stakeholders and parties.

Section	Sourcebook and chapters-CP18/28	Sourcebook and chapters -CP18/36	Stakeholders
High-level standards	SYSC (1, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 18, 19, 20, 21, TP2, TP3, Schedule 2) FINMAR (All) GEN (2,6 and TP1)	APER (All) COCON (All) COND (All) FEES (1-4,6,7,7A,8-11,13, App1-3) FIT (All) GEN (1,2,4,5,7, TP3) PRIN (All) SYSC (2, 3, 4.4, 5.2, 10, 10A, 12, 19F.2, 22, 23, 24, 25, 26, 27, 28, TP5, 7) TC (All)	<ul style="list-style-type: none"> All authorised persons, firms, employees and consumers (for CMCs see below) Firms, Lloyds, managing agents, members agents Claims management companies (CMCs) that are set up or serving customers, in England, Scotland and Wales – see only SYSC; GEN; PRIN
Prudential Standards	GENPRU (1,2, Schedules) BIPRU (All) IFPRU (All except 11) INSPRU (All) MIPRU (4) IFPRU-FSOC (All) IPRU-INS (All) IPRU-INV (All except 14)	GENPRU (3 and schedules) IFPRU (11) IPRU-INV (14) MIPRU (1,2,3,5)	<ul style="list-style-type: none"> Investment firms (and groups containing such entities) Mortgage and home finance firms, insurance intermediaries (and groups containing such entities), insurers

Section	Sourcebook and chapters-CP18/28	Sourcebook and chapters -CP18/36	Stakeholders
Business Standards	COBS MAR	BCOBS (All) CASS (All) COBS (All) ICOBS (All) MAR (1, 2, 4, 8, TP1.1, TP1.2) MCOB (All) PROD (All)	<ul style="list-style-type: none"> • Firms that offer savings and current accounts, consumers. • Authorised persons and firms holding client assets • Investment firms and other firms undertaking designated investment business and long-term insurance business in relation to life policies. • Firms undertaking non-investment general insurance and protection business and distribution. • Regulated markets, Operators of MTFs, Operators of OTFs, Systematic Internalisers, Algorithmic Traders, Data Reporting Service Providers (DRSPs), stakeholders involved in the buying, selling and trading of financial instruments, persons trading in commodity derivatives. • Firms undertaking home finance activities and their consumers. • CMCs that are set up or serving customers, in England, Scotland and Wales – see only CMCOB found in the separate CMC instrument
Regulatory processes	SUP	DEPP (1,2,7, Schedule 3) SUP (1A, 2, 7, 9, 10A, 10C, 11, 12, 13, 13A, 14, 15, 15A, 15B, 16, 17A, 18 and APP2, Schedules 1, 4, 5, 6, TP 5-9)	<ul style="list-style-type: none"> • All authorised persons, firms and consumers (for CMCs see below) • CMCs that are set up or serving customers, in England, Scotland and Wales – see only SUP
Redress	CONRED (All)	COMP (All) DISP (All)	<ul style="list-style-type: none"> • All authorised persons, consumers and firms (for CMCs see below) • CMCs that are set up or serving customers, in England, Scotland and Wales – see only DISP

Section	Sourcebook and chapters-CP18/28	Sourcebook and chapters -CP18/36	Stakeholders
Specialist sourcebooks	COLL (All) FUND (All) RCB (All)	COLL (1,4) CONC (All) CREDS (All) FUND (1,4) PROF (All) REC (All)	<ul style="list-style-type: none"> • Managers and depositaries of UK-authorized collective investment schemes and/or EEA UCITS schemes • Managers and depositaries of alternative investment funds • Covered bonds issuers and owners • Firms that offer credit-related activities and their consumers • Credit unions • Lawyers, actuaries and accountants who undertake regulated activities • Recognised investment exchanges and clearing houses
Listing, Prospectus and Disclosure		DTR (1A, 1B, 1C, 4-8, TP1 and schedules) LR (All) PR (All)	<ul style="list-style-type: none"> • Issuers and stakeholders involved in the buying, selling and trading of financial instruments, primary information providers • Issuers with listed securities or seeking a listing of their securities, their advisors, and other.
Handbook Guides		BENCH (All)	<ul style="list-style-type: none"> • Firms that provide or administer benchmarks
Regulatory Guides	WDPG (All) RPPD (All) M2G (All)	EG (1-4, 6-11, 13, 14, 19, 20, Appendix 3) UNFCOG (All)	<ul style="list-style-type: none"> • All authorised persons and firms, consumers (for CMCs see below). • Regulated firms involved in the supply of products or services to retail customers • All persons within MiFID scope, MiFID optional exemption firms • CMCs that are set up or serving customers, in England, Scotland and Wales – see only WDPG and for PERG see the separate CMC instrument

Section	Sourcebook and chapters-CP18/28	Sourcebook and chapters -CP18/36	Stakeholders
Glossary			<ul style="list-style-type: none"> • All authorised persons, firms and consumers (for CMCs see below) • CMCs that are set up or serving customers, in England, Scotland and Wales – see:³⁶ <ul style="list-style-type: none"> • agreeing to carry on a regulated activity; • EEA State; • Respondent; • Consumer; • data protection legislation

List of BTS sources and stakeholders

EU legislation under which BTS are made	Examples of Stakeholders
Credit Rating Agencies Regulation (CRAR)	Credit rating agencies registered with the us after exit.
Alternative Investment Fund Managers Directive (AIFMD)	Managers and depositaries of alternative investment funds.
Undertakings for Collective Investment in Transferable Securities Directive (UCITS)	Managers and depositaries of UK UCITS and EEA UCITS schemes.
European Market Infrastructure Regulation (EMIR)	Financial markets infrastructure firms and their users including: credit institutions, investment firms and other financial services firms.
Markets in Financial Instruments Directive and Regulation (MiFID/MiFIR)	All persons within MiFID scope and MiFID optional exemption firms (firms providing investment advice and/or receiving and transmit orders), e.g. investment firms, data reporting service providers.
Short Selling Regulation (SSR)	Investment firms and investment managers involved in the short selling of UK listed shares or sovereign debt, which are already regulated in the UK under the EU SSR.
Capital Requirements Directive and Regulation (CRD/R)	Banks, building societies and investment firms already regulated in the UK under the EU CRD IV/CRR.
Packaged Retail and Insurance-based Investment Products Regulation (PRIIPs)	Manufacturers of products that are classed as PRIIPs and issuers of securities that are classed as PRIIPs (including businesses that do not require Part 4A authorisation under FSMA), life companies, discretionary investment management firms, firms providing services in relation to insurance based products, fund managers, wealth managers, stockbrokers and other firms that provide advice to retail clients on funds, structured products and derivatives, financial advisers, firms operating retail distribution platforms.
Payment Accounts Directive (PAD)	Payment account providers (banks, building societies, and some credit card providers, money remitters and e-money issuers) and their customers.

