

Consultation Paper

CP16/43***

Markets in Financial Instruments Directive II Implementation – Consultation Paper IV



December 2016

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We are asking for comments on this Consultation Paper (CP) by 17 February 2017, except for comments on Chapter 7 on Fees which should reach us by 16 January 2017.

You can send them to us using the form on our website at:
www.fca.org.uk/cp16-43-response-form.

Or in writing to:

MiFID Coordination
Markets Policy Department
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 9758

Email: cp16-43@fca.org.uk

We have developed the policy in this consultation paper in the context of the existing UK and EU regulatory framework. We will keep the proposals under review to assess whether any amendments will be required due to changes in the UK regulatory framework, including as a result of any negotiations following the UK's vote to leave the EU.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 0790 or email publications_graphics@fca.org.uk or write to Editorial and Digital Department, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS

Abbreviations used in this paper

AIFM	Alternative Investment Fund Manager
APA	Approved Publication Arrangements
AR	Appointed Representative
ARM	Approved Reporting Mechanism
CA	Competent Authority
CBA	Cost benefit analysis
CIS	Collective investment scheme
COBS	Conduct of Business sourcebook
COLL	Collective Investment Schemes sourcebook
CP	Consultation Paper
CTP	Consolidated Tape Provider
DP	Discussion Paper
DRS	Data Reporting Services
DRSP	Data Reporting Services Provider
ECP	Eligible Counterparty
EMP	Energy Market Participant
ESMA	European Securities and Markets Authority
EU	European Union
FSA	Financial Services Authority (predecessor to the FCA)
FSMA	Financial Services and Markets Act 2000
FUND	Investment Funds sourcebook
FX	Foreign Exchange

MAR	Market Conduct Sourcebook
MiFID	Markets in Financial Instruments Directive
MiFID II	Markets in Financial Instruments Directive II (includes MiFIR, where the context indicates)
MiFIR	Markets in Financial Instruments Regulation
MTF	Multilateral Trading Facility
OMP	Oil Market Participants
OTF	Organised Trading Facility
PERG	Perimeter Guidance
PRA	Prudential Regulation Authority
PROD	Product Intervention and Product Governance sourcebook
PRIIPs	Regulation on Packaged Retail and Insurance-Based Investment Products
RAO	Regulated Activities Order
REC	Recognised Investment Exchanges sourcebook
RIE	Recognised Investment Exchange
RM	Regulated Market
RPA	Research Payment Account
RTS	Regulatory Technical Standard
SME	Small and Medium-sized Enterprise
SUP	Supervision Manual
SYSC	Senior Management Arrangements, Systems and Controls – FCA Handbook
TC	Training and Competence sourcebook
the Treasury	Her Majesty's Treasury
UCITS	Undertakings for collective investments in transferable securities

1. Overview

Introduction

- 1.1 Member States of the European Union (EU) have until 3 July 2017 to bring their laws and regulations into line with the requirements in the Markets in Financial Instruments Directive (MiFID) II which will apply six months later from 3 January 2018. MiFID II is a package of EU legislation that regulates both retail and wholesale investment business.
- 1.2 As part of our work on the implementation of MiFID II we have published three CPs over the last year: CP15/43, CP16/19 and CP16/29. We are now publishing a final CP on the implementation of MiFID II. This covers a range of broadly technical matters that we were not able to cover in the previous CPs. If we identify any further issues requiring consultation these will be dealt with through proposals in one of our Quarterly CPs.
- 1.3 We will finalise the changes to our Handbook to implement MiFID II in the first half of 2017. We anticipate publishing two policy statements (PSs). The first PS, which we aim to publish in March 2017, will mainly cover matters consulted on in CP15/43. The second PS, which we aim to publish in June 2017, will cover all other issues on which we have consulted.
- 1.4 The policy in this CP has been developed in the context of the existing UK and EU regulatory framework. As noted in our previous CPs, firms must continue with implementation plans for MiFID II.
- 1.5 For ease of consultation, our Handbook text is prepared as if the amendments proposed in our previous consultations on MiFID II implementation have been made and are in force. We will of course take account of responses to the previous consultations in finalising the changes to our Handbook.

Wider UK implementation of MiFID II

- 1.6 Implementation of MiFID II also involves changes to UK legislation and changes to the rules of the Prudential Regulation Authority (PRA). Her Majesty's Treasury (The Treasury) consulted in March 2015¹ on MiFID II implementation and will produce a policy statement in due course before presenting the legislation to Parliament.
- 1.7 The PRA published PS29/16² on rules on passporting and algorithmic trading which it consulted on in CP9/16. It is also now consulting through CP43/16³ on MiFID II management body requirements, key organisational requirements, authorisations and disapplication of PRA rules where they will be superseded by a directly applicable EU regulation.

1 'Transposition of the Markets in Financial Instruments Directive II' (March 2015)
www.gov.uk/government/uploads/system/uploads/attachment_data/file/418281/PU_1750_MiFID_II_26.03.15.pdf

2 <http://www.bankofengland.co.uk/prd/Documents/publications/ps/2016/ps2916.pdf>

3 <http://www.bankofengland.co.uk/prd/Pages/publications/cp/2016/cp4316.aspx>

Summary of proposals

1.8 In this CP, we seek views on the proposed changes to the Handbook in the areas below:

- **Specialist regimes** – Conduct of Business sourcebook (COBS) 18 contains a number of tailored conduct regimes (covering MiFID and non-MiFID business) for specialist types of designated investment business. We propose changes to ensure that all relevant cross references in the Handbook are identified and updated where necessary and ensure appropriate decisions are made in relation to non-MiFID investment business that has some MiFID derived conduct rules applied to it.
- **Tied agents** – We propose reflecting the technical changes in MiFID II to the tied agents regime in our rules dealing with appointed representatives (ARs).
- **SME growth markets** – We are proposing rules to apply the MiFID II SME growth markets regime, including guidance on how to register as an SME growth market.
- **Market data** – We are proposing some guidance on the scope of the Approved Reporting Mechanism (ARM) regime, the circumstances in which trading venues can make transaction reports using ARMs and that Data Reporting Service Providers (DRSPs) should be required to undertake an annual assurance review of their compliance with their obligations under the DRSP regime, verified by a member of the management body of the DRSP. We are also proposing guidance of certain aspects of the use of ARMs.
- **Miscellaneous changes to the Handbook** – We propose changes to various Handbook modules. These include changes to our Perimeter Guidance, clarification of the territorial scope of rules on remuneration and training and competency, amendments to BCOBS to reflect our proposals in CP16/29 in relation to structured deposits.
- **Fees** – We propose opening the authorisation gateway in January to assist firms. As such, we propose a transitional rule for fees to deal with the period between when we start accepting applications for authorisations related to the changes in MiFID II and the point at which legislation changes to enable us to collect fees for the changes of scope.
- **Forms** – We provide feedback on the changes to Form A consulted on in CP16/29.

Equality and diversity considerations

1.9 We have considered the equality and diversity issues that may arise from the proposals in this consultation. Overall, we do not consider that the proposals in this CP adversely affect any of the groups with protected characteristics ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

1.10 We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim, we welcome any input to this consultation on these issues.

Who does this consultation affect?

1.11 At the start of each chapter, we state to which firms it is most likely to be relevant. This consultation affects a wide range of firms that we authorise and recognise (as well as unregulated entities trading commodity derivatives), particularly:

- banks
- investment firms
- tied agents
- recognised investment exchanges (RIEs)
- prospective Data Reporting Service Providers (DRSPs)
- trustee firms
- energy and oil market participants
- firms conducting corporate finance business or stocklending activities
- alternative investment fund managers (AIFMs) and undertakings for collective investments in transferable securities (UCITS) management companies
- occupational pension scheme (OPS) firms
- firms conducting Lloyd's market activities
- depositaries
- investment companies with variable capital (ICVCs)
- UCITS and AIFM qualifiers
- service companies
- authorised professional firms (APFs)

Is this of interest to consumers?

1.12 Each chapter notes the implications for consumers. Consumers have a clear interest in financial markets that operate fairly and transparently, which is the rationale for the proposals in this CP. Of the subjects covered, proposals relating to conduct of business rules will probably be of most concern to consumers. However, the proposals should not adversely affect any of the groups with protected characteristics. The conduct proposals aim to improve firms' existing efforts to ensure they act in their clients' best interests, and so may help ensure that firms consider the needs of vulnerable consumers when these consumers seek to purchase investment services.

Next steps

1.13 What do you need to do next?

We want to know what you think of our proposals. Please send us comments by 17 February 2017, except for comments on Chapter 7 on Fees which should reach us by **16 January 2017**.

How?

1.14 Use the online response form on our website or write to us at the address on page 3.

What will we do?

1.15 We will consider your feedback and publish our rules in a PSs mentioned in paragraph 1.3, above.

2. Specialist regimes

Who should read this chapter

Trustee firms, energy and oil market participants, corporate finance businesses, stock lenders, residual collective investment scheme (CIS) operators, management companies of undertakings for collective investment in transferable securities (UCITS), alternative investment fund managers (AIFMs), Lloyd's of London companies, depositaries, occupational pension scheme (OPS) firms, operators of investment companies with variable capital (ICVCs), UCITS qualifiers, AIFM qualifiers, service companies, and authorised professional firms

Introduction

- 2.1** COBS 18 contains a range of tailored conduct regimes for various types of specialist designated investment business, covering both MiFID and non-MiFID business. The regimes generally work by referencing other parts of COBS. In light of the changes to COBS that we proposed in CP16/29, we have reviewed the specialist regimes in COBS 18 and propose various changes mainly involving updating cross references.

Trustee firms (COBS 18.1)

Introduction

- 2.2** COBS 18.1 applies to trustee firms conducting MiFID business. We consulted on the conduct regime for firms conducting MiFID business in CP16/29.

Existing provisions

- 2.3** COBS 18.1.2 provides a list of COBS rules which do not apply to trustee firms conducting MiFID business by virtue of the sort of business they conduct and COBS 18.1.3 provides a list of COBS rules which, for the same reason, are unlikely to apply. COBS 18.1.4-18.1.6 provides guidance on aspects of how the conduct rules apply to business conducted by trustee firms.

Proposals

- 2.4** We are not proposing to make any substantive changes to the rules applying to trustee firms conducting MiFID business beyond those proposed in CP16/29. In this CP we are simply proposing changes to update the rule references in the tables of COBS rules which do not apply or are unlikely to apply.

Q1: Do you agree with our approach to COBS 18.1? If not, please give reasons why.

Energy market participants (EMPs) and oil market participants (OMPs) (COBS 18.2)

Introduction

- 2.5** COBS 18.2 includes a mixture of guidance and rules for MiFID and non-MiFID firms trading commodity derivatives, including EMPs and OMPs. In CP16/29 we consulted on certain aspects of this chapter as it related to the recording of telephone conversations and electronic communications (taping) and investment research.

Existing provisions

- 2.6** COBS 18.2.1-18.2.4 provides guidance and rules for EMPs and OMPs. COBS 18.2.5-18.2.9 provides guidance and rules for other types of commodities markets activity.

Proposals

- 2.7** COBS 18.2 breaks down into provisions covering:
- OMPs and EMPs conducting MiFID business (COBS 18.2.1-2)
 - OMPs and EMPs conducting non-MiFID business (COBS 18.2.3-4)
 - Firms conducting other non-MiFID commodity derivatives business (COBS 18.2.5-9)
- 2.8** For OMPs and EMPs conducting MiFID business we are making no substantive proposals in this CP, we are only updating references of rules which do not apply, because of the type of business OMPs and EMPs do, and the rules which are unlikely to apply.
- 2.9** For OMPs and EMPs conducting non-MiFID business we made proposals in CP16/29 (see Chapter 15) regarding the application of the rules on taping and investment research (see Chapter 11). The rules governing client categorisation and financial promotions for non-MiFID business which apply to them are changing based on proposals in CP16/29, but the changes should not have a significant effect on these firms.
- 2.10** In CP16/29, for other non-MiFID business related to commodity or exotic derivatives, we asked, but made no proposals (see Chapter 9) about whether the MiFID II standard on record keeping of transactions should apply to these firms.
- 2.11** However, we propose in this CP to apply the MiFID II requirements on taping to non-MiFID business related to commodity or exotic derivative instruments. Firms that currently undertake this activity must, by virtue of COBS18.2.5, tape relevant conversations and communications.
- 2.12** In CP16/29, we proposed to delete COBS11.8 and replace it with a new chapter in SYSC. This will mean that the new taping requirements will migrate from COBS to SYSC. We also stated that the additional costs of meeting the new MiFID II requirements on taping for firms that are currently required to tape would be low. This is because previous research implies that these firms have organisational requirements in place which align with those of MiFID II.
- 2.13** We also proposed in that CP that OMPs and EMPs should adhere to the MiFID II standards on taping. In our view, firms undertaking non-MiFID business related to commodity or exotic derivative instruments are similar in business model and complexity to OMPs and EMPs. As such, it is appropriate to apply the MiFID II standards on taping to these types of activities too.
- 2.14** Changes proposed for non-MiFID business in CP16/29 will affect firms conducting non-MiFID business in relation to commodity and exotic derivatives instruments which includes changes to client categorisation (see Chapter 4) and rules on communicating with clients, financial

promotions and occasional reporting to clients (see Chapter 5). We do not propose to amend the application of these non-MiFID rules to this business.

Q2: Do you agree with our approach to COBS 18.2? If not, please give reasons why.

Corporate finance business (COBS 18.3)

Introduction

- 2.15** This chapter applies to firms undertaking corporate finance business.
- 2.16** In CP16/29 we consulted on the changes that MiFID II will make to corporate finance business. This included corporate finance boutiques that fall within the optional exempt regulatory framework under Article 3 of that Directive.
- 2.17** We have revised the references in COBS 18.3 to reflect the consequential changes CP16/29 makes to our Handbook. We are also inserting a new table into COBS 18.3. This table is entitled 'Corporate finance business – optionally exempt business' and captures the list of provisions that will apply to corporate finance boutiques that undertake optional exempt business under Article 3 of MiFID II.

Existing provisions

- 2.18** COBS 18.3 details the provisions of COBS that apply or are disapplied to firms undertaking corporate finance business.

Proposals

- 2.19** We propose to update the existing tables in COBS 18.3 with updated handbook references following the publication of CP16/19.
- 2.20** We also propose to insert a new table into COBS 18.3 to identify the provisions we consulted on in CP16/29 which will apply to corporate finance boutiques that undertake optional exempt business. The new table will provide clarity to users of our handbook regarding the regulatory framework that applies to them.

Q3: Do you agree with our proposed changes to COBS 18.3? If not, please give reasons why.

Stock lending activity (COBS 18.4)

Introduction

- 2.21** This chapter applies to firms undertaking stock lending activities.
- 2.22** In CP16/29 we consulted on a number of areas of policy that are also cross-referred to in COBS 18.4. This requires us to update the references in COBS 18.4. These changes are only consequential and administrative in nature.

Existing provisions

- 2.23** COBS 18.4 outlines the COBS provisions that do not apply or are unlikely to apply to firms in relation to stock lending activities that is MiFID or equivalent third country business.

Proposals

- 2.24** The provisions in COBS 18.4 are unchanged. However, we need to update the specific Handbook references following the proposals we made in CP16/29.

**Q4: Do you agree with our proposals to update COBS 18.4?
If not, please give reasons why.**

Residual CIS operators, AIFMs and UCITS management companies (COBS 18.5, 18.5A and 18.5B)

Introduction

- 2.25** In CP16/29, we set out proposals to reorganise COBS 18.5 by breaking it down into three sections – creating new sections 18.5A for UK full-scope AIFMs and 18.5B for UCITS management companies, while retaining the original section for small authorised UK AIFMs and other CIS operators. At the same time we proposed to apply the MiFID II standards to all these firms in relation to best execution, and inducements and research.
- 2.26** We noted in CP16/29 that we would consider further what modifications might be necessary to COBS 2.3B so that its requirements could be applied effectively to the operation of collective investment schemes and AIFs.

Proposals

- 2.27** We propose a number of consequential changes to achieve that aim. We propose to add a new section (4) on inducements and research to the draft of COBS 18 Annex 1 proposed in CP16/29. We also propose minor consequential changes to COBS 18.5, 18.5A and 18.5B and updates to the relevant cross-references in Collective Investment Schemes sourcebook (COLL) and Investment Funds sourcebook (FUND). COBS 18 Annex 1.4 adapts the rules in COBS 2.3B to reflect the fact that the managed fund is itself the client of the firm, so the fund's investors are not in the same position as the other clients of the firm. In some cases, this is simply a matter of adapting the terms used, but we have recast the rules that require firms to engage with clients and disclose information to them.
- 2.28** Individual investors in a fund cannot negotiate with the fund manager to agree a budget for research and in many cases there is no separate governance mechanism in the fund itself to engage with the firm on investors' behalf. In such cases, although a research budget would still need to be set and approved internally by senior management, we propose to disapply the requirement in COBS 2.3B.8R(1) for the firm to agree terms with the client. However, the requirement to agree the budget will remain in place where the CIS or AIF is a body corporate with a board structure that includes directors other than just the fund manager, since those entities will be able to carry out an independent negotiation about the use of research in the way envisaged by MiFID II.
- 2.29** Where the fund manager wishes to begin using a research payment account (RPA) in an authorised fund, it could be considered either as introducing a new type of payment out of scheme property or as increasing a payment to the authorised fund manager. Introducing a new type of payment is a fundamental change that requires prior approval by a meeting of unit holders, whereas an increase in payment to the manager is a significant change requiring investors to be given prior notice (at least 60 days in the case of a fund available to retail investors).⁴

⁴ See COLL 4.3.4R (2)(d), COLL 4.3.6R (2)(c) and COLL 8.3.6R.

- 2.30** To help ease the transition to the new arrangements, we propose a transitional provision in COLL allowing the authorised fund manager to treat the introduction of a RPA as a significant change for a period of up to two years after the new rules take effect. This should allow all firms enough time to put the RPA in place, even if they pay for research out of their own fees to begin with. After two years, if a fund manager that has been paying for research itself decides to change to a RPA, its decision is likely to be a fundamental change and should be treated accordingly.
- 2.31** We have similarly considered whether the information to be disclosed to clients is relevant and useful to fund investors. We believe that it is and that making it available will contribute to the transparency of the fund management process and help investors judge whether their investment represents value for money. In Annex 1.4, we have modified the various disclosure requirements of COBS 2.3B to make them relevant to investors in funds, dividing them into prior disclosure requirements (4.7 to 4.10) and a periodic reporting requirement (4.11). The prior disclosure requirements must be met by including the relevant information in the prospectus for an authorised fund. Managers of other types of fund may include this information in the other material to be made available pre-sale under AIFMD or COBS 18.5.5R. The periodic reporting requirement must be satisfied by including the information in the fund's annual reports and accounts for an authorised fund. Full-scope UK AIFMs may also wish to include this information in their annual report.
- 2.32** We have not proposed any specific modifications for internally-managed AIFs, since we think these firms are more likely to pay for research directly out of their own resources than set up a RPA.

Q5: Do you agree with our proposals to update COBS 18 Annex 1? If not, please give reasons why. In particular, are there any issues affecting internally-managed AIFs that we should consider?

Lloyd's (COBS 18.6)

Introduction

- 2.33** Firms conducting Lloyd's market activities are subject to the rules on client categorisation in COBS 3 and the financial promotion rules in COBS 4. We made proposals in CP16/29 to revise the rules in COBS 3 and 4 for non-MiFID business which, by virtue of COBS 18.6, will apply to firms conducting Lloyd's market activities.

Existing provisions

- 2.34** COBS 18.6.2 R applies COBS 3 and the financial promotion rules to Lloyd's market activities. COBS 18.6.4 G provides guidance on the meaning of designated investment and designated investment business in the context of Lloyd's market activities.

Proposals

- 2.35** We do not propose to make any changes to COBS 18.6.
- 2.36** Chapter 4 of CP16/29 explained the changes we are proposing to make to the client categorisation rules for non-MiFID business. These are: limiting the scope of public bodies dealing with public debt that can be classified as eligible counterparties; prohibiting elective professional clients from being opted up to eligible counterparty status and categorising local authorities as retail clients; and providing revised criteria for opting them up to professional

client status. We do not think these changes are of significance to Lloyd's market activities and therefore see no reason to specifically disapply their application to Lloyd's market activities.

- 2.37** Chapter 5 of CP16/29 explained the changes we are proposing to the financial promotion rules for non-MiFID business. We said that the changes could be inferred from existing provisions and therefore we did not consider that they involve substantially new requirements. As such, we do not think there is any reason why the changes should not apply to Lloyd's markets activities.

Q6: Do you agree with our proposal to make no changes to COBS 18.6? If not, please give reasons why.

Depositories (COBS 18.7)

Introduction

- 2.38** Depositories conducting non-MiFID business are subject to the clients' best interest rule, the inducements rule (except for certain disclosures), the communicating with clients rules, and the personal account dealing rules. In CP16/29, we consulted on changes to some of the underlying rules.

Existing provisions

- 2.39** COBS 18.7.1R applies certain COBS rules to depositories conducting non-MiFID business, including the client's best interest rule and rules on communications to clients.

Proposals

- 2.40** We do not intend to make any changes to COBS 18.7.
- 2.41** In CP16/29, we proposed no changes to the client's best interests rule, the inducements rule, and the personal account dealing rules for non-MiFID business.
- 2.42** Chapter 5 of CP16/29 explained the changes we are proposing to the communicating with clients rules for non-MiFID business. We said that the changes could be inferred from existing provisions and therefore we did not consider that they involve substantially new requirements. As such, we do not think there is any reason why the changes should not apply to depositories conducting non-MiFID business.

Q7: Do you agree with our proposal to make no changes to COBS 18.7? If not, please give reasons why.

Occupational pension scheme (OPS) firms – non-scope business (COBS 18.8)

- 2.43** Occupational Pension Scheme (OPS) firms are subject to COBS, on a modified basis, when conducting non-MiFID business. We are currently considering what changes we want to make, if any, to the rules to which these firms are subject, both in COBS and other sourcebooks. In particular, we wish to explore enhancing the current best execution, telephone recording and use of dealing commission rules, and whether any of the other changes of rules applying to non-MiFID business we proposed in CP16/29 should apply to OPS firms. We are not consulting on changes to the regime for OPS firms in this paper. We are continuing our policy analysis on

whether to extend certain aspects of MiFID II to OPS firms and expect to consult in the first half of 2017.

Investment companies with variable capital (ICVCs) (COBS 18.9)

Introduction

2.44 ICVCs are subject to a bespoke conduct regime in COBS 18.9

Existing provisions

2.45 COBS 18.9 applies the financial promotion rules and rules of providing product information to clients to ICVCs, and provides guidance to alert an operator of an ICVC to the fact that they are subject to COBS 18.5.2R when undertaking scheme management activity.

Proposals

2.46 We proposed a change to the reference to COBS 18.9 in CP 16/29 to refer to the equivalent provision to COBS 18.5.2R in COBS 18.5A and COBS 18.5B. We do not propose to make any further changes to COBS 18.9. There are some slight enhancements to the financial promotion rules as they apply to non-MiFID firms which we proposed in CP16/29 (see Chapter 4).

Q8: Do you agree with our proposal to make no further changes to COBS 18.9? If not, please give reasons why.

UCITS qualifiers, AIFM qualifiers and service companies (COBS 18.10)

Introduction

2.47 COBS 18.10 applies a small selection of COBS rules to UCITS qualifiers, AIFM qualifiers and service companies.

Existing provisions

2.48 COBS 18.10.1R applies the communication to clients rules (but only in relation to communicating or approving a financial promotion), e-commerce and research recommendations: required disclosures rules to UCITS qualifiers and service companies. COBS 18.10.2R applies the communications to clients and research recommendations: required disclosures rules to AIFM qualifiers.

Proposals

2.49 In this CP we do not propose any amendments to 18.10 of COBS following on from revisions to COBS proposed in CP16/29. However, there are some slight enhancements to the communications to clients rule as they apply to non-MiFID firms which we proposed in CP16/29 (see Chapter 4).

Q9: Do you agree with our proposal for COBS 18.10? If not, please give reasons why.

Authorised professional firms (COBS 18.11)

Introduction

2.50 This section is relevant to authorised professional firms (APFs).

Existing provisions

2.51 The COBS specialist regime for APFs is set out in COBS 18.11. That regime currently applies the COBS rules to APFs – except in relation to non-mainstream regulated activities and financial promotions, where the application of COBS is modified.

2.52 In relation only to the current COBS rules that are subject to change as a result of the requirement to implement MiFID II (ie excluding the insurance mediation and the e-commerce rules), those that apply to APFs are:

- in respect of an APF's non-mainstream regulated activities
 - the 'fair, clear and not misleading' rule
 - the financial promotion rules (as modified)
 - the client agreement rules (except for the requirement to provide information on conflicts of interest)
- in relation to the communication of a financial promotion by an APF, the financial promotion rules do not apply if
 - the firm's main business is the practice of its profession
 - the financial promotion is made for the purposes of and incidental to the promotion or provision by the firm of its professional services or its non-mainstream regulated activities
 - the financial promotion is not communicated on behalf of another person who would not lawfully be able to communicate the financial promotion if he were acting in the course of business
- an APF may use the exemptions for promoting unregulated collective investment schemes in COBS 4 (Communicating with clients, including financial promotions) should it choose to do so.

Proposals

2.53 Whereas some of the COBS rules referred to in COBS 18.11 (the 'fair, clear and not misleading' rule, the financial promotion rules, and the client agreement rules) are subject to change as part of MiFID II implementation, those changes do not require a corresponding change to the rules in COBS 18.11.

2.54 Therefore, the only change we are proposing to the current COBS 18.11 rules is the insertion of guidance to make it clear that the application of COBS to an authorised professional firm will be determined by the firm's status as a MiFID investment firm, a MiFID optional exemption firm or a firm to which MiFID does not apply.

2.55 We would advise APFs to review and familiarise themselves with the MiFID II changes to the COBS ‘fair, clear and not misleading’ rule, the financial promotions rules, and the client agreement rules.⁵

**Q10: Do you agree with our proposed change to COBS 18.11?
If not, please give reasons why.**

⁵ CP16/29 ‘Markets in Financial Instruments Directive II Implementation – Consultation Paper III’ Appendix 1 contains the relevant non-MiFID provisions in COBS Chapters 4 (85/346) and 8A (128/346).

3. Tied agents

Who should read this chapter

Firms undertaking MiFID or equivalent third country business and Article 3 firms

Introduction

- 3.1** The tied agent regime was established under Article 23 of MiFID. This regime was optional for Member States.
- 3.2** The Financial Services Authority (FSA) and the Treasury implemented the MiFID tied agent regime by way of changes to the existing domestic framework for the appointment of ARs. Following these changes, tied agents of MiFID investment firms which carry on regulated activities in the UK are also ARs.
- 3.3** However, tied agents of UK MiFID investment firms that do not carry on activities in the UK are not also ARs. To this end, the FSA introduced a number of different definitions relating to tied agents in the Handbook.
- 3.4** These definitions also recognise that, at present, certain Member States do not allow investment firms for which they are the Home State to appoint tied agents. This may lead to a scenario in which a UK MiFID investment firm appoints a tied agent established in another Member State but in which that tied agent cannot be registered (because the Member State does not maintain a tied agent regime). Such a tied agent must be registered with the FCA.
- 3.5** Under MiFID II, it will no longer be the case that tied agents established in other Member States might need to be registered in the UK for these purposes, because all Member States will be required to maintain tied agent regimes.
- 3.6** MiFID II also:
 - introduces some new requirements in connection with the tied agent regime for Article 3 firms
 - expands the scope of permitted business for tied agents to include certain activities relating to structured deposits.

Existing provisions

- 3.7** The UK transposed MiFID's tied agent regime through a combination of primary legislation, secondary legislation and FCA rules (in Chapter 12 of the Supervision manual (SUP)).

Proposals

- 3.8** The Treasury is making changes to the legislation that establishes the UK's tied agent regime. We propose complementary amendments to our existing tied agents rules and guidance in SUP 12 to reflect the changes brought about under MiFID II.

- 3.9** In particular we propose to:

- Clarify the territorial application of SUP 12 in light of the changes made by MiFID II which mean that Member States no longer have an option whether or not to implement a tied agent regime.
- Introduce new definitions of 'MiFID optional exemption AR' and 'structured deposit AR'. We propose to use these terms to define those new populations of AR to which MiFID requirements relating to tied agents are also to apply.

- 3.10** We are also updating a handful of references in SUP 12, including to the information on the FCA's website about ARs. We will undertake a separate review of these webpages in due course.

Q11: Do you agree with our proposed changes to SUP 12? If not, please give reasons why.

Implications for firms

- 3.11** The proposals in this chapter are broadly consequential amendments arising from the fact that the tied agents regime will no longer be discretionary for Member States. UK MiFID investment firms will see limited impact, save where they currently use tied agents established in Member States which do not yet maintain tied agent regimes.

Implications for consumers

- 3.12** The proposals in this chapter are broadly consequential amendments as a result of the tied agents regime no longer being discretionary for Member States. They aim to make sure MiFID II is implemented effectively. In the context of the wider package of standards and requirements under MiFID II, these proposals should ensure better protection for consumers and cleaner financial markets.

- 3.13** The Treasury will extend the regulatory perimeter to include certain activities (such as arranging and advising) when carried on in relation to structured deposits. The scope of permitted business of tied agents will, in future, also include certain activities in relation to structured deposits as

well as MiFID financial instruments (subject to their principals assuming responsibility for such activities).

Impact on Article 3 firms

- 3.14** Article 3(2)(b) of MiFID II confirms that Member States may allow Article 3 firms to appoint ‘tied agents’ (or something analogous to tied agents, since the definition of tied agent in Article 4(1) (29) refers to acting under the responsibility of an investment firm).
- 3.15** The UK has effectively already exercised that discretion since Article 3 firms may appoint ARs. However, where the AR of an Article 3 firm is engaged in the equivalent business of a MiFID tied agent in future, it will be necessary to ensure that the Article 3 firm is subject to requirements which are at least analogous to those set out in Article 29 of MiFID II. This includes, for example, the requirement to be registered before carrying on activities as a tied agent.
- 3.16** The changes needed to give effect to this development will, in part, be made by the Treasury through legislation. However, some changes will also need to be made to SUP 12.

Impact on structured deposits

- 3.17** Article 1(4) of MiFID II provides that Article 29 (tied agents) applies to an investment firm or credit institution when selling, or advising clients in relation to, structured deposits. This suggests that the tied agents of investment firms or credit institutions should be able to advise on, and sell, structured deposits (within the scope of permitted business of tied agents). Tied agents will not, however, be able to avail themselves of their principals’ passport rights under MiFID in relation to such business.

4. Market data

Who should read this chapter

Those interested in becoming authorised as a Data Reporting Service Provider (DRSP) in the UK. DRSP means an Approved Reporting Mechanism (ARM),⁶ Approved Publication Arrangement (APA)⁷ or Consolidated Tape Provider (CTP)⁸

UK trading venues seeking verification of their rights to provide data reporting services.

Trading venues and investment firms with an obligation to transaction report to us

Introduction

- 4.1** The proposed MAR 9 chapter included in CP15/43 explained the FCA's supervisory approach and a requirement in MAR 9.3.7 for an annual notification to be made containing the information to be specified in Annex 8D, to enable us to assess whether the DRSP continues to comply with its regulatory obligations. This chapter addresses our supervisory approach to DRSPs, but more specifically provides further clarity about our intentions for the annual notification under MAR 9 Annex 8D. We are also making other small changes to our proposals in MAR9 in CP15/43 to clarify aspects of our approach and procedures for the authorisation and verification of DRSPs.
- 4.2** We also propose some guidance in MAR 9 on the scope of the Approved Reporting Mechanism (ARM) regime. This includes the circumstances in which trading venues can use ARMs to report transactions to us by trading venues and guidance for groups of firms that wish to aggregated transaction reporting via a hub.

Existing provisions

- 4.3** MAR 9.4 outlines our proposed supervisory approach to DRSPs and it makes clear that we expect DRSPs to have an open, constructive and co-operative relationship with us. It sets out

⁶ 'ARM' means a person authorised under MiFID II to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms.

⁷ Approved publication arrangement or 'APA' means a person authorised under MiFID II to provide the service of publishing trade reports on behalf of investment firms.

⁸ Consolidated tape provider or 'CTP' means a person authorised under MiFID II to provide the service of collecting trade reports of specific financial instruments from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument.

the supervisory tools that we may use in the supervision of DRSPs. DRSPs must also produce several different types of notifications and MAR 9.3.7 makes reference to the annual notification in MAR 9 Annex 8D.

Proposals

- 4.4** The new DRSP regime recognises the key role that DRSPs have in ensuring the integrity and quality of the data published to the market and submitted to competent authorities. Data provided from DRSPs is central for users to be able to obtain an overview of trading activity, and for competent authorities to receive accurate and comprehensive information on relevant transactions. DRSPs will also rely on robust technology systems and, as such, it is appropriate to have arrangements in place to identify emerging risks in these areas and a DRSP's continued compliance with Title V of MiFID II.
- 4.5** In CP15/43 we proposed that under MAR 9.3.7 and MAR 9 Annex 8D, a DRSP must undertake an annual review of its continued compliance, in the previous 12 months, of Title V of MiFID II. The expectation is that the review should assess the DRSP's organisational requirements and publication arrangements (where applicable), and determine whether the DRSP continues to meet its' initial authorisation conditions in line with the European Securities and Markets Authority (ESMA) Regulatory Technical Standards (RTS 13). The notification in MAR 9 Annex 8D will be an annual review for each of the relevant articles in RTS 13. This review will be verified by a member of the management body of the DRSP in the declaration section of the form. A copy of the form is included in the annexes of this CP.
- 4.6** The proposed scope and content of the review will be based on the framework and provisions of RTS 13. This will require the DRSP to confirm that it continues to be compliant with each of the relevant articles of RTS 13 and either provide information, or reasons as to why not. The DRSP may attach a copy of any internal review to support the annual review.
- 4.7** In CP15/43 we proposed that the DRSP will submit the notification in MAR 9 Annex 8D within 10 business day after the 12-month anniversary of the commencement of its authorisation; and then every year within 10 business days after the same date (proposed MAR 9.3.7).
- 4.8** We propose that this is amended to within three months of the anniversary of the commencement of its authorisation; and then every year within three months after the same date.
- 4.9** We are also proposing some small changes to the proposals in MAR 9 that we consulted upon in CP15/43 in regard to our approach and procedures for the authorisation and verification of DRSPs. These include greater clarity on the information required for the extension or variation of authorisation and greater clarity on notification to us by an APA or a CTP of compliance with connectivity requirements.
- 4.10** In responses to CP15/43 we got a lot of questions about transaction reporting and the use of ARMs. Two key issues raised were whether trading venues could, where required to transaction report on their own behalf or on behalf of certain persons, report to us through an ARM, and whether investment firms could aggregate a group of their reporting via an internal hub.
- 4.11** In MAR 9.5.9G and 9.5.10G we are proposing guidance that makes clear that we think that trading venues (whether operated by market operators or investment firms) can use ARMS to report transaction reports to us and it is permissible for a group of investment firms to aggregate their reporting via an internal hub provided the hub uses an ARM or is an ARM.

- Q12:** Do you agree with our approach that the annual notification required under MAR 9.3.7 will be an annual review, verified by a member of the management body of the DRSP, which assesses the DRSP's controls in place for RTS 13? If not, please give reasons why.
- Q13:** Do you agree with our proposal that RTS 13 should form the framework and scope of the annual review that should be undertaken by a DRSP prior to verifying its' compliance with Title V of MiFID II? If not, please give reasons why.
- Q14:** Do you agree with our proposal to extend the timeframe in MAR 9.3.7 to submit the notification in MAR 9 Annex 8D? If not, please give reasons why.
- Q15:** Do you agree with our proposed changes to process around authorisation and notification for DRSPs? If not, please give reasons why.
- Q16:** Do you agree with our proposed guidance on transaction reporting at MAR 9.5.9 and 9.5.10? If not, please give reasons why.

5. SME growth markets

Who should read this chapter

Recognised investment exchanges (RIEs) and firms undertaking MiFID or equivalent third country business that may seek to operate a Multilateral Trading Facility (MTF) and register it as an SME growth market

It may be of interest to direct and indirect users of MTFs

Introduction

- 5.1** MiFID II introduces a new sub-category of Multilateral Trading Facility (MTF) called SME growth markets. This is intended to raise the visibility and profile of growth markets or junior markets across Europe.

Existing provisions

- 5.2** Investment firms that currently operate a market to facilitate access to SMEs are currently regulated as MTFs. MiFID II introduces a new sub-category to give some flexibility and help the development of common regulatory standards in those markets.

Proposals

- 5.3** An MTF may be registered by us as an SME growth market if the MTF operator applies and meets the requirements set out in our Handbook. As SME growth markets are a sub-category of an MTF, we propose to amend MAR 5 to include a sub-chapter, MAR 5.10 with the provisions related to these markets.
- 5.4** There is no formal application form but guidance on how to apply can be found in MAR 5.10.4. An MTF operator of a junior market may continue to operate without seeking registration as an SME growth market as there is no legal obligation to do so.
- 5.5** We may deregister an MTF as an SME growth market if the firm operating the market applies for its deregistration, or where the percentage of issuers that are SMEs falls below the 50% threshold for three consecutive calendar years (as specified in the MiFID II delegated regulation).

We may also deregister the SME growth market where there is no longer compliance with the requirements in MAR 5.10.2R (2) to (7).

- 5.6** The requirements specific to SME growth markets do not detract from other requirements relevant to MTFs under this chapter. There is some complexity around the SME growth market requirement in that at least half of the issuers admitted to trading on an SME growth market must be SMEs.⁹ The MiFID II delegated regulation further specifies this requirement.
- 5.7** MiFID II requires that, where a financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may also be traded on another SME growth market only where the issuer has been informed and has not objected. Notice should be in writing and the issuer should generally be given no less than 28 calendar days to object.

Implications for firms

- 5.8** The creation of a new sub-category of MTFs is aimed at promoting the visibility and profile and aid the development of the SME market.

Implications for consumers

- 5.9** SME growth markets will facilitate access to capital to SMEs and promote the use of this market to make it attractive to investors.

Q17: Do you agree with our proposal to include SME growth markets as part of MAR 5. If not, please give reasons why?

References

- 5.10** In addition to MAR 5.10, firms should look at the MiFID II and delegated regulation where further specification of the requirements for issuer qualification as an SME, and for market registration and deregistration are set out. The relevant sections of MiFID II are:
- Article 33 MiFID II
 - Articles 77, 78 and 79 of the MiFID II delegated regulation

⁹ As defined by [MiFID II] Article 4(13) and as set out in the Commission Delegated Acts in accordance with Article 89 of MiFID, further specifying the requirements laid down in Article 33(3) of MiFID.

6. Miscellaneous changes to the Handbook

Who should read this chapter

Regulated and unregulated firms, and individuals performing investment services and activities

Perimeter Guidance (PERG)

Introduction

- 6.1** MiFID II imposes a series of scope changes supplemented by the MiFID II delegated regulation. Perimeter Guidance (PERG) on several of these new features was consulted on as part of CP15/43 notably in relation to dealing on own account, structured deposits and multilateral systems. We noted then that we would issue a later consultation addressing scope matters to be expanded on in the delegated acts.
- 6.2** In CP16/29 we explained the changes we propose to make arising from those matters not dealt with in our earlier consultation, notably those new elements introduced by the MiFID II delegated regulation. These included forward foreign exchange (FX), commodity derivatives, and new exemptions for professional firms and commodity derivatives trading.

Existing provisions

- 6.3** The existing guidance in PERG 2.6.22A (and in previous MiFID II consultations) relates to the current pre-MiFID II scope of article 84 RAO in regard to forward FX instruments. Similarly, the guidance on the incidental services as part of a professional activity in PERG 13 Q39 (and in previous MiFID II consultations) does not take account of the effect of the amendment to Part XX FSMA, as part of domestic transposition of FSMA.

Proposals

- 6.4** Our revised guidance in PERG 2.6.22A reflects the amendments we expect to be made to article 84 RAO and links these to our previous guidance on forward FX in CP16/29 in PERG 13 Q31B to Q31O on the scope changes arising out of the MiFID II delegated regulation. We have also updated the guidance in PERG 13 Q39 to note that the Part XX exemption for professional firms remains available to those who meet the article 2.1(c) MiFID exemption conditions, supplemented by the MiFID II delegated regulation.
- 6.5** The amendment to PERG 13 Q39 should be read in conjunction with new proposed guidance in PROF 2.1.16 G. In our view, existing guidance elsewhere in PROF is also relevant when interpreting the exemption in the MiFID II delegated regulation (see PROF 2.1.14G and PROF 4.1.4G).

Q18: Do you agree with our proposals? If not, please give reasons why.

Implications for firms

- 6.6** Firms providing services in relation to forward FX instruments or trading in these instruments will need to consider whether MiFID II requires them to seek new permissions and passports, which result from the changes in scope in investment services, financial instruments and exemptions. The guidance should help them in doing this. The guidance should also help professional firms wishing to rely on the MiFID exemption, when considering the relevant criteria.

Remuneration and Knowledge and Competence

Introduction

- 6.7** In CP16/19 we consulted on a proposed new chapter SYSC 19F ‘Remuneration and performance management of sales staff’ where we intend to transpose MiFID II article 24(10) on remuneration incentives. We also consulted on changes to our Training and Competence sourcebook (TC) and SYSC to transpose the provisions in article 25(1) of MiFID regarding knowledge and competence.

Existing provisions

- 6.8** The provision in MiFID II article 24(10) on remuneration and in article 25(1) on training and competency are new.

Proposals

- 6.9** Under MiFID II article 35(8), the FCA as CA under MiFID has the responsibility for ensuring that the services provided by the branch within the UK comply with the obligations laid down in MiFID II article 24(10), among other provisions. Accordingly, we propose to amend the application of SYSC 19F to include the UK branch of an incoming EEA firm (unless it is a UCITS investment firm or an AIFM investment firm). Similar amendments reflecting our responsibility as a competent authority in relation to branches for matters falling under articles 24 and 25 of MiFID are made to the TC, Senior Management Arrangements, SYSC, Product Governance sourcebook (PROD) and the Fit and Proper test for Approved Persons (‘FIT’).

Q19: Do you agree with our proposal to amend SYSC 19F? If not, please give reasons why.

Q20: Do you agree with our proposal to amend several sourcebooks to clarify our responsibility as a competent authority in relation to matters falling under articles of MiFID? If not, please give reasons why.

Structured deposits

Introduction

- 6.10** Through Article 1(4), MiFID II applies certain of MiFID II’s conduct of business and organisational requirements to investment firms and to credit institutions when selling or advising clients in relation to structured deposits. These requirements include those relating to suitability, appropriateness, inducements, product governance, cost and charges disclosures, and post-sale reporting obligations.

- 6.11** In CP16/29, we consulted on our proposals for applying relevant conduct requirements to firms selling or advising on structured deposits. We proposed that we would apply individual COBS rules to those activities, rather than bringing such activities more generally within the definition of ‘designated investment business’. Our proposed application of these COBS rules to structured deposits was dealt with in the relevant individual chapters in that CP.
- 6.12** We proposed transposing MiFID II’s requirements in relation to structured deposits in COBS because we consider that it would make BCOBS unnecessarily complicated, and unwieldy, if we were to copy out the MiFID II provisions relevant to structured deposits into BCOBS.
- 6.13** This section sets out our proposals for making consequential changes to the Handbook arising from the proposed amendments described in CP16/29.
- 6.14** In CP16/18¹⁰ we consulted on guidance in BCOBS Chapter 2 to refer to the requirements of the PRIIPs Regulation that will apply in relation to structured deposits, as structured deposits fall within the definition of a PRIIP.

Existing provisions

- 6.15** In the UK, structured deposit business is broadly regulated in the Handbook in the same way as other activities involving accepting deposits – mainly through rules in BCOBS that are specific to deposit takers.

Proposals

- 6.16** A number of the requirements in COBS which we have proposed to apply to firms when selling or advising on structured deposits are similar to requirements in BCOBS – in particular, those in BCOBS Chapters 2 (Communications with banking customers and financial promotions) and 4 (Information to be communicated to banking customers).
- 6.17** In relation to structured deposits, we are therefore proposing to amend, in part, the application of BCOBS to ensure that firms selling structured deposits which are within the scope of BCOBS are not, in future, subject also to those BCOBS requirements which achieve similar outcomes to applicable COBS requirements.
- 6.18** We are proposing to amend the application of BCOBS through a new Annex which will be relevant to firms which accept deposits when selling structured deposits (i.e. certain BCOBS provisions will continue to apply to structured deposits).
- 6.19** In order to reflect the impact of the directly applicable PRIIPs Regulation, we are now proposing guidance that will refer to the PRIIPs Regulation in the application provisions of BCOBS Chapter 1 (rather than BCOBS Chapter 2). We are also proposing to clarify that if a firm is required to provide information in a key information document, then the rules in BCOBS will not apply to the extent they would require the firm to provide the same information.

Q21: Do you agree with our proposal to amend BCOBS? If not, please give reasons why.

¹⁰ www.fca.org.uk/publication/consultation/cp16-18.pdf

Transparency waivers and deferrals

Introduction

- 6.20** In CP15/43, see paragraphs 6.16 to 6.26, we consulted on the process of trading venues making applications to use pre-trade transparency waivers and seeking authorisation to use post-trade transparency deferrals. Following the feedback received we are now making firm proposals.

Existing provisions

- 6.21** See draft directions and guidance in MAR 5.7.1A to C, 5A.10.1 and 5.11.1 in CP15/43.

Proposals

- 6.22** Respondents to CP15/43 favoured us providing more clarity in our sourcebooks on the information we need in order to evaluate an application for a pre-trade transparency waiver, and setting up the process in our sourcebook on the process of applying for deferrals. We will be providing further practical information about our forms and processes shortly in an Applications and Notifications Guide, but in the meantime are consulting on some minor revisions to the draft Handbook text we proposed in CP15/43.
- 6.23** For pre-trade transparency waivers and post-trade transparency deferrals, we propose the provisions in MAR 5 and MAR5A for MTFs and OTFs respectively requiring firms to apply for waivers in the approve form, be extended to Recognised Investment Exchanges.

Q22: Do you agree with our proposed similar treatment of firms and Recognised Investment Exchanges in relation to pre-trade transparency waivers and post-trade transparency deferrals? If not, please give reasons why.

Implications for firms

- 6.24** Our proposals simply extend to Recognised Investment Exchanges a set of administrative arrangements designed to facilitate a directly applicable obligation for trading venues to apply for pre-trade transparency waivers and post-trade transparency deferrals.

Consequential

Introduction

- 6.25** In the course of our previous MiFID consultations, we have tried in several areas to deal with consequential changes to the Handbook at the same time as making the substantive changes. There is, however, additional updating which we have undertaken as part of the current consultation. Our overall aim is to bring the Handbook and associated material into line with the changes we are proposing to make as a part of implementing MiFID. This section sets out our proposals for these mainly consequential changes to the Handbook, in addition to a proposal for a general transitional provision.

Existing provisions

- 6.26** The proposed consequential amendments are essentially administrative and they do not reflect any change in policy.

Proposals

- 6.27** We propose to amend various Handbook modules and in particular the following:

- Glossary – miscellaneous updating
- Conduct of Business sourcebook (COBS): consequential changes including updating the application table in COBS 1 Annex 1
- Complaint handling rules (DISP): changes to our new draft section DISP 1.1A, to align the requirements that apply to MiFID complaints that are resolved by MiFID investment firms by close of business on the third business day following the day on which they are received, with the existing rules in DISP 1.5 on handling other complaints that are resolved within this timeframe. These provisions enable firms to use a MiFID complaint approach similar to that which applies to non-MiFID complaints. We are also proposing consequential changes to Schedule 1, Record Keeping requirements and Schedule 2, Notification requirements to include and amend MiFID-derived guidance.
- Supervision manual (SUP): various amendments including categorisation for reporting purposes of Organised Trading Facility (OTF) operators and changes to reflect the removal of the MiFID exemption for locals. We have also updated SUP 13A and SUP Appendix 3 to deal with miscellaneous issues relating to passporting, including the application of the Handbook to EEA firms, home/host competent authority (CA) responsibilities and the mapping of MiFID scope elements to UK regulated activities and mechanical amendments to reflect that some passporting issues in relation to PRA-authorised firms are addressed in the PRA rulebook.

**Q23: Do you agree with our proposal amend these modules?
If not please give reasons why.**

Transitionals

- 6.28** There are a couple of areas in which firms may wish to take steps not prescribed in MiFID II for their administrative convenience. The first is where firms would like to make changes to the way they do business, such as changing the classification of clients, ahead of legal changes in MiFID II that require them to. The second is where firms undertaking MiFID and non-MiFID business want to have a single set of compliance standards across both types of business, applying in each case the most stringent of whichever rules are relevant. We have drafted a transitional provision relating to the first area for the first and are interested in views on whether a provision in rules to cover the second area would be helpful, to the extent possible.

Q24: Do you agree with our proposal for a transitional provision in GEN to enable firms to make changes related to MiFID II ahead of 3 January 2018? If not, please give reasons why.

Q25: Do think it would be helpful to have rules to support firms applying a single set of conduct standards across MiFID and non-MiFID business once MiFID II is implemented? If not, please give reasons why.

7. Fees Manual (FEES)

Who should read this chapter

Any firm applying for FCA authorisation, or an FCA-authorised firm applying to vary permissions, under MiFID II

- 7.1** In this chapter, we propose transitional rules for FCA-authorised firms which submit draft applications for permissions, or variations of permission, under MiFID II before the appropriate charges are in place. The chapter does not apply to dual regulated firms which are authorised, or seek authorisation, by the PRA.
- 7.2** In CP16/19, we consulted on the application fees we intend to charge for the new permissions and activities to be introduced under MiFID II (the ‘new permissions’) from 3 January 2018.¹¹ We intend to finalise and implement these charges when the transitional regime that enables us to receive and determine applications for these new permissions before 3 January 2018 comes into force.
- 7.3** We now propose that when an applicant makes an application for new permissions specified in the transitional regime together with an application for permissions to carry on activities we currently regulate, a transitional rule in FEES ensures that the applicant is to be treated for fees purposes as having made a single application.
- 7.4** To achieve this we propose that the fee payable for the application made under the transitional regime will only be payable where the fee for that application is higher than the amount paid for any connected application for activities we already regulate. Any amount payable will be the difference between the two applications.
- 7.5** This reflects the approach we will take to forms too. When we open the MiFID II authorisations gateway firms will be asked to make both applications using the same application form to avoid unnecessary duplication.
- 7.6** It is expected that we may open our MiFID II authorisations gateway before this transitional regime comes into force. That is to enable us to receive and consider draft applications in advance of that date. In this case, firms will also be asked to use a single form covering both the draft application under the transitional regime and the formal application under FSMA.

¹¹ For the purpose of this chapter the new permissions are the permission to carry out the new activity of operating an OTF and the proposed emission allowances, binary bets and structured deposits investment types. MiFID II also introduces new data reporting services activities, however these do not constitute FSMA activities and will be covered under the UK Data Reporting Services Regulations. The proposals in this chapter will not affect firms applying for data reporting services.

- 7.7** Our intention is for the transitional rule to also apply in these circumstances, with the effect being that when a fee becomes payable in respect of the application for new permissions following the entry into force of the transitional regime, that fee is adjusted as described above.
- 7.8** The rules are in Appendix 1. On this particular point we have decided it is appropriate to set a shorter consultation deadline, of 16 January 2017, so that we can clarify the outcome of this consultation in time for the opening of our authorisation gateway.

Q26: Do you have any comments on our proposal to charge firms the difference between the fee payable under MiFID II and the amount already paid in connection with applications for existing activities?

(Please respond by 16 January 2017)

8. Feedback on CP16/29 proposed Form A

Who should read this chapter

Those who provided responses to CP16/29 on our proposed Form A for MiFID firms, and those who may seek to use the Form A for MiFID firms

Introduction

- 8.1** In CP16/29 we proposed the introduction of a new Form A for firms seeking authorisation under MiFID.
- 8.2** We have proposed that a new Form A would be introduced as a result of relevant MiFID II RTS and ITS,¹² which will require firms to submit information for the approval of individuals who will be members of the management body or effectively direct the business of MiFID firms. We proposed allowing firms to use that form when we open the Authorisations gateway in 2017.
- 8.3** To reduce duplication and complexity in forms for firms, we also proposed to allow prospective MiFID firms coming through our Authorisations gateway to use the new Form A to submit information on the proposed appointment of persons who are not members of the management body or do not direct the business. This proposed approach does not extend the additional information requirements to individuals who would not otherwise be subject to it. We recognised that firms may wish to take this approach; or continue using the existing Long or Short Form As, as they see fit.

Responses

- 8.4** We received responses from seven respondents. All respondents were in favour of the proposed changes; with no objections.
- 8.5** Two respondents were explicitly supportive of our intention to allow firms to choose which Form A to use, as a method of reducing duplication.
- 8.6** One respondent asked for further guidance clarifying what would constitute a relevant 'financial interest' for the purpose of disclosures on those interests held by members of a management body. However, we believe that determining what constitutes a relevant 'financial interest' is a matter of judgment for firms when deciding what to include in Form A.

¹² These will be the RTS under Article 7(4) and the ITS under Article 7(5) of MiFID II.

Proposals

- 8.7** Taking the responses into account, we do not intend to make any significant changes to what we proposed with regard to changes to the relevant Form A. However, in order to reflect better the proposed purpose of the new form, we have amended the title of the form as follows: ‘Long Form A – UK and Overseas Firms (not Incoming EEA) for MiFID 2 authorisation applications’. We have also amended the footnote on the first page of the form.
- 8.8** The proposed draft form can be found at Appendix 3.
- 8.9** These forms should be used by all non-MiFID firms applying for permission to carry out activities under MiFID from when the MiFID II authorisations gateway opens on 30 January 2017. The new forms do not need to be used by existing MiFID firms (including those which already have permission to carry out MIFID activities and want to vary that permission to include MIFID II activities).
- 8.10** We propose to make the amended Form A and the other authorisation forms by direction before the MIFID II authorisations gateway opens on 30 January 2017. Firms will be able to use the new forms after that point. However, the Treasury has not yet amended the RAO to include the new MIFID II activities. In view of that, authorisation applications from firms applying to undertake activities brought into the scope of regulation by MiFID II including operating an OTF or carrying out activities in relation to the new proposed investment types of structured deposits, binary bets and emission allowances will be treated as drafts until the Treasury’s proposed changes to the RAO have come into force. In such cases, the Form As (insofar as they relate to persons performing MIFID II activities), together with the rest of the application, will also be treated as drafts until the Treasury’s relevant statutory instruments are finalised. To allow these forms to be treated as final, we will formalise our proposals as part of the MiFID II Policy Statement next year.
- 8.11** Applications from firms seeking to obtain permission to carry out any of the existing MIFID activities, or to carry out activities in relation to the existing investment types, will continue to be treated as final and so will be treated any accompanying Form As.

Annex 1

List of questions

- Q1:** Do you agree with our approach to COBS 18.1? If not, please give reasons why.
- Q2:** Do you agree with our approach to COBS 18.2? If not, please give reasons why.
- Q3:** Do you agree with our proposed changes to COBS 18.3? If not, please give reasons why.
- Q4:** Do you agree with our proposals to update COBS 18.4? If not, please give reasons why.
- Q5:** Do you agree with our proposals to update COBS 18 Annex 1? If not, please give reasons why. In particular, are there any issues affecting internally-managed AIFs that we should consider?
- Q6:** Do you agree with our proposal to make no changes to COBS 18.6? If not, please give reasons why.
- Q7:** Do you agree with our proposal to make no changes to COBS 18.7? If not, please give reasons why.
- Q8:** Do you agree with our proposal to make no further changes to COBS 18.9? If not, please give reasons why.
- Q9:** Do you agree with our proposal for COBS 18.10? If not, please give reasons why.
- Q10:** Do you agree with our proposed change to COBS 18.11? If not, please give reasons why.
- Q11:** Do you agree with our proposed changes to SUP 12? If not, please give reasons why.
- Q12:** Do you agree with our approach that the annual notification required under MAR 9.3.7 will be an annual review, verified by a member of the management body of the DRSP, which assesses the DRSP's controls in place for RTS 13? If not, please give reasons why.

- Q13:** Do you agree with our proposal that RTS 13 should form the framework and scope of the annual review that should be undertaken by a DRSP prior to verifying its' compliance with Title V of MiFID II? If not, please give reasons why.
- Q14:** Do you agree with our proposal to extend the timeframe in MAR 9.3.7 to submit the notification in MAR 9 Annex 8D? If not, please give reasons why.
- Q15:** Do you agree with our proposed changes to process around authorisation and notification for DRSPs? If not, please give reasons why.
- Q16:** Do you agree with our proposed guidance on transaction reporting at MAR 9.5.9 and 9.5.10? If not, please give reasons why.
- Q17:** Do you agree with our proposal to include SME growth markets as part of MAR 5. If not, please give reasons why?
- Q18:** Do you agree with our proposals? If not, please give reasons why.
- Q19:** Do you agree with our proposal to amend SYSC 19F? If not, please give reasons why.
- Q20:** Do you agree with our proposal to amend several sourcebooks to clarify our responsibility as a competent authority in relation to matters falling under articles of MiFID? If not, please give reasons why.
- Q21:** Do you agree with our proposal to amend BCOBS? If not, please give reasons why.
- Q22:** Do you agree with our proposed similar treatment of firms and Recognised Investment Exchanges in relation to pre-trade transparency waivers and post-trade transparency deferrals? If not, please give reasons why.
- Q23:** Do you agree with our proposal amend these modules? If not please give reasons why.
- Q24:** Do you agree with our proposal for a transitional provision in GEN to enable firms to make changes related to MiFID II ahead of 3 January 2018? If not, please give reasons why.
- Q25:** Do think it would be helpful to have rules to support firms applying a single set of conduct standards across MiFID and non-MiFID business once MiFID II is implemented? If not, please give reasons why.

Q26: Do you have any comments on our proposal to charge firms the difference between the fee payable under MiFID II and the amount already paid in connection with applications for existing activities?

Annex 2

Cost benefit analysis

1. When proposing rules we must publish a cost benefit analysis (CBA) as required under Section 138I(2)(a) of FSMA, as amended by the Financial Services Act (2012). In CP15/43, CP16/19 and CP16/29 we provided an overview of EU work on the impact of MiFID II and its relevance to the UK. In this CBA we present here our cost-benefit analysis of the proposals in this CP.

Specialist regimes

2. The baseline for the CBA of Specialist Regimes is COBS 18. This includes a range of specialist conduct regimes for different types of business. Below we set out the implications of our proposals for the various different types of business.

Trustee firms

Introduction

3. The specialist regime for Trustee firms applies when they are doing MiFID business. We consulted in CP16/29 on the conduct changes for MiFID business. In this CP we are not making any substantive proposals in regard to Trustee firms just updating references to rules which do not currently apply to them, or are unlikely to apply to them.

Costs

4. These proposals will result in no incremental costs or incremental costs of minimal significance for Trustee firms.

Benefits

5. These proposals will result in no incremental benefits or incremental benefits of minimal significance.

EMPs and OMPs

Introduction

6. This regime breaks down into provisions covering:
 - EMPs and OMPs conducting MiFID business – where our proposal involves updating references
 - EMPs and OMPs conducting non-MiFID business – where we are not proposing substantive changes but some of the COBS rules to which they are subject are being updated on the basis of proposals in CP16/29
 - Firms conducting other non-MiFID commodity derivatives business – where we are proposing to subject them to the MiFID II tapering rules and various of the underlying COBS rules to which they are subject are being updated on the basis of proposals in CP16/29

Costs

7. For EMPs and OMPs conducting MiFID business we are making no substantive proposals in this CP, we are only updating references of rules which do not apply, because of the type of business EMPs and OMPs do, and the rules which are unlikely to apply. These proposals will result in no incremental costs or incremental costs of minimal significance. For EMPs and OMPs conducting non-MiFID business we made proposals in CP16/29 regarding the application of the rules on recording of telephone conversations and electronic communications and investment research. The rules governing client categorisation and financial promotions for non-MiFID business which apply to them are changing based on proposals in CP16/29.
8. Paragraphs 84 to 130 of the CBA in CP16/29 deal with changes to the client categorisation rules, including for non-MiFID business. We do not believe that changes to the rules as they relate to the categorisation of local authorities will be relevant for EMPs and OMPs. This is because we do not believe EMPs and OMPs have local authorities as clients. Paragraph 119 of the CBA concluded that the overall impact of the other discretionary changes to the client categorisation regime being proposed for non-MiFID business ‘...will not be material.’ In relation to firms, paragraph 122 of the CBA said the additional one-off and ongoing costs would be of minimal significance. In relation to clients, paragraph 123 of the CBA said clients unable to opt up would incur costs which are unlikely to be material. This conclusion applies for EMPs and OMPs, who were included in the CBA survey we conducted for CP16/29, as much as to other forms of non-MiFID.
9. Paragraphs 131 to 149 of the CBA in CP16/29 covered the changes to COBS 4, including to firms conducting non-MiFID business, which encompasses changes to the financial promotion rules. In paragraph 135 we explained that the only changes made to the rules for non-MiFID business (other than that conducted by Article 3 firms) were ‘...where the recast provisions are identical to, very similar to, or can be inferred from, existing provisions in the Handbook...’. As a result we said in paragraph 144 we expected the one-off impact of the changes to ‘...result in costs of minimal significance’. This conclusion applies for financial promotions conducted by OMPs and EMPs just as much as to other forms of non-MiFID business.
10. For other non-MiFID activity related to commodity and exotic derivatives we do not think the changes proposed in CP16/29 will have significant implications for firms conducting this business. Paragraphs 308 to 339 of the CBA in CP16/29 deal with taping. In paragraph 325 we highlighted that for non-MiFID firms who already have a taping solution in place, the additional costs of meeting the MiFID II requirements would be low. Firms conducting non-MiFID activity related to commodity and exotic derivatives are subject to our existing taping rules and so the conclusion from CP16/29 applies to them as well.

Benefits

11. For OMPs and EMPs conducting MiFID business the proposals will result in no incremental benefits or incremental benefits of minimal significance.
12. The changes to the financial promotion rules for non-MiFID business clarify existing obligations to ensure that promotions are fair, clear and not misleading and that consumers are better informed as a result. We expect these proposals, in relation to EMPs and OMPs, to result in incremental benefits of minimal significance.
13. In paragraphs 128 to 130 of the CBA in CP16/29 we noted that the main benefits of applying the MiFID II client categorisation changes to non-MiFID business would be to offer greater protections to elective professional clients and help to address information asymmetries. In

paragraph 129 we also outlined that it is not possible to quantify the detriment arising from elective professional clients inappropriately being treated as ECPs, as the scale of opting up in practice appears to be very low.

14. Paragraphs 336 to 339 of 16/29 of CP16/29 set out the benefits of taping. They explained that estimating the benefits of taping is not reasonably practicable, but that it brings benefits from a supervisory and enforcement perspective.

Corporate finance business

Introduction

15. We consulted on the substantive changes for corporate finance business conducted by MiFID firms in CP16/29. In this CP we are updating references and this has no impact on the rules to which MiFID firms conducting corporate finance business are subject.

Costs

16. These proposals will result in no incremental costs or incremental costs of minimal significance.

Benefits

17. These proposals will result in no incremental benefits or incremental benefits of minimal significance.

Stock lending activity

Introduction

18. We consulted on the substantive changes for stock lending activity by MiFID firms in CP16/29. In this CP we are updating references and this has no impact on the rules to which MiFID firms conducting stock lending activity are subject.

Costs

19. These proposals will result in no incremental costs or incremental costs of minimal significance.

Benefits

20. These proposals will result in no incremental benefits or incremental benefits of minimal significance.

Residual CIS operators, AIFMs and UCITS management companies

Introduction

21. We proposed changes to the application of COBS rules in relation to firms carrying on collective portfolio management (CIS operators and fund managers) in CP16/29. The changes included requiring this group of firms to comply with the inducements and research rules proposed in COBS 2.3B. Paragraphs 38 to 83 of the CBA in CP16/29 explain why COBS 2.3B should apply to non-MiFID firms carrying on collective portfolio management. In this CP we propose to modify how COBS 2.3B applies to these firms in respect of the requirements to agree terms of business with clients and disclose information to them. Where a firm intends to operate a research payment account, we propose to partly disapply the requirement for the firm to agree a research budget with the client.