36 As CMC rules were published after the proposed Brexit changes were consulted on, we set out above the specific sourcebooks relevant to CMCs which have been amended following the feedback on the Brexit consultation papers

EU legislation under which BTS are made	Examples of Stakeholders
Payment Services Directive (PSD)	Payment service providers (banks, building societies, credit card providers, money remitters and e-money issuers) and their customers.
Markets Abuse Regulation (MAR)	Persons professionally arranging or executing transactions registered or having their head office in the UK or with a branch situated in the UK, UK trading venues, issuers with financial instruments traded on UK trading venues, emission allowance market participants (EAMPs) registered in the UK, persons discharging managerial responsibilities as well as persons closely associated with them for the issuers and EAMPs above, disclosing market participants for market soundings, persons producing or disseminating investment recommendations or other information recommending or suggesting an investment strategy.
Benchmarks Regulation (BMR)	Benchmark administrators; supervised contributors and benchmark users.
Money Markets Funds Regulation (MMFR)	Managers and depositaries of money market funds.
Transparency Directive (TD)	Issuers of securities traded in the UK market.
Prospectus Directive (PD)	Market participants raising capital through public offers or issuing securities in the UK market.
European Long-Term Investment Fund Regulation (ELTIF)	Managers and depositaries of ELTIFs.
European Venture Capital Funds Regulation (EuVECA)	Managers and depositaries of registered EuVECA funds.
European Social Entrepreneurship Funds Regulation (EuSEF)	Managers and depositaries of registered EuSEFs.
Insurance Distribution Directive (IDD)	Insurance companies (including reinsurers), insurance intermediaries and reinsurance intermediaries, Lloyd's market participants, customers of insurance products, mortgage intermediaries.

Annex 3

List of Binding Technical Standards

These are listed in the order they appear in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018, SI 2018/1115.^{37 38}

Alternative Investment Fund Managers Directive

Commission Delegated Regulation (EU) 694/2014 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers.

Credit Rating Agencies Regulation

Commission Delegated Regulation (EU) 447/2012 of 21 March 2012 supplementing Regulation (EC) 1060/2009 of the European Parliament and of the Council on credit rating agencies by laying down regulatory technical standards for the assessment of compliance of credit rating methodologies.

Commission Delegated Regulation (EU) 449/2012 of 21 March 2012 supplementing Regulation (EC) 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on information for registration and certification of credit rating agencies.

Commission Delegated Regulation (EU) 2015/1 of 30 September 2014 supplementing Regulation (EC) 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by the European Securities and Markets Authority.

Commission Delegated Regulation (EU) 2015/2 of 30 September 2014 supplementing Regulation (EC) 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies make available to the European Securities and Markets Authority.

Commission Delegated Regulation (EU) 2015/3 of 30 September 2014 supplementing Regulation (EC) 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments.

European Market Infrastructure Regulation

Commission Implementing Regulation (EU) 1248/2012 of 19 December 2012 laying down implementing technical standards with regard to the format of applications for registration of trade repositories according to Regulation (EU) 648/2012 of the

37 We are not amending the Technical Standards under the Mortgage Credit Directive listed in SI 2018/1115. These are dealt with in secondary legislation.

38 We propose to amend the Technical Standards under Commission Delegated Regulation 2018/389 and this will be set out in a separate Policy Statement.

European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.

Commission Delegated Regulation (EU) 150/2013 of 19 December 2012 supplementing Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the details of the application for registration as a trade repository.

Commission Delegated Regulation (EU) 151/2013 of 19 December 2012 supplementing Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data.

European Social Entrepreneurship Fund Regulation

Commission Implementing Regulation (EU) 594/2014 of 3 June 2014 laying down implementing technical standards with regard to the format of the notification according to Article 17(1) of Regulation (EU) 346/2013 of the European Parliament and of the Council on European social entrepreneurship funds.

European Venture Capital Funds Regulation

Commission Implementing Regulation (EU) 593/2014 of 3 June 2014 laying down implementing technical standards with regard to the format of the notification according to Article 16(1) of Regulation (EU) 345/2013 of the European Parliament and of the Council on European venture capital funds.

Insurance Distribution Directive

Commission Implementing Regulation (EU) 2017/1469 of 11 August 2017 laying down a standardised presentation format for the insurance product information document.

Market Abuse Regulation

Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 2016/378 of 11 March 2016 laying down implementing technical standards with regard to the timing, format and template of the submission of notifications to competent authorities according to Regulation (EU) 596/2014 of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 2016/523 of 10 March 2016 laying down implementing technical standards with regard to the format and template for notification and public disclosure of managers' transactions in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council.

Commission Delegated Regulation (EU) 2016/908 of 26 February 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance.

Commission Delegated Regulation (EU) 2016/909 of 1 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications.

Commission Delegated Regulation (EU) 2016/957 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and reporting abusive practices or suspicious orders or transactions.

Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest.

Commission Implementing Regulation (EU) 2016/959 of 17 May 2016 laying down implementing technical standards for market soundings with regard to the systems and notification templates to be used by disclosing market participants and the format of the records in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council.

Commission Delegated Regulation (EU) 2016/960 of 17 May 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings.

Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures.

Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 2017/1158 of 29 June 2017 laying down implementing technical standards with regards to the procedures and forms for competent authorities exchanging information with the European Securities Market Authority.

Markets in Financial Instruments Directive

Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

Commission Delegated Regulation (EU) 2017/566 of 18 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on Markets in Financial Instruments with regard to regulatory technical standards for the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions.

Commission Delegated Regulation (EU) 2017/568 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets.

Commission Delegated Regulation (EU) 2017/569 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the suspension and removal of financial instruments from trading.

Commission Delegated Regulation (EU) 2017/570 of 26 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards for the determination of a material market in terms of liquidity in relation to notifications of a temporary halt in trading.

Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers.

Commission Delegated Regulation (EU) 2017/573 of 6 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on requirements to ensure fair and Non-discriminatory co-location services and fee structures.

Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks.

Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions.

Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution.

Commission Delegated Regulation (EU) 2017/578 of 13 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes.

Commission Delegated Regulation (EU) 2017/584 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying organisational requirements of trading venues.

Commission Delegated Regulation (EU) 2017/586 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations.

Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds.

Commission Delegated Regulation (EU) 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives.

Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business.

Commission Implementing Regulation (EU) 2017/953 of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

Commission Implementing Regulation (EU) 2017/980 of 7 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities in accordance with Directive 2014/65/EU of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 2017/981 of 7 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation in accordance with Directive 2014/65/EU of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 2017/988 of 6 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State.

Commission Implementing Regulation (EU) 2017/1005 of 15 June 2017 laying down implementing technical standards with regard to the format and timing of the communications and the publication of the suspension and removal of financial instruments pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

Commission Delegated Regulation (EU) 2017/1018 of 29 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions.

Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators.

Commission Implementing Regulation (EU) 2017/1110 of 22 June 2017 laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting services and related notifications pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

Commission Implementing Regulation (EU) 2017/1111 of 22 June 2017 laying down implementing technical standards with regard to procedures and forms for submitting information on sanctions and measures in accordance with Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

Commission Delegated Regulation (EU) 2017/1943 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms.

Commission Implementing Regulation (EU) 2017/1944 of 13 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 2017/2382 of 14 December 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with Directive 2014/65/EU of the EU Parliament and of the Council.

Markets in Financial Instruments Regulation

Commission Delegated Regulation (EU) 2016/2020 of 26 May 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation.

Commission Delegated Regulation (EU) 2016/2022 of 14 July 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards concerning the information for registration of third-country firms and the format of information to be provided to the clients.

Commission Delegated Regulation (EU) 2017/572 of 2 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of the offering of pre-and post-trade data and the level of disaggregation of data.

Commission Delegated Regulation (EU) 2017/577 of 13 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations.

Commission Delegated Regulation (EU) 2017/579 of 13 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the direct, substantial and foreseeable effect of derivative contracts within the Union and the prevention of the evasion of rules and obligations.

Commission Delegated Regulation (EU) 2017/580 of 24 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments.

Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives.

Commission Delegated Regulation (EU) 2017/585 of 14 July 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities.

Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser.

Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities.

Commission Delegated Regulation (EU) 2017/2194 of 14 August 2017 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to package orders.

Commission Delegated Regulation (EU) 2017/2417 of 17 November 2017 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivatives.³⁹

Packaged Retail and Insurance Based Investment Products Regulation

Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for Packaged Retail and Insurance Based Investment Products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents.