Costs

22. The disapplication will reduce the cost of implementing the rules for many firms, compared to the estimate of costs made in CP16/29. We consider that the reduction to the estimate of costs made in CP16/29 will be of minimal significance. We have also clarified through a transitional provision that the prior consent of unit holders in authorised funds to the introduction of a RPA will not be required for up to two years after the rules become effective. Therefore, during that time the process for setting up a RPA for a fund should not lead to incremental costs for fund

managers and CIS operators compared to the cost of setting one up for an individual portfolio management client or group of clients.

23. We also propose that the same information which MiFID requires a firm to disclose to its clients about the use of third-party research should be disclosed by the CIS operator or fund manager to investors in the fund. We propose information about an authorised fund should be added to its existing disclosure documents (the prospectus and the annual report and accounts) so any one-off or ongoing incremental costs to the fund manager should be of minimal significance. For all other funds, we do not prescribe how the new information should be disclosed, but in most cases it could be provided alongside, or as part of, existing pre-contractual information and periodic reports or statements that firms are already required to provide or make available to fund investors. For that reason, we similarly believe that the incremental costs of providing the information, compared to the costs estimated in CP16/29 for the provision, should be of minimal significance.

Benefits

24. The main benefit of these proposals is to give investors in funds access to equivalent information about the fund manager's use of third-party research that an individual client of a firm carrying on MiFID business would have. This should mean that collective portfolio managers choosing to use a RPA would take the same degree of care as a MiFID firm would do to set an annual budget for research and use it appropriately, although we recognise that individual investors in funds do not have the same ability to negotiate with a fund manager over the terms of the RPA. As such, we consider that the incremental impact of our proposals on the benefits outlined in CP16/29 should be of minimal significance.

Lloyd's Introduction

25. We proposed changes to the client categorisation and financial promotion rules for non-MiFID business in CP16/29 that will affect the conduct rules that apply to Lloyd's market activity.

Costs

26. Paragraphs 84 to 130 of the CBA in CP16/29 deal with changes to the client categorisation rules, including for non-MiFID business. We do not believe that changes to the rules as they relate to the categorisation of local authorities will be relevant for Lloyd's market activities. This is because we do not believe firms conducting Lloyd's markets activities have local authorities as clients. Paragraph 119 of the CBA concluded that the overall impact of the other discretionary changes to the client categorisation regime being proposed for non-MiFID business '...will not be material.' In relation to firms, paragraph 122 of the CBA said the additional one-off and ongoing costs would be minimal significance. In relation to clients, paragraph 123 of the CBA said clients unable to opt up would incur costs which were unlikely to be material. The conclusion in CP16/29 concerning the minimal cost implications for firms and clients of the procedural changes for clients opting up to ECP status was a general conclusion about the costs of the procedures and therefore holds for all non-MiFID business including Lloyd's market activities. In regard to the costs imposed by certain clients being prevented from opting up to ECP status, the only substantive conduct rules imposed on Lloyd's market activities are the financial promotion rules. The general disapplication of conduct rules that comes with ECP status is not therefore really relevant in this area and we do not believe therefore that there will be significant incremental costs associated with this change in regard of Lloyd's market activities.
27. Paragraphs 131 to 149 of the CBA in CP16/29 covered the changes to COBS 4, including to firms conducting non-MiFID business, which encompasses changes to the financial promotion rules. In paragraph 135 we explained that the only changes made to the rules for non-MiFID

business (other than that conducted by Article 3 firms) were ‘...where the recast provisions are identical to, very similar to, or can be inferred from, existing provisions in the Handbook...’. As a result we said in paragraph 144 we expected the one-off impact of the changes to ‘...result in costs of minimal significance’. This conclusion holds for financial promotions conducted as part of Lloyd’s market activities just as much as to other forms of non-MiFID business.

Benefits

- 28.** In paragraphs 128 to 130 of the CBA in CP16/29 we noted that the main benefits of applying the MiFID II client categorisation changes to non-MiFID business would be to offer greater protections to elective professional clients and help to address information asymmetries. In paragraph 129 we also outlined that it is not possible to quantify the detriment arising from elective professional clients inappropriately being treated as ECPs, as the scale of opting up in practice appears to be very low.
- 29.** The changes to the financial promotion rules for non-MiFID business clarify existing obligations to ensure that promotions are fair, clear and not misleading and that consumers are better informed as a result. We expect these proposals, in relation to EMPs and OMPs, to result in incremental benefits of minimal significance.

Depositaries

Introduction

- 30.** The only change for Depositary firms conducting non-MiFID business is as a result of the changes to COBS 4 that we consulted on in CP16/29.

Costs

- 31.** Paragraphs 131 to 149 of the CBA in CP16/29 covered the changes to COBS 4, including to firms conducting non-MiFID business. In paragraph 135 we explained that the only changes made to the rules for non-MiFID business (other than that conducted by Article 3 firms) were ‘...where the recast provisions are identical to, very similar to, or can be inferred from, existing provisions in the Handbook...’. As a result we said in paragraph 144 we expected the one-off impact of the changes to ‘...result in costs of minimal significance’. This conclusion applies to Depositary firms just as much as to other forms of non-MiFID business.

Benefits

- 32.** The changes to the financial promotion rules for non-MiFID business clarify existing obligations to ensure that promotions are fair, clear and not misleading and that consumers are better informed as a result. We expect these proposals, in relation to depositaries, to result in incremental benefits of minimal significance.

ICVCs

Introduction

- 33.** The only changes for ICVCs are as a result of the changes to COBS 4 that we consulted on in CP16/29.

Costs

- 34.** Paragraphs 131 to 149 of the CBA in CP16/29 covered the changes to COBS 4, including to firms conducting non-MiFID business. In paragraph 135 we explained that the only changes made to the rules for non-MiFID business (other than that conducted by Article 3 firms) were ‘...where the recast provisions are identical to, very similar to, or can be inferred from, existing provisions in the Handbook...’. As a result we said in paragraph 144 we expected the one-off impact of the changes to ‘...result in costs of minimal significance’. This conclusion applies to ICVCs just as much as to other forms of non-MiFID business.

Benefits

35. The changes to the financial promotion rules for non-MiFID business clarify existing obligations to ensure that promotions are fair, clear and not misleading and that consumers are better informed as a result. We expect these proposals, in relation to ICVC, to result in incremental benefits of minimal significance.

OPS firms**Introduction**

36. We are proposing that the existing rules that apply to OPS firms should continue to apply to them after 3 January 2018, although further policy work will be undertaken next year to consider certain issues.

Costs

37. Given that, at this stage, we are not proposing any changes to the COBS rules applying to OPS firms there will be no cost to firms of our proposed Handbook change applying the existing rules after 3 January 2018 compared to the current COBS 18 baseline.

Benefits

38. Given that, at this stage, we are not proposing any changes to the COBS rules applying to OPS firms there will be no benefit of our proposed Handbook change applying the existing rules after 3 January 2018 compared to the current COBS 18 baseline.

UCITS qualifiers, AIFM qualifiers and Service companies**Introduction**

39. The only changes for UCITS qualifiers, AIFM qualifiers and Service companies as a result of the changes to COBS 4 that we consulted on in CP16/29.

Costs

40. Paragraphs 131 to 149 of the CBA in CP16/29 covered the changes to COBS 4, including to firms conducting non-MiFID business. In paragraph 135 we explained that the only changes made to the rules for non-MiFID business (other than that conducted by Article 3 firms) were ‘...where the recast provisions are identical to, very similar to, or can be inferred from, existing provisions in the Handbook...’. As a result we said in paragraph 144 we expected the one-off impact of the changes to ‘...result in costs of minimal significance’. This conclusion applies to UCITS qualifiers, AIFM qualifiers and Service companies just as much as to other forms of non-MiFID business.

Benefits

41. The changes to the financial promotion rules for non-MiFID business clarify existing obligations to ensure that promotions are fair, clear and not misleading and that consumers are better informed as a result. We expect these proposals, in relation to UCITS qualifiers, AIFM qualifiers and Service companies, to result in incremental benefits of minimal significance.

Authorised professional firms**Introduction**

42. The only changes for APFs conducting non-mainstream regulated activities are as a result of changes to COBS 4 and COBS 8 that we consulted on in CP16/29.

Costs

43. Paragraphs 131 to 149 of the CBA in CP16/29 covered the changes to COBS 4, including to firms conducting non-MiFID business. In paragraph 135 we explained that the only changes made to the rules for non-MiFID business (other than that conducted by Article 3 firms) were ‘...where the recast provisions are identical to, very similar to, or can be inferred from, existing

provisions in the Handbook...'. As a result we said in paragraph 144 we expected the one-off impact of the changes to ...result in costs of minimal significance'. This conclusion applies to APFs conducting non-mainstream regulated activities, particularly given the modifications to the financial promotion rules for these firms, just as much as to other forms of non-MiFID business.

44. Paragraphs 266 to 271 of the CBA in CP16/29 covered client agreements. The change we made for non-MiFID business is to align the record keeping requirements, except for certain products, with those in MiFID. Paragraph 270 of the CBA in CP16/29 explained that '...this is a relaxation of the current requirements...'. For APFs conducting non-mainstream regulated activities this proposal is likely to result in costs of minimal significance.

Benefits

45. The changes to the financial promotion rules for non-MiFID business clarify existing obligations to ensure that promotions are fair, clear and not misleading and that consumers are better informed as a result. We expect these proposals, in relation to APFs conducting non-mainstream regulated activities, to result in incremental benefits of minimal significance.
46. The changes to the client agreement rules give firms slightly more flexibility to decide how long to keep records of agreements. We said in CP16/29 we thought that this change would benefit consumers, as greater and more detailed information on their investments is expected to help consumers make more informed financial decisions.

Tied agents

Introduction

47. The tied agents regime was originally introduced under Article 23 of MiFID I and was optional for Member States. At that stage, the FSA and the Treasury chose to implement the MiFID tied agent regime by way of changes to the existing domestic framework for the appointment of ARs. MiFID II now mandates that Member States must have a tied agents regime in place. The proposed changes in SUP 12 have been introduced to reflect that the tied agents regime is no longer discretionary for member states. This impacts primarily on the registration of tied agents. The changes made by MiFID II (and reflected in SUP12) are also relevant to the ability of tied agents to perform services in relation to structured deposits and result in some additional requirements for Article 3 firms appointing ARs.
48. This is a matter where it is intended that there is a common approach across the EU and therefore we have little or no margin for discretion in implementing MiFID II. The exception to this is that Member States can choose whether to allow Article 3 firms to appoint tied agents. However, the UK already allows such firms to appoint ARs. Moreover, the changes substantially mirror our current regime and approach. As such we provide a high level CBA on the changes.

Costs

49. There will be incremental costs of minimal significance for firms who have to reregister tied agents they currently use in jurisdictions who under MiFID do not currently allow the registration of tied agents, and for Article 3 firms whose appointed representatives become tied agents. The costs of the substantive conduct obligations applying to tied agents, including in relation to tied agents of Article 3 firms and where tied agents are selling, or advising clients on structured deposits, were covered by our assessment of the changes to conduct rules in CP16/29 as the firms for which tied agents work are responsible for their compliance with regulatory requirements.

Benefits

50. We consider that there will be minimal incremental benefits as a result of the changes to the registration of tied agents and for Article 3 firms whose appointed representatives become tied agents. The benefits of the substantive conduct obligations applying to tied agents, including in relation to tied agents of Article 3 firms and where tied agents are selling, or advising clients on structured deposits, were covered by our assessment of the changes to conduct rules in CP16/29 as the firms for which tied agents work are responsible for their compliance with regulatory requirements

Market data**Introduction**

51. We consulted on the Market Data proposals in CP15/43. In this CP we outline the expectations for the annual review of on-going compliance, which will need to be verified by a member of the management body of the DRSP. We also propose an extension in the time firms have to provide an annual review, from 10 weeks to 3 months and some small changes to MAR 9 in regard to our approach and procedures for the authorisation and verification of DRSPs.

Costs

52. We consider that any incremental costs to firms as a result of these proposals will be of minimal significance.

Benefits

53. We consider there will be minimal incremental benefits as a result of these proposals.

SME growth markets**Introduction**

54. MiFID II introduces a new sub-category of MTF called SME Growth Markets. This is a voluntary regime which market operators or investment firms operating an MTF can choose to register for if they meet the requirements. This is a matter where it is intended that there is a common approach across the EU and therefore we have little or no margin for discretion in implementing MiFID II. We therefore provide a high level cost benefit analysis.

Costs

55. Registration as an SME Growth Market is voluntary which means that the option will remain for operators of markets aimed at smaller and medium-sized issuers to choose to continue to operate such a market in accordance with the requirements of MiFID II without seeking registration as an SME growth market. The cost for registration will be of minimal significance, essentially consisting of the time to put together the information for the forms. Operators of MTFs wishing to register as an SME, have to ensure that at least 50% of the issuers are small and medium sized enterprises. The incremental costs associated with this proposal are of minimal significance.

Benefits

56. The creation of the SME Growth Market sub-category raises the profile and visibility and aims to create a set of harmonised requirements for these markets. Therefore, consumers can benefit from specialised MTFs where they are able to easily access these junior markets. This new sub-category also intends to facilitate access to capital for SMEs as it will create more visibility and easier access from investors to secondary market.

Miscellaneous changes to the Handbook***Perimeter guidance***

57. The PERG amendments provide guidance on the regulatory perimeter rather than on FCA rules. The main implications of the changes in the regulatory perimeter which they provide guidance on were discussed in the Impact Assessment accompanying the Treasury's consultation on changes to legislation to implement MiFID II (or will be discussed, given aspects of the scope of MiFID II were only clarified after the Treasury's consultation was published, in the revised Impact Assessment that the Treasury will publish when finalising its legislative proposals) which included changes to ensure that the UK regulatory boundary captured all the activities and services encompassed by MiFID II and its range of financial instruments. The guidance does not impose additional costs on firms.

Remuneration and Knowledge and Competence

58. In CP16/19, we set out our approach to remuneration and provided a high level cost-benefit analysis of implementing the proposed changes to SYSC. In CP 16/29, we set out our approach to knowledge and competence and provided a high level cost-benefit analysis of implementing the proposed changes to TC and SYSC. In this CP we do not propose anything further on these two topics, but clarify the application of the associated territorial rules. The territorial application of the MiFID II remuneration and knowledge and competence requirements are intended to introduce a common approach across the EU and we do not have discretion on their implementation. The conclusions from our high-level CBAs conducted for CP16/19, on remuneration, and CP 16/29, on knowledge and competence, still hold.

Structured Deposits

59. In CP16/29, we consulted on our proposals for applying relevant conduct requirements to firms selling or advising on structured deposits. We proposed transposing MiFID II's requirements in relation to structured deposits in COBS because we consider that it would make BCOBS unnecessarily complicated, and unwieldy, if we were to copy out the MiFID II provisions relevant to structured deposits into BCOBS. In this CP we include consequential changes to the Handbook arising from the proposed amendments described in CP16/29. We do not believe these consequential changes will add any significant costs or benefits to those expected from MiFID II as addressed in CP 16/29. The proposed consequential amendments are administrative and they do not reflect any change in policy. Most of them consist of incorporating cross-references to organisational requirements in the EU directly applicable regulation. There is no FSMA obligation on us to conduct a CBA or produce a compatibility statement for guidance.

Consequential changes to the Handbook

60. The changes we propose to the relevant modules of the Handbook are a direct result of the changes imposed by the implementation of MiFID II. We do not believe these consequential changes will add any significant costs or benefits to those expected from MiFID II as addressed in CPs 16/19 and 16/29
61. The proposed consequential amendments are administrative and they do not reflect any change in policy. Most of them consist of incorporating cross-references to organisational requirements in the EU directly applicable regulation. There is no FSMA obligation on us to conduct a CBA or produce a compatibility statement for guidance.

Transitionals

62. In CP16/19 our work on transitionals commenced with the inclusion of a proposed rule in TP 9 in SUP. This was to ensure that firms continue to notify and remedy breaches of the MiFID Regulation and SUP 17 as at 2 January 2018 whenever these breaches come to light notwithstanding the repeal of the MiFID Regulation on 3 January 2018. The intention of this rule was to assist firms with their transitional arrangements while ensuring that the FCA retained the ability to look backwards prior to MiFID II where necessary.

63. The transitional provision was to deal with the cutover from one legal regime to another. It does not add to firms' costs in that it merely confirms that firms can continue to be held accountable for historical errors in transaction reporting as would be the case if there were no change of regime. The benefit is that it ensures there should be no incentive for firms to allow the quality of their reporting to deteriorate in the run up to 3 January 2018 on the assumption that unless problems come to light before then we will not be able to take action against firms. Similarly, the aim of the GEN TP 1.3 proposal is to help firms transition from one regime to another in a way that does not add to their costs and helps them prepare more effectively for the implementation of MiFID II, in the run-up to 3 January 2018.

Form A

64. We are feeding back on consultation from our last CP; but are not finalising our approach on this Form A change until a Policy Statement in 2017. We therefore cover any appropriate CBA in that Policy Statement.

Annex 3

Compatibility statement

Compatibility with the FCA's general duties

This annex follows the requirements set out in section 138I FSMA. When consulting on new rules, we are required by section 138I FSMA to include an explanation of why we consider the proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B FSMA. We are also required by section 138K(2) FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons. We also note the application of section 139A (5) relating to consulting on guidance. This annex also includes our assessment of the equality and diversity implications of these proposals. Sections 1B (1) and 3B of FSMA require us to have regard to the regulatory principles.

The FCA's objectives and regulatory principles

Our proposals in this CP meet our strategic objective of ensuring that the relevant markets function well and are primarily intended to advance our operational objectives of:

- enhancing market integrity, protecting and enhancing the integrity of the UK financial system, by implementing provisions ensuring effective supervision of DRSPs
- strengthening investor protection ensuring an appropriate degree of protection for consumers through revisions to the specialist regimes in COBS 18

In preparing our proposals, we have paid attention to the regulatory principles set out in section 3B FSMA. In particular:

The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons.

We do not believe that our proposals discriminate against any particular business model or approach.

The principle that we should exercise our functions as transparently as possible.

We believe that by consulting on our proposals we are acting in accordance with this principle.

The need to use our resources in the most efficient and economical way.

For the proposals in this CP where we have discretion have had regard to the burden on us in assessing how best to implement.

The principle that a burden or restriction should be proportionate to the benefits.

We believe the proposals in this CP containing burdens or restrictions are proportionate to the benefits.

The desirability of publishing information relating to persons, or requiring persons to publish information.

We have had regard to the desirability of publishing information in our proposals.

Expected effect on mutual societies

Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised mutual societies, compared to other authorised bodies. The relevant rules we propose to amend will apply equally, according to the powers exercised and to whom they are addressed, regardless of whether it is a mutual society or another authorised body.

Equality and diversity

We are required under the Equality Act 2010 to ‘have due regard’ to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.

Our equality impact assessment (EIA) suggests that our proposals do not result in direct discrimination for any of the groups with protected characteristics (i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender), nor do we believe that our proposals should give rise to indirect discrimination against any of these groups.

Appendix 1

Draft Handbook text

**MiFID 2 (MISCELLANEOUS AND CONSEQUENTIAL PROVISIONS)
INSTRUMENT 2017**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
 - (a) section 64A (Rules of conduct);
 - (b) section 69 (Statement of policy);
 - (c) section 73A (Part 6 Rules);
 - (d) section 84 (Matters which may be dealt with by prospectus rules);
 - (e) section 89A (Transparency rules);
 - (f) section 96 (Obligations of issuers of listed securities);
 - (g) section 137A (The FCA’s general rules);
 - (h) section 137B (FCA general rules: clients’ money, right to rescind etc);
 - (i) section 137H (General rules about remuneration);
 - (j) section 137R (Financial promotion rules);
 - (k) section 137T (General supplementary powers);
 - (l) section 138D (Action for damages);
 - (m) section 139A (Power of the FCA to give guidance);
 - (n) section 226 (Compulsory jurisdiction);
 - (o) section 247 (Trust scheme rules);
 - (p) section 248 (Scheme particulars rules);
 - (q) section 261I (Contractual scheme rules);
 - (r) section 261J (Contractual scheme particulars rules);
 - (s) section 293 (Power to make notification rules in respect of recognised bodies);
 - (t) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority);
 - (u) paragraph 19 (Establishment) of Schedule 3 (EEA Passport Rights);
 - (v) paragraph 20 (Services) of Schedule 3 (EEA Passport Rights); and
 - (w) paragraph 13(3)-(4) ([FCA’s]...rules) of Schedule 17 (The Ombudsman Scheme);
 - (2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228);
 - (3) regulation [11] of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, as inserted by the [Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2016];
 - (4) the powers of direction, guidance and related provisions in or under the following provisions of the [Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2016]:

- (a) regulation [7] (Application for authorisation);
 - (b) regulation [10] (Cancellation of authorisation);
 - (c) regulation [11] (Variation of authorisation);
 - (d) regulation [20] (Fees);
 - (e) regulation [21] (Guidance); and
 - (f) regulation [23] (Reporting requirements); and
- (5) in relation to the Glossary of definitions, the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA's Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*commencement dates will be added when all the relevant legislation has been finalised*].

Amendments to the FCA Handbook

- D. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below.

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls (SYSC)	Annex B
The Fit and Proper test for Approved Persons and specified significant-harm functions (FIT)	Annex C
Training and Competence (TC)	Annex D
General Provisions (GEN)	Annex E
Fees manual (FEES)	Annex F
Conduct of Business sourcebook (COBS)	Annex G
Banking: Conduct of Business sourcebook (BCOBS)	Annex H
Client Assets (CASS)	Annex I
Market Conduct (MAR)	Annex J
Product Intervention and Product Governance sourcebook (PROD)	Annex K
Supervision manual (SUP)	Annex L
Dispute Resolution: Complaints sourcebook (DISP)	Annex M
Collective Investment Schemes sourcebook (COLL)	Annex N
Investment Funds sourcebook (FUND)	Annex O
Professional Firms sourcebook (PROF)	Annex P
Recognised Investment Exchanges sourcebook (REC)	Annex Q
Listing Rules (LR)	Annex R

Prospectus Rules (PR)	Annex S
Disclosure Guidance and Transparency Rules sourcebook (DTR)	Annex T

Amendments to material outside the Handbook

- E. The Enforcement Guide (EG) is amended in accordance with Annex U to this instrument.
- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex V to this instrument.

Notes

- G. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- H. This instrument may be cited as the MiFID 2 (Miscellaneous and Consequential Provisions) Instrument 2017.

By order of the Board
[date] 2017

[*Editor's note:* The text in the following Annexes takes into account the changes proposed by CP15/43 *Markets in Financial Instruments Directive II Implementation – Consultation Paper I* (December 2015), CP16/19 *Markets in Financial Instruments Directive II Implementation - Consultation Paper II* (July 2016) and CP16/29 *Markets in Financial Instruments Directive II Implementation – Consultation Paper III* (September 2016), as if they were made.]

[*Editor's note:* The text in this Annex sets out new definitions relating to Annexes A to T and amended Glossary definitions comprising references to MiFID.]

Annex A

Amendments to the Glossary of definitions

Insert the following new definitions in the appropriate alphabetical position. The text in this section is all new and is not underlined.

FCA MDP on-boarding application form a form for approval to connect to the *FCA's market data processor system*.

MiFID optional exemption appointed representative an *appointed representative* that acts under the full and unconditional responsibility of a *MiFID optional exemption firm* and that would be a *tied agent* if its *principal* were a *MiFID investment firm*.

MIS confidentiality agreement an agreement between the *FCA* and a party receiving information regarding the *market data processor system market interface specification*.

MIS or market interface specification a document setting out the technical details required to format and submit *market data* to the *FCA* using the *market data processor system*.

structured deposit appointed representative an *appointed representative* that is a party to a contract with a *principal* that permits or requires it to carry on only the business of selling, or advising *clients* in relation to, *structured deposits* in accordance with the *Appointed Representatives Regulations*.

Amend the following definitions as shown.

CAD investment firm a *firm* that is subject to the requirements imposed by *MiFID* (or which would be subject to that Directive if its head office were in an *EEA State*) but excluding a *bank*, a *building society*, a *credit institution*, a *local firm* and an

exempt CAD firm that meets the following conditions:

...

close links

- (1) (in relation to *MiFID business* or in *FUND*) a situation in which two or more persons are linked by:
- (a) participation which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;
 - (b) control which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 4 ~~22~~(1) and (2) of ~~Directive 83/349/EEC~~ the Accounting Directive, or a similar relationship between any person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings.

A situation in which two or more persons are permanently linked to one and the same person by a control relationship is also to be regarded as constituting a close link between such persons.

[Note: article 4(1) ~~(31)~~ (35) of ~~MIFID~~ MiFID and article 4(1)(e) of AIFMD]

...

controller

...

- (4) *shares* and *voting power* that a *person* holds in a *firm* ("B") or in a *parent undertaking* of B ("P") are disregarded for the purposes of determining *control* in the following circumstances:

...

- (c) *shares* representing no more than 5% of the total voting power in B or P held by an *investment firm*, provided that:
 - (i) it holds the *shares* in the capacity of a *market maker* (as defined in ~~article 4.1(8) of MIFID~~ article 4(1)(7) of MiFID);
 - (ii) it is authorised by its *Home State regulator* under ~~MIFID~~ MiFID; and

...

...

- (e) *shares* held by a *credit institution* or an *investment firm* are disregarded, provided that:

- (i) the *shares* are held as a result of performing the *investment services* and activities of:

...

- (B) placing shares on a firm commitment basis in accordance with Annex I, section A.6 of ~~MIFID~~ MiFID; and

...

EEA registered tied agent a *tied agent* of a *UK MiFID investment firm* that is not an *appointed representative* and ~~would have been~~ is not an *FCA registered tied agent* ~~but for the fact that it does business in an EEA State that permits investment firms authorised by the competent authority of that state to appoint tied agents because it is established in an EEA State other than the United Kingdom.~~

employee ...

- (2) (for the purposes of:

- (a) COBS 11.7 and COBS 11.7A (Personal account dealing);

...

...

execution venue for the purposes of the provisions relating to best execution in COBS 11.2A and ~~in~~ *COLL*, execution venue means a *regulated market*, an *MTF*, an OTF, a *systematic internaliser*, or a *market maker* or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

[Note: article 44(1) of the *MiFID implementing Directive*]

exempt CAD firm

- (1) (except in *SYSC* and *IPRU(INV)*) a firm as defined in article 4(1)(2)(c) of the *EU CRR* that is authorised to provide only one or more of the following *investment services*:

- (a) investment advice;
- (b) receive and transmit orders from investors as referred to in Section A of Annex I of *MiFID*).

- (2) (in *SYSC* and *IPRU(INV)*) a firm in (1) whose head office (or, if it has a registered office, that office) is in the ~~United Kingdom~~ United Kingdom.

financial promotion ...

- (2) (in relation to COBS 3.2.1R(3), and COBS 4.3.1R, ~~COBS 4.5.8R and COBS 4.7.1R~~) (in addition to (1)) a marketing communication within the meaning of *MiFID* made by a firm in connection with its *MiFID*,

equivalent third country or optional exemption business.

...

investment services or activities

any of the services and activities listed in Section A of Annex I to *MiFID* relating to any *financial instrument*, that is:

...

(h) operation of *multilateral trading facilities* an MTF; and

(i) operation of an OTF.

[Note: article 4(1)(2) of, and section A of Annex 1 to, *MiFID* and article 6(5) of the *auction regulation*]

issuer

...

~~[Note: article 2(2) of the *MiFID Regulation*]~~

...

market maker

...

[Note: article 4 (1)(~~8~~) (7) of *MiFID* and article 11 of the *MiFID Org Regulation*]

...

market data processing processor system

the IT system set up and maintained by the *FCA* to receive data under *MiFID* and *MIFIR*.

material interest

(in *COBS*) (in relation to a transaction) any interest of a material nature, other than ÷

(a) ~~disclosable commission~~ on the transaction ÷

(b) ~~goods or services which can reasonably be expected to assist in carrying on designated investment business with or for clients and which are provided or to be provided in compliance with *COBS* 11.6.3R.~~

money-market instrument

...

(2) those classes of *financial instruments* which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.

[Note: article 4(1)(~~19~~) (17) of *MiFID* and article 11 of the *MiFID Org Regulation*]

personal

...

<i>transaction</i>	[Note: article 2(7) and article 11 of the MiFID implementing Directive <u>article 16(2) of MiFID and article 28 of the MiFID Org Regulation</u>]
<i>professional client</i>	a <i>client</i> that is either a <i>per se professional client</i> or an <i>elective professional client</i> (see COBS 3.5.1R). [Note: article 4(1)(12) (10) of MiFID] -
<i>RAP recognition requirements</i>	(1) (in relation to an <i>RAP</i>) any of the requirements applicable to an <i>RAP</i> under the <i>RAP regulations</i> , the <i>auction regulation</i> or the MiFID Regulation <u>MiFIR and any EU regulation adopted under MiFID or MiFIR.</u> (2) (in relation to a <i>UK RIE</i> applying for recognition as an <i>RAP</i>) any of the requirements under the <i>RAP regulations</i> , the <i>auction regulation</i> or the MiFID Regulation <u>MiFIR and any EU regulation adopted under MiFID or MiFIR</u> which, if its application were successful, would apply to it.
<i>recognised body requirements</i>	(1) (in relation to an <i>RIE</i>) the <i>recognition requirements</i> ; (2) (in relation to a <i>UK RIE</i>) the MiFID implementing requirements <u>MiFID/MiFIR requirements</u> ; ...
<i>retail client</i>	(1) (other than in relation to the provision of basic advice on stakeholder products or to <i>credit-related regulated activities</i>) in accordance with COBS 3.4.1R, a <i>client</i> who is neither a <i>professional client</i> or an <i>eligible counterparty</i> ; or [Note: article 4(1)(12) (11) of MiFID] ...
<i>retail investment product</i>	... [Note: Section 238 of the <i>Act</i> and COBS 4.12.3R set out restrictions on the promotion of <i>non-mainstream pooled investments to retail clients</i> . See also COBS 9.3.5G and <u>COBS 9A.2.22G</u> (Non-mainstream pooled investments).]
<i>securities and futures firm</i>	... (h) a <i>firm</i> that is exempt from <i>MiFID</i> under article 2(1) (i) (j) whose <i>permitted activities</i> include <i>bidding in emissions auctions</i> .
<i>subsidiary</i>	... (2) (in relation to <i>MiFID business</i>) a subsidiary undertaking as defined in Articles 1 and 2 of Seventh Council Directive on consolidated accounts (No. 83/349/EEC) <u>within the meaning of articles 2(10) and (22) of the Accounting Directive</u> , including any subsidiary of a subsidiary

undertaking of an ultimate *parent undertaking*.

- (3) (for the purpose of *IFPRU*) has the meaning in article 4(1)(16) of the *EU CRR*.

[Note: article 4 (1)~~(29)~~ (33) of *MiFID*]

*summary
resolution
communication*

either:

- (1) in relation to a *MiFID complaint*, a response in accordance with *DISP 1.1A.22BEU*, *DISP 1.1A.22CEU* and *DISP 1.1A.22DR*; or
- (2) in relation to all other *complaints*, has the meaning given in *DISP 1.5.4R*.

Delete the following definitions.

*execution
criteria*

the criteria set out in *COBS 11.2.6R*, that is:

- (a) the characteristics of the *client* including the categorisation of the *client* as retail or professional;
- (b) the characteristics of the *client order*;
- (c) the characteristics of *financial instruments* that are the subject of that order;
- (d) the characteristics of the *execution venues* to which that order can be directed; and
- (e) for a *management company*, the objectives, investment policy and risks specific to the *UCITS scheme* or *EEA UCITS scheme*, as indicated in its *prospectus* or *instrument constituting the fund*.

*normal trading
hours*

(in relation to a *trading venue* or an *investment firm*) those hours which the *trading venue* or *investment firm* establishes in advance and makes public as its trading hours.

[Note: article 2(5) of the *MiFID Regulation*]

*person with
whom a
relevant person
has a family
relationship*

any of the following:

- (a) the spouse of the *relevant person* or any partner of that person considered by national law as equivalent to a spouse;
- (b) a child or stepchild of the *relevant person*;
- (c) any other relative of the *relevant person* who has shared the same household as that person for at least one year on the date of the personal

transaction concerned.

[Note: article 2(7) of the *MiFID implementing Directive*]

portfolio trade a transaction in more than one security where those securities are grouped and traded as a single lot against a specific reference price.

[Note: article 2(6) of the *MiFID Regulation*]

related financial instrument means a *financial instrument*, the price of which is closely affected by price movements in another *financial instrument* which is the subject of *investment research*, and includes a derivative on that other *financial instrument*.

[Note: article 25(2) of the *MiFID implementing Directive*]

relevant competent authority (in relation to a *financial instrument*) means the *competent authority* of the most relevant market in terms of liquidity for that *financial instrument*.

[Note: article 2(7) of *MiFID Regulation*]

relevant liquid market a market for a share determined in accordance with paragraph 2 and 8 of Article 9 of the *MiFID Regulation*, in many cases this will be the Member State where the share or the unit was first admitted to trading on a regulated market.

[Note: article 9 of the *MiFID Regulation*]

rule on use of dealing commission COBS 11.6.3R.

trading day (1) (in *MAR 7* (Disclosure of information on certain trades undertaken outside a regulated market or MTF) and *SUP 17* (Transaction reporting)) in relation to post-trade information to be made public about a share under *MAR 7.2.10EU*, any day of normal trading in a share on a *trading venue* in the *relevant liquid market* for this share. [Note: article 4(2) of the *MiFID Regulation*]

...

(3) (in *FINMAR*) as defined in article 2(1)(p) of the *short selling regulation*, a trading day as referred to in article 4 of Regulation (EC) No 1287/2006.

turnover (in relation to a *financial instrument*) means the sum of the results of multiplying the number of units of that instrument exchanged between buyers and sellers in a defined period of time, pursuant to *transactions* taking place on a *trading venue* or otherwise, by the unit price applicable to each such *transaction*.

[Note: article 2(9) of the *MiFID Regulation*]

Annex B

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

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

1 Application and purpose

1.1A Application

...

1 Annex Detailed application of SYSC

1

...

Part 3	Tables summarising the application of the common platform requirements to different types of firm		
...			
3.2D	R	(1)	Subject to (2), <i>SYSC 4.3A.6R, SYSC 4.3A.8R and SYSC 7.1.18R</i> apply to an <i>article 3 MiFID firm</i> and a third country firm that is 'significant' as a <i>rule</i> or as <i>guidance</i> in accordance with <i>SYSC 1 Annex 1 3.2CR</i> .
		(2)	In (1), 'significant' means an <i>article 3 MiFID firm</i> or a third country firm that meets one of more of the conditions in paragraphs (1) to (5) of <i>IFPRU 1.2.3R</i> and related <i>rules</i> and <i>guidance</i> .
...			
<u>3.3A</u>	<u>R</u>		<u><i>SYSC 1 Annex 1 3.3R(1)(b)</i> does not apply to a <i>firm</i> in relation to the requirements in <i>SYSC 4.5 (Management responsibilities maps for UK relevant authorised persons), SYSC 4.6 (Management responsibilities maps for non-UK relevant authorised persons), SYSC 4.7 (Senior management responsibilities for UK relevant authorised persons: allocation of responsibilities), SYSC 4.8 (Senior management responsibilities for third country relevant authorised persons: allocation of responsibilities), SYSC 4.9 (Handover procedures and material) and SYSC 5.2 (Certification regime)</i>.</u>

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

Provision SYSC	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
----------------	----------	-----------	------------	----------

4	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents the Society, full-scope UK AIFMs of unauthorised AIFs, article 3 MiFID firms and third country firms
...				
SYSC 4.5	Whole section applies to <i>UK relevant authorised persons</i> only	Not applicable	Not applicable	Not applicable <u>Whole section applies to relevant authorised persons only.</u> <u>All rules apply as rules and not as guidance.</u>
SYSC 4.6	Applies to <i>EEA relevant authorised persons</i> and <i>third country relevant authorised persons</i> in accordance with the <i>rules</i> in SYSC 4.6	Not applicable	Not applicable	Not applicable <u>Whole section applies to relevant authorised persons only.</u> <u>All rules apply as rules and not as guidance.</u>
SYSC 4.7	Whole section applies to <i>UK relevant authorised persons</i> only	Not applicable	Not applicable	Not applicable <u>Whole section applies to relevant authorised persons only.</u> <u>All rules apply as rules and not</u>

				<u>as guidance.</u>
SYSC 4.8	Applies to <i>third country relevant authorised persons</i> only	Not applicable	Not applicable	Not applicable <u>Whole section applies to relevant authorised persons only.</u> <u>All rules apply as rules and not as guidance.</u>
SYSC 4.9	Whole section applies to <i>third country relevant authorised persons</i> and <i>UK relevant authorised persons</i> only	Not applicable	Not applicable	Not applicable <u>Whole section applies to relevant authorised persons only.</u> <u>All rules apply as rules and not as guidance.</u>
...				
Provision SYSC 5	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents the Society, full-scope UK AIFMs of unauthorised AIFs, article 3 MiFID firms and third country firms
...
SYSC 5.1.5AG	...	...	...	...
SYSC 5.1.5AAR	Rule	Not applicable <u>save in relation to a UCITS investment firm and its MiFID business</u>	Not applicable	<u>Rule applicable to the branch of an incoming EEA firm in relation to its MiFID business</u>

				<u>Other firms:</u> Not applicable
<u>SYSC 5.1.5ABR</u>	<u>Rule</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Rule applicable to the branch of an incoming EEA firm in relation to its MiFID business</u> <u>Other firms:</u> Not applicable
<u>SYSC 5.1.5ACG</u>	<u>Guidance</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Guidance applicable to the branch of an incoming EEA firm in relation to its MiFID business</u> <u>Other firms:</u> Not applicable
<u>SYSC 5.1.5ADG</u>	<u>Guidance</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Guidance applicable to the branch of an incoming EEA firm in relation to its MiFID business</u> <u>Other firms:</u> Not applicable
<u>SYSC 5.1.5AEG</u>	<u>Guidance</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Guidance applicable to the branch of an incoming EEA firm in relation to its MiFID business</u> <u>Other firms:</u> Not applicable
...				

SYSC 5.2	Whole section applies to <i>relevant authorised persons</i> only. All <i>rules</i> apply as <i>rules</i> and not as <i>guidance</i> .	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u> Whole section <u>applies to relevant authorised persons only</u> . All <u>rules apply as rules and not as guidance</u> .
...				

Provision SYSC 9	COLUMN A Application to a common platform firm other than to a UCITS	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society, full-scope UK AIFMs of authorised AIFs, article 3 MiFID firms and third country firms
...				
SYSC 9.1.7G	Not applicable	Guidance applies only in relation to <i>MiFID business of a UCITS investment firm</i>	Not applicable	Not applicable [deleted]
...				

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

				AIFs, article 3 MiFID firms and third country firms
...				
SYSC 10.1.4R	Not applicable	Rule	Not applicable	Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with COBS 12.2 , or the production or dissemination of non-independent research, in accordance with COBS 12.3 <u>12.2</u>
SYSC 10.1.6R	Not applicable	Rule	Not applicable	Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with COBS 12.2 , or the production or dissemination of non-independent research, in accordance with COBS 12.3 <u>12.2</u>
...				
SYSC	Not applicable	Rule	Not applicable	Guidance – but

10.1.10R				applies as a rule in relation to the production or arrangement of investment research in accordance with COBS 12.2 , or the production or dissemination of non-independent research, in accordance with COBS 12.3 <u>12.2</u>
SYSC 10.1.11R	Not applicable	Rule	Not applicable	Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with COBS 12.2 , or the production or dissemination of non-independent research, in accordance with COBS 12.3 <u>12.2</u>
...				

Table B: Application of the common platform requirements in SYSC 4 to 10 to article 3 MiFID firms and third country firms

Provision	COLUMN A Article 3 MiFID firms	COLUMN B Third country firms
...		
SYSC 5		

...
<i>SYSC 5.1.5AG</i>	...	...
<i>SYSC 5.1.5AAR</i>	Not applicable	Rule
<u><i>SYSC 5.1.5ABR</i></u>	<u>Not applicable</u>	<u>Rule</u>
<u><i>SYSC 5.1.5ACG</i></u>	<u>Not applicable</u>	<u>Guidance</u>
<u><i>SYSC 5.1.5ADG</i></u>	<u>Not applicable</u>	<u>Guidance</u>
<u><i>SYSC 5.1.5AEG</i></u>	<u>Not applicable</u>	<u>Guidance</u>

Provision	COLUMN A Article 3 MiFID firms	COLUMN B Third country firms
...		
<i>SYSC 9.1.7G</i>	Not applicable	Not applicable [<u>deleted</u>]
...		

...

Provision	COLUMN A Article 3 MiFID firms	COLUMN B Third country firms
...		
<i>SYSC 10</i>		
...		
<i>SYSC 10.1.4R</i>	Rule	Guidance – <u>but applies as a rule in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2</u>
...		
<i>SYSC 10.1.6R</i>	Rule	Guidance – <u>but applies as a rule in relation to the</u>

		<u>production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2</u>
...		
SYSC 10.1.10R	Rule	Guidance – <u>but applies as a rule in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2</u>
SYSC 10.1.11R	Rule	Guidance – <u>but applies as a rule in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2</u>
...		

Table C:

Part 1: Application of the requirements in articles 1(2), 21 to 25, 30 to 35 and 72 of the MiFID Org Regulation to article 3 MiFID firms and third country firms

Provision MiFID Org Regulation	Text of the MiFID Org Regulation as of:	Article 3 MiFID firm	Third country firm
...			
Article 33 – Conflicts of interest potentially detrimental to clients		Rule <u>Not applicable</u>	Guidance <u>Not applicable</u>
Article 34 –	(1)	Rule <u>Not applicable</u>	Guidance <u>Not applicable</u>

Conflicts of interest policy	(2)	Rule <u>Not applicable</u>	Guidance <u>Not applicable</u>
	(3)	Rule <u>Not applicable</u>	Guidance <u>Not applicable</u>
	(4)	Rule <u>Not applicable</u>	Rule <u>Not applicable</u>
	(5)	Rule <u>Not applicable</u>	Guidance <u>Not applicable</u>
Article 35 – Record of services or activities giving rise to detrimental conflict of interest		Rule <u>Not applicable</u>	Guidance <u>Not applicable</u>
...			

5 Employees, agents and other relevant persons

5.1 Skills, knowledge and expertise

...

Application to a common platform firm

5.1.1-AA G For a *common platform firm*:

- (1) ...
- (2) the *rules* and *guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
Segregation of functions – knowledge and competence	<i>SYSC</i> 5.1.2G to <i>SYSC</i> 5.1.5AG, <i>SYSC</i> 5.1.5AAR, <u><i>SYSC</i> 5.1.5ABR, <i>SYSC</i> 5.1.5ACG to <i>SYSC</i> 5.1.5AEG, <i>SYSC</i> 5.1.7R, <i>SYSC</i> 5.1.8G to <i>SYSC</i> 5.1.11G</u>
...	

...

...

5.1.5AA R ~~This rule~~ *SYSC* 5.1.5ABR applies to a *common platform firm*:

...

5.1.5AB ~~G~~-R A *firm* must ensure, and be able to demonstrate to the *FCA*, at the *FCA*'s request, that any relevant individuals possess the necessary knowledge and competence so as to ensure that the *firm* is able to meet its obligations under:

- (1) those *rules* which implement articles 24 and 25 of *MiFID* (including those which implement related provisions under the *MiFID Delegated Directive*); and
- (2) related provisions under the *MiFID Org Regulation*.

[Note: article 25(1) of *MiFID*]

5.1.5AC G The *rules* which implement articles 24 and 25 of *MiFID* can be found in *COBS* and *PROD* and are identified with a 'Note:'

5.1.5AD G *ESMA* has issued guidelines for *MiFID investment firms* specifying the criteria for the assessment of knowledge and competence for the purposes of *SYSC 5.1.5AAR* and *SYSC 5.1.5ABR*. The *ESMA* guidelines (published on 17 December 2015) can be found at <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-translations-its-guidelines-assessment-knowledge-and-competence>.

5.1.5AE G A *firm* to which the Training and Competence sourcebook (*TC*) applies may satisfy its knowledge and competence obligations under *SYSC 5.1.5AAR* and *SYSC 5.1.5ABR* in relation to an *employee* by way of compliance with its obligations in *TC*. The *FCA* expects a *MiFID investment firm* to act consistently with the *ESMA* guidelines referred to in *SYSC 5.1.5ADG* in relation to its *MiFID business*.

...

8 Outsourcing

8.1 General outsourcing requirements

...

8.1.5 R For a *UCITS investment firm* and without prejudice to the status of any other function, the following functions will not be considered as critical or important for the purposes of this chapter:

...

- (3) the recording and retention of relevant telephone conversations or electronic communications subject to ~~*COBS 11.8*~~ *SYSC 10A*.

...

9 Record-keeping

9.1 General rules on record-keeping

...

Guidance on record-keeping

...

- 9.1.7 G ~~The Committee of European Securities Regulators (CESR) has issued recommendations on the list of minimum records under Article 51(3) of the MiFID implementing Directive. [deleted]~~

...

10 Conflicts of interest

10.1 Application

...

Application of conflicts of interest rules to non-common platform firms when producing investment research or non-independent research

- 10.1.16 R The *rules* relating to:
- (1) types of conflict (see SYSC 10.1.4R);
 - (2) records of conflicts (see SYSC 10.1.6R); and
 - (3) *conflicts of interest policies* (see SYSC 10.1.10R and SYSC 10.1.11R);

also apply to a *firm* which is not a *common platform firm* when it produces, or arranges for the production of, *investment research* that is intended or likely to be subsequently disseminated to *clients* of the *firm* or to the public ~~in accordance with COBS 12.2~~, and when it produces or disseminates *non-independent research* ~~in accordance with COBS 12.3~~ 12.2.

...

10A Recording telephone conversations and electronic communications

10A.1 Application

- 10A.1.1 R Subject to the exemptions in SYSC 10A.1.4R, this chapter applies to a *firm*:

- (1) that is a:
- (a) *UK MiFID investment firm*; or
 - (b) *full-scope UK AIFM*; or
 - (c) *small authorised UK AIFM or residual CIS operator*; or
 - (d) *incoming EEA AIFM*; or
 - (e) *UCITS management company*; or
 - (f) *MiFID optional exemption firm, performing activities covered by the exemption*; or
 - (g) *EEA MiFID investment firm*; or
 - (h) *third country investment firm*; or
 - (i) that carries on activities referred to in the general application rule related to:
 - (i) commodity futures; or
 - (ii) commodity options; or
 - (iii) contracts for differences related to an underlying commodity; or
 - (iv) other futures or contracts for differences which are not related to commodities, financial instruments or cash,

which are not MiFID or equivalent third country business and energy market activity or oil market activity, but excluding the following firms:

 - (v) a depositary when acting as such; and
 - (vi) an authorised professional firm with respect to its non-mainstream regulated activities; or
 - (l) *that carries on energy market activity or oil market activity; and*
- (2) ~~which~~ that carries out any of the following activities, in *investments* that are *financial instruments*:
- (a) *arranging (bringing about) deals in investments*;
 - (b) *dealing in investments as agent*;

- (c) *dealing in investments as principal;*
- (d) *corporate finance business;*
- (e) *managing investments;*
- (f) *managing a UCITS to the extent that this comprises the function of investment management referred to in Annex II of the UCITS Directive;*
- (g) *managing an AIF to the extent that this comprises the function of portfolio management referred to in Annex I of AIFMD;*
- (h) *establishing, operating or winding up a collective investment scheme to the extent that this comprises scheme management activity; ~~and~~*
- (i) *energy market activity and oil market activity ,*

only with respect to a *firm's* activities carried on from an establishment (including a *branch*) maintained by the *firm* in the *United Kingdom*.

[**Note:** article 16(7) and 16(11) of *MiFID*]

...

19F Remuneration and performance management of sales staff

19F.1 MiFID remuneration incentives

Application

19F.1.1 R (1) SYSC 19F.1 applies to:

- (a) *a common platform firm, unless it is a collective portfolio management investment firm;*
 - (b) *an article 3 MiFID firm; ~~and~~*
 - (c) *a third country firm; and*
 - (d) *a UK branch of an EEA MiFID investment firm, unless it is a UCITS investment firm or an AIFM investment firm.*
- (2) In relation to a *firm* that falls under (1)(c), SYSC 19F.1 applies only in relation to activities carried on from an establishment in the *United Kingdom*.

Annex C

Amendments to Fit and Proper test for Approved Persons and specified significant-harm functions (FIT)

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

1 General

...

1.2 Introduction

...

1.2.4A G (1) Under Article ~~5~~ 21(1)(d) of the *MiFID ~~Implementing Directive~~ Org Regulation* and articles ~~31~~ 34 and ~~32~~ 35 of *MiFID*, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the *firm's Home State*. Therefore, in assessing the fitness and propriety of:

~~(1)~~ a person to perform a *controlled function*; or

(a)

~~(2)~~ a *certification employee*;

(b)

solely in relation to the *MiFID business* of an *incoming EEA firm*, the ~~appropriate regulator~~ FCA will not have regard to that *person's* competence and capability.

(2) Where the ~~controlled function~~ function relates to:

(a) matters outside the scope of *MiFID*, for example ~~money laundering responsibilities (see CF11)~~ or activities related to a *specified benchmark* (see the benchmark submission function (CF 40), ~~the benchmark administration function (and CF 50)~~ ; and the benchmark submission and administration FCA-specified significant-harm functions (see SYSC 5.2.33R) ; or ~~to~~

(b) business outside the scope of the *MiFID business* of an *incoming EEA firm*, for example *insurance mediation activities* in relation to life policies ; or

(c) matters within the responsibility of the FCA as the Host State regulator, for example money laundering responsibilities (see the money laundering reporting function (CF11 and SMF17)) or (3) below;

the *FCA* will have regard to a ~~candidate's~~ *person's* competence and capability as well as ~~his~~ *their* honesty, integrity, reputation and financial soundness.

- (3) The *FCA* will have regard to a natural *person's* competence and capability to the extent they give a *personal recommendation* or *information about financial instruments, structured deposits, investment services* or *ancillary services* on behalf of a *UK branch* of:
- (a) an *investment firm* authorised under *MiFID*;
 - (b) an *AIFM investment firm* carrying out activities under article 6(4) of the *AIFMD* (provision of additional services);
 - (c) a *UCITS investment firm* carrying out activities under article 6(3) of the *UCITS Directive* (provision of additional services); or
 - (d) a *credit institution*.
- (4) (3) is the result of the combined effect of articles 25(1) (Assessment of suitability and appropriateness and reporting to clients) and 35(8) (Establishment of a branch) of *MiFID*.
- (5) (1) to (4) are also relevant to the matters an *EEA relevant authorised person* should take into account when assessing any *staff being assessed under FIT*. Where, under (1) to (4):
- (a) the *FCA* will have regard to a *person's* competence and capability, so should a *firm* when assessing any *staff being assessed under FIT*; and
 - (b) the *FCA* will not have regard to a *person's* competence and capability, a *firm* need not do so either when assessing any *staff being assessed under FIT*.

...

Annex D

Amendments to the Training and Competence sourcebook (TC)

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

4 Specific modified requirements

4.1 Specified requirements for MiFID investment firms and for third country investment firms

...

4.1.2 4.1.3 G *Rules* in this section relate to the requirements in SYSC 5.1.5AAR and SYSC 5.1.5ABR.

4.1.4 G For employees of an incoming EEA firm, with an establishment maintained by that firm (or its appointed representative) in the United Kingdom, the matters covered by SYSC 5.1.5AAR and SYSC 5.1.5ABR are matters reserved for the United Kingdom as the Host State regulator.

...

App 2.1 Territorial scope subject to the limitation in TC Appendix 3

App

2.1.1R

	<i>UK domestic firm</i>	<i>Incoming EEA firm</i>	<i>Overseas firm (other than an incoming EEA firm)</i>
<i>MiFID business and equivalent third country business</i>	<i>TC applies in respect of employees who carry on activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom</i> <i>and</i> <i>TC also applies insofar as if an</i>	<i>TC does not apply</i>	<i>TC applies in respect of employees who carry on activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom</i>

	<p>activity is carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i> or, where applicable, its <i>tied agent</i>) in, and within the territory of, another <i>EEA State</i>, <i>TC</i> applies <u>although matters which would otherwise be covered by SYSC 5.1.5AAR and SYSC 5.1.5ABR are matters reserved for the <i>Host State</i> regulator</u></p>		
<p>...</p>			

Annex E

Amendments to the General Provisions (GEN)

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

4 Statutory status disclosure

...

4.2 Purpose

...

4.2.2 G There are other pre-contract information requirements outside this chapter, including:

...

(2) for *designated investment business*, in *COBS 8* and *COBS 8A* (Client agreements), *COBS 5* (Distance Communications), *COBS 6* and *COBS 6.1-A* (Information about the firm, its services and remuneration), *COBS 13* and *14* (which relate to product information) and *CASS* (Client assets);

...

...

TP 1 Transitional provisions

...

TP 1.3 (3) Transitional Provisions applying to GEN only

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
<u>15</u>	<u>Rules and directions implementing MiFID II</u>	<u>R</u>	<u>A firm that is required or wishes to make any notification, application or undertake any other administrative</u>	<u>[[xx] 2017 to 2 January 2018]</u>	<u>[xx] 2017</u>

			<p><u>procedure enabling it to carry on <i>MiFID or third country equivalent business in the UK</i> from 3 January 2018, may do so before that date subject to the requirements of any applicable statutory provision, rule, direction or <i>EU regulation</i> that will be in force on 3 January 2018.</u></p>		
16	<p><u>Rules and directions implementing <i>MiFID II</i></u></p>	G	<p>(1) <u>The purpose of this transitional provision is to help a <i>firm</i> to take the necessary administrative or regulatory steps to enable them to carry on <i>investment services and activities in the UK</i> from 3 January 2018.</u></p> <p>(2) <u>This could take the form, for example, of making notifications to the <i>FCA</i> in the case of <i>algorithmic trading</i> notifications (see <i>MAR 7A.3.6R</i>), before 3 January 2018.</u></p> <p>(3) <u>It also enables a <i>firm</i> wishing to classify <i>clients</i> in accordance with the client categorisation requirements in <i>COBS 3</i> (to take effect on 3 January 2018) to take steps towards doing so before 3 January 2018.</u></p>	[] 2017 to 2 January 2018]	[] 2017

...

TP 2 Transitional Provisions applying across the FCA Handbook and the PRA Rulebook

...

Table 2: Transitional Provisions applying across the FCA Handbook and the PRA Rulebook

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
4	Paragraph 3 <u>[deleted]</u>	G	For example, a <i>firm</i> which executes an aggregated order shortly before eutover must comply with COBS 11.3.8R (Requirement for fair allocation) if the allocation occurs after eutover.	From eutover	Cutover
...					

[*Editor's Note: The text of this Annex takes into account changes proposed by CP16/33 Regulatory fees and levies: policy proposals for 2017/18 (November 2016) and CP16/42 Reviewing the funding of the Financial Services Compensation Scheme (FSCS) (December 2016) as if they were made.*]

Annex F

Amendments to the Fees manual (FEES)

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

3 Application, Notification and Vetting Fees

...

3.2 Obligation to pay fees

...

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

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	Due date
...		
(r) Providers of reporting or trade matching systems applying for recognition under <i>MiFID</i> as an Approved Reporting Mechanism <u>Approved Reporting Mechanism</u> .	100,000	...
...		

...

4 Periodic fees

...

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

Part 1

This table shows how the *FCA* links the *regulated activities* for which a *firm* has *permission* to activity groups (fee-blocks). A *firm* can use the table to identify

which fee-blocks it falls into based on its <i>permission</i> .	
...	
B. Market operators	(1) <i>firms</i> that were prescribed as an operator of a <i>prescribed market</i> under the Financial Services and Markets Act (Prescribed Markets and Qualifying Investments) Order 2001 (SI 2001/996); and (2) <i>firms</i> that are prescribed as a market operator, as defined in article 4(1)(13) <u>article 4(1)(18) of MiFID</u> .

...

Insert the new FEES TP 16 after FEES TP 15 (Transitional provisions relating to changes to the FSCS levy arrangements taking effect in 2018/19). All the text is new and is not underlined.

TP 16 Transitional Provisions for the MiFID II Order

16.1	Introduction		
16.1.1	G	<i>FEES</i> TP 16 deals with transitional arrangements for applicants applying for permissions as introduced by the MiFID II Order.	
16.2	Interpretation		
16.2.1	R	The “MiFID II Order” is the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment []) Order xxxx (SI XXXX/XX).	
16.2.2	G	The MiFID II Order makes amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order (S.I. 2001/544) to transpose parts of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast) (OJ L173, 12/6/2014, p.349) (“MiFID II”). The MiFID II Order will be brought into force on [TBC] for the purpose of enabling the FCA to determine applications made under it.	
16.3	Application		
16.3.1	R	(1)	<i>FEES</i> TP 16.4.1R applies to a <i>person</i> who:

		(a)	makes an application for a <i>Part 4A permission</i> or an application for a variation of a <i>Part 4A permission</i> other than an application made under article [2] of the MiFID II Order; and
		(b)	makes an application for a <i>Part 4A permission</i> or an application for a variation of a <i>Part 4A permission</i> under article [2] of the MiFID II Order.
		(2)	<i>FEES</i> TP 16.4.1R applies where either:
		(a)	applications under <i>FEES</i> TP 16.3.1R(1)(a) and <i>FEES</i> TP 16.3.1R(1)(b) are made on the same date; or
		(b)	an application under <i>FEES</i> TP 16.3.1R(1)(a) is made before an application under <i>FEES</i> TP 16.3.1R(1)(b), where the following two conditions apply:
		(i)	a draft of the application described in <i>FEES</i> TP 16.3.1R(1)(b) is received by the <i>FCA</i> before the date the MiFID II Order enters into force; and
		(ii)	the applicant confirms that the draft application can be treated as a formal application on or after the date that the MiFID II Order enters into force.
16.4 Calculation of fees payable under FEES 3.2.1R			
16.4.1	R	Where this <i>rule</i> applies, the fee payable under <i>FEES</i> 3.2.1R in respect of the application described under <i>FEES</i> TP 16.3.1R(1)(b) is any positive amount that results from the following calculation:	
		(1)	the fee payable under the application described under <i>FEES</i> TP 16.3.1R1(b); LESS
		(2)	the fee paid for the application described under <i>FEES</i> TP 16.3.1R1(a)
16.5 Transitional provisions: dates in force			
16.5.1	R	<i>FEES</i> TP 16 will remain in force until 3 January 2018.	

Annex G

Amendments to the Conduct of Business sourcebook (COBS)

Amend the following as shown. Underlining indicates new text and striking through indicates deleted text.

1 Application

...

1 Annex 1 Application (see COBS 1.1.2R)

Part 1: What?

Modifications to the general application rule according to activities

1.	Eligible counterparty business																			
1.1	R	The <i>COBS</i> provisions shown below do not apply to <i>eligible counterparty business</i> .																		
		<table border="1"> <thead> <tr> <th>COBS provision</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td><i>COBS</i> 2 (other than <u><i>COBS</i> 2.1.1AR, <i>COBS</i> 2.2A and <i>COBS</i> 2.4</u>)</td> <td>Conduct of business obligations</td> </tr> <tr> <td><i>COBS</i> 4 (other than <u><i>COBS</i> 4.2, <i>COBS</i> 4.4.1R, <i>COBS</i> 4.5A.9EU and <i>COBS</i> 4.4.2G <u><i>COBS</i> 4.7.-1AEU</u>)</u></td> <td>Communicating with clients including financial promotions</td> </tr> <tr> <td><i>COBS</i> 6.1</td> <td>Information about the firm, its services and remuneration (<u>non-MiFID provisions</u>)</td> </tr> <tr> <td><u><i>COBS</i> 6.1-A.2.12R</u></td> <td><u>Information about costs and charges of different services or products (MiFID provisions)</u></td> </tr> <tr> <td><u><i>COBS</i> 6.1-A.2.19R</u></td> <td><u>Compensation information (MiFID provisions)</u></td> </tr> <tr> <td><i>COBS</i> 8</td> <td>Client agreements (<u>non-MiFID provisions</u>)</td> </tr> <tr> <td><u><i>COBS</i> 8A (other than <i>COBS</i> 8A.1.5EU to <i>COBS</i> 8A.1.7EU)</u></td> <td><u>Client agreements (MiFID provisions)</u></td> </tr> <tr> <td><i>COBS</i> 10</td> <td>Appropriateness (for <u>non-MiFID</u>)</td> </tr> </tbody> </table>	COBS provision	Description	<i>COBS</i> 2 (other than <u><i>COBS</i> 2.1.1AR, <i>COBS</i> 2.2A and <i>COBS</i> 2.4</u>)	Conduct of business obligations	<i>COBS</i> 4 (other than <u><i>COBS</i> 4.2, <i>COBS</i> 4.4.1R, <i>COBS</i> 4.5A.9EU and <i>COBS</i> 4.4.2G <u><i>COBS</i> 4.7.-1AEU</u>)</u>	Communicating with clients including financial promotions	<i>COBS</i> 6.1	Information about the firm, its services and remuneration (<u>non-MiFID provisions</u>)	<u><i>COBS</i> 6.1-A.2.12R</u>	<u>Information about costs and charges of different services or products (MiFID provisions)</u>	<u><i>COBS</i> 6.1-A.2.19R</u>	<u>Compensation information (MiFID provisions)</u>	<i>COBS</i> 8	Client agreements (<u>non-MiFID provisions</u>)	<u><i>COBS</i> 8A (other than <i>COBS</i> 8A.1.5EU to <i>COBS</i> 8A.1.7EU)</u>	<u>Client agreements (MiFID provisions)</u>	<i>COBS</i> 10	Appropriateness (for <u>non-MiFID</u>)
COBS provision	Description																			
<i>COBS</i> 2 (other than <u><i>COBS</i> 2.1.1AR, <i>COBS</i> 2.2A and <i>COBS</i> 2.4</u>)	Conduct of business obligations																			
<i>COBS</i> 4 (other than <u><i>COBS</i> 4.2, <i>COBS</i> 4.4.1R, <i>COBS</i> 4.5A.9EU and <i>COBS</i> 4.4.2G <u><i>COBS</i> 4.7.-1AEU</u>)</u>	Communicating with clients including financial promotions																			
<i>COBS</i> 6.1	Information about the firm, its services and remuneration (<u>non-MiFID provisions</u>)																			
<u><i>COBS</i> 6.1-A.2.12R</u>	<u>Information about costs and charges of different services or products (MiFID provisions)</u>																			
<u><i>COBS</i> 6.1-A.2.19R</u>	<u>Compensation information (MiFID provisions)</u>																			
<i>COBS</i> 8	Client agreements (<u>non-MiFID provisions</u>)																			
<u><i>COBS</i> 8A (other than <i>COBS</i> 8A.1.5EU to <i>COBS</i> 8A.1.7EU)</u>	<u>Client agreements (MiFID provisions)</u>																			
<i>COBS</i> 10	Appropriateness (for <u>non-MiFID</u>)																			

		non-advised services)
	<u>COBS 10A</u>	<u>Appropriateness (for non-advised MiFID or equivalent third country business)</u>
	<u>COBS 11.2 11.2A, COBS 11.2B and COBS 11.3 and COBS 11.6</u>	Best execution, <u>quality of execution and client order handling and use of dealing commission</u>
	<u>COBS 12.3.1R to COBS 12.3.3R COBS 12.2.18EU</u>	Labelling of non-independent research
	<u>COBS 14.3</u>	Information about designated investments (<u>non-MiFID provisions</u>)
	<u>COBS 16</u>	Reporting information to clients (<u>non-MiFID provisions</u>)
	[Note: paragraphs 1 and 2 of article 30(1) of <i>MiFID</i>]	
<u>1.2</u>	<u>G</u>	<u>Of the provisions in paragraph 1.1R which apply to <i>eligible counterparty business</i>, some may only apply to certain types of <i>eligible counterparty business</i>. In particular, some provisions only apply to <i>eligible counterparty business</i> that is also <i>MiFID, equivalent third country or optional exemption business</i>. Firms should therefore read those provisions which are specified in paragraph 1.1R as applying to <i>eligible counterparty business</i> with the application provisions in the relevant chapter or section of this sourcebook (see <u>COBS 1.1.3R</u>).</u>
<u>1.3</u>	<u>G</u>	<u>The table of application in paragraph 1.1R refers to a number of <i>COBS</i> provisions which reproduce elements of the <i>MiFID Org Regulation</i>. This is intended to help <i>firms</i> which engage in <i>eligible counterparty business</i> to understand the extent of their conduct obligations in relation to that business. As explained in <u>COBS 1.2.1G</u>, the provisions of the <i>MiFID Org Regulation</i> are directly applicable to <i>firms</i> in relation to their <i>MiFID business</i>.</u>

...