Payment Services Directive

Commission Delegated Regulation (EU) 2017/2055 of 23 June 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for the cooperation and exchange of information between competent authorities relating to the exercise of the right of establishment and the freedom to provide services of payment institutions.

Prospectus Directive

Commission Delegated Regulation (EU) No 382/2014 of 7 March 2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus.

Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004.

Short Selling Regulation

Commission Delegated Regulation (EU) 826/2012 of 29 June 2012 supplementing Regulation (EU) 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares.

Commission Implementing Regulation (EU) 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of

39 This was incorrectly listed under the UCITS Directive heading in the original print of SI 2018/1115.

agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps(g).

Commission Delegated Regulation (EU) 919/2012 of 5 July 2012 supplementing Regulation (EU) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments.

Transparency Directive

Commission Delegated Regulation (EU) 2015/761 of 17 December 2014 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings.

Commission Delegated Regulation (EU) 2016/1437 of 19 May 2016 supplementing 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on access to regulated information at Union level.

Undertakings for Collective Investment in Transferable Securities Directive

Commission Implementing Regulation (EU) 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities.

Commission Implementing Regulation (EU) 2016/1212 of 25 July 2016 laying down implementing technical standards with regard to standard procedures and forms for submitting information in accordance with Directive 2009/65/EC of the European Parliament and of the Council.

Bank Recovery and Resolution Directive

Commission Implementing Regulation (EU) 2016/911 of 9 June 2016 laying down implementing technical standards with regard to the form and the content of the description of group financial support agreements in accordance with Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms.

Articles 1 to 21, 33 to 34, 42 to 49 of Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion

powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges.

Capital Requirements Directive

Commission Delegated Regulation (EU) 524/2014 of 12 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information that competent authorities of home and host Member States supply to one another.

Commission Delegated Regulation (EU) No 527/2014 of 12 March 2014 supplementing Directive (EU) No 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the classes of instruments that adequately reflect the credit quality of an institution as a going concern and are appropriate to be used for the purposes of variable remuneration.

Commission Delegated Regulation (EU) 530/2014 of 12 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards further defining material exposures and thresholds for internal approaches to specific risk in the trading book.

Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile Text with EEA relevance.

Commission Implementing Regulation (EU) 620/2014 of 4 June 2014 laying down implementing technical standards with regard to information exchange between competent authorities of home and host Member States, according to Directive 2013/36/EU of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 650/2014 of 4 June 2014 laying down implementing technical standards with regard to the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities in accordance with Directive 2013/36/EU of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 710/2014 of 23 June 2014 laying down implementing technical standards with regard to conditions of application of the joint decision process for institution-specific prudential requirements according to Directive 2013/36/EU of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 926/2014 of 27 August 2014 laying down implementing technical standards with regard to standard forms, templates and procedures for notifications relating to the exercise of the right of establishment and the freedom to provide services according to Directive 2013/36/EU of the European Parliament and of the Council.

Commission Delegated Regulation (EU) 1151/2014 of 4 June 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the information to be notified when exercising the right of establishment and the freedom to provide services.

Commission Delegated Regulation (EU) No 1152/2014 of 4 June 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates.

Commission Delegated Regulation (EU) 2016/98 of 16 October 2015 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for specifying the general conditions for the functioning of colleges of supervisors.

Commission Implementing Regulation (EU) 2016/99 of 16 October 2015 laying down implementing technical standards with regard to determining the operational functioning of the colleges of supervisors according to Directive 2013/36/EU of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 2016/2070 of 14 September 2016 laying down implementing technical standards for templates, definitions and IT-solutions to be used by institutions when reporting to the European Banking Authority and to competent authorities in accordance with Article 78(2) of Directive 2013/36/EU of the European Parliament and of the Council.

Commission Delegated Regulation (EU) 2017/180 of 24 October 2016 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for benchmarking portfolio assessment standards and assessment-sharing procedures.

Commission Implementing Regulation (EU) 2017/461 of 16 March 2017 laying down implementing technical standards with regard to common procedures, forms and templates for the consultation process between the relevant competent authorities for proposed acquisitions of qualifying holdings in credit institutions as referred to in Article 24 of Directive 2013/36/EU of the European Parliament and of the Council.

Capital Requirements Regulation

Commission Implementing Regulation (EU) 2013/1423 of 20 December 2013 laying down implementing technical standards with regard to disclosure of own funds requirements for institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council.

Commission Delegated Regulation (EU) 2014/183 of 20 December 2013 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms, with regard to regulatory technical standards for specifying the calculation of specific and general credit risk adjustments.

Commission Delegated Regulation (EU) 2014/241 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for own funds requirements for institutions.

Commission Delegated Regulation (EU) 2014/523 of 12 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for determining what constitutes the close

correspondence between the value of an institution's covered bonds and the value of the institution's assets.

Commission Delegated Regulation (EU) 2014/525 of 12 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the definition of market.

Commission Delegated Regulation (EU) 2014/526 of 12 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for determining proxy spread and limited smaller portfolios for credit valuation adjustment risk.

Commission Delegated Regulation (EU) 2014/528 of 12 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for non-delta risk of options in the standardised market risk approach.

Commission Delegated Regulation (EU) 2014/529 of 12 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for assessing the materiality of extensions and changes of the Internal Ratings Based Approach and the Advanced Measurement Approach.

Commission Implementing Regulation (EU) 2014/602 of 4 June 2014 laying down implementing technical standards for facilitating the convergence of supervisory practices with regard to the implementation of additional risk weights according to Regulation (EU) No 575/2013 of the European Parliament and of the Council.

Commission Delegated Regulation (EU) 2014/625 of 13 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk.

Commission Implementing Regulation (EU) 2014/680 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 2014/945 of 4 September 2014 laying down implementing technical standards with regard to relevant appropriately diversified indices according to Regulation (EU) No 575/2013 of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 1030/2014 of 29 September 2014 laying down implementing technical standards with regard to the uniform formats and date for the disclosure of the values used to identify global systemically important institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council.

Commission Delegated Regulation (EU) 2014/1187 of 2 October 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council as regards

regulatory technical standards for determining the overall exposure to a client or a group of connected clients in respect of transactions with underlying assets.

Commission Delegated Regulation (EU) 2015/585 of 18 December 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the specification of margin periods of risk.

Commission Delegated Regulation (EU) 2015/1555 of 28 May 2015 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the disclosure of information in relation to the compliance of institutions with the requirement for a countercyclical capital buffer in accordance with Article 440.

Commission Delegated Regulation (EU) 2015/1556 of 11 June 2015 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the transitional treatment of equity exposures under the IRB approach.

Commission Implementing Regulation (EU) 2015/2197 of 27 November 2015 laying down implementing technical standards with regard to closely correlated currencies in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 2016/100 of 16 October 2015 laying down implementing technical standards specifying the joint decision process with regard to the application for certain prudential permissions pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council.

Commission Delegated Regulation (EU) 2016/101 of 26 October 2015 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for prudent valuation under Article 105(14).

Commission Implementing Regulation (EU) 2016/200 of 15 February 2016 laying down implementing technical standards with regard to disclosure of the leverage ratio for institutions, according to Regulation (EU) No 575/2013 of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 2016/1646 of 13 September 2016 laying down implementing technical standards with regard to main indices and recognised exchanges in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms.

Commission Implementing Regulation (EU) 2016/1799 of 7 October 2016 laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for credit risk in accordance with Articles 136(1) and 136(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 2016/1801 of 11 October 2016 on laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for securitisation in

accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council.

Commission Delegated Regulation (EU) 2017/72 of 23 September 2016 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying conditions for data waiver permissions.

Commission Delegated Regulation (EU) 2017/2295 of 4 September 2017 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for disclosure of encumbered and unencumbered assets.

Commission Delegated Regulation (EU) 2018/171 of 19 October 2017 on supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the materiality threshold for credit obligations past due.

Commission Delegated Regulation (EU) 2018/728 of 24 January 2018 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for procedures for excluding transactions with non-financial counterparties established in a third country from the own funds requirement for credit valuation adjustment risk.

Financial Conglomerates Directive

Commission Delegated Regulation (EU) 342/2014 – Commission Delegated Regulation (EU) 342/2014 of 21 January 2014 supplementing Directive 2002/87/EC of the European Parliament and of the Council and Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the application of the calculation methods of capital adequacy requirements for financial conglomerates.

Commission Delegated Regulation (EU) 2015/2303 of 28 July 2015 supplementing Directive 2002/87/EC of the European Parliament and of the Council with regard to regulatory technical standards specifying the definitions and coordinating the supplementary supervision of risk concentration and intra-group transactions.

Markets in Financial Instruments Directive

Commission Delegated Regulation (EU) 2017/589 of 19 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading.

Commission Implementing Regulation (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council.

Commission Delegated Regulation (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to

be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm.

Markets in Financial Instruments Regulation

Commission Delegated Regulation (EU) 2017/581 of 24 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties.

Commission Delegated Regulation (EU) 2017/582 of 29 June 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing.

Commission Delegated Regulation (EU) 2017/2154 of 22 September 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements.

The following BTS are anticipated to be added to the Schedule to SI 2018/1115 by exit day by legislation currently before Parliament.

Market Abuse Regulation

Commission Implementing Regulation (EU) 2018/292 of 26 February 2018 laying down implementing technical standards with regard to procedures and forms for exchange of information and assistance between competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse.

Payment Accounts Directive

Commission Implementing Regulation (EU) 2018/33 of 28 September 2017 laying down implementing technical standards with regard to the standardised presentation format of the statement of fees and its common symbol according to Directive 2014/92/EU of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 2018/34 of 28 September 2017 laying down implementing technical standards with regard to the standardised presentation format of the fee information document and its common symbol according to Directive 2014/92/EU of the European Parliament and of the Council.

Benchmark Regulation

Commission Implementing Regulation (EU) 2018/1105 of 8 August 2018 laying down implementing technical standards with regard to procedures and forms for the provision of information by competent authorities to ESMA under Regulation (EU) 2016/1011 of the European Parliament and of the Council.

Commission Implementing Regulation (EU) 2018/1106 laying down implementing technical standards with regard to templates for the compliance statement to be published and maintained by administrators of significant and non-significant benchmarks pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council.

Commission Delegated Regulation (EU) 2018/1637 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the procedures and characteristics of the oversight function.

Commission Delegated Regulation (EU) 2018/1638 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further how to ensure that input data is appropriate and verifiable, and the internal oversight and verification procedures of a contributor that the administrator of a critical or significant benchmark has to ensure are in place where the input data is contributed from a front office function.

Commission Delegated Regulation (EU) 2018/1639 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the elements of the code of conduct to be developed by administrators of benchmarks that are based on input data from contributors.

Commission Delegated Regulation (EU) 2018/1640 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the governance and control requirements for supervised contributors.

Commission Delegated Regulation (EU) 2018/1641 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology.

Commission Delegated Regulation (EU) 2018/1642 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the criteria to be taken into account by competent authorities when assessing whether administrators of significant benchmarks should apply certain requirements.

Commission Delegated Regulation (EU) 2018/1643 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the contents of, and cases where updates are required to, the benchmark statement to be published by the administrator of a benchmark.

Commission Delegated Regulation (EU) 2018/1644 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards determining the minimum content of cooperation arrangements with competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent.

Commission Delegated Regulation (EU) 2018/1645 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the form and content of the application for recognition with the competent authority of the Member State of reference and of the presentation of information in the notification to European Securities and Markets Authority (ESMA).

Commission Delegated Regulation (EU) 2018/1646 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the information to be provided in an application for authorisation and in an application for registration.

European Long-Term Investment Funds Regulation

Regulation 2018/480 supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council with regard to regulatory technical standards on financial derivative instruments solely serving hedging purposes, sufficient length of the life of the European long-term investment funds, assessment criteria for the market for potential buyers and valuation of the assets to be divested, and the types and characteristics of the facilities available to retail investors.

Money Market Funds Regulation

Commission Implementing Regulation (EU) 2018/708 of 17 April 2018 laying down implementing technical standards with regard to the template to be used by managers of money market funds when reporting to competent authorities as stipulated by Article 37 of Regulation (EU) 2017/1131 of the European Parliament and of the Council.

Capital Requirements Regulation

Commission Delegated Regulation (EU) 2018/959 of 14 March 2018 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards of the specification of the assessment methodology under which competent authorities permit institutions to use Advanced Measurement Approaches for operational risk.

Annex 4

List of Statutory Instruments

Statutory Instruments Made in Parliament

Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019

Bank of England (Amendment) (EU Exit) Regulations 2018

Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018

Building Societies Legislation (Amendment) (EU Exit) Regulations 2018

Capital Requirements (Amendment) (EU Exit) Regulations 2018

Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

Central Securities Depositories (Amendment) (EU Exit) Regulations 2018

Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019

Consumer Credit (Amendment) (EU Exit) Regulations 2018

Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019

Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019

Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018

Deposit Guarantee Scheme and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018

EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018

Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018

Financial Conglomerates and Other Financial Groups (Amendment etc.) (EU Exit) Regulations 2019

Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019

Financial Regulators Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018

Friendly Societies (Amendment) (EU Exit) Regulations 2018

Interchange Fee (Amendment) (EU Exit) Regulations 2019

Long-term Investment Funds (Amendment) (EU Exit) Regulations 2019

Market Abuse (Amendment) (EU Exit) Regulations 2019

Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018

Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2019

Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019

Short Selling (Amendment) (EU Exit) Regulations 2018

Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019

Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018

Venture Capital Funds (Amendment) (EU Exit) Regulations 2019

Accounts and Reports (Amendment) (EU Exit) Regulations 2019

The Competition (Amendment etc.) (EU Exit) Regulations 2019

Consumer Protection (Amendment etc.) (EU Exit) Regulations 2018

Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2019

Electronic Commerce (Amendment etc.) (EU Exit) Regulations 2019

Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2019

Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2019

Statutory Instruments Laid in Parliament

Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019

Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019

The Financial Regulators' Powers (Technical Standards etc.) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019

Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019

The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019

Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019

Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019

Financial Services (Gibraltar) (Amendment) (EU Exit) Regulation 2019

Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019

Insurance Distribution (Amendment) (EU Exit) Regulations 2019

Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019

Money Market Funds (Amendment) (EU Exit) Regulations 2019

Mortgage Credit (Amendment) (EU Exit) Regulations 2019

Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019

Payment Accounts (Amendment) (EU Exit) Regulations 2018

Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019

Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019

Securitisation (Amendment) (EU Exit) Regulations 2019

Solvency 2 and Insurance (Amendment etc.) (EU Exit) Regulations 2019

Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019

Electricity and Gas (Market Integrity and Transparency) (Amendment) (EU Exit) Regulations 2019

Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019

The International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019

State Aid (EU Exit) Regulations 2019

Annex 5

Abbreviations used in this paper

ADR	alternative dispute resolution
AIF	alternative investment funds
AIFM	alternative investment fund managers
AIFMD	Alternative Investment Fund Managers Directive
APER	Statements of Principle and Code of Practice for Approved Persons
APR	Approved Persons regime
ARM	approved reporting mechanism
AUM	assets under management
BCOBS	Banking Conduct of Business sourcebook
BENCH	General Guidance on Benchmark Submission and Administration
BIPRU	Prudential sourcebook for Banks, Building Societies and Investment Firms
BMR	Benchmarks Regulation
BRRD	Bank Recovery and Resolution Directive
BST	British Summer Time
BTS	Binding Technical Standards
CASS	Client Assets sourcebook
CBA	cost benefit analysis
CCPs	central counterparties
CESR	Committee of European Securities Regulators
CET	Central European Time
CJ	Compulsory Jurisdiction
CMC	claims management company

CMCOB	Claims Management: Conduct of Business sourcebook
CMID	Consolidated Motor Insurance Directive
COBS	Conduct of Business sourcebook
COCON	Code of Conduct sourcebook
COLL	Collective Investment Schemes sourcebook
COMP	Compensation sourcebook
CONC	Consumer Credit sourcebook
COND	Threshold Conditions sourcebook
CONRED	Consumer Redress Schemes sourcebook
CP	Consultation Paper
CRA_s	Credit Rating Agencies
CRAR	Credit Rating Agencies Regulation
CRD	Capital Requirements Directive
CREDS	Credit Unions sourcebook
CRO	contractual run-off
CRR	Capital Requirements Regulation
DEPP	Decision Procedure and Penalties manual
DfT	Department of Transport
DISP	Disputes Resolution: Complaints sourcebook
DMD	Distance Marketing Directive
DTR	Disclosure Guidance and Transparency Rules sourcebook
EAMP	Emission Allowance Market Participants
EBA	European Banking Authority
ECA	Electronic Commerce Activity
ECAI	External Credit Assessment Institutions

ECD	Electronic Commerce Directive
EEA	European Economic Area
EG	Enforcement Guide
ELTIF	European Long-Term Investment Fund Regulation
EMI	electronic money institutions
EMIR	European Market Infrastructure Regulation
EMPS	Energy Markets Participant Guide
ESAs	European Supervisory Authorities
ESMA	European Securities and Markets Authority
EU	European Union
EuSEF	European Social Entrepreneurship Funds Regulation
EuVECA	European Venture Capital Funds Regulation
EUWA	European Union (Withdrawal) Act 2018
FCA	Financial Conduct Authority
FEES	Fees Manual
FICOD	Financial Conglomerates Directive
FINMAR	Financial Stability and Market Confidence Sourcebook
FIRDS	Financial Instruments Reference Data System
FIT	Fit and Proper Test for Employees and Senior Personnel
FPO	Financial Promotions Order
FSCR	Financial Services Contracts Regime
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
FUND	Investment Funds sourcebook
GDPR	General Data Protection Regulation

GEN	General Provisions sourcebook
GENPRU	General Prudential sourcebook
GMT	Greenwich Mean Time
ICOB	Insurance Conduct of Business sourcebook
ICSD	Investor Compensation Scheme Directive
IDD	Insurance Distribution Directive
IFPRU	Prudential sourcebook for Investment Firms
ILS	insurance-linked securities
IML	illegal money lending
INSPRU	Prudential sourcebook for Insurers
IPID	Insurance Product Information Document
IPRU-FSOC	Interim Prudential sourcebook for Friendly Societies
IPRU-INS	Interim Prudential sourcebook for Insurers
IPRU-INV	Interim Prudential sourcebook for Investment Businesses
ISPV	Insurance Special Purpose Vehicles
KID	Key Information Document
LEI	Legal Entity Identifier
KIID	key investor information document
LR	Listing Rules
LRRA	Legislative and Regulatory Reform Act 2006
M2G	MiFID 2 Guide
MAR	Market Abuse Regulation
MCOB	Mortgages and Home Finance Conduct of Business sourcebook
MDP	Market Data Processor
MIB	Motor Insurance Bureau

MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation
MIIC	Motor Insurers Information Centre
MIPRU	Prudential sourcebook for Mortgage and Home Finance Firms and Insurance Intermediaries
MMFR	Money Market Funds Regulation
MLRO	Money Laundering Reporting Officer
MRTs	Material Risk Takers
MTFs	Multilateral Trading Facilities
NCA s	National Competent Authorities
NMPI	non-mainstream pooled investments
NPPR	National Private Placement Regime
NURS	Non-UCITS Retail Schemes
OMPS	Oil Market Participants Guide
OTC	Over-the-counter
OTF	Organised Trading Facilities
PAD	Payment Accounts Directive
PD	Prospectus Directive
PERG	Perimeter Guidance manual
PIP	primary information provider
PR	Prospectus Rules
PRA	Prudential Regulation Authority
PRIIPS	Packaged Retail and Insurance-based Investment Products Regulation
PRIN	Principles for Businesses sourcebook
PROD	Product Intervention and Product Guidance sourcebook
PS	Policy Statement

PSD	Payment Services Directive
PSD2	revised Payment Services Directive
PSR	Payment Systems Regulator
RAISP	registered account information service provider
RAO	Regulated Activities Order
RCB	Regulated Covered Bonds
REC	Recognised Investment Exchanges sourcebook
RPPD	Responsibilities of Providers and Distributors for the Fair Treatment of Customers
RTS	Regulatory Technical Standards
SERV	Service Companies Guide
SFGB	Single Financial Guidance Body
SIs	Statutory Instruments
SM&CR	Senior Managers and Certification Regime
SPFs	special project fees
SR	Securitisation Repositories
SRO	supervised run-off
SSR	Short Selling Regulation
SUP	Supervision manual
SYSC	Senior Management Arrangements Systems and Controls sourcebook
TC	Training and Competence sourcebook
TD	Transparency Directive
TP	Transitional Provisions
TPR	Temporary Permissions Regime
TR	trade repositories
TREM	Transaction Reporting Exchange Mechanism

TTP	temporary transitional power
UCITS	Undertakings for Collective Investment in Transferable Securities Directive
UK	United Kingdom
UNFCOG	Unfair Contract Terms and Consumer Notices Regulatory Guide
USA	United States of America
VJ	Voluntary Jurisdiction
VoP	variation of permission
WDPG	Wind-down Planning Guide

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 Handbook instruments

www.fca.org.uk/publication/policy/ps19-05-appendix-01.pdf

Appendix 2

Near-final BTS instruments

www.fca.org.uk/publication/policy/ps19-05-appendix-02.pdf

Appendix 3

Our approach to EU non-legislative materials

The purpose of this guidance

1. This guidance sets out the FCA's approach to non-legislative material produced by the EU and, in particular, the European Supervisory Authorities (ESAs).
2. This guidance is relevant to firms, financial institutions and other market participants operating, or intending to operate, in the United Kingdom.

What are non-legislative materials?

3. The European Supervisory Authorities (ESAs) were established in 2011 to strengthen the coordination between national regulators of financial markets within the European Union (EU) and ensure the consistent application of EU financial legislation. They have the power to produce non-legislative-material, either individually or through their Joint Committee. This includes Guidelines and Recommendations on the application of EU law, 'Questions & Answers' documents and Opinions. Similar material was also produced by other EU bodies in the past, including the ESAs' predecessors⁴⁰ and, in some instances, adopted by the ESAs.

ESA Guidelines and Recommendations

4. Each of the three ESAs – the European Securities & Markets Authority (ESMA), the European Insurance & Occupational Pensions Authority (EIOPA) and the European Banking Authority (EBA) – has the power to issue non-legally binding 'Guidelines and Recommendations' ('Guidelines') under their respective ESA Regulations, as tools to promote the consistent application of EU law across jurisdictions.
5. These Guidelines are directed to competent authorities, financial market participants and financial institutions.⁴¹ Competent authorities, and in some circumstances other market participants, notify the relevant ESA(s) of their intention to comply, or explain why they do not propose to comply. This is commonly called the 'comply or explain' process, under which the addressees are expected to 'make every effort to comply' with the Guidelines.
6. The ESAs maintain a record of Guidelines published and corresponding 'comply and explain' responses by the competent authorities, including those of the FCA.