Part 3: Guidance

...	
3	MiFID: effect on territorial scope
...	

3.5	G	However, the <i>rules on investment research and non-independent research (COBS 12.2 and 12.3, except for COBS 12.2.18EU)</i> and the rules on <i>personal transactions (COBS 11.7)</i> apply on a "home state" basis. This means that they apply to the establishments of a <i>UK MiFID investment firm in the United Kingdom and another EEA State</i> and do not apply to an <i>EEA MiFID investment firm</i> .
...		

...

2 Conduct of business obligations

...

2.4 Agent as client and reliance on others

...

2.4.2 G This section is not relevant to, or does not affect:

- (1) the question of who is the *firm's* counterparty for prudential purposes and it does not affect; or
- (2) any obligation a *firm* may owe to any other *person* under the general law; or
- (3) any obligation imposed on a *firm* by article 26 of *MiFIR* or *RTS 22*.

...

3 Client categorisation

...

3.6 Eligible counterparties

...

Per se counterparties

3.6.2 R Each of the following is a *per se eligible counterparty* (including an entity that is not from an *EEA State* that is equivalent to any of the following) unless and to the extent it is given a different categorisation under this chapter:

...

- (7) ~~an undertaking exempted from the application of *MiFID* under either Article 2(1)(k) (certain own account dealers in commodities or commodity derivatives) or Article 2(1)(l) (locals) of that directive; [deleted]~~

- ...
- (9) a central bank; and
- ...

...
9A Suitability (MiFID, equivalent third country or optional exemption business)

...
9A.3 Information to be provided to the client

...
 Periodic assessments

- ...
9A.3.6A EU 52(5) Investments firms providing a periodic assessment of the suitability of the recommendations provided pursuant to Article 54(12) shall disclose all of the following:
- (a) the frequency and extent of the periodic suitability assessment and where relevant, the conditions that trigger that assessment;
 - (b) the extent to which the information previously collected will be subject to reassessment; and
 - (c) the way in which an updated recommendation will be communicated to the client.

[Note: article 52(5) of the *MiFID Org Regulation*]

...
18 Specialist Regimes

18.1 Trustee Firms

Application

- 18.1.1 R (1) This section applies to the ~~*MiFID or equivalent third country business*~~ *MiFID, equivalent third country or optional exemption business* carried on by a *trustee firm*.

...
 Application of COBS to trustee firms

- 18.1.2 R The provisions of *COBS* in the table do not apply to a *trustee firm* to which this section applies:

COBS	Description
...	
6.2A	Describing advice services
...	
9.4	Suitability reports
9.6	Special rules for providing basic advice on a stakeholder product
16.3.9 <u>16A.4.5</u>	Guidance on contingent liability transaction
16.5	Quotations for surrender values
16.6	Life insurance contracts – communications to clients
16 Annex 1R (1)14	Information to be provided in accordance with COBS 16.2.1 R and 16.3

- 18.1.2A G This section applies to the *MiFID*, *equivalent third country* or *optional exemption business* carried on by a *trustee firm*. As such, the list in *COBS* 18.1.2R above does not include any provisions in *COBS* which do not apply to *MiFID*, *equivalent third country* or *optional exemption business*.

...

18.2 Energy market activity and oil market activity

Energy market activity and oil market activity – MiFID business

- 18.2.1 R The provisions of *COBS* in the table do not apply in relation to any *energy market activity* or *oil market activity* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

COBS	Description
...	
6.2A <u>6.2B</u>	Describing advice services
...	
11.6	Use of dealing commission

...	
-----	--

...

Energy market activity and oil market activity – non-MiFID business

- 18.2.3 R Only the *COBS* provisions in the table apply to *energy market activity* or *oil market activity* carried on by a *firm* which is not:
- (1) *MiFID* or *equivalent third country business*; or
 - (2) *energy market activity* or *oil market activity* set out in *COBS* 18.2.4R.

COBS	Description
...	
12	Investment research <u>and non-independent research</u>
...	

...

18.3 Corporate finance business

Corporate finance business – MiFID business

- 18.3.1 R The provisions of *COBS* in the table do not apply in respect of any *corporate finance business* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

COBS	Description
...	
6.2A <u>6.2B</u>	Describing advice services
...	
11.6	Use of dealing commission
...	
16.3.9 <u>16.3.7</u>	Guidance on contingent liability transaction
...	

...

Corporate finance business – non-MiFID business

- 18.3.3 R Only the provisions of *COBS* in the table apply to *corporate finance business* carried on by a *firm* which is not *MiFID* or *equivalent third country business* or *optional exemption business*.

COBS	Description
...	
2.3 <u>2.3A</u>	Inducements
...	
11.7 <u>11.7A</u>	Personal account dealing
12	Investment research <u>and non-independent research</u>
...	

Corporate finance business – optionally exempt business

- 18.3.3A R Only the provisions of *COBS* in the table apply to *corporate finance business* which is *MiFID optional exemption business*.

<u>COBS</u>	<u>Description</u>
<u>1</u>	<u>Application</u>
<u>2.1.1</u>	<u>Acting honestly, fairly and professionally</u>
<u>2.2A</u>	<u>Information disclosures before providing services</u>
<u>2.3A</u>	<u>Inducements</u>
<u>2.4</u>	<u>Agent as client and reliance on others</u>
<u>3</u>	<u>Client categorisation</u>
<u>4</u>	<u>Communication to clients including financial promotions, except <i>COBS</i> 4.5-<i>COBS</i> 4.6 and <i>COBS</i> 4.8 - <i>COBS</i> 4.11</u>
<u>5.1</u>	<u>The information and other requirements of the Distance Marketing Directive, but only in relation to distance contracts concluded with consumers</u>

<u>5.2</u>	<u>E-commerce</u>
<u>6.1A</u>	<u>Information about the firm, its services and remuneration</u>
<u>6.2B</u>	<u>Describing advice services</u>
<u>8A</u>	<u>Client agreements</u>
<u>9A</u>	<u>Suitability</u>
<u>11.7A</u>	<u>Personal account dealing</u>
<u>12</u>	<u>Investment research</u>
<u>14.3.1A</u>	<u>Information about financial instruments</u>
<u>15</u>	<u>Cancellation, but only in relation to distance contracts concluded with consumers</u>
<u>16A</u>	<u>Reporting information to clients</u>

...

18.4 Stock lending activity

- 18.4.1 R The provisions of *COBS* in the table do not apply in relation to any *stock lending activity* carried on by a firm which is ~~*MiFID*~~ or equivalent ~~*third country business*~~:

COBS	Subject
...	
6.2A <u>6.2B</u>	Describing advice services
...	
11.6	Use of dealing commission
16.3.9 <u>16A.4.5</u>	Guidance on contingent liability transaction
...	

- 18.4.2 G The provisions of *COBS* in the table are unlikely to be relevant in relation to any *stock lending activity* carried on by a firm which is ~~*MiFID*~~ or equivalent ~~*third country business*~~:

COBS	Description
------	-------------

...	
18.3	Corporate finance business
...	

18.5 Residual CIS operators and small authorised UK AIFMs

...

Application or modification of general COBS rules

18.5.2 R A *firm* when it is carrying on *scheme management activity* or, for an *AIFM*, *AIFM investment management functions*:

- (1) must comply with the *COBS rules* specified in the table, as modified by this section; and
- (2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

Chapter, section, rule	Small authorised UK AIFM and a residual CIS operator
...	
2.3B (Inducements and research)	Applies, as modified by <i>COBS 18 Annex 1</i>
...	

...

18.5A Full-scope AIFMs and incoming EEA AIFM branches

...

Application or modification of general COBS rules

18.5A.3 R A *firm* when it is carrying *AIFM investment management functions*:

- (1) must comply with the *COBS rules* specified in the table, as modified by this section; and
- (2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

Chapter, section, rule	Full-scope UK AIFM	Incoming EEA AIFM

		branch
...		
2.3B (Inducements and research)	Applies	Applies, as modified by <u>COBS 18 Annex 1</u>
...		

...

18.5B UCITS management companies

...

Application or modification of general COBS rules

18.5B.2 R A *firm* when it is carrying on *scheme management activity*:

- (1) must comply with the *COBS rules* specified in the table, as modified by this section; and
- (2) need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

Chapter, section, rule	UCITS management company
...	
2.3B (Inducements and research)	Applies, as modified by <u>COBS 18 Annex 1</u>
...	

...

18.11 Authorised professional firms

...

18.11.1A G In certain respects, the application of *COBS* to an *authorised professional firm* will be determined by the *firm's* status as a *MiFID investment firm*, a *MiFID optional exemption firm* or a *firm* to which *MiFID* does not apply.

...

18 Annex 1 Research and inducements for collective portfolio managers

...	
-----	--

3.3	G	A non-monetary benefit that involves a third party allocating valuable resources to the <i>firm</i> is not a minor non-monetary benefit.	
4	<u>Inducements and research</u>		
4.1	R	<u>A firm must comply with COBS 2.3B, as modified by this section, when executing orders that relate to financial instruments for, or on behalf of, the fund.</u>	
<u>General modifications</u>			
4.2	R	<u>The application provision in COBS 2.3B.1R (Application) and associated guidance in COBS 2.3B.2G do not apply.</u>	
4.3	R	<u>Where COBS 2.3B applies to a firm, the following modifications apply:</u>	
		(1)	<u>the reference to “providing investment services or ancillary services to clients” in COBS 2.3B.3R is to be construed as a reference to “executing orders that relate to financial instruments for, or on behalf of, the fund”;</u>
		(2)	<u>the reference to “COBS 2.3A.3R(1), COBS 2.3A.11R(2) or COBS 2.3A.12R(2)” in COBS 2.3B.3R is to be construed as a reference to COBS 18 Annex 1 2.1R;</u>
		(3)	<u>the reference to “third party research in respect of investment services rendered to its clients” in COBS 2.3B.4R(1)(a) is to be construed as a reference to “third party research in respect of scheme management activity or, for an AIFM, AIFM investment management functions”;</u>
		(5)	<u>the reference to “the firm’s policy for using third party research established under COBS 2.3B.12R” in COBS 2.3B.11R(3)(b)(ii) is to be construed as a reference to “the firm’s written statement made in accordance with COBS 18 Annex 1 4.7R”; and</u>
		(6)	<u>the reference to “COBS 2.3A.15R and COBS 2.3A.18G” in COBS 2.3B.22G is to be construed as a reference to “COBS 18 Annex 1 3.1R or COBS 18 Annex 1 3.2G”. The reference to “COBS 2.3A.11R(2) or COBS 2.3A.12R(2)” in COBS 2.3B.22G is to be construed as a reference to “COBS 18 Annex 1 2.1R”.</u>
4.4	R	<u>COBS 2.3B.8R(1) and the reference to “agreeing the research charge with its clients” in COBS 2.3B.4R(2)(a) only apply if the fund has its own governing body which is independent of the firm.</u>	
4.5	G	(1)	<u>An example of a fund that has its own governing body which is independent of the firm is a fund that is a body corporate where the firm is not a director of the fund.</u>

		(2)	<u>An example of a <i>fund</i> that does not have its own <i>governing body</i> which is independent of the <i>firm</i> is a <i>fund</i> that is a <i>body corporate</i> where the <i>firm</i> is the sole <i>director</i> of the <i>fund</i>.</u>
<u>Disapplication of disclosure provisions</u>			
4.6	R		<u>The following provisions do not apply and references to them are to be ignored unless otherwise stated in this Annex:</u>
		(1)	<u>COBS 2.3B.5R;</u>
		(2)	<u>COBS 2.3B.6G;</u>
		(3)	<u>COBS 2.3B.8R(2);</u>
		(4)	<u>COBS 2.3B.9G;</u>
		(5)	<u>COBS 2.3B.12R; and</u>
		(6)	<u>COBS 2.3B.20R.</u>
<u>Prior disclosure of the research account to investors</u>			
4.7	R		<u>A <i>firm</i> using a <i>research</i> payment account must set out in writing:</u>
		(1)	<u>how the <i>firm</i> will comply with the elements of COBS 2.3B.4R(4);</u>
		(2)	<u>how <i>research</i> purchased through the <i>research</i> payment account may benefit the <i>fund</i>, taking into account its investment objective, policy and strategy;</u>
		(3)	<u>the approach the <i>firm</i> will take to allocate the costs of research fairly among the <i>funds</i> it manages;</u>
		(4)	<u>the manner in which, and the frequency at which, the <i>research</i> charge will be deducted from the assets of the <i>fund</i>; and</u>
		(5)	<u>a statement as to where up-to-date information on the matters covered in COBS 18 Annex 1 4.10R can be obtained.</u>
4.8	R		<u>An <i>authorised fund manager</i> of an <i>authorised fund</i> must publish the information in 4.7 in the <i>fund's prospectus</i>.</u>
4.9	G	(1)	<u>A <i>full-scope UK AIFM</i> of an <i>unauthorised AIF</i> may wish to publish the information in 4.7 with the information to be made available about <i>AIFs</i> in accordance with FUND 3.2.2R(9) (Prior disclosure of information to investors).</u>
		(2)	<u>A <i>small authorised UK AIFM</i> of an <i>unauthorised AIF</i> or a <i>residual CIS operator</i> may wish to publish the information in 4.7 with the information to be made available about <i>AIFs</i> in accordance with</u>

			<u>COBS 18.5.5R (Scheme documents for an unauthorised fund).</u>		
4.10	R	(1)	<u>A firm using a research payment account must publish:</u>		
		(a)	<u>the budgeted amount for research; and</u>		
		(b)	<u>the amount of the estimated research charge for each fund.</u>		
		(2)	<u>A firm must not increase its research budget or research charge unless it has provided clear information about the increase in good time before it is to take effect.</u>		
		(3)	<u>The information in (1) and (2) must be made available to investors and potential investors in the fund.</u>		
<u>Periodic disclosure of the research payment account to investors</u>					
4.11	R	<u>A firm using a research payment account must, for each fund it manages, provide the following information to investors:</u>			
		(1)	<u>the total costs the fund has incurred for third-party research in the accounting period; and</u>		
		(2)	<u>a summary of:</u>		
		(a)	<u>the providers paid from the account;</u>		
		(b)	<u>the total amount each provider was paid;</u>		
		(c)	<u>the benefits and services received by the firm; and</u>		
		(d)	<u>how the total amount spent from the account compares to the budget set by the firm, noting any rebate or carry-over if residual monies are held in the account.</u>		
4.12	R	<u>An authorised fund manager of an authorised fund must publish the information in 4.11 in the annual long report of the authorised fund.</u>			
4.13	G	<u>A full-scope UK AIFM of an unauthorised AIF may wish to publish the information in 4.11 with the information to be made available about AIFs in accordance with FUND 3.3 (Annual report of an AIF).</u>			

...

TP 1 Transitional Provisions relating to Client Categorisation

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional		Transitional provision	Transitional provision: dates in	Handbook provisions: coming into

	provision applies			force	force
...					
			Former inter-professional business		
1.4	COBS 3	G	The requirement to provide notices under <i>COBS 3.3.1R</i> 3.3.1R <u>3.3.1AEU</u> only applies in relation to new <i>clients</i> . The requirement to obtain confirmation under <i>COBS 3.6.4R(2)</i> 3.6.4R(2) <u>3.6.4BEU</u> only applies in relation to prospective counterparties. These obligations are therefore not relevant to the extent that an existing <i>client</i> with whom a <i>firm</i> conducted <i>inter-professional business</i> before 1 November 2007 is categorised as an <i>eligible counterparty</i> under <i>COBS 3</i> in relation to <i>eligible counterparty business</i> .	From 1 November 2007 indefinitely	1 November 2007
...					

Sch 1 Record keeping requirements

...

Sch 1.2A G A MiFID investment firm, third country investment firm or MiFID optional exemption firm should refer to the requirements on record keeping in the MiFID Org Regulation and SYSC 9. In particular, Annex I to the MiFID Org Regulation contains a minimum list of records to be kept by those firms to which it applies.

[**Note:** article 72 of the *MiFID Org Regulation*]

Sch 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				

<u>COBS 2.3A.28R</u>	<u>Evidence that any fees, commissions and non-monetary benefits paid or received are designed to enhance the quality of the relevant service to the <i>client</i></u>	(1) <u>List of all fees, commissions and non-monetary benefits received; and</u> (2) <u>record of how any fees, commissions or non-monetary benefits enhance the quality of the services provided and the steps taken in order not to impair compliance with the duty to act honestly, fairly and professionally in the best interests of the <i>client</i></u>	<u>When the relevant fee, commission or non-monetary benefit is paid or received</u>	<u>Not specified</u>
<u>COBS 2.3B.11R</u>	<u>Audit trail in relation to the operation of any <i>research</i> payment accounts</u>	(1) <u>Payments made to <i>research</i> providers; and</u> (2) <u>how the amounts paid were determined</u>	<u>When a payment for <i>research</i> is made</u>	<u>Not specified</u>
<u>COBS 2.3B.20R</u>	<u>Summary details in relation to the operation of a <i>research</i> payment account</u>	A summary of: (1) <u>the providers paid from the account;</u> (2) <u>the total amount paid over a defined period;</u> (3) <u>the benefits and services received; and</u> (4) <u>how the total amount spent compares to the budget</u>	<u>From when the <i>research</i> payment account is established</u>	<u>Not specified</u>
...				
<u>COBS 6.3.11R</u>	<u><i>Menu</i></u>	<u>Copy of each <i>menu</i></u>	<u>From date on which it was</u>	<u>5 years</u>

			updated or replaced	
COBS 8.1.4R	Client agreements <u>Client agreements (non-MiFID provisions)</u>	Documents setting out rights and obligations of the <i>firm</i> and the <i>client</i>	From date of agreement	From whichever is the longer of 5 years or <u>At least the duration of the relationship with the <i>client</i>.</u> Records relating unless the record <u>relates to a pension transfer, pension conversion, pension opt-out or FSAVC in which case it must be retained indefinitely</u>
<u>COBS 8A.1.9R</u>	<u>Client agreements (MiFID provisions)</u>	<u>Documents setting out rights and obligations of the <i>firm</i> and the <i>client</i></u>	<u>From date of agreement</u>	<u>At least the duration of the relationship with the <i>client</i></u>
...				
COBS 9.5.1G	Suitability (<u>non-MiFID provisions</u>)	<i>Client</i> information for <i>suitability report</i> and <i>suitability report</i>	From date of <i>suitability report</i>	See COBS 9.5.2R
...				
<u>COBS 9A.4.1G</u>	<u>Suitability (MiFID provisions)</u>	<u><i>Client</i> information for <i>suitability report</i> and <i>suitability report</i></u>	<u>From date of <i>suitability report</i></u>	<u>5 years</u>

<i>COBS</i> 10.7.1G	Appropriateness (<u>non-MiFID provisions</u>)	<i>Client</i> information obtained in making assessment of appropriateness and the appropriateness assessment	Date of assessment	5 years
<u><i>COBS</i> 10A.7.2EU</u>	<u>Appropriateness (MiFID provisions)</u>	<u>Records of appropriateness assessments including the results of such assessments and any warnings given to <i>clients</i></u>	<u>Date of assessment</u>	<u>5 years</u>
<i>COBS</i> 11.3.2R	Client orders	Orders executed for <i>clients</i>	See <i>COBS</i> 11.5	5 years
<i>COBS</i> 11.5.1EU	<i>Client</i> orders and decisions to deal in <i>portfolio management</i>	Orders received from <i>clients</i> and decisions taken – details in <i>COBS</i> 11.5.1 EU	See <i>COBS</i> 11.5.1 EU	5 years
<i>COBS</i> 11.5.2EU	<i>Client</i> orders	Execution of orders	See <i>COBS</i> 11.5.1 EU	5 years
<i>COBS</i> 11.5.3EU	<i>Client</i> orders	Transmission details (see <i>COBS</i> 11.5.3 EU)	Date of transmission	5 years
<u><i>COBS</i> 11.5A.4EU</u>	<u><i>Client</i> orders</u>	<u>Initial orders from <i>clients</i></u>	<u>Immediately after receiving a <i>client</i> order</u>	<u>5 years</u>
<u><i>COBS</i> 11.5A.5EU</u>	<u><i>Client</i> orders</u>	<u>Transactions and order processing</u>	<u>Immediately after receiving a <i>client</i> order</u>	<u>5 years</u>
<i>COBS</i> 11.6.19R	Prior and periodic disclosure	Prior and periodic disclosure on use of dealing commission	From date of disclosure to <i>customers</i>	5 years
...				
<u><i>COBS</i> 11.7A.7EU</u>	<u>Personal account dealing (MiFID provisions)</u>	<u>A record of any personal transaction notified or identified.</u>	<u>Date of notification, identification or decision</u>	<u>5 years</u>

		<u>including any authorisation or prohibition</u>		
COBS 11.8.5R	Telephone conversations and electronic communications subject to the taping obligation (see <i>COBS 11.8.5R</i>)	Telephone conversations and electronic communications recorded under <i>COBS 11.8.5R</i>	When the conversation or electronic communication is made, sent or received	6 months
<u>COBS 11A.1.10EU</u>	<u>Underwriting and placing</u>	<u>Content and timing of instructions received from clients and allocation decisions</u>	<u>Date of receipt of instructions or of allocation decision</u>	<u>5 years</u>
...				
COBS 16.2.7R	Confirmation to clients	Copy of a confirmation	From date of despatch to <i>client</i>	<i>MiFID or equivalent third country business</i> — 5 years Other business — <u>At least 3 years</u>
COBS 16.3.11R	<i>Periodic statements</i>	A copy of a <i>periodic statement</i> sent to a client	From date of despatch to <i>client</i>	<i>MiFID or equivalent third country business</i> — 5 years Other business — <u>At least 3 years</u>
...				

[*Editor's Note:* The text in this Annex takes into account the changes to the Glossary of definitions proposed by CP16/18 *Changes to disclosure rules in the FCA Handbook to reflect the direct application of PRIIPs Regulation* (July 2016) as if they were made.]

Annex H

Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

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

1 Application

1.1 General application

...

Limitations on the general application rule

1.1.2 R The general application *rule* is modified;

(1) in the chapters of this sourcebook for particular purposes; and

(2) in BCOBS 1 Annex 1 for certain types of firm in relation to the sale of structured deposits.

...

Structured deposits

1.1.8 G A firm that carries on the activity of accepting deposits which are structured deposits should refer to BCOBS 1 Annex 1.

Insert the following new Annex after BCOBS 1 (Application). All the text is new and is not underlined.

1 Annex 1 Structured deposit business

Application of BCOBS to firms selling structured deposits

1.1 R The BCOBS provisions shown below do not apply to a *MiFID investment firm*, a *third country investment firm* or a *MiFID optional exemption firm* in relation to the sale of *structured deposits* subject to the *rules* specified in COBS 1.1.1AR(2).

BCOBS provision	Description
-----------------	-------------

<i>BCOBS 2</i>	Communications with banking customers and financial promotions
<i>BCOBS 4 (other than BCOBS 4.1.4AG and BCOBS 4.3)</i>	Information to be communicated to banking customers

1.2 G A *firm* to which *BCOBS 1* Annex 1 paragraph 1.1R applies should read and understand the reference to the appropriate information *rule* in *BCOBS 4.1.4AG* as referring to *COBS 2.2A.2R*.

1.3 G A *MiFID investment firm*, a *third country investment firm* or a *MiFID optional exemption firm* that sells *structured deposits* should consider *COBS 1.1.1AR* to *COBS 1.1.1ABR*. These *rules* specify how certain provisions in *COBS* apply to a *firm* in relation to the sale of *structured deposits*.

Financial promotions relating to structured deposits

- 1.4 G (1) *BCOBS 2* contains *rules* which apply to a *firm* when it *communicates* a *financial promotion* that is not an *excluded communication* or when the *firm* *approves* a *financial promotion*.
- (2) If a *financial promotion* relates to a *structured deposit*, *rules* relating to past, simulated past and future performance in *COBS 4.5A* or *COBS 4.6* will also apply.

Structured deposits as PRIIPs

1.5 G *Firms* are reminded that *structured deposits* are *PRIIPs* and that the provisions of the *PRIIPs Regulation* are also relevant to such products. The *PRIIPs Regulation* requires a *person* who advises on, or sells, a *PRIIP* to provide a retail investor (as defined in the *PRIIPs Regulation*) with the *key information document* for that *PRIIP*.

1.6 G Where a *firm* is required to provide information in a *key information document*, it will not be required to provide the same information under *BCOBS 4.1*.

[**Note:** *BCOBS 1.1.4R(3)* and article 13 of the *PRIIPs Regulation*]

Amend the following as shown.

2 Communications with banking customers and financial promotions

2.1 Purpose and Application: Who and what?

...

- 2.1.4 G In accordance with BCOBS 1 Annex 1 paragraph 1.1R, BCOBS 2 does not apply to a MiFID investment firm, a third country investment firm or a MiFID optional exemption firm in relation to the sale of structured deposits. A MiFID investment firm, a third country investment firm or a MiFID optional exemption firm is subject to the rules specified in COBS 1.1.1AR(2) in relation to the sale of structured deposits.

...

2.3 Other general requirements for communications and financial promotions

...

- 2.3.6 G ~~The Credit Institutions (Protection of Deposits) Regulations 1995~~ Depositor Protection Part of the PRA Rulebook may apply in relation to communications with a *banking customer*.

...

2.4 ~~Structured deposits, cash~~ Cash deposit ISAs and cash deposit CTFs

- 2.4.1 G ~~If a financial promotion relates to a structured deposit, rules in COBS 4.6 (Past, simulated past and future performance) will also apply.~~ [deleted]

...

Annex I

Amendments to the Client Assets sourcebook (CASS)

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

3 Collateral

...

3.2 Requirements

...

- 3.2.4 G When appropriate, *firms* that enter into the arrangements with *retail clients* covered in this chapter will be expected to identify in the statement of *custody assets* sent to the *client* in accordance with COBS 16.4 (Statements of client designated investments or client money), article 63 of the MiFID Org Regulation (see COBS 16A.5) or CASS 9.5 (Reporting to clients on request) details of the assets which form the basis of the arrangements. Where the *firm* utilises global netting arrangements, a statement of the assets held on this basis will suffice.

...

6 Custody rules

6.1 Application

...

Business in the name of the firm

- 6.1.4 R ...

[Note: recital ~~26~~ 51 to *MiFID*]

...

7 Client money rules

...

7.10 Application and purpose

...

Credit institutions and approved banks

...

- 7.10.23 G *Firms* carrying on *MiFID business* are reminded of their obligation to supply investor compensation scheme information to *clients* under *COBS 6.1.16R* ~~6.1.16R~~ 6.1-A.2.19R (Compensation Information).

...

7.11 Treatment of client money

...

- 7.11.15 G The exclusion from the *client money rules* for delivery versus payment transactions under *CASS 7.11.14R* is an example of an exclusion from the *client money rules* which is permissible by virtue of recital ~~26~~ of 51 to *MiFID*.

...

10 CASS resolution pack

...

10.3 Existing records forming part of the CASS resolution pack

- 10.3.1 R A *firm* must include, as applicable, within its *CASS resolution pack* the records required under:

...

- (11) *COBS 8.1.4R* or *COBS 8A.1.9R* (retail and professional client agreements).

...

[*Editor's note:* The form for yearly notification to the FCA comprising MAR 9 Annex 8D can be found in Appendix 2 of the CP.]

Annex J

Amendments to the Market Conduct sourcebook (MAR)

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

5 Multilateral trading facilities (MTFs)

...

5.7 Pre- and post- trade transparency requirements for equity and non-equity instruments: form of waiver and deferral

...

5.7.1B G According to article 4(7) of *MiFIR*, waivers granted by competent authorities in accordance with articles 29(2) and 44(2) of Directive 2004/39/EC and articles 18, 19 and 20 of Regulation (EC) No 1287/2006 before 3 January 2017 2018 shall be reviewed by *ESMA* by 3 January ~~2019~~ 2020. *ESMA* shall issue an opinion to the competent authority, assessing the continued compatibility of those waivers with the requirements established in *MiFIR* and any regulations made pursuant to it. The *FCA* will cooperate with *ESMA* in relation to the continued effect of existing waivers.

5.7.1C D ~~A firm that makes an application to the *FCA* intending to apply to the *FCA* for deferral in accordance with articles 7 or 11 of *MiFIR* in relation to post-trade transparency for equity or non-equity instruments must make it in the approved form~~ apply in writing to the *FCA*.

[**Note:** articles 7 and 11 of *MiFIR*, and *RTS 1* and 2]

5.7.1D G A firm should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the *FCA* by telephone or by other prompt means of communication, before submitting written notification. Oral notifications should be given directly to the firm's usual supervisory contact at the *FCA*. An oral notification left with another person or left on a voicemail or other automatic messaging service is unlikely to have been given appropriately.

...

...

Insert the new MAR 5.10 after MAR 5.9 (Post-trade transparency requirements for shares). All the text is new and is not underlined.

5.10 Operation of an SME growth market

Registering an MTF as an SME growth market

5.10.1 R *A firm may apply to the FCA to have an MTF registered as an SME growth market.*

[Note: article 33(1) of *MiFID*]

5.10.2 R For an *MTF* to be eligible for registration as an *SME growth market*, the *firm* must have effective rules, systems and procedures which ensure that:

- (1) at least 50% of the *issuers* whose *financial instruments* are admitted to trading on the *MTF* are *small and medium-sized enterprises* at the time when the *MTF* is registered as an *SME growth market*, and in any calendar year thereafter;
- (2) appropriate criteria are set for initial and ongoing admission to trading of *financial instruments* of *issuers* on the market;
- (3) on initial admission to trading of *financial instruments* on the market, there is sufficient information to enable investors to make an informed judgement about whether or not to invest in the *financial instruments* published in either:
 - (a) an appropriate admission document; or
 - (b) a prospectus, if the *Prospectus Directive* is applicable in respect of a public offer being made in conjunction with the initial admission to trading of the *financial instrument* on the *MTF*;
- (4) there is appropriate ongoing periodic financial reporting by, or on behalf of, an *issuer* on the market, for example through audited annual reports;
- (5) the following comply with the *Market Abuse Regulation* as applicable to each of them:
 - (a) *issuers* on the market as defined in point (21) of article 3(1) of the *Market Abuse Regulation*;
 - (b) *persons* discharging managerial responsibilities as defined in point (25) of article 3(1); and
 - (c) *persons* closely associated with them as defined in point (26) of article 3(1);

- (6) regulatory information concerning the *issuers* on the market is stored and disseminated to the public; and
- (7) there are effective systems and controls aiming to prevent and detect *market abuse* on that market as required under the *Market Abuse Regulation*.

[**Note:** articles 33(2) and 33(3) of *MiFID*]

The contents of an application for registration as an SME growth market

- 5.10.3 G The requirements specified in *MAR* 5.10.2R:
- (1) are subject to the provisions of the *MiFID Org Regulation*, further specifying the requirements laid down in article 33(3) of *MiFID*; and
 - (2) do not detract from other obligations relevant to an *MTF* under this chapter, but a *firm* may impose additional requirements to those specified in *MAR* 5.10.2R.