Other EU non-legislative material

7. The ESAs also publish other non-legislative material which includes:
 - Opinions
 - 'Questions & Answers' documents

⁴⁰ The Committee of European Securities Regulators, the Committee of European Banking Supervisors and the Committee of European Insurance and Occupational Pensions Supervisors.

⁴¹ For ease of reference the rest of this guidance refers simply to 'financial market participants' or 'market participants'

- supervisory briefings
- peer-review analyses
- best practices and statements to help build a common supervisory culture and consistent supervisory practices within the EU
- warnings (e.g. around the risks associated with particular complex products).

What is happening to non-legislative EU material in the UK post-exit?

8. Under the EU (Withdrawal) Act 2018 (the EUWA), the broad range of non-legislative material produced by the ESAs or their predecessor bodies (for example, CESR) has not been incorporated into UK law. However, the EU-derived law to which the non-legislative material relates has largely been retained. Therefore, we consider that the EU non-legislative material will remain relevant post-exit day to the FCA and market participants in their compliance with regulatory requirements, including provisions in our Handbook.

What is the FCA's expectation in relation to the application of pre-exit EU non-binding material?

ESA Guidelines and Recommendations

9. Our supervisory expectation in respect of Guidelines and Recommendations remains the same. Persons requiring authorisation or recognition to continue to provide services in the UK post-exit day will become subject to these expectations.
10. In particular:
- i. we expect firms and market participants to continue to apply the Guidelines to the extent that they remain relevant, as they did before exit-day, interpreting them in light of the UK's withdrawal from the EU and the associated legislative changes that are being made to ensure the regulatory framework operates appropriately
 - ii. we shall continue to apply such Guidelines and Recommendations in respect of its own functions in the same manner as before, interpreting them in light of the UK's withdrawal from the EU and the associated legislative changes.

Other EU non-legislative material

11. We will continue to have regard to other EU non-legislative material where and if they are relevant, taking account of Brexit and ongoing domestic legislation. Firms, market participants and stakeholders should also continue to do so.

Are there any exceptions to our expectations to non-legislative EU material?

12. Where we have previously informed the relevant ESA that we will not comply with part of, or all of, a pre-exit Guideline we will continue this approach. For example, we have notified that we would not comply with parts of the Guidelines in the cases listed below. In those circumstances, we explained our reasons for why it would not be appropriate to comply with all or part of the guidelines and the legal consequences of the refusal to comply. For example:

We stated in our MIFID 17/14 Policy Statement⁴⁵ that *'in our view, investment trusts and non-UCITS retail schemes (NURS) are neither automatically non-complex nor automatically complex, but must be assessed against the criteria set out in the MiFID II delegated regulation'*. We also said that *'when firms apply these criteria, they should adopt a cautious approach if there is any doubt as to whether a financial instrument is non-complex. This remains our view of how this part of MiFID II should be interpreted, and how firms should apply these rules.'*

Post-exit non-legislative EU material

16. The FCA may consider materials produced by the ESAs post-exit, including where pre-exit material is updated. Where we consider it appropriate to do so, we will set out our expectations as to how it should be treated.

How to interpret non-legislative EU material

17. As a result of the UK's withdrawal from the EU, EU non-binding materials may include references which no longer have their intended effect (for example, references to legislation that may have been amended during the withdrawal process and may therefore no longer be correct). In these situations, we expect firms and other market participants to sensibly and purposively interpret EU non-binding material, taking into account the UK's withdrawal from the EU, the provisions of the Act and amendments made to relevant legislation in the withdrawal process, including the FCA Handbook.
18. Examples of where non-legislative EU material needs to be interpreted in line of the UK's withdrawal from the EU include:
- a. References to passporting across the EU. References to passporting or associated processes have been deleted from UK legislation and are no longer relevant. References in non-legislative EU material to passporting and associated processes that have been deleted from legislation can be ignored.
 - b. References to reporting to the ESAs are redundant, as there are no longer requirements in UK legislation to report to the ESAs. References in non-legislative EU material to ESA reporting and associated processes that can be interpreted in light of the amendments made to the relevant legislation.
 - c. References to any roles or responsibilities currently carried out by EU authorities. Those have, to the extent that they remain relevant, been reallocated to the most appropriate UK authority. Firms should interpret references to EU functions with reference to the new UK authority taking on that function. This may be the case, for example, for equivalence assessments and recognition of third-country jurisdictions for market access.

45 <https://www.fca.org.uk/publication/policy/ps17-14.pdf>

Appendix 4

Our approach to non-Handbook guidance where it relates to EU-law or EU-derived law

The purpose of this guidance

1. This document sets out our approach to existing non-Handbook guidance where it relates to EU law or EU-derived law.
2. It is concerned with non-Handbook guidance issued before exit day, i.e. 29 March 2019 at 11pm.
3. The guidance in this document is relevant to consumers, firms, financial institutions, issuers and other market participants operating, or intending to operate, in the United Kingdom.

What is non-Handbook guidance?

4. Non-Handbook guidance is guidance published outside of the Handbook.
5. It may include technical notes, case studies and 'Dear CEO' letters. Specific examples of non-Handbook guidance include the 'Payment Services and Electronic Money – Our Approach'⁴⁶ guidance and the procedural and technical notes within the UK Listing Authority's knowledge base.⁴⁷

What is happening to non-Handbook guidance that relates to EU law or EU-derived law after Brexit?

6. We are not, in general, amending existing non-Handbook guidance relating to EU law or EU-derived law.
7. It will continue to be relevant to take this guidance into account in relation to matters that occur before exit day.
8. It will also continue to be relevant, and should be taken into account, in relation to matters arising on or after exit day where the EU or EU-derived provisions to which it relates become or remain UK law.
9. In many cases, such provisions will have been amended to address deficiencies arising from the UK's withdrawal from the EU. Non-Handbook guidance issued before exit day will not, in general, be amended to take these changes into account.
10. Instead, until stated otherwise, we expect such guidance to be interpreted in line with the approach set out below.

46 <https://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf>

47 <https://www.fca.org.uk/markets/ukla/knowledge-base>

How to interpret non-Handbook guidance after Brexit where it relates to EU or EU derived law and matters arising after exit day

- 11.** We expect firms and other market participants to sensibly and purposively interpret pre-exit non-Handbook guidance in light of the provisions of the European Union (Withdrawal) Act 2018 (the EUWA) and any changes to the underlying provision as it is preserved or converted into UK law.
- 12.** We expect references to EU or EU-derived law in non-Handbook guidance to be read in a way that takes into account the following:
 - a.** the UK is no longer part of the EU
 - b.** EU regulations and EU decisions will no longer directly apply but may have been converted into UK law
 - c.** passporting of financial services will end
 - d.** the purpose of the EUWA is to provide a functioning legal system in the UK and, as a general rule, to ensure that the same rules and laws will apply on the day after exit day as on the day before, subject to amendments made to prevent, mitigate or remedy deficiencies.
- 13.** For example, unless the context requires otherwise, where existing non-Handbook guidance refers to:
 - a provision in EU law that has been converted into national law, we expect it to be read as a reference to the post-exit national law provision
 - an EU body or EU process, we expect it to be read as a reference to the UK body to which the relevant functions have been transferred or to the equivalent UK process (if any)
 - all or part of an EU or EU-derived provision that has been deleted, we expect this guidance to be read excluding this aspect (and any consequential statements).
- 14.** Non-Handbook guidance will apply to firms in the temporary permissions regime in accordance with GEN 2.2.35R (Guidance applying while a firm has temporary permission). In most cases it should be clear when non-Handbook guidance remains relevant to a temporary permissions firm.

Appendix 5

Interpretative Guide on completing our forms after the UK's withdrawal from the EU

The purpose of this guide

1. We have not, in general, amended our pre-exit⁴⁸ day FCA forms to resolve provisions which no longer have their intended effect (for example, references to legislation that may have been amended as part of the United Kingdom's (UK) withdrawal from the EU and may therefore no longer be correct).
2. This guide sets out the approach the FCA expects users of our forms to take when interpreting EU-based references still present in our forms now that the UK has withdrawn from the European Union (EU). This guide covers our forms and, where applicable, the accompanying FCA guidance on how to complete them.

Binding technical standards (BTS) forms

3. The guide does not set out the approach to be taken by users of forms in binding technical standards (BTS). Users of BTS forms should take the following approach:
 - a. The reporting and disclosure requirements forms contained in certain CRD IV and CRR BTS, should be read in line with our specific guidance on those forms (see [link available after exit day]). This reflects corresponding guidance produced by the PRA for dual-regulated firms (see [link available after exit day]).
 - b. All other BTS forms have been amended to correct deficiencies and can be found in pdf format on the Handbook website (see [link available after exit day]).
 - c. In some cases, an electronic version of the BTS form has been created on FCA systems. We continue to operate such electronic forms. These electronic versions have been updated to reflect the amendments to address EU-based references.
 - d. The electronic version of the suspicious transactions and orders form under the Market Abuse Regulation (STOR) form has not been updated. Users of this form must still complete the electronic version but refer to the FCA website version of the STOR BTS (which is found here [link available after exit day]) to see the changes made to the form flowing from the UK's withdrawal from the EU.

Temporary Permission firms

4. It should also be noted that for Temporary Permission (TP) firms, some references within forms to passporting firms (and related concepts) may still be relevant to firms within the Temporary Permissions Regime (TPR). For example, although there are no longer 'incoming EEA firms' on exit day there are TP firms which used to be incoming EEA firms or incoming Treaty firms (some of whom may still be operating without a UK branch). TP firms should consider whether EU-based references remain applicable to them.

Gibraltar-based firms

5. We are maintaining the pre-exit day regulatory position on Gibraltar within our Handbook.⁴⁹ This position is in line with the Government's commitment that Gibraltar financial services firms should, until December 2020, have the same market access in the UK as they did before exit day. For Gibraltar-based firms able to exercise passport rights, the Government's commitment means they continue to be able to exercise such rights after exit day. This means that applicable forms pre-exit may continue to be relevant. Instead of the default interpretations laid out in the tables below, Gibraltar-based firms should read relevant forms in light of GEN [ref/URL] and 'Our approach to non-Handbook guidance where it relates to EU law or EU-derived law' (see [link available after exit day]).

Interaction with the transitional directions

6. Under its powers in Regulation 198 of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, the FCA has made a number transitional directions to waive or modify regulatory requirements amended under the EU Withdrawal Act. Where a form relates to a requirement which has been waived or modified the relevant form should, for the duration of the direction, be interpreted in light of that direction.

The content of this guide

7. Table 1 sets out a default approach for interpreting EU-based references found in our forms. This is in line with the approach taken more widely in the FCA Handbook to take account of the UK's withdrawal from the EU and the associated legislative changes made.
8. Table 2 and table 3 respectively set out more specific cases in relation to forms found in the Handbook (table 2) and those found not in the Handbook but on one of our systems, such as Connect or the FCA website (table 3). It sets out an expected approach in each instance. The specific case guidance takes priority over table 1.
9. We expect users of our forms and, when relevant, the accompanying guidance, to use this interpretive guide in light of the UK's withdrawal from the EU and the associated legislative changes, which includes the Glossary and rules and directions in the FCA Handbook. There may be some circumstances where it is appropriate to continue to use the pre-exit day EU-based reference.
10. This guide should also be read in conjunction with the Prudential Regulation Authority's (PRA's) Supervisory Statement on interpreting reporting and disclosure requirements⁵⁰, where relevant, for shared forms. Where appropriate, our approach to forms is the same as the PRA's.

49 We have made rules and guidance in relation to Gibraltar (see [link to follow]) ([GEN 2.3]).

50 See [link available after exit day].

General guidance

Table 1

11. This table sets out the various types of EU-based references, and a default approach to how these should be interpreted.

Type of reference	Default interpretation
Reference to UK primary or secondary legislation	This should be read as a reference to UK legislation as amended under the European Union (Withdrawal) Act 2018 (the EUWA).
References to deleted 'glossary terms'	These should, depending on the context and relevant EU withdrawal legislative changes (which includes changes to the FCA Handbook), generally be read as if deleted in line with the deletion of the corresponding Handbook Glossary terms.
Reference to an EU regulation	This should be read as a reference to the UK version of the EU regulation which is part of UK law by virtue of the EUWA.
Reference to an EU technical standard	This should be read as a reference to the UK version of the EU technical standard, as amended.
Reference to an EU directive	This should generally be read as a reference to the implementing UK legislation (including FCA or PRA rules), or the UK, FCA or PRA processes, that give effect to the directive, as amended on EU withdrawal. In some cases, it may also be helpful to refer to the text of the EU directive as at exit day to provide additional context.
Reference to the European Supervisory Authorities (ESAs) ⁴⁹ guidelines and recommendations and other non-legislative material	See Guidance on our approach to EU non-legislative materials [link available after exit day].
Reference to terms such as the European Union or EU; or the European Economic Area or EEA (i.e. not part of a compound term, for example, an 'EEA firm' etc)	This should be read as a reference to the UK, subject to the context and the relevant EU withdrawal legislative changes (which includes changes to the FCA Handbook).
Reference to Member State, Member States or home Member State	This should be read as a reference to the UK, subject to the context and the relevant EU withdrawal legislative changes (which includes changes to the FCA Handbook).
Reference to third country	This should be read as a reference to a territory or country which is not the United Kingdom
Reference to an EEA bank	These should be read as references to a UK bank or a non-UK bank depending on the context and the EU withdrawal legislative changes (which includes changes to the FCA Handbook).
Reference to an EEA firm	This should be read as a reference to a third-country firm depending on the context and the relevant EU withdrawal legislative changes (which includes changes to the FCA Handbook).
References to EEA other than the UK	This should be read as a reference to EEA states.
Reference to EEA notifications	This should be read as if deleted as there is no longer a requirement to submit them, subject to the context and the relevant EU withdrawal legislative changes (which includes changes to the FCA Handbook).
References to an EEA regulator and EEA branch	These should be read as if they are deleted, subject to the context and the relevant EU withdrawal legislative changes (which includes changes to the FCA Handbook).
Reference to the European Union not in relation to legislation	This should be read as a reference to the UK.

Type of reference	Default interpretation
Reference to Euros	Any threshold set in Euros will continue to apply as such. This is subject to the relevant EU withdrawal legislative changes (which includes changes to the FCA Handbook).
References to an incoming EEA firm or to an incoming Treaty firm	These should be read as if they are deleted as there will be no firms passporting into the UK after exit day. However, it should be noted that for TP firms, some references within our Handbook forms to passporting firms (and related concepts) may still be relevant to firms within the Temporary Permissions Regime (TPR).
References to the official language or languages of the EEA State	These should be read as 'the official languages of the United Kingdom'. This is subject to the relevant EU withdrawal legislative changes (which includes changes to the FCA Handbook).
Reference to freedom to provide services	On the basis that UK firms will no longer be able to write business under the Freedom to Provide Services in the EU after exit: <ul style="list-style-type: none"> any data relating to business performed through freedom to provide service will be a nil entry after EU withdrawal, and any references to the country where the freedom to provide services notification was made for the purpose of identifying the location where a contract is entered into should be disregarded.