[**Note:** articles 33(4) and 33(8) of *MiFID*, and articles 78 and 79 of the *MiFID Org Regulation*]

- 5.10.4 G (1) The *FCA* expects an application for registration as an *SME growth market* to be accompanied by:
- (a) a copy of the rules, systems and procedures supporting the applicant's compliance with the requirements specified in *MAR* 5.10.2R; and
 - (b) such other information as the *FCA* may reasonably require to determine the application in accordance with *MAR* 5.10.2R and *MAR* 5.10.3R.
- (2) A *firm* intending to apply for registration as an *SME growth market* may wish to contact the Infrastructure and Trading Firms Department at the *FCA* for further advice on the preparation, timing and practical aspects of an application to register.

- 5.10.5 R (1) Where a *financial instrument* of an *issuer* is admitted to trading on one *SME growth market*, the *financial instrument* must not be traded on another *SME growth market* unless the *issuer* has been informed and has not objected.
- (2) In the case of (1), the *issuer* shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter *SME growth market*.

[**Note:** article 33(7) of *MiFID*]

- 5.10.6 G The *issuer* of the *financial instrument* referred to in *MAR* 5.10.5R should be informed by notice in writing that another *SME growth market* wishes to

admit the instrument to trading, and should generally be given no less than 28 *days* to object.

Deregistering an MTF as an SME growth market

5.10.7 R An *MTF* registered as an *SME growth market* may be deregistered by the *FCA* in the following cases:

- (1) the *firm* operating the market applies for its deregistration; or
- (2) the requirements in *MAR* 5.10.2R are (subject to *MAR* 5.10.3G(1)) no longer complied with.

[**Note:** article 33(5) of *MiFID* and article 79 of the *MiFID Org Regulation*]

Amend the following as shown.

5A Organised trading facilities (OTFs)

...

5A.11 Post-trade transparency requirements for non-equity instruments: form of deferral

5A.11.1 D ~~A *firm* that makes an application to the *FCA* intending to apply to the *FCA* for deferral in accordance with article 11 of *MiFIR* (in relation to post-trade transparency for non-equity instruments) must make it in the approved form apply in writing to the *FCA*.~~

[**Note:** article 11 of *MiFIR* and *RTS* 2]

5A.11.2 G A *firm* should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the *FCA* by telephone or by other prompt means of communication, before submitting written notification. Oral notifications should be given directly to the *firm's* usual supervisory contact at the *FCA*. An oral notification left with another person or left on a voicemail or other automatic messaging service is unlikely to have been given appropriately.

...

...

9 Data Reporting Services

...

9.2 Authorisation and verification

...

Extension of or variation of authorisation form

...

- 9.2.4 G ~~MAR 9 Annex 3D is derived from~~ requires completion of Annex I of ITS 3 in the case of an extension of authorisation and, if relevant, Annex II of ITS 3 if the members of the management body are different from the existing authorised data reporting services.

Cancellation of authorisation form

- 9.2.5 D If a ~~data reporting service~~ services provider wishes to cancel all its ~~data reporting services~~ authorisation it must complete the form of cancellation at MAR 9 Annex 4D.

Provision of the forms in MAR 9 Annex 1D, 2D, 3D and 4D to the FCA

- 9.2.6 D ...
- (1) emailing MiFiDII.Applications@fca.org.uk; or
 - (2) posting to the FCA addressed to:
The Financial Conduct Authority
FAO The Authorisations Support Team
25 The North Colonnade
Canary Wharf
London E14 5HS -

...

9.3 Notification and information

...

Notification to the FCA by an APA or a CTP of ~~agreement to non-disclosure and compliance with connectivity requirements~~

- 9.3.4 D ~~Within~~ As soon as possible and within 2 weeks of being authorised as an APA or CTP, an APA or CTP seeking a connection to the FCA's market data processor system must:
- (1) sign the ~~non-disclosure agreement~~ MIS confidentiality agreement at MAR 9.6 Annex 10D; and
 - (2) Email it to MDP.onboarding@fca.org.uk or post an original signed copy to the FCA addressed to:
The Financial Conduct Authority

FAO The Markets Reporting Team

25 The North Colonnade

Canary Wharf

London E14 5HS -

- 9.3.5 G (1) To ensure security of the *FCA*'s systems, the *FCA* requires an *APA* or a *CTP* to sign ~~a non-disclosure agreement~~ the *MIS confidentiality agreement* before receiving the *FCA*'s technical specifications for connectivity *Market Interface Specification (MIS)* .
- (2) Once the *FCA* receives the ~~non-disclosure agreement~~ *MIS confidentiality agreement* from the *APA* or the *CTP*, the *FCA* will provide the *APA* or the *CTP* with:
- (a) ~~the technical specifications~~ *Market Interface Specification (MIS)*; and
- (b) ~~a request for the *APA* or a *CTP* to confirm to the *FCA* that the *APA* or the *CTP* can satisfy the technical specifications~~ *Market Interface Specification (MIS) document* .

...

~~Notification to the *FCA* by an *APA* or a *CTP* of its ability to meet *FCA* connectivity requirements~~

- 9.3.6 D An *APA* or a *CTP* seeking a connection to the *FCA*'s market data processor system must complete the form at *MAR 9 Annex 7D* ~~within~~ as soon as possible and no later than 4 weeks following receipt from the *FCA* of its technical specifications for connectivity complete authorisation as an *APA* or *CTP*.
- ~~(a) — complete the outstanding questions relating to compliance with requirements for *ARMs* to connect to the *FCA* using your partly completed form *MAR 9 Annex 1D*; and~~

Yearly notifications to the *FCA*

- 9.3.7 D A data reporting services provider must provide the information in *MAR 9 Annex 8D*:
- (1) ~~within 10 business days after~~ 3 months of the 12 ~~month~~ month anniversary of the commencement of its authorisation; and
- (2) then every year within ~~10 business days after~~ 3 months of the same date.

...

Provision of the forms in *MAR 9 Annexes 5D, 6D, 7D, 8D and 9D* to the *FCA*

9.3.10 D ...

- (1) at ~~[insert department email address]~~ MRT@fca.org.uk; or
- (2) by posting it to the *FCA*, addressed to:

The Financial Conduct Authority
~~[insert department]~~ The Markets Reporting Team
 25 The North Colonnade
 Canary Wharf
 London E14 5HS

...

9.5 Frequently Asked Questions

...

9.5.5 G Q. How do we go about applying to be an *ARM*?

- A. (1) You should complete:
 - (a) all of the questions in the application form at *MAR 9 Annex 1D*, ~~other than those questions relating to your compliance with requirements for *ARMs* to connect to the *FCA*~~; and
 - (b) ...
- (2) You should sign the ~~non-disclosure agreement~~ *MIS confidentiality agreement* at *MAR 9 Annex 10D*.
- ...
- (4) After receiving the documents referred to in (3) and subject to our review of these documents, we will provide you with a copy of our ~~technical specifications~~ *Market Interface Specification (MIS)*.
- (5) If you consider that you can meet our specifications you should:
 - (a) ~~complete the outstanding questions relating to compliance with requirements for *ARMs* to connect to the *FCA* using your partly completed form *MAR 9 Annex 1D*~~; and
 - (b) ~~provide it~~ obtain the *FCA MDP on-boarding application form* at *MAR 9 Annex 7D* and provide the completed form and any relevant documents to

us together with the associated fee in [*to be inserted following the making of rules subject to consultation as part of FCA CP 16/19 Markets in Financial Instruments Directive II Implementation in respect of the MiFID 2 Organisational requirements and miscellaneous provisions Instrument 2017*]. Our consideration of your application for authorisation as an ARM is dependent on us reviewing a completed FCA MDP on-boarding application form.

...

9.5.6 G Q. Does an *investment firm* need to be authorised as an *ARM* to send *transaction reports* to the *FCA*?

A. No. If you are a *MiFID investment firm* that wishes to send transaction reports to us to satisfy your own transaction reporting obligations under *MiFIR*, you do not need to become authorised as an *ARM*. You are permitted to connect directly to us although there will be a requirement to sign a ~~non-disclosure agreement~~ *MIS confidentiality agreement* with us, to satisfy connectivity requirements and to undertake testing associated with connecting to our systems. For the associated costs please refer to [*to be inserted following the making of rules subject to consultation as part of FCA CP 16/19 Markets in Financial Instruments Directive II Implementation in respect of the MiFID 2 Organisational requirements and miscellaneous provisions Instrument 2017*]. If you want to connect to us to send reports on behalf of other *investment firms* then you must become authorised as an *ARM*.

...

9.5.9 G Q. Can any *trading venue* report transactions for the purposes of article 26 *MiFIR* to the *FCA* using an *ARM*?

A. Yes. The ability of a *trading venue* to submit data to an *ARM* is consistent with the definition of an *ARM* which enables a *trading venue* to submit information, on its own behalf, to an *ARM*. It is also consistent with paragraph 2 of article 9 [Security] of *RTS 13*, which enables a third party to submit information to an *ARM* on behalf of others. More generally, it supports the purpose underlying *MiFIR* and *MiFID* of facilitating the detection of cases of *market abuse*.

9.5.10 G Q. Can a group of *investment firms* aggregate their reporting via an internal hub?

A. Yes. A group of *investment firms* may use a hub to assist with aggregating transaction reporting data for each legal entity that is an *investment firm* in the group for the purposes of article 26 of *MiFIR* provided that the hub is either an *ARM* or the hub uses an *ARM* to report the transaction data to the *FCA*. Paragraph 2 of article 9

[Security] of RTS 13 confirms that an investment firm ('reporting firm') may use a third party ('submitting firm') to submit information to an ARM.

9.5.11 G Q. Which form should I use if I wish to cancel some, but not all, of my data reporting services?

A. You should use the form at MAR 9 Annex 3D. If you expect the wind-down (run-off) of the service that you wish to cancel to take longer than six months you should discuss this with your usual supervisory contact.

9.5.12 G Q. I intend to apply to be authorised to provide the data reporting services of an APA. May I establish connectivity requirements while my application for authorisation is being considered?

A. Yes. The MIS confidentiality agreement is available on our website at www.fca.org.uk together with instructions on how to obtain the Market Interface Specification (MIS) for connectivity.

9 Annex ~~Connectivity to FCA notification by APAs and/or CTPs form~~ **FCA MDP on-**
7D **boarding application form**

...

...

9 Annex ~~Non-Disclosure Agreement~~ **MIS confidentiality agreement**
10D

...

Annex K

Product Intervention and Product Governance Sourcebook (PROD)

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

1 Application and purpose

...

1.3 Application of PROD 3

...

EEA territorial scope rule: compatibility with European law

- 1.3.5 R (1) The territorial scope of *PROD 3* is modified to the extent necessary to be compatible with European law (see *PROD 1.3.6G* to *1.3.9G* for guidance on this).
- (2) This *rule* overrides every other *rule* in this sourcebook.

Effects of the EEA territorial scope rule

- 1.3.6 G One of the effects of *PROD 1.3.5R* is to override the application of this sourcebook to the *overseas* establishments of *EEA firms* in circumstances covered by *MiFID*.
- 1.3.7 G The *guidance* in this chapter provides a general overview only and is not comprehensive.
- 1.3.8 G When considering the impact of a directive on the territorial application of a *rule*, a *firm* will first need to consider whether the relevant situation involves a non-UK element. *PROD 1.3.5R* is unlikely to apply if a *UK firm* is doing business in a *UK establishment* for a *client* located in the *United Kingdom* in relation to a ~~*United Kingdom*~~ *UK product*, in other words *PROD 3* will apply to the *UK firm*. However, if there is a non-UK element, the *firm* should consider whether:
- (1) it is subject to the directive (in general, directives only apply to *UK firms* and *EEA firms*, but the implementing provisions may not treat non-*EEA firms* more favourably than *EEA firms*);
 - (2) the business it is performing is subject to the directive; and
 - (3) the particular *rule* is within the scope of the directive.

If the answer to all three questions is ‘yes’, *PROD 1.3.5R* may change the

application of the *rules* in this sourcebook.

...

MiFID: effect on territorial scope

- 1.3.10 G *PERG* 13 contains general *guidance* on the *persons* and businesses to which *MiFID* applies.
- 1.3.11 G For a *UK MiFID investment firm*, *rules* in this sourcebook that are within the scope of *MiFID* generally apply to its *MiFID business* carried on from an establishment in the *United Kingdom*. They also generally apply to its *MiFID business* carried on from an establishment in another *EEA State*, ~~but~~ only although in the case of *rules* that implement article 24(2) *MiFID*, only where that business is not carried on within the territory of that *EEA State*. Where a *MiFID investment firm* carries on *MiFID business* from a *branch* in another *EEA State*, organisational requirements, including *rules implementing product manufacture obligations under article 16 MiFID* are home state requirements and therefore *FCA* responsibility (see *SUP* 13A Annex 1G).
- [**Note:** see articles 34(1) and 35(1) and (8) of *MiFID*]
- 1.3.12 G For an *EEA MiFID investment firm*, *rules* in this sourcebook that are within the scope of *MiFID* generally apply only to its *MiFID business* if that business is carried on from an establishment in, and within the territory of, the *United Kingdom* and only to the extent that the *rules* implement article 24(2) of *MiFID*.

[**Note:** see articles 35(1) and (8) of *MiFID*]

...

Annex L

Amendments to the Supervision manual (SUP)

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

6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements

...

6.4 Applications for cancellation of permission

...

When will the relevant regulator grant an application for cancellation of permission?

...

- 6.4.22 G In deciding whether to cancel a *firm's Part 4A permission*, the relevant regulator will take into account all relevant factors in relation to business carried on under that *permission*, including whether:

...

- (3) the *firm* has ceased to hold or control *custody assets* in accordance with instructions received from *clients* and *COBS 6.1.7R or article 49 of the MiFID Org Regulation (see COBS 6.1-A.2.5EU)* (Information concerning safeguarding of designated investments belonging to clients and client money);

...

...

6 Annex 4G Additional guidance for a firm winding down (running off) its business

...

4.2AG

1

1	<p>A <i>firm</i> must comply with <i>CASS 5.5.80R</i> and <i>CASS 7.11.34R</i> (Client money: discharge of fiduciary duty) and <i>CASS 7.11.50R</i> (Allocated but unclaimed <i>client money</i> <u>client money</u>) if it is ceasing to hold <i>client money</i>. A <i>firm</i> must also cease to hold or control <i>custody assets</i> in accordance with instructions received from <i>clients</i> and <i>COBS 6.1.7R or article 49 of the MiFID Org Regulation (see COBS 6.1-A.2.5EU)</i> (Information concerning safeguarding of designated investments belonging to clients and client money). These <i>rules</i> apply to both repayment and transfer to a third party.</p>
---	---

10A FCA Approved Persons**10A.1 Application**

...

Bidders in emissions auctions

- 10A.1.21 G For a *firm* that is exempt from *MiFID* under article 2(1)(i) (j) and whose only *permission* is *bidding in emissions auctions*, the only *FCA controlled functions* that apply to it are:

...

...

10A.8 Systems and controls functions

...

- 10A.8.2 R The *systems and controls function* does not apply in relation to *bidding in emissions auctions* carried on by a *firm* that is exempt from *MiFID* under article 2(1)(i) (j).

...

12 Appointed representatives**12.1 Application and purpose**~~Application~~ General application

- 12.1.1 R ...

Territorial application: compatibility with EU law

- 12.1.1A R (1) The territorial scope of SUP 12 is modified to the extent necessary to be compatible with EU law (see SUP 12.1.1BG and 12.1.1CG for guidance on this).

(2) This rule overrides every other rule in this chapter.

- 12.1.1B G For a UK MiFID investment firm, in our view, rules in this chapter that are within the scope of MiFID apply to its MiFID business carried on from an establishment in the United Kingdom or another EEA State.

[Note: articles 34(1) and 35(1) and (8) of MiFID]

- 12.1.1C G For an EEA MiFID investment firm, in our view, rules in this chapter that are within the scope of MiFID apply only to its MiFID business to the extent they relate to the knowledge and competence of one or more of its UK tied

agents. An EEA MiFID investment firm should complete the Appointed representative appointment form in SUP 12 Annex 3R when appointing a UK tied agent to carry on MiFID business on its behalf.

[Note: article 29(3) of MiFID]

Interaction of SUP 12 and other modules in relation to MiFID business

- 12.1.1D G In addition to those rules in SUP 12 relating to the MiFID business of appointed representatives and tied agents, there are other MiFID obligations in the Handbook relevant to the knowledge and competence of tied agents and related compliance obligations (see SYSC 5.1, TC and FIT (in respect of appointed representatives that are approved persons)). These provisions are subject to the territorial application requirements in their respective chapters.

Purpose

...

- 12.1.4 G ~~The FCA has produced a leaflet entitled "Becoming an appointed representative" which provides a comprehensive summary of some of the main features of the appointed representative regime. You may download a copy of this leaflet from our website at <http://www.fca.org.uk/your-fca/documents/factsheet-becoming-an-appointed-representative> FCA's website includes information about becoming and appointing an appointed representative. This information can be found at <https://www.fca.org.uk/firms/appointed-representatives-principals>.~~
- 12.1.5 G This chapter also sets out:
- (1) guidance about section 39A of the Act, which is relevant to a UK MiFID investment firm that is considering appointing an FCA registered tied agent; and
 - (2) ~~It also sets out the FCA's rules, and guidance on those rules, in relation to the appointment of:~~
 - (a) an EEA tied agent by a UK MiFID investment firm;
 - (b) a MiFID optional exemption appointed representative; and
 - (c) a structured deposit appointed representative.

12.2 Introduction

[Editor's note: This and subsequent sections are based on the assumption that there will be legislative amendments to sections 39 and 39A of the Financial Services and Markets Act 2000 and the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 to take account of articles 1(4) and 3(2) of MiFID.]

What is an appointed representative?

12.2.1 G ...

- (3) If an *appointed representative* is also a *tied agent*, a *MiFID optional exemption appointed representative* or a *structured deposit appointed representative*, he must also satisfy the condition in section 39(1A) of the *Act* in order to be an *exempt person*. See *SUP 12.4.12G* and *SUP 12.4.13G* for *guidance* on that condition and, *SUP 12.2.16G* for more general *guidance* about *tied agents*, *SUP 12.2.17G* for *guidance* about *MiFID optional exemption appointed representatives* and *SUP 12.2.18G* for *guidance* about *structured deposit appointed representatives*.

...

...

Business for which an appointed representative is exempt

12.2.7 G (1) The *Appointed Representatives Regulations* are made by the Treasury under sections 39(1), (1C) and (1E) of the *Act*. These regulations describe, among other things, the business for which an *appointed representative* may be exempt or to which sections 20(1) and (1A) and 23(1A) of the *Act* may not apply, which is business which comprises any of:

...

- (b) *arranging (bringing about) deals in investments* (article 25(1) of the *Regulated Activities Order*) (that is in summary, deals in a *designated investment* (other than a *P2P agreement*), *structured deposit*, *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interest in a funeral plan);
- (c) *making arrangements with a view to transactions in investments* (article 25(2) of the *Regulated Activities Order*) (that is in summary, transactions in a *designated investment* (other than a *P2P agreement*), *structured deposit*, *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interest in a funeral plan);

...

- (i) *advising on investments (except P2P agreements)* (article 53(1) of the *Regulated Activities Order*) (that is in summary, on any *designated investment* (other than a *P2P agreement*), *structured deposit*, *funeral plan contract*, *pure protection contract*, *general insurance contract* or right to or interest in a funeral plan);

...

- (2) If the *appointed representative* is also a tied agent of an EEA firm, the business for which the *appointed representative* may be exempt includes the following additional activities:

...

...

What is a tied agent?

12.2.16 G ...

- (7) Under MiFID, an EEA State may prohibit the appointment of tied agents by MiFID investment firms for which it is the Home State a tied agent must be registered with the competent authority of the EEA State in which it is established. If a UK MiFID investment firm appoints may appoint a tied agent established in such an EEA State, the UK but that does not, and is not likely to, conduct any business as a tied agent in the UK. That tied agent must be registered with the FCA. Such an EEA tied agent is referred to in the Handbook as an FCA registered tied agent.
- (8) If a UK MiFID investment firm appoints a tied agent established in an EEA State that allows MiFID investment firms for which it is the Home State to appoint tied agents other than the UK, the tied agent must be registered with the competent authority of the EEA State in which it is established. Such an EEA tied agent is referred to in the Handbook as an EEA registered tied agent.

What is a MiFID optional exemption appointed representative?

- 12.2.17 G (1) A MiFID optional exemption appointed representative is a person who acts for and under the responsibility of a MiFID optional exemption firm. Such appointed representatives are not also tied agents since they do not act on behalf of a MiFID investment firm.
- (2) Unless otherwise provided, this chapter applies to a firm that appoints a MiFID optional exemption appointed representative in the same way as it applies to the appointment of any other appointed representative.
- (3) The rules in this chapter which apply with respect to UK tied agents appointed by UK firms also apply to a firm that appoints a MiFID optional exemption appointed representative.

What is a structured deposit appointed representative?

- 12.2.18 G (1) If a MiFID investment firm appoints a person to act under its full and unconditional responsibility but only for the purpose of selling, or

advising clients in relation to, structured deposits (and not any of the activities within article 4(1)(29) of MiFID), that person will not be a tied agent in respect of that activity.

- (2) Unless otherwise provided, this chapter applies to a firm that appoints a structured deposit appointed representative in the same way as it applies to the appointment of any other appointed representative.
- (3) The rules in this chapter which apply with respect to UK tied agents appointed by UK firms also apply to a firm that appoints a structured deposit appointed representative.

12.3 What responsibility does a firm have for its appointed representatives or EEA tied agent agents?

...

Responsibility for EEA tied agents

- 12.3.5 R A UK MiFID investment firm must not appoint an EEA registered tied agent or allow such an agent to continue to act for it unless it accepts or has accepted responsibility in writing for the agent's activities in acting as its EEA registered tied agent.

[Note: paragraph 1 of article ~~23(2)~~ 29(2) of MiFID]

...

12.4 What must a firm do when it appoints an appointed representative or an EEA tied agent?

...

Appointment of an appointed representative (other than an introducer appointed representative)

...

- 12.4.2A R (1) A firm must ensure that:
- (a) a tied agent that is an appointed representative; or
 - (b) a MiFID optional exemption appointed representative; or
 - (c) a structured deposit appointed representative.

is of sufficiently good repute and that it possesses appropriate general, commercial and professional knowledge and competence so as to be able to communicate accurately all relevant information

regarding the proposed service to the *client* or potential *client*. This does not limit a *firm's* obligations under SUP 12.4.2R.

- (2) A firm must ensure that its tied agent or MiFID optional exemption appointed representative also possesses appropriate general, commercial and professional knowledge and competence so as to be able to deliver any investment service or ancillary service.

[Note: paragraphs 3 2 and 4 3 of article 23(3) 29(3) of MiFID]

- 12.4.2B G (1) A firm to which SUP 12.4.2AR applies should also have regard to SYSC 5.1 (Skills, knowledge and expertise). The requirements of the Training and Competence sourcebook may also be relevant.
- (2) ESMA has issued guidelines for MiFID investment firms specifying the criteria for the assessment of knowledge and competence. These guidelines are relevant to tied agents (see SYSC 5.1.5ADG).

...

Appointment of an FCA registered tied agent

- 12.4.11 R If a UK MiFID investment firm appoints an FCA registered tied agent, SUP 12.4.2R and SUP 12.4.2AR apply to that firm as though the FCA registered tied agent were an appointed representative.

[Note: paragraphs 3 2 and 4 3 of article 23(3) 29(3) of MiFID]

Tied agents

- 12.4.12 G (1) A tied agent that is an appointed representative may not start to act as a tied agent until it is included on the applicable register (section 39(1A) of the Act). If the tied agent is established in the UK, the register maintained by the FCA is the applicable register for these purposes. If the tied agent is established in another EEA State, ~~it should consult section 39(1B) of the Act to determine the applicable register~~ is that maintained by the competent authority in the EEA State in which the tied agent is established.

...

- (4) If the tied agent is not established in the UK and is appointed by an EEA MiFID investment firm, it cannot commence acting as a tied agent until it is included on the public register of tied agents in the EEA State in which it is established ~~(or in certain cases, of the Home State of the firm).~~

...

MiFID optional exemption appointed representatives and structured deposit appointed representatives

...

12.6 Continuing obligations of firms with appointed representatives or EEA tied agents

Suitability etc. of appointed representatives

...

- 12.6.1A R A UK firm that is a ~~principal~~ *principal* of a *tied agent* that is an *appointed representative* must monitor the activities of that *tied agent* so as to ensure the *firm* complies with obligations imposed under *MiFID* (or equivalent obligations relating to the *equivalent business of a third country investment firm*) when acting through that *tied agent*.

[**Note:** paragraph 3 of ~~Article 23(2)~~ article 29(2) of *MiFID*]

...

Obligations of firms under the training and competence rules

- 12.6.10 G ...

- 12.6.10A G A firm that is a *principal* of a *tied agent* should also refer to the guidelines for *MiFID investment firms* issued by *ESMA* specifying criteria for the assessment of knowledge and competence (see *SYSC 5.1.5ADG*).

...

Continuing obligations of firms with tied agents

- 12.6.13 R A UK firm must ensure that its *tied agent* discloses the capacity in which he is acting and the *firm* he is representing when contacting a *client* or potential *client* or before dealing with a *client* or potential *client*.

[**Note:** paragraph 1 of article ~~23(2)~~ 29(2) of *MiFID*]

- 12.6.14 R A UK firm must take adequate measures in order to avoid any negative impact of the activities of its *tied agent* not covered by the scope of *MiFID* (or relating to the *equivalent business of a third country investment firm*) could have on the activities carried out by the *tied agent* on behalf of the *firm*.

[**Note:** paragraph 1 of article ~~23(4)~~ 29(4) of *MiFID*]

...

Continuing obligations of firms with *MiFID* optional exemption appointed representatives or structured deposit appointed representatives

- 12.6.15A R If a firm appoints a *MiFID* optional exemption appointed representative or a structured deposit appointed representative, that firm must:

- (1) monitor the activities of the *appointed representative* to ensure that the *firm* complies with those obligations which implement provisions of *MiFID* and to which it is subject when acting through its *appointed representative*;
- (2) ensure that its *appointed representative* discloses the capacity in which it is acting and the *firm* it is representing when contacting a *client* or potential *client* or before dealing with a *client* or potential *client*; and
- (3) take adequate measures to avoid any negative impact that the activities of its *appointed representative* not covered by the scope of *MiFID* could have on the activities carried out by the *appointed representative* on behalf of the *firm*.

12.6.15B G In SUP 12.6.15AR(1), the obligations which implement relevant provisions of *MiFID* to which a *firm* is subject include:

- (1) in the case of a *MiFID optional exemption firm* appointing a *MiFID optional exemption appointed representative*, those conduct requirements which are imposed pursuant to article 3(2) of *MiFID*; and
- (2) in the case of a *firm* appointing a *structured deposit appointed representative*, those requirements which are imposed pursuant to article 1(4) of *MiFID*.

...

12.7 Notification requirements

Notification of appointment of an appointed representative

- 12.7.1 R (1) This *rule* applies to a *firm* which intends to appoint:
- (a) an *appointed representative* to carry on *insurance mediation activities*; or
 - (b) a *tied agent*; or
 - (c) an *appointed representative* to carry on *MCD credit intermediation activity*; or
 - (d) a *MiFID optional exemption appointed representative*; or
 - (e) a *structured deposit appointed representative*.

...

...

12.7.5 G To contact the ~~Individuals, Mutuals and Policy Department~~ FCA's Contact Centre with appointed representatives enquiries:

- (1) telephone ~~on 020 7066 0019~~ 0300 500 0597; fax ~~on 020 7066 4099~~ 0017; or
- (2) write to: ~~Individuals, Mutuals and Policy Department~~ Customer Contact Centre, The Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS; or
- (3) email ~~iva@fca.org.uk~~ firm.queries@fca.org.uk.

...

Notification of changes in information given to the FCA

12.7.7 R ...

(1A) If:

(a)

(i) the scope of appointment changes such that the appointed representative acts as a tied agent, MiFID optional exemption appointed representative or structured deposit appointed representative for the first time; and

(ii) the appointed representative is not included on the ~~Financial Services Register~~ Financial Services Register; or

(b) the appointed representative ceases to act as a tied agent, MiFID optional exemption appointed representative or structured deposit appointed representative;

the appointed representative's principal ~~principal~~ principal must give written notice to the FCA of that change before the appointed representative begins to act as a tied agent, MiFID optional exemption appointed representative or structured deposit appointed representative (see SUP 12.4) or as soon as the appointed representative ceases to act as a tied agent, MiFID optional exemption appointed representative or structured deposit appointed representative.

...

...

Submission in the event of failure of FCA information technology systems

12.7.10 G If the FCA's information technology systems fail and online submission is unavailable for 24 hours or more, the FCA will endeavour to publish a

notice on its website confirming that online submission is unavailable and that *firms*, other than *credit unions*, should use the alternative methods of submission set out in SUP 12.7.1AR(3) and SUP 12.7.8AR(3) (as appropriate), and SUP 15.7.4R to SUP 15.7.9G, addressing applications for the attention of the ~~Individuals~~ Approved Persons, Passporting and Mutuals Team.

...

13 Exercise of passport rights by UK firms

13.6 Changes to branches

...

Firms passporting under MiFID

- 13.6.5A G If a *UK firm* has exercised an *EEA right* to establish a *branch* under *MiFID*, it must not make a change in the *requisite details* of the *branch* (see ~~SUP 13 Annex 1~~ SUP 13 Annex 1AR), use, for the first time, a *tiered agent* established in the *EEA State* in which the *branch* is established, or cease to use a *tiered agent* established in the *EEA State* in which the *branch* is established, unless it has satisfied the requirements of regulation 11A(2) (see SUP 13.6.5BG).

...

13.7 Changes to cross border services

...

Firms passporting under MiFID

- 13.7.3A G If a *UK firm* is providing *cross border services* in a particular *EEA State* in exercise of an *EEA right* deriving from *MiFID*, the *UK firm* must comply with the requirements of regulation 12A(2) before it makes a change to its programme of operations, including:
- (1) changing the activities to be carried on in exercise of that *EEA right*;

...

...

13A Qualifying for authorisation under the Act

...