Guidance on specific forms in the Handbook

Table 2

12. This table sets out guidance on how to approach specific cases.

Handbook form or accompanying guidance location	Form title	Reference	Interpretation
SUP 10A Annex 10D	MiFID Article 4 APER Information Form	MiFID II requires certain information to be provided by the applicant firm when making changes to their management body or key function holders and currently refers to European technical standards.	The information required is detailed in the MiFID II UK version of Regulatory Technical Standards (RTS) Implementing Technical Standards (ITS) which are part of UK law by virtue of the EUWA.
SUP 16 Annex 42AR (and guidance notes in SUP 16 Annex 42BG)	REP-CRIM – Financial Crime Report	Non-EEA Correspondent Banks	Question 5 of the return requires firms to report the number of 'non-EEA Correspondent Banks' at the end of the reporting period and the number new in the same period. these references to 'correspondent banks' should be taken to mean any relationship <i>outside of the UK</i> .
SUP 16 Annex 19B in relation to form at SUP 16 Annex 19AR	Notes for completion of the Mortgage Lenders & Administrators Return ('MLAR')	Land in the EEA	References to land in the EEA for the purpose of SUP 16 Annex 19B should be taken to mean 'land in the UK'.

Handbook form or accompanying guidance location	Form title	Reference	Interpretation
GENPRU 3 Annex 3G	Classification of groups (GENPRU 3.1.3G)	'EU regulated entity', 'EU non-regulated entity', 'non-EU regulated entity' and 'non-EU non-regulated entity'	References to 'EU regulated entity', 'EU non-regulated entity', 'non-EU regulated entity' and 'non-EU non-regulated entity' on the first page of the form, should be read as if 'EU' is replaced by 'UK' in each case.
GENPRU 3 Annex 3G	Classification of groups (GENPRU 3.1.3G)	'supervisors in EEA states' and 'EEA supervisors'	The reference in field H1 of the form to '(i.e. supervisors in EEA States in which the group has significant regulated activity?)' should be read as '(i.e. supervisors in the UK)'. The reference in field H2 of the form to '(i.e. EEA supervisor of the group's most important regulated activity in the EU)?' should be read as '(i.e. UK supervisor of the group)'.
MAR 9 Annex 7D in relation to MAR 9.3.6D and guidance at SUP 17A.2.1BG	MAR 9 Annex 7 FCA MDP on-boarding application form	<i>Section 3 Non-UK, EEA authorised applicant entities</i>	Delete this section.
MAR 9 Annex 7D in relation to MAR 9.3.6D and guidance at SUP 17A.2.1BG	MAR 9 Annex 7 FCA MDP on-boarding application form	<i>Section 4 Data types, 4.1 (see note)</i>	The references to non-MiFID firms should be read to mean non-UK investment firms, excluding UK branches.
MAR 9 Annex 7D in relation to MAR 9.3.6D and guidance at SUP 17A.2.1BG	MAR 9 Annex 7 FCA MDP on-boarding application form	<i>Section 6 Fees (2nd paragraph)</i>	Delete the sentence 'An incoming DRSP, authorised in another EU member state, would pay 80% of each charge.'
MAR 9 Annex 5D in relation to MAR 9.3.1R	Data Reporting Services Provider (DRSP) Material Change in information	EEA	References to the term 'EEA' should be read to mean EEA, and the general guidance with respect to the term 'EEA' in Table 1 does not apply.
MAR 9 Annex 3D in relation to MAR 9.2.3D and MAR 9.2.4G	Data Reporting Services Provider (DRSP) Variation of Authorisation	EEA	References to the term 'EEA' should be read to mean 'non-UK', and the general guidance with respect to the term 'EEA' in Table 1 does not apply.
MAR 9 Annex 4D in relation to MAR 9.2.5D	Data Reporting Services Provider (DRSP) Cancellation of authorisation	EEA	References to the term 'EEA' should be read to mean 'non-UK', and the general guidance with respect to the term 'EEA' in Table 1 does not apply.

Guidance on specific forms not in the Handbook

Table 3

13. This table sets out guidance on how to approach specific cases.

Form not found in the Handbook or accompanying guidance location	Form title	Reference	Interpretation
Connect	Application for registration as a consumer buy-to-let firm (for use by unauthorised firms only)	<i>Section 2 Basic details, 2.1 What type of firm is the applicant?</i>	The reference to 'UK branch of a non-EEA firm' should be read to mean 'UK branch of a non-UK firm'.
Connect	Application for Authorisation: Core details form	<i>Section 2 About the applicant firm, 2.6 What type of firm is the applicant firm?</i>	The reference to 'UK branch of a non-EEA firm' should be read to mean 'UK branch of a non-UK firm'.
Connect	Application for Registration as a Small Payment Institution (SPI)	<i>Section 1 Identification details and timings, 1.1 What type of firm is the applicant?</i>	The reference to 'UK branch of a non-EEA firm' should be read to mean 'UK branch of a non-UK-firm' in accordance with Payment Services Regulation 14(9), which requires the Payment Institution's head office, registered office, or place of residence to be in the UK.
Connect	Application for registration as an Account Information Service provider	<i>Section 1 Identification details and timings, 1.1 What type of firm is the applicant?</i>	The reference to 'UK branch of a non-EEA firm' should be read to mean 'UK branch of a non-UK firm', in accordance with Payment Services Regulation 18, which does not require an Account Information Service provider's head office etc. to be in the UK.
Connect	Application for Authorisation as an Electronic Money Institution (AEMI)	<i>Section 1 Identification details and timings, 1.1 What type of firm is the applicant?</i>	The reference to 'UK branch of a non-EEA firm' should be read to mean 'UK branch of a non-UK firm', in accordance with the onshored version of Electronic Money Regulation 4(b), which will permit the Electronic Money Institution's head office to be outside the UK.
Connect	Application for Registration as a Small Electronic Money Institution (SEMI)	<i>Section 1 Identification details and timings, 1.1 What type of firm is the applicant?</i>	The reference to 'UK branch of a non-EEA firm' should be read to mean 'UK branch of a non-UK firm', in accordance with Electronic Money Regulation 13(9), which requires the small Electronic Money Institution's head office to be in the UK.

Form not found in the Handbook or accompanying guidance location	Form title	Reference	Interpretation
Connect	Application for Authorisation MiFID and Article 3 exempt firms: Controllers appendices – Legal persons and Partnerships	<i>Section 7 Non-EEA controllers</i>	The reference to 'Non-EEA controllers' should be read to mean 'Non-UK controllers'.
Connect	Application for Authorisation as a Payment Institution (API) Application for Authorisation as an Electronic Money Institution (AEMI) Application for registration as an Account Information Service Provider (RAISP) Variation of EMD Authorisation/Registration Variation of PSD Authorisation/Registration	PII	The information regarding PII refers to firms complying with the EBA guidelines and recommendation on PII. Our level 3 guidance covers the approach that we would take to firms continuing to apply the EBA guidelines and recommendation.
Connect	Application for Authorisation MiFID Annex	Permission Profile table 1- MiFID firms	The 'bidding in emission auctions product' column and the 'emissions auction product' row are deleted.
Connect	Application for a Variation of Permission (VOP)	Permissions Section	The 'bidding in emissions auctions product and 'emissions auction product' options are deleted.