13A Application of the Handbook to Incoming EEA Firms

Annex 1G

...		
5. An <i>EEA firm</i> that exercises an <i>EEA right</i> under <i>MiFID</i> to carry on <i>MiFID business bidding</i> is subject to the <i>applicable provisions</i> relating to its carrying on of <i>MiFID business</i> and any applicable <i>EU regulations</i> .		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
SYSC	<p>...</p> <p>The <i>common platform requirements</i> in SYSC 4 - 10 apply as set out in Part 2 of SYSC 1 Annex 1 (Application of the common platform requirement).</p> <p>...</p> <p><u>SYSC 10A applies to an incoming EEA AIFM and an EEA MiFID investment firm.</u></p> <p>...</p> <p>SYSC 19A, 19B, 19C and 19D do not apply.</p> <p><u>SYSC 19F applies to a MiFID investment firm unless it is a UCITS investment firm or an AIFM investment firm.</u></p>	<p>...</p> <p>The <i>common platform requirements</i> in SYSC 4 - SYSC 10 apply as set out in SYSC 1 Annex 1.2.2R.</p> <p>SYSC 4 <u>10A</u> - SYSC 17 do not apply.</p> <p>SYSC 18 applies.</p> <p>SYSC 19A, <u>19B</u>, 19C and 19D, <u>19E</u> and 19F do not apply.</p>
...		
GEN	<p>GEN applies (<i>GEN 1.1</i>, <u>GEN 1.2</u>, <i>GEN 2.1</i>, <i>GEN 4.1</i>, <i>GEN 5.1</i> and <i>GEN 6.1</i>). However,</p> <p>(a) <i>GEN 4</i> does not apply to the extent that the <i>firm</i> is subject to equivalent <i>rules</i> imposed by its <i>Home State</i> (<i>GEN 4.1.1R(3)</i>), and</p> <p>(b) <i>GEN 6</i> only applies to</p>	<p><i>GEN 4</i> does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> (see <i>GEN 4.1.1R</i>).</p> <p>Otherwise, as column (2) <u>except in relation to article 44(8) of the MiFID Org</u></p>

	<p>business that can be regulated under sections 137A and 137G of the <i>Act</i> (The FCA's General rules) and (The PRA's General rules), respectively. It does not therefore apply if, or to the extent that, responsibility has been reserved to an <i>incoming firm's Home State regulator</i> by an <i>EU instrument</i>. Only GEN <u>GEN 4.5</u> applies in relation to <i>MiFID or equivalent third country business</i> (see <i>GEN 4.1.1R</i>). <u>The FCA has supervisory responsibility in respect of a branch of a MiFID investment firm under article 44(8) of the MiFID Org Regulation relating to the prohibition on using the name of a competent authority to suggest its endorsement of the firm's products or services.</u></p>	<u>Regulation.</u>
<i>FEES</i>	<p>Applies to the extent a firm is required to pay a fee in regards to carrying out any <i>regulated activity</i> in the <i>UK</i>, normally this would be the case when the firm holds a top-up permission.</p>	<p>As column (2) <u>Does not apply</u></p>
...		
<i>SUP</i>	...	...
...		
	<p>SUP 16 (Reporting requirements)</p> <p>Parts of this chapter may apply if the <i>firm</i> has a <i>top-up permission</i> or if the <i>firm</i> is:</p> <ul style="list-style-type: none"> (a) a <i>bank</i>; or (c) an <i>OPS firm</i>; or (e) an <i>insurer</i> with <i>permission</i> to effect or carry out <i>life policies</i>; or 	<p>SUP 16 (Reporting requirements)</p> <p>Parts of this chapter may apply if the <i>firm</i> has a <i>top-up permission</i> or if the <i>firm</i> is:</p> <ul style="list-style-type: none"> (b) an <i>OPS firm</i>; or (d) an <i>insurer</i> with <i>permission</i> to effect or carry out <i>life policies</i>; or (e) a <i>firm</i> with <i>permission</i> to <i>establish, operate or wind up</i>

	<p>(f) a firm with permission to establish, operate or wind up a personal pension scheme or a stakeholder pension scheme; or</p> <p>(g) a firm with permission to carry on <u>MiFID business</u>, advise on investments, arrange (bring about) deals in investments, make arrangements with a view to transactions in investments, or arrange safeguarding and administration of assets.</p> <p>(SUP 16.1)</p>	<p>a personal pension scheme or a stakeholder pension scheme; or</p> <p>(f) a firm with permission to advise on investments, arrange (bring about) deals in investments, make arrangements with a view to transactions in investments, or arrange safeguarding and administration of assets.</p> <p>(SUP 16.1)</p>
	<p>SUP 17 (Transaction reporting)</p> <p>Applies to UK branches of incoming EEA firms which are MiFID investment firms in respect of reportable transactions executed in the course of services provided, whether within in the United Kingdom and outside. (SUP 17.1.2G and SUP 17.1.3AG)</p> <p><u>A MiFID investment firm (other than a collective portfolio management investment firm) reports transactions executed wholly or partly through its branch to the competent authority of its Home State unless otherwise agreed by that competent authority and the FCA, in which case it will report to the FCA.</u></p>	<p>SUP 17 (Transaction reporting)</p> <p>Applies as appropriate to incoming EEA firms which are MiFID investment firms in respect of reportable transactions. (SUP 17.1.1R and SUP 17.1.4R)</p> <p><u>Does not apply.</u></p>
...		
<u>PROD</u>	<p><u>Applies in respect of the rules which implement article 24(2) MiFID and articles 9 and 10 of the MiFID Delegated Directive in relation to the activities of a branch within the territory of the UK.</u></p>	<p><u>Does not apply.</u></p>

<i>DEPP</i>	...	...
<i>DISP</i>	<p>Generally applies (<i>DISP</i> 1.1.1G) but in a limited way in relation to <i>MiFID</i> business.</p> <p><u>In relation to <i>MiFID</i> business carried on from the branch of an <i>EEA</i> firm, the provisions in <i>DISP</i> relating to <i>MiFID</i> complaints generally apply (subject to some limitations, see <i>DISP</i> 1.1A.7R), as do the directly applicable provisions of the <i>MiFID</i> Org Regulation relating to complaints handling.</u></p> <p>...</p>	<p>Generally does not apply (<i>DISP</i> 1.1.1G).</p> <p>However, <i>DISP</i> applies (subject to some limitations, see <i>DISP</i> 1.1.3R and <i>DISP</i> 1.1.5R) to:</p> <p>(a) an <i>incoming EEA</i> firm which is a <i>UCITS</i> management company managing a <i>UCITS</i> scheme; or</p> <p>(b) an <i>AIFM</i> managing an <i>authorised AIF</i> or a <i>UK ELTIF</i> other than a <i>body corporate</i> that is not a <i>collective investment scheme</i>.</p>
...		
Notes to Annex 1		
<p>Note 1: The following modules or chapters are relevant to firms in both the <i>PRA Handbook</i> and the <i>FCA Handbook</i>: <i>PRIN</i>, <i>SYSC</i>, <i>COCON</i>, <i>APER</i>, <i>FIT</i>, <i>GEN</i>, <i>FEES</i>, <i>GENPRU</i>, <i>BIPRU</i>, <i>MIPRU</i>, <i>IPRU(INV)</i>, <i>SUP</i> 2 to 6, 8, 11, 13 to 16, 18 & Appendix 2 and <i>COMP</i></p> <p><u><i>PRA-authorised persons</i> should also refer to the relevant parts of the <i>PRA Rulebook</i>.</u></p>		
<p>Note 2: The following modules or chapters are relevant in the <i>FCA Handbook</i> only: <i>COND</i>, <i>INSPRU</i>, <i>COBS</i>, <i>ICOB</i>, <i>MCOB</i>, <i>CASS</i>, <i>MAR</i>, <i>TC</i>, <i>SUP</i> 1A, 7, 9, 10A, 12 & 17, <i>DEPP</i>, <i>DISP</i>, <i>COLL</i>, <i>FUND</i>, <i>PROF</i>, <i>LR</i>, <i>PR</i>, <i>DTR</i>, and <i>EG</i> <u>The effect of article 35(1) and 35(8) of <i>MiFID</i> (when read with article 1(3) of <i>MiFID</i>) is that if an <i>EEA MiFID investment firm</i> establishes a <i>branch</i> in the <i>UK</i> exercising an <i>EEA right</i> under <i>MiFID</i> or <i>CRD</i>, the <i>FCA</i> has supervisory responsibility for the services and activities provided or performed by the <i>branch</i> within the <i>UK</i> in relation to the <i>rules</i> implementing articles 24, 25, 27 and 28 of <i>MiFID</i>.</u></p>		

13A **Matters reserved to a Home State regulator**
Annex 2G

Introduction	
1.	...

[FCA/PRA]		
Requirements in the interest of the general good		
2. [FCA/PRA]	The <i>Single Market Directives</i> , and the <i>Treaty</i> (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the <i>Home State regulator</i> . To summarise, the <i>FCA</i> or <i>PRA</i> , as <i>Host State regulator</i> , is entitled to impose requirements with respect to activities carried on within the <i>United Kingdom</i> if these can be justified in the interests of the "general good" and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the <i>Single Market Directives</i> :	
	(1)	the <i>Single Market Directives</i> expressly reserve responsibility for the prudential supervision of a <i>MiFID investment firm</i> , <i>CRD credit institution</i> , <i>UCITS management company</i> , <i>AIFM</i> or passporting <i>Solvency II firm</i> to the <i>Firm's Home State regulator</i> <u>in respect of prudential matters within the scope of the respective <i>Single Market Directives</i></u> . The <i>Insurance Mediation Directive</i> and the <i>MCD</i> reach the same position without expressly referring to the concept of prudential supervision. Accordingly, the <i>FCA</i> , as <i>Host State regulator</i> , is entitled to regulate only the conduct of the firm's business within the <i>United Kingdom</i> ;
	...	
	(3)	for a <i>CRD credit institution</i>, the <i>PRA</i> or <i>FCA</i>, as <i>Host State regulator</i>, is jointly responsible with the <i>Home State regulator</i> under article 156 of the <i>CRD</i> for supervision of the liquidity of a <i>branch</i> in the <i>United Kingdom</i>; [deleted]
	(4)	for a <i>MiFID investment firm</i> including a <i>CRD credit institutions institution</i> which is a <i>MiFID investment firm</i>), the protection of <i>clients' money</i> and <i>clients' assets</i> is reserved to the <i>Home State regulator</i> under <i>MiFID</i> ; and
	...	
3. [FCA/PRA]	It is necessary to refer to the case law of the European Court of Justice to interpret the concept of the "general good". To summarise, to satisfy the general good test, <i>Host State</i> rules must come within a field which has not been harmonised at <i>EU</i> level, satisfy the general requirements that they pursue an objective of the general good, be non-discriminatory, be objectively necessary, be proportionate to the objective pursued and not already be safeguarded by rules to which the <i>firm</i> is	

	subject in its <i>Home State</i> .	
Application of SYSC 2 and SYSC 3		
4. {FCA/PRA}	...	
5. {FCA/PRA}	...	
6. {FCA/PRA}	This Annex represents the <i>FCA's</i> and <i>PRA's</i> views, but a firm is also advised to consult the relevant <i>EU</i> instrument and, where necessary, seek legal advice. ...	
...		
Application of the common platform requirements in SYSC to <i>EEA MiFID investment firms</i>		
8. {FCA/PRA}	Whilst the <i>common platform requirements</i> (located in SYSC 4 - SYSC 10) do not generally apply to <i>incoming EEA firms</i> (but for <i>EEA UCITS management companies</i> , see 8A below), <i>EEA MiFID investment firms</i> must comply with the <i>common platform record-keeping requirements</i> in relation to a <i>branch</i> in the <i>United Kingdom</i> and SYSC 10A (<u>Recording telephone communications and electronic communications</u>).	
Application of SYSC to EEA UCITS management companies		
8A. {FCA}	...	
Requirements under MiFID		
9. {FCA/PRA}	...	
10. {FCA/PRA}	...	
	...	
	(1A)	<u>25 (Assessment of suitability and appropriateness and reporting to clients);</u>
	...	

	(4)	28 of <i>MiFID</i> (client order handling rules);
	(5)	14 to 23 of <i>MiFIR</i> (transparency for systematic internalisers and investment firms trading OTC); and
	(6)	24 to 26 of <i>MiFIR</i> (transaction reporting).
		In addition, the <i>FCA</i> assumes responsibility for supervision of <u>articles 14 to 26 of <i>MiFIR</i> although article 14 of <i>RTS 22</i> permits a firm to report transactions executed wholly or partly through its branch to the competent authority of its Home State unless otherwise agreed by that competent authority and the <i>FCA</i>. The remaining obligations under <i>MiFID</i> and <i>MiFIR</i> are reserved to the Home State regulator other than requirements in <i>MAR 10.2</i> in relation to commodity derivative position limits.</u>
...		
12. [FCA/PRA]		Further guidance on the territorial application of the <i>Handbook</i> can be found at <i>PERG 13.6</i> and <i>PERG 13.7</i> . [deleted]
13. [FCA/PRA]		Examples of how <i>SYSC 3</i> and/or the common platform provisions apply in practice.
	...	
	(2)	The Conduct of Business sourcebook (<i>COBS</i>) applies to an incoming EEA firm. Similarly, <i>SYSC 3</i> and <i>SYSC 4-10</i> do require such a firm, to the extent provided by <u><i>SYSC 1 Annex 1</i></u> :
		(a) to establish systems and controls in relation to those aspects of the conduct of its business covered by applicable sections of <i>COBS</i> (<i>SYSC 3.1.1R</i> and <i>SYSC 4.1.1R</i>);
		(b) to establish systems and controls for compliance with the applicable sections of <i>COBS</i> (<i>SYSC 3.2.6R</i> and <i>SYSC 6.1.1R</i>); and
		(c) to make and retain records in relation to those aspects of the conduct of its business (<i>SYSC 3.2.20R</i> and <i>SYSC 9.1.1R</i> to <i>9.1.4G</i>).
		See also Question 12 in <i>SYSC 2.1.6G</i> for guidance on the application of <i>SYSC 2.1.3R(2)</i> .

...

16 Reporting requirements

...

16.7A Annual report and accounts

...

Exceptions from the requirement to submit an annual report and accounts

16.7A.4 R (1) ~~An adviser, local or traded options market maker~~ (as referred to in *IPRU(INV) 3-60(4)R*), is only required to submit the *annual report and accounts* if:

...

...

...

16.12 Integrated Regulatory Reporting

...

Reporting requirement

...

16.12.4R Table of applicable rules containing *data items*, frequency and submission periods

(1)	(2)	(3)		(4)
<i>RAG</i> number	<i>Regulated activities</i>	Provisions containing:		
		applicable data items	reporting frequency/ period	due date
<i>RAG 8</i>	<ul style="list-style-type: none"> • making arrangements with a view to transactions in investments • operating a multilateral trading facility 	<i>SUP 16.12.25AR</i> or <i>SUP 16.12.25CR</i> for <i>UK designated investment firms</i> except <i>FSA001</i> and <i>FSA002</i> on <i>consolidated basis</i> for	<i>SUP 16.12.26R</i>	<i>SUP 16.12.27R</i>

	• <u>operating an organised trading facility</u>	<i>FINREP firm</i>		
...				

...

16.17 Remuneration reporting

...

High Earners Reporting Requirements

16.17.4 R ...

(12) This *rule* also applies to a *BIPRU firm*, an *exempt CAD firm*, a *local firm*, or any other *firm* that is not a *bank*, a *building society* or an *IFPRU investment firm*:

...

...

...

App 3 Guidance on passporting issues

...

App 3.3 Background

3.3.6 G (1) The European Commission has not produced an interpretative communication on *MiFID*. It is arguable, however, that the principles in the communication on the Second Banking Directive can be applied to *investment services and activities*. This is because ~~Chapter~~ Chapter II of Title II of *MiFID* (containing provisions relating to operating conditions for investment firms) also applies to the *investment services and activities* of *firms* operating under the *Banking Consolidation Directive*, which is repealed and replaced by the *CRD*.

...

...

App 3.6 Freedom to provide services

...

Place of supply

...

App 3.6.7 G In respect of banking services, the European Commission believes that “...to determine where the activity was carried on, the place of provision of what may be termed the ‘characteristic performance’ of the service i.e. the essential supply for which payment is due, must be determined” (Commission interpretative communication: Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C/209/04)). In the view of the *FCA and PRA*, this requires consideration of where the service is carried out in practice.

App 3.6.8 G The *FCA and PRA* are is of the opinion that *UK firms* that are *credit institutions* and *MiFID investment firms* should apply the 'characteristic performance' test (as referred to in *SUP App 3.6.7G*) when considering whether prior notification is required for services business. *Firms* should note that other *EEA States* may take a different view. Some *EEA States* may apply a solicitation test. This is a test as to whether it is the consumer or the provider that initiates the business relationship.

...

Monitoring procedures

App 3.6.15 G The *FCA and PRA* ~~consider~~ considers that, in order to comply with *Principle 3: Management and control* (see *PRIN 2.1.1R*), a *firm* should have appropriate procedures to monitor the nature of the services provided to its *customers*. Where a *UK firm* has non-resident *customers* but has not notified the *EEA State* in which the *customers* are resident that it wishes to exercise its freedom to provide services, the *FCA and PRA* would expect the *firm's* systems to include appropriate controls. Such controls would include procedures to prevent the supply of services covered by the *Single Market Directives* in the *EEA State* in which the *customers* are resident if a notification has not been made and it is proposed to provide services otherwise than by remote communication. In respect of *insurance business*, the *insurer's* records should identify the location of the risk at the time the policy is taken out or last renewed. That will, in most cases, remain the location of the risk thereafter, even if, for example, the *policyholder* changes his habitual residence after that time.

...

Membership of ~~regulated markets~~ trading venues

App 3.6.25 G (1) The *FCA and PRA* are is of the opinion that where a *UK firm* becomes a member of:

- (a) a *regulated market* that has its registered office or, if it has no registered office, its head office, in another *EEA State*; or
- (b) an *MTF* or *OTF* operated by a *MiFID investment firm* or a *market operator* in another *EEA State*,

the same principles as in the 'characteristic performance' test should apply. Under this test, the fact that a *UK firm* has a screen displaying the *regulated market's* or the *MTF's* or the *OTF's* prices in its ~~UK~~ UK office does not mean that it is *dealing* within the territory of the *Home State* of the *regulated market* or of the *MTF* or *OTF*.

- (2) In such a case, the *FCA* and ~~*PRA*~~ would consider that:
 - (a) the *market operator* operating the *regulated market* or the *MTF* or the *OTF* is providing a *cross-border service* into the *UK* and so, provided it has given notice to its *Home State regulator* in accordance with articles 42 ~~53~~(6) or ~~34(5)~~ 34(6) of *MiFID*, it will be exempt from the *general prohibition* in respect of any *regulated activity* carried on as part of the business of the *regulated market* ~~or of operating an MTF~~, of *operating a multilateral trading facility* or of *operating an organised trading facility* (see section 312A of the *Act*);
 - (b) the *MiFID investment firm* operating the *MTF* or *OTF* is providing a *cross-border service* into the *UK* and so needs to comply with *SUP 13A*.

App 3.6.26 G *Firms* are reminded of their rights, under article ~~33~~ 36 of *MiFID*, to become members of, or have access to, the *regulated markets* in other Member States.

...

App 3.9 Mapping of MiFID, CRD, AIFMD, UCITS Directive, MCD and Insurance Mediation Directive to the Regulated Activities Order

...

App 3.9.1 G The following Tables 1, 2, 2ZA, 2A and 2B provide an outline of the *regulated activities* and *specified investments* that may be of relevance to *firms* considering undertaking *passported activities* under the *CRD*, *MiFID*, *AIFMD*, the *UCITS Directive*, the *MCD* and the *Insurance Mediation Directive*. The tables may be of assistance to *UK firms* that are thinking of offering financial services in another *EEA State* and to *EEA firms* that may offer those services in the *United Kingdom*.

...

- App 3.9.3 G In considering the issues raised in the tables, *firms* should note that:
- (1) article 64 of the *Regulated Activities Order* (Agreeing to carry on specific kinds of activity) ~~applies~~ may apply in respect of agreeing to undertake the specified activity (see *PERG 2.7.21G*) ; and
 - (2) article 89 of the *Regulated Activities Order* (Rights to or interests in investments) applies in respect of rights to and interests in the types of *investments* to which the category applies.

...

Services set out in Annex I to MiFID

App 3.9.5	G	Table 2: <i>MiFID investment services and activities</i>	Part II RAO Investments	Part III RAO Investments
		A <i>MiFID investment services and activities</i>		
		...		
		9. Operation of Organised Trading Facilities <u>an OTF</u>	Article 25DA (see Note 3)	Article 76-81 <u>77, 77A, 78, 79, 80, 81, 82B, 83-85, 89</u>
		...		

Activities set out in article 6(2) to (4) of AIFMD

App 3.9.5A	G	Table 2ZA: AIFMD activities	Part II RAO Activities	Part III RAO Investments
		...		
		2. Management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement in accordance with article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary client-by-client basis (Note 2).	Articles 14, 21, 25, 37, 40 (arranging only), 64	Articles 76 to 81, <u>82B</u> , 83 to 85, 89
		3. Investment advice (Note 2).	Articles 53(1), 64	Articles 76 to 81, <u>82B</u> , 83 to 85, 89

4.	Safe-keeping and administration in relation to <i>shares</i> or <i>units</i> of collective investment undertakings.	Articles 40, 45, 64	Articles 76 to 81, <u>82B</u> , 83 to 85, 89
5.	Reception and transmission or orders in relation to <i>financial instruments</i> .	Articles 25(1), 64	Articles 76 to 81, <u>82B</u> , 83 to 85, 89
...			

Activities set out in Article 6(2) and (3) of the UCITS Directive

App 3.9.6 G

Table 2A: UCITS Directive activities		Part II RAO Activities	Part III RAO Investments
...			
2.	Managing portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section C of Annex I to <i>MiFID</i> .	Articles 14, 21, 25, 37, 40 (arranging only), 64	Articles 76-81, <u>82B</u> , 83-85, 89
3.	Investment advice concerning one or more of the instruments listed in Section C of Annex I to <i>MiFID</i> .	Articles 53(1), 64	Articles 76-81, <u>82B</u> , 83-85, 89
4.	Safekeeping and administration services in relation to units of collective investment undertakings.	Articles 40, 45, 64	Articles 76-81, <u>82B</u> , 83-85, 89
...			

Annex M

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

1 Treating complainants fairly

1.1 Purpose and application

...

1.1A Complaints handling requirements for MiFID complaints

...

Complaints resolved by close of the third business day

1.1A.22A R If a *MiFID investment firm* resolves a *MiFID complaint* by close of business on the third *business day* following the day on which it is received, it may choose to comply with *DISP* 1.1A.22BEU to *DISP* 1.1A.22G rather than with *DISP* 1.1A.23R to *DISP* 1.1A.29G.

1.1A.22B EU When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay.

[Note: article 26(4) of the *MiFID Org Regulation*]

1.1A.22C EU Investment firms shall communicate the firm's position on the complaint to clients or potential clients and inform the clients or potential clients about their options, including that they may be able to refer the complaint to an alternative dispute resolution entity, as defined in Article 4(h) of Directive 2013/11/EU of the European Parliament and Council on consumer ADR or that the client may be able to take civil action.

[Note: article 26(5) of the *MiFID Org Regulation*. See the *ADR Directive* at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>]

1.1A.22D R The explanation given by *MiFID investment firms* to clients or potential *clients* in accordance with *DISP* 1.1A.22CEU must also:

(1) refer to the fact that the complainant has made a *MiFID complaint* and inform the complainant that the *MiFID investment firm* now considers the *MiFID complaint* to have been resolved;

- (2) inform the complainant that if, still dissatisfied with the resolution of the *MiFID complaint*, the complainant may be able to refer it to the *Financial Ombudsman Service*;
- (3) indicate whether or not the *respondent* consents to waiving the relevant time limits in *DISP 2.8.2R* or *DISP 2.8.7R* (Was the complaint referred to the Financial Ombudsman Service in time?) by including the appropriate wording set out in *DISP 1 Annex 3R*;
- (4) provide the website address of the *Financial Ombudsman Service*; and
- (5) refer to the availability of further information on the website of the *Financial Ombudsman Service*.

[**Note:** article 13 of the *ADR Directive*]

1.1A.22E **G** The information regarding the *Financial Ombudsman Service* required to be provided in a communication sent under *DISP 1.1A.22CEU* and referred to in *DISP 1.1A.22DR* should be set out clearly, comprehensibly, in an easily accessible way and prominently within the text of those responses.

[**Note:** article 13 of the *ADR Directive*]

...

Sch 1 Record keeping requirements

...

Sch 1.2G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<u><i>DISP 1.1A.32EU</i></u>	<u><i>MiFID complaints</i> subject to <i>DISP 1.1A</i>.</u>	<u>Each <i>MiFID complaint</i> received and the <i>complaint handling measures</i> taken to address the <i>MiFID complaint</i> and for its resolution</u> <u>[Note: see article 26(1), article 72, and Annex 1 of the <i>MiFID Org</i>]</u>	<u>Not specified (see article 26(1), article 72 and Annex 1 of the <i>MiFID Org Regulation</i>)</u>	<u>Not specified (see article 72 of the <i>MiFID Org Regulation</i>)</u>

		<u>Regulation]</u>		
<i>DISP</i> 1.9.1R	<i>Complaints</i> subject to <i>DISP</i> 1.3 - <i>DISP</i> 1.8.	Each <i>complaint</i> received and the measures taken for its resolution	On <u>From</u> receipt	5 years for <i>complaints</i> relating to <i>MiFID</i> <i>business or</i> <i>collective</i> <i>portfolio</i> <i>management</i> services and 3 years for all other <i>complaints</i>

Sch 2 Notification requirements

...

Sch 2.1G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>DISP</i> 1.10A.4R and (where relevant) <i>DISP</i> 1.1A.35R	Publication of <i>complaints</i> data summary/total number of <i>complaints</i> <i>complaints</i> (as appropriate), <u>including <i>MiFID</i></u> <u><i>complaints</i> where</u> <u>relevant</u>	Email confirmation of publication, containing also a statement that the data summary or total number of <i>complaints</i> (as appropriate) accurately reflects the report submitted to the <i>FCA</i> and stating where the summary/total number of <i>complaints</i> has been published	Upon publication of <i>complaints</i> data summary/total number of <i>complaints</i> (as appropriate)	Immediately
...				

Annex N

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

6 Operating duties and responsibilities

...

6.6B UCITS depositaries

...

Depositary functions: cash monitoring

6.6B.17 R The *depositary* must ensure that the cash flows of each *UCITS scheme* are properly monitored and that:

...

(2) all cash of the *scheme* has been booked in cash accounts which are:

...

(c) maintained in accordance with the principles in article ~~16~~ 2 (safeguarding of client financial instruments and funds) of the ~~MiFID implementing directive~~ MiFID Delegated Directive; and

...

...

TP 1 Transitional Provisions

TP 1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
46	<u>COLL 4.3.4R(2); COLL 4.3.6R(2); COLL 8.3.6R(1)</u>	<u>R</u>	<u>A new type of payment out of <i>scheme property</i>, which is introduced</u>	<u>From [insert date that instrument comes into force] until [two years</u>	<u>[insert date that instrument comes into force]</u>

	<p><u>and (2)</u></p>	<p><u>by a firm to facilitate the operation of a research payment account under COBS 2.3B.3R(2), does not constitute a fundamental change under COLL 4.3.4R(2) or COLL 8.3.6R(1) requiring prior approval by meeting. Such a change will however constitute a significant change under COLL 4.3.6R(2) and COLL 8.3.6R(2) requiring pre-event notification.</u></p>	<p><u>after the instrument comes into force]</u></p>	
--	-----------------------	--	--	--

Annex O

Amendments to the Investment Funds sourcebook (FUND)

Amend the following as shown. Underlining indicates new text and striking through indicates deleted text.

3 Requirements for alternative investment fund managers

...

3.11 Depositories

...

Depository functions: cash monitoring

3.11.20 R *A depository* must ensure that the *AIF's* cash flows are properly monitored and that:

...

(2) all cash of the *AIF* has been booked in cash accounts opened:

...

(b) at:

...

(iv) another entity of the same nature, in the relevant market where cash accounts are required, provided such an entity is subject to effective prudential regulation and supervision which have the same effect as *EU* law and are effectively enforced and in accordance with the principles set out in article ~~16~~ 2 (safeguarding of client financial instruments and funds) of the ~~*MiFID*~~ *implementing directive* *MiFID Delegated Directive*; and

...

Annex Q

Amendments to the Recognised Investment Exchanges sourcebook (REC)

In this Annex underlining indicates new text.

2 **Recognition requirements**

...

2.16A **Operation of a multilateral trading facility**

2.16A.1E UK Schedule to the Recognition Requirements Regulations, Paragraph 14

...

2.16A.1F R For the purposes of complying with the requirement set out in paragraph 14 of the Schedule to the *Recognition Requirement Regulations* (registration of an SME Growth Market), the *rules* set out by the FCA in MAR 5.10 (Operation of an SME growth market) shall apply to a UK RIE operating a *multilateral trading facility* as an *SME growth market*, as though it was an *investment firm*.

[Note: article 33 of MiFID]

2.16A.1~~F~~ G UK Schedule to the Recognition Requirements Regulations, Paragraph 15

...

2.16A.1 ~~G~~ H R ...

2.16A.1 ~~H~~ I UK Schedule to the Recognition Requirements Regulations, Paragraph 16

...

2.16A.1 ~~I~~ J UK Schedule to the Recognition Requirements Regulations, Paragraph 17

...

2.16A.1 ~~J~~ K R ...

...

3 **Notification rules for UK recognised bodies**

...

3.14A **Operation of a trading venue**

...

Operation of a recognised auction platform

3.14A.6 G ...

Pre- and post- trade transparency requirements for equity and non-equity instruments: form of waiver and deferral

3.14A.7A D A UK RIE operating a trading venue that proposes to take advantage of a waiver in accordance with articles 4 or 9 of MiFIR (in relation to pre-trade transparency for equity or non-equity instruments) must make an application for it to the FCA using the approved form.

[Note: articles 4 and 9 of MiFIR, and RTS 1 and 2]

3.14A.7B G According to article 4(7) of MiFIR, waivers granted by competent authorities in accordance with articles 29(2) and 44(2) of Directive 2004/39/EC and articles 18, 19 and 20 of Regulation (EC) No 1287/2006 before 3 January 2018 shall be reviewed by ESMA by 3 January 2020. ESMA shall issue an opinion to the competent authority, assessing the continued compatibility of those waivers with the requirements established in MiFIR and any regulations made pursuant to it. The FCA will cooperate with ESMA in relation to the continued effect of existing waivers.

3.14A.7C D A UK RIE operating a trading venue that proposes to take advantage of a deferral in accordance with articles 7 or 11 of MiFIR in relation to post-trade transparency for equity or non-equity instruments must apply for it in writing to the FCA.

[Note: articles 7 and 11 of MiFIR, and RTS 1 and 2]

3.14A.7D G A UK RIE should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the FCA by telephone or by other prompt means of communication, before submitting written notification. Oral notifications should be given directly to its usual supervisory contact at the FCA. An oral notification left with another person or left on a voicemail or other automatic messaging service is unlikely to have been given appropriately.

...

Annex R

Amendments to the Listing Rules (LR)

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

App 1.1 Relevant definitions

App 1.1.1 **Note:** The following definitions relevant to the *listing rules* are extracted from the *Glossary*.

...	
<i>regulated market</i>	<p>a multilateral system operated and/or managed by a <i>market operator</i>, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in <i>financial instruments</i> - in the system and in accordance with its non-discretionary rules - in a way that results in a contract, in respect of the <i>financial instruments</i> admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of <i>MiFID</i>.</p> <p>[Note: article 4(1)(14) <u>4(1)(21)</u> of <i>MiFID</i>]</p>
...	

Annex S

Amendments to the Prospectus Rules (PR)

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

App 1.1 Relevant definitions

App 1.1.1 **Note:** The following definitions relevant to the *prospectus rules* are extracted from the *Glossary*.

...	
<i>MiFID</i>	<p>The European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC).</p> <p>See also <i>MiFID Regulation</i> and <i>MiFID implementing Directive</i>.</p> <p><u>Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending the <i>insurance mediation directive</i> and <i>AIFMD</i>.</u></p>
<i>regulated market</i>	<p>a multilateral system operated and/or managed by a <i>market operator</i>, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in <i>financial instruments</i> – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the <i>financial instruments</i> admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of <i>MiFID</i>.</p> <p>[Note: article 4(1)(21) of <i>MiFID</i>]</p>
...	

Annex T**Amendments to the Disclosure Guidance and Transparency Rules (DTR)**

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

5 Vote Holder and Issuer Notification Rules

...

5.4 Aggregation of managed holdings

...

- 5.4.2 R (1) The *parent undertaking* of an *investment firm* authorised under *MiFID* shall not be required to aggregate its holdings with the holdings which such *investment firm* manages on a client-by-client basis within the meaning of Article 4(1), ~~point 9~~ point 8, of *MiFID*, provided that:

...

...

Annex U

Amendments to the Enforcement Guide (EG)

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

8 Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms

...

8.4 Limitations and requirements that the FCA may impose when exercising its section 55J and 55L powers

...

8.4.2 Examples of the *limitations* that the *FCA* may impose when exercising its *own-initiative variation power* in support of its enforcement function include *limitations* on: the number, or category, of *customers* that a *firm* can deal with; the number of specified investments that a *firm* can deal in; and the activities of the *firm* so that they fall within specific regulatory regimes (for example, so that *oil market participants*, ~~*locals*~~, *corporate finance advisory firms* and service providers are permitted only to carry on those types of activities).

...

Annex V

Amendments to the Perimeter Guidance manual (PERG)

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

2 Authorisation and regulated activities

...

2.6 Specified investments: a broad outline

...

Futures

...

2.6.22A G As with *options*, there is an additional category of instruments which are *futures* only in limited circumstances. These are contracts as described in *PERG 2.6.21G*:

- (1) ...
- (2) that:
 - (a) fall within paragraph 4 of Annex 1 to *MiFID* and relate to currencies (see *PERG 13, Q31B to Q31O* for *guidance* about these derivatives); or
 - (b) fall within paragraphs 5, 6, 7 or 10 of Annex 1 to *MiFID* (see *PERG 13, Q33A to Q34* for *guidance* about these derivatives); and
- (3) in relation to which *PERG 2.5.7G* (Wider definition of certain specified investments when carrying on some kinds of EU business) applies.

[**Note:** see article 84(1A) – ~~(1D)~~(1[]) of the *Regulated Activities Order*]

...

2.7 Activities: a broad outline

...

Agreeing

2.7.21 G Agreeing to carry on most *regulated activities* is itself a *regulated activity*. But this is not the case if the underlying activities to which the agreement relates are those of *accepting deposits, issuing electronic money, effecting or carrying out contracts of insurance, operating a multilateral trading facility, operating an organised trading facility, managing dormant account funds, the meeting of repayment claims, managing a UCITS, acting as depositary or trustee of a UCITS, managing an AIF, acting as trustee or depositary of an AIF, establishing, operating or winding up a collective investment scheme, establishing, operating or winding up a stakeholder pension scheme or establishing, operating or winding up a personal pension scheme*. A person will need to make sure that ~~he~~ it has appropriate *authorisation* at the stage of agreement and before ~~he~~ it actually carries on the underlying activity (such as the *dealing* or *arranging*).

...

10.4A The application of EU Directives

Q41A. Are pension scheme trustees and administration service providers likely to be subject to authorisation under the Markets in Financial Instruments Directive or subject to the Directive on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms?

This is possible, but in many instances it is likely that pension scheme trustees and service providers will either not be providing an investment service for the purposes of, or otherwise be exempt under article 2.1 of, the *Markets in Financial Instruments Directive*. The following table expands on this in broad terms.

As for the *CRD*, this will only apply to persons who are *MiFID investment firms* or *CRD credit institutions*.

Detailed guidance on the scope of ~~MiFID~~ MiFID and the *CRD* and *EU CRR* is in *PERG 13*.

Activity	Potential MiFID investment activity or service	Potential application of MiFID or of a MiFID article 2.1 exemption?
Dealing in scheme assets as trustee	Execution of orders on behalf of clients	<p>MiFID will not apply provided the trustees are wither not acting by way of business or otherwise are not holding themselves out as persons who provide a dealing service to third parties. This is because the trustees would not be regarded as providing an investment service to third parties on a professional basis.</p> <p>In any event, the trustee should be exempt under article 2.1(h) (i) as manager or depositary (or both) of a</p>

		pension fund
...		
<p>Pension scheme service provider:</p> <p>a. dealing in scheme assets as agent for the trustees</p> <p>b. arranging deals in scheme assets as agent for the trustees</p> <p>c. arranging for persons to join the scheme or to switch or dispose of, or to acquire further, rights under the scheme</p>	<p>a. Execution of orders on behalf of clients</p> <p>b. Receiving and transmitting orders</p> <p>c. None - the rights are not MiFID financial instruments and neither are any rights to or interests in financial instruments that the scheme member may acquire under the scheme</p>	<p>MiFID <u>MiFID</u> will potentially apply where the investments are MiFID <u>MiFID</u> financial instruments (such as shares, debt securities or units)</p> <p>However, many pension schemes will be employee participation schemes, the administration of which is exempt under article 2.1(e) (<u>f</u>)</p> <p>Where the service provider is providing services exclusively for the benefit of a corporate trustee who is a member of its group, the exemption in article 2.1(b) should apply. And article 2.1(f) (<u>g</u>) will provide for the exclusions in 2.1(b) and 2.1(e) (<u>f</u>) to be combined where the service provider is both administering an employee participation scheme and providing services to a trustee who is a group member</p> <p>Where the activity is receiving and transmitting orders and the service provider is authorised, the optional intermediaries exemption in article 3 of MiFID may apply</p> <p>If the service provider is acting as the operator of a stakeholder or personal pension scheme (for example, as the scheme administrator), he should be exempt under article 2.1(h) (<u>i</u>) as manager of a pension fund</p>
<p>Managing the assets of the scheme</p>	<p>Investment management</p>	<p>MiFID will not apply to trustees provided they are either not acting by way of business or otherwise are not holding themselves out as, or <u>are</u> additionally remunerated for, providing investment management services. This is because the trustees would not be regarded as providing an investment service to third parties on a professional basis</p> <p>In any event, trustees should be exempt under article 2.1(h) (<u>i</u>) as manager or</p>

		<p>depository (or both) of a pension fund</p> <p>If a service provider is acting as the operator of a stakeholder or personal pension scheme, he should also be exempt under article 2.1(h) (i) as manager of a pension fund</p> <p>But a service provider who is merely managing the assets of a pension fund without being the manager or depository of the scheme will not be exempt under article 2.1(h) (i). The manager and depository are those persons charged with responsibility for managing the fund or safeguarding its assets and not persons to whom such functions may be delegated or outsourced</p>
<p>...</p>		
<p>a. Pension scheme trustee advising fellow trustees or members or prospective members</p> <p>b. Pension scheme service provider advising trustees or members or prospective members</p>	<p>Investment advice</p>	<p>MiFID will potentially apply where the advice concerns MiFID financial instruments (such as shares, debt securities or units) and so may apply to advice given to the trustees about scheme assets. However, beneficial interests in financial instruments held under the trusts of a pension scheme will not themselves be financial instruments under MiFID. And rights under a personal pension or stakeholder pension scheme are also not financial instruments. So, advice given to scheme members or prospective members should not be investment advice under MiFID</p> <p>MiFID will not apply to trustees who are advising their fellow trustees for the purposes of the trust provided they are not additionally remunerated for providing investment advisory services</p> <p>Also, trustees will be exempt under article 2.1(h) (i) in respect of anything they do in the capacity of manager or depository of a pension fund (including advising their fellow trustees)</p> <p>If a service provider is acting as the operator of a stakeholder or personal</p>

		<p>pension scheme, he should also be exempt under article 2.1(h) (i) as manager of a pension fund if he gives advice to the trustees</p> <p>Where the service provider is providing advice to a corporate trustee who is a member of its group, the exemption in article 2.1(b) may apply (and may be combined with the exemption for administration of an employee participation scheme under article 2.1(f) (g) where relevant)</p>
--	--	---

...

13 Guidance on the scope of MiFID and CRD IV

...

13.5 Exemptions from MiFID

...

Incidental services as part of a professional activity

Q39. We provide investment services as a complement to our main professional activity. Are we exempt (article 2.1(c) of MiFID and article 4 of the MiFID Org Regulation)?

Yes, you will be exempt under article 2.1(c) MiFID if:

- you provide these services in the course of your professional activity;
- a close and factual connection exists between your professional activity and the provision of the investment service to the same client, such that the investment service can be regarded as accessory to your main professional activity;
- the provision of investment services to the clients of your main professional activity does not aim to provide a systematic source of income to you;
- you do not market or otherwise promote your ability to provide investment services, except where these are disclosed to clients as being accessory to your main professional activity; and
- your professional activity is regulated by legal or regulatory provisions or a code of ethics that do not exclude the provision of investment services.

This exemption is relevant, for example, to firms belonging to *designated professional bodies*, such as accountants, actuaries and solicitors, to whom Part XX of the *Act* applies. It could also apply to *authorised professional firms* which provide investment services in an incidental manner in the course of their professional activity. In our view, the criteria set out in *PROF 2.1.14G* in relation to section 327(4) of the *Act* are also relevant to considering

whether a firm can rely on the exemption in article 2.1(c) of MiFID, as supplemented by article 4 of the MiFID Org Regulation (see further guidance in PROF 2.1.16G).

...

Appendix 2

Yearly Notification Form for a Data Reporting Service Provider (DRSP)

Yearly Notification Form for a Data Reporting Service Provider (DRSP)

DRSP Name

DRSP Reference Number (FRN)

Purpose of this form

You should use this form (MAR 9 Annex 8D) to notify us of your ongoing compliance with Title V of MiFID II and the information provided at the time of authorisation and thereafter in accordance with the regulatory technical standards under article 61(4) of Directive 2014/65/EU on the authorisation, organisational requirements and the publication of transactions for data reporting services providers ("RTS 13").

This information must be provided pursuant to MAR 9.3.7D, which states that a data reporting service provider must provide the information in MAR 9 Annex 8D:

- within 3 months after the 12 month anniversary of the commencement of its authorisation, and
- then every year within 3 months after the same date.

Important information you should read before completing this form

Please keep a copy of the forms you complete and any supporting documents you include for your future reference.

It is important that you provide accurate and complete information, and disclose all relevant information. If you do not, you may be committing an offence under [Regulation 34 of the Data Reporting Services Regulations 2016]. If necessary, appropriate professional advice should be sought before supplying information to us. If any information is inaccurate or incomplete, this notification may take longer to be processed. You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

Terms in this form

In this form the following terms are used in this way:

- 'we', 'our' or 'us', refers to the Financial Conduct Authority (FCA)
- 'applicant firm' refers to the firm applying for authorisation
- 'you' refers to the person(s) signing the form on behalf of the applicant firm
- 'DRSP' refers to Data Reporting Services Provider
- 'MAR 9' refers to our guidance in the FCA Handbook: <https://handbook.fca.org.uk/handbook/>
- 'ARM' refers to Approved reporting mechanism
- 'APA' refers to Approved publication arrangement
- 'CTP' refers to Consolidated tape provider

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1 Contact details	3
2 Notification details	4
3 Verification, declaration and signature	7

Filling in the form

1 If you are using your computer to complete the form:

- use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question, and
- print out the form you have completed and sign the declaration in this form.

2 If you are filling in the form by hand:

- use black ink
- write clearly in block capitals, and
- sign the declaration in this form.

3 If you think a question is not relevant to you, write 'not applicable' and explain why.

4 If you leave a question blank, you do not sign the declaration or you do not attach the required supporting information without telling us why, we will treat the notification as incomplete. This will increase the time taken to assess it.

4 If there is not enough space on the form, you may need to use separate sheets of paper. Clearly mark each separate sheet of paper with the relevant question number.

5 Submit the form by email to: MRT@fca.org.uk

Alternatively you may post the application form to us:

**The Markets Reporting Team
The Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS**

1 Contact details

1.1 Contact person details for this notification

Name	
Position/Role	
DRSP Name	
Phone number (including STD code)	
Email address	

2

Notification details

I confirm that the DRSP continues to be compliant with the conditions of authorisation under RTS 13, as follows:

2.1 Information on the organisation (article 2 of RTS 13)

- Yes
 No ▶ Please explain below

2.2 Information on corporate governance (article 3 of RTS 13)

- Yes
 No ▶ Please explain below

2.3 Information on members of the management body (article 4 of RTS 13)

- Yes
 No ▶ Please explain below

2.4 Information on conflicts of interest (article 5 of RTS 13)

- Yes
 No ▶ Please explain below

2.5 Information on organisational requirements regarding outsourcing (article 6 of RTS 13)

- Yes
 No ▶ Please explain below

2.6 Information on business continuity and back-up facilities (article 7 of RTS 13)

- Yes
 No ▶ Please explain below

2.7 Information on testing and capacity (article 8 of RTS 13)

- Yes
 No ▶ Please explain below

2.8 Information on security (article 9 of RTS 13)

- Yes
 No ▶ Please explain below

2.9 Information on management of incomplete or potentially erroneous information by APAs and CTPs (article 10 of RTS 13)

- Yes
 No ▶ Please explain below
 Not applicable

2.10 Information on management of incomplete or potentially erroneous information by ARMs (article 11 of RTS 13)

- Yes
- No ▶ Please explain below
- Not applicable

2.11 Information on connectivity of ARMs (article 12 of RTS 13)

- Yes
- No ▶ Please explain below
- Not applicable

2.12 Information on other services provided by CTPs (article 13 of RTS 13)

- Yes
- No ▶ Please explain below
- Not applicable

2.13 Information on publication arrangements (Chapter III of RTS 13)

- Yes
- No ▶ Please explain below
- Not applicable

3 Verification, declaration and signature

Warning

Knowingly or recklessly giving the FCA information which is false or misleading in material particular may be an offence under [Regulation 37 of the Data Reporting Services Regulations 2016]. If necessary, appropriate professional advice should be sought before supplying information to us. If any information is inaccurate or incomplete this notification may take longer to be processed. You must notify us immediately of any significant change to the information provided. If you do not it may take longer to be processed.

Data protection

For the purposes of complying with the Data Protection Act 1998, please note that any personal information provided to us will be used to discharge our statutory functions under the [Data Reporting Services Regulations 2016] and other relevant legislation and may be disclosed to third parties for those purposes.

Declaration

By submitting this notification form:

- ✓ I verify that the information in this application is accurate and complete to the best of my knowledge and belief.
- ✓ I am aware that it is an offence to knowingly or recklessly give the FCA information that is false or misleading in a material particular.
- ✓ I am aware that any document which demonstrates the notifying firm's compliance with the obligations referred to in section 2 of this form must be available to the FCA on request.
- ✓ I will notify the FCA immediately if there is a significant change to the information given in this notification.

Tick here to confirm you have read and understood this declaration.

Date	
Name of signatory ¹	
Position of signatory	
Signature	

¹ The signatory must be a member of the management body of the DRSP.

Appendix 3

Long Form A – UK and Overseas Firms (not including EEA) for MiFID authorisation applications

Application number
(for FCA use only)

The FCA has produced notes which will assist both the applicant and the candidate in answering the questions in this form. Please read these notes, which are available on the FCA website at:

- <https://www.handbook.fca.org.uk/handbook/SUP/10A/Annex4.html>

Both the applicant and the candidate will be treated by the FCA as having taken these notes into consideration when completing their answers to the questions in this form.

Long Form A – UK and Overseas Firms (not Incoming EEA) for MiFID authorisation applications*

Application to perform controlled functions under the approved persons regime

FCA Handbook Reference: SUP 10A Annex 4D

[date]

Name of *candidate*[†]
(to be completed by applicant firm)

Name of *firm*[†]
(as entered in 2.01)

Firm reference number[†]
(as entered in 2.02)

Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
United Kingdom
Telephone +44 (0) 300 500 0597
Facsimile +44 (0) 207 066 0017
E-mail iva@fca.org.uk
Website <http://www.fca.org.uk>

Registered as a Limited Company in England and Wales No 1920623. Registered Office as above

*This Form should only be used when an unauthorised firm applies for permission to carry out MiFID activities and where an authorised firm which does not have permission to carry out MiFID activities applies for permission to carry out those activities.

[†] The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7 Long Form A – UK and Overseas

1.01	a	<i>Candidate</i> Individual Reference Number (IRN) †	
	b	OR name of previous regulatory body†	
	c	AND previous reference number (if applicable) †	
1.02		Title (e.g. Mr, Mrs, Ms, etc) †	
1.03		Surname†	
1.04		ALL forenames†	
1.05		Name commonly known by†	
1.06		Date of birth (dd/mm/yyyy) †	
1.07		National Insurance number†	
1.08		Previous name †	
1.09		Date of name change†	
1.10	a	Nationality†	
	b	Passport number (if National Insurance number not available) †	
1.11		Place of birth†	
1.12		Contact telephone number	



I have supplied further information related to this page in Section 6†

YES

NO

† The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7 Long Form A – UK and Overseas Application to perform controlled functions under the approved persons regime Version 1

1.13 a Private address[†]

[Redacted address field]

b

Postcode[†]

c

Dates resident at this address
(mm/yyyy)[†]

From

[Redacted date field]

To

PRESENT

(If address has changed in the last three years, please provide addresses for the previous three years.)

1.14 a Previous address 1[†]

[Redacted address field]

b

Postcode

c

Dates resident at this address
(mm/yyyy)[†]

From

[Redacted date field]

To

[Redacted date field]

1.15 a Previous address 2[†]

[Redacted address field]

b

Postcode[†]

c

Dates resident at this address
(mm/yyyy)[†]

From

[Redacted date field]

To

[Redacted date field]



I have supplied further information related to this page in Section 6[†]

YES

NO

[†] The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7 Long Form A – UK and Overseas Application to perform controlled functions under the approved persons regime Version 1

2.01	Name of <i>firm</i> making the application	
2.02	Firm Reference Number (FRN)	
2.03 a	Who should the <i>FCA</i> contact at the <i>firm</i> in relation to this application?	
b	Position	
c	Telephone	
d	Fax	
e	E-mail	



I have supplied further information related to this page in Section 6[†]

YES NO

[†] The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7 Long Form A – UK and Overseas Application to perform controlled functions under the approved persons regime Version 1

3.01	Nature of the arrangement between the candidate and the applicant.	<p><i>a</i> Employee <input type="checkbox"/></p> <hr/> <p><i>b</i> Group employee <input type="checkbox"/></p> <p style="padding-left: 20px;">Name of group </p> <hr/> <p><i>c</i> Contract for services <input type="checkbox"/></p> <hr/> <p><i>d</i> Partner/Sole trader <input type="checkbox"/></p> <hr/> <p><i>e</i> Appointed representative/tied agent – customer function <input type="checkbox"/></p> <p style="padding-left: 20px;">AR firm name and reference number </p> <hr/> <p><i>f</i> Appointed representative/tied agent – governing function <input type="checkbox"/></p> <p style="padding-left: 20px;">AR firm name and reference number </p> <hr/> <p><i>g</i> Other <input type="checkbox"/></p> <p style="padding-left: 40px;">Give details </p>
-------------	--	--

3.02 For applications from a single firm, please tick the boxes that correspond to the *controlled functions* to be performed. If the *controlled functions* are to be performed for more than one firm, please go to question **3.05**

a	Significant influence functions	<p>CF 1 Director function <input type="checkbox"/></p> <p>CF 2 Non-executive director function <input type="checkbox"/></p> <p>CF 3 Chief executive function <input type="checkbox"/></p> <p>CF 4 Partner function <input type="checkbox"/></p> <p>CF 5 Director of an unincorporated association function <input type="checkbox"/></p> <p>CF 6 Small friendly society function <input type="checkbox"/></p>
	Significant influence functions	<p>CF 8 Apportionment and oversight function <input type="checkbox"/> <i>(this function is not applicable to all firms please refer to Notes for Completing Form A)</i></p> <p>CF 10 Compliance oversight function <input type="checkbox"/></p> <p>CF 10a CASS operational oversight function <input type="checkbox"/></p> <p>CF 11 Money laundering reporting function <input type="checkbox"/></p> <p>CF 12 Actuarial function <input type="checkbox"/></p> <p>CF 12A With-profits actuary function <input type="checkbox"/></p> <p>CF 12B Lloyd's Actuary function <input type="checkbox"/></p> <p>CF 28 System and controls function <input type="checkbox"/></p> <p>CF 29 Significant management function <input type="checkbox"/></p> <p>CF 40 Benchmark submission function <input type="checkbox"/></p> <p>CF 50 Benchmark administration function <input type="checkbox"/></p>
b	Customer function	<p>CF 30 Customer function <input type="checkbox"/></p>

3.03 Effective date of *controlled functions* indicated above[†]

3.04 Job title[†]
Please refer to notes on the requirements for submitting a CV

[†] The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7 Long Form A – UK and Overseas Application to perform controlled functions under the approved persons regime Version 1

Insurance mediation

Will the candidate be responsible for Insurance mediation at the firm?

(Note: Yes can only be selected if the individual is applying for (CF1, 3-8 or 29)

YES NO

Mortgage Credit Directive

Will the candidate be responsible for Mortgage Credit Directive Intermediation at the firm?

(Note: Yes can only be selected if the individual is applying for (CF1, 3-8 or 29)

YES NO



I have supplied further information related to this page in Section 6[†]

YES NO

[†] The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7 Long Form A – UK and Overseas Application to perform controlled functions under the approved persons regime Version 1

3.05

Complete this section only if the application is on behalf of more than one firm.

List all firms within the group (including the firm entered in 2.01) for which the candidate requires approval and the requested controlled function for that firm.[†]

	Firm Reference Number	Name of firm	Controlled function	Job title	Effective date
a					
b					
c					
d					
e					



I have supplied further information related to this page in Section 6

YES

NO

[†] The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7
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N.B.: ALL gaps must be accounted for

4.01 Employment details (1) †

a	Period (mm/yyyy)	From	<input type="text"/>	To	<input type="text"/>
b	Nature of employment	<i>a</i>	Employed	<input type="checkbox"/>	
		<i>b</i>	Self-employed	<input type="checkbox"/>	
		<i>c</i>	Not employed	<input type="checkbox"/>	
		<i>d</i>	Full-time education	<input type="checkbox"/>	
	If <i>c</i> or <i>d</i> is ticked, please give details		<input type="text"/>		
c	Name of employer	<input type="text"/>			
d	Nature of business	<input type="text"/>			
e	Previous / other names of employer	<input type="text"/>			
f	Last known address of employer	<input type="text"/>			
g	Is/was employer regulated by a regulatory body?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	Name of regulatory body	
		<input type="text"/>			
h	Is/was employer an <i>appointed representative/tied agent</i> ?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, of which <i>firm</i> ?	
		<input type="text"/>			
i	Position held	<input type="text"/>			
j	Responsibilities	<input type="text"/>			
k	Reason for leaving:	<i>a</i>	Resignation	<input type="checkbox"/>	
		<i>b</i>	Redundancy	<input type="checkbox"/>	
		<i>c</i>	Retirement	<input type="checkbox"/>	
		<i>d</i>	Termination/dismissal	<input type="checkbox"/>	
		<i>e</i>	End of contract	<input type="checkbox"/>	
		<i>f</i>	Other	<input type="checkbox"/>	
	Specify	<input type="text"/>			

† The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7
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4.02 Employment details (2) †

a	Period (mm/yyyy)	From	<input type="text"/>	To	<input type="text"/>
b	Nature of employment	<i>a</i>	Employed	<input type="checkbox"/>	
		<i>b</i>	Self-employed	<input type="checkbox"/>	
		<i>c</i>	Not employed	<input type="checkbox"/>	
		<i>d</i>	Full-time education	<input type="checkbox"/>	
	If <i>c</i> or <i>d</i> is ticked, please give details				
	<input type="text"/>				
c	Name of employer	<input type="text"/>			
d	Nature of business	<input type="text"/>			
e	Previous / other names of employer	<input type="text"/>			
f	Last known address of employer	<input type="text"/>			
g	Is/was employer regulated by a regulatory body?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	Name of regulatory body	
		<input type="text"/>			
h	Is/was employer an <i>appointed representative/tied agent</i> ?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If yes, of which <i>firm</i> ?	
		<input type="text"/>			
i	Position held	<input type="text"/>			
j	Responsibilities	<input type="text"/>			
k	Reason for leaving:	<i>a</i>	Resignation	<input type="checkbox"/>	
		<i>b</i>	Redundancy	<input type="checkbox"/>	
		<i>c</i>	Retirement	<input type="checkbox"/>	
		<i>d</i>	Termination/dismissal	<input type="checkbox"/>	
		<i>e</i>	End of contract	<input type="checkbox"/>	
		<i>f</i>	Other	<input type="checkbox"/>	
	Specify	<input type="text"/>			



I have supplied further information related to this page in Section 6† YES NO

† The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7
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5.01 Criminal Proceedings

When answering the questions in this section the candidate should include matters whether in the UK or overseas. By virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, if the candidate is subject to the law of England and Wales, the candidate must disclose spent convictions and cautions (other than a protected conviction or caution). By virtue of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 and the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979, if the candidate is subject to the law of Scotland or Northern Ireland, you must disclose spent convictions (other than a protected conviction).

For the avoidance of doubt, references to the legislation above are references to the legislation as amended.

- 5.01.1a** Has the *candidate* **ever** been convicted of any criminal offence (whether spent or not and whether or not in the *United Kingdom*):
- i. involving fraud, theft, false accounting, offences against the administration of public justice (such as perjury, perverting the course of justice and intimidation of witnesses or jurors), serious tax offences or other dishonesty: or
 - ii. relating to *companies, building societies, industrial and provident societies, credit unions, friendly societies, insurance, banking or other financial services, insolvency, consumer credit or consumer protection, money laundering, market manipulations or insider dealing?*

If the answer to the question above is “yes”, please provide an official certificate of conviction or equivalent document if and so far as it is available from the UK or, where applicable, another country. Please attach a copy of this form as an Additional Supporting Document.

YES NO

- b** Is the *candidate* currently the subject of any criminal proceedings, whether in the UK or elsewhere?

YES NO

- c** Has the *candidate* **ever** been given a caution in relation to any criminal offence?

YES NO

- 5.01.2** Has the *candidate* any convictions for any offences other than those in 5.01.1 above (excluding traffic offences that did not result in a ban from driving or did not involve driving without insurance)?

YES NO

- 5.01.3** Is the *candidate* the subject of any ongoing criminal investigation?

YES NO

- 5.01.4** Has the *candidate* been ordered to produce documents pursuant to any ongoing criminal investigation or been the subject of a search (with or without a warrant) pursuant to any ongoing criminal investigation?

YES NO

In answering question 5.01.4, you should include all matters even where the candidate was not the subject of the investigation.



I have supplied further information related to this page in Section 6[†] YES NO

[†] The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7 Long Form A – UK and Overseas Application to perform controlled functions under the approved persons regime Version 1

5.01.5 Has any firm at which the *candidate* holds or has held a position of influence ever:

- | | | | |
|----------|--|------------------------------|-----------------------------|
| a | Been convicted of any criminal offence?
(Please check the guidance notes for the meaning of 'position of influence' in the context of the questions in this part of the form.) | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| b | Been summonsed, charged with or otherwise investigated or prosecuted for any criminal offence? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| c | Been the subject of any criminal proceeding which has not resulted in a conviction? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| d | Been ordered to produce documents in relation to any criminal investigation or been the subject of a search (with or without a warrant) in relation to any criminal investigation? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |

In answering question 5.01.5, you should include all matters even when the summons, charge, prosecution or investigation did not result in a conviction, and, in respect of 5.01.5d, even where the firm was not the subject of the investigation. However, firms are not required to disclose details of any specific individuals who were subject to historic (as opposed to ongoing) criminal investigations, prosecutions, summons or other historic criminal proceedings.



I have supplied further information related to this page in Section 6[†] YES NO

[†] The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7
Long Form A – UK and Overseas
Application to perform controlled functions under the approved persons regime
Version 1

5.02 Civil Proceedings

5.02.1 Has the candidate, **ever** been the subject of a judgment debt or award against the candidate?

YES NO

Please give a full explanation of the events in questions, ensuring that it adheres to the Disclosure Note at the beginning of this form.

You should include all County Court Judgment(s) (CCJs) made against the candidate, whether satisfied or not); and

i) the sum and date of all judgment debts, awards or CCJs (whether satisfied or not); and

ii) the total number of all judgment debts, awards or CCJs ordered.

5.02.2 Has the *candidate* ever been party to any civil proceedings which resulted in any order against the candidate (other than a judgment debt or award referred to in 5.02.1 above)? (You should include, for example, injunctions and employment tribunal proceedings.)

YES NO

5.02.3 Is the candidate aware of:

a Any proceedings that have begun or anyone's intention to begin proceedings against the candidate, for a CCJ or another judgment debt?

YES NO

b More than one set of proceedings, or anyone's intention to begin more than one set of proceedings, that may lead to a CCJ or other judgment debt?

YES NO

c Anybody's intention to claim more than £1,000 of CCJs or judgment debts in total from the candidate?

YES NO

5.02.4 Does the candidate have any **current** judgment debts (including CCJs) made under a court order still outstanding, whether in full or in part?

YES NO

5.02.5 Has the *candidate* **ever** failed to satisfy any such judgment debts (including CCJs) made under a court order still outstanding, whether in full or part, within one year of the order being made?

YES NO



I have supplied further information related to this page in Section 6[†]

YES NO

[†] The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7
Long Form A – UK and Overseas
Application to perform controlled functions under the approved persons regime
Version 1

5.02.6	Has the <i>candidate</i> ever:		
a	Filed for the candidate's own bankruptcy or had a bankruptcy petition served on the candidate?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
b	Been adjudged bankrupt?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
c	Been the subject of a bankruptcy restrictions order (including an interim bankruptcy restrictions order) or offered a bankruptcy restrictions undertaking?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
d	Made any arrangements with the candidate's creditors, for example a deed of arrangement or an individual voluntary arrangement (or in Scotland a trust deed)?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
e	Had assets sequestrated?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
f	Been involved in any proceedings relating to the above matters even if such proceedings did not result in the making of any kind of order against the candidate or result in any kind of agreement with the candidate?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
5.02.7	Does the <i>candidate</i> , or any undertaking under their management, have any outstanding financial obligations arising from <i>regulated activities</i> , which have been carried out in the past (whether or not in the UK or overseas)?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
5.02.8	Has the <i>candidate</i> ever been adjudged by a court or tribunal (whether criminal, civil or administrative) for any fraud, misfeasance, negligence, wrongful trading or other misconduct?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
5.02.9	Is the <i>candidate</i> currently:		
a	Party to any civil proceedings (including those covered in 5.02.7 above)?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
b	Aware of anybody's intention to begin civil proceedings against the candidate? (You should include any ongoing disputes whether or not such dispute is likely to result in any order against the candidate.)	YES <input type="checkbox"/>	NO <input type="checkbox"/>
5.02.10	Has any firm at which the <i>candidate</i> holds or has held a position of influence ever been:		
a	Adjudged by a court civilly liable for any fraud, misfeasance, wrongful trading or other misconduct?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
b	The subject of a judgment debt or award against the firm? (You should include all CCJs made against the firm, whether satisfied or not.)	YES <input type="checkbox"/>	NO <input type="checkbox"/>
c	Party to any other civil proceedings which resulted in an order against the firm other than in relation to matters covered in 5.02.10a and 5.02.10b above?	YES <input type="checkbox"/>	NO <input type="checkbox"/>



I have supplied further information related to this page in Section 6[†] YES NO

[†] The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7 Long Form A – UK and Overseas Application to perform controlled functions under the approved persons regime Version 1

5.02.11 Is any firm at which the *candidate* currently holds or has held, within the last 12 months from the date of the submission of this form, a position of influence currently:

a a party to civil proceedings?

YES NO

b aware of anyone's intention to begin civil proceedings against them?

YES NO

5.02.12 Has any company, partnership or unincorporated association of which the *candidate* is or has been a controller, director, senior manager, partner or company secretary, in the United Kingdom or elsewhere, at any time during their involvement, or within one year of such an involvement, been put into liquidation, wound up, ceased trading, had a receiver or administrator appointed or entered into any voluntary arrangement with its creditors?

YES NO



I have supplied further information related to this page in Section 6[†]

YES NO

[†] The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7
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5.03 Business and Employment Matters

5.03.1 Has the *candidate* ever been:

a Disqualified from acting as a director or similar position (one where the candidate acts in a management capacity or conducts the affairs of any company, partnership or unincorporated association)?

YES NO

b The subject of any proceedings of a disciplinary nature (whether or not the proceedings resulted in any finding against the *candidate*)?

YES NO

c The subject of any investigation which has led or might lead to disciplinary proceedings?

YES NO

d Notified of any potential proceedings of a disciplinary nature against the candidate?

YES NO

e The subject of an investigation into allegations of misconduct or malpractice in connection with any business activity? (This question covers internal investigation by an authorised firm, as well as investigation by a regulatory body, at any time.)

YES NO

5.03.2 Has the *candidate* ever been refused entry to, or been dismissed, suspended or requested to resign from, any professional, vocation, office or employment, or from any fiduciary office or position of trust whether or not remunerated?

YES NO

5.03.3 Does the *candidate* have any material written complaints made against the candidate by the candidate's clients or former clients in the last five years which the candidate has accepted, or which are awaiting determination, or have been upheld – by an ombudsman or complaints scheme?

YES NO



I have supplied further information related to this page in Section 6[†]

YES NO

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5.04 Regulatory Matters

5.04.1 In relation to activities regulated by the FCA or any other regulatory body (see section 5 guidance notes), has:

- The *candidate*, or
- Any company, partnership or unincorporated associate of which the candidate is or has been a controller, director, senior manager, partner or company secretary, during the candidate's association with the entity and for a period of three years after the candidate ceased to be associated with it, ever –

a	Been refused, had revoked, restricted, been suspended from or terminated, any licence, authorisations, registration, notification, membership or any other permission granted by any such body?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
b	Been criticised, censured, disciplined, suspended, expelled, fined or been the subject of any other disciplinary or interventional action by any such body?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
c	Received a warning (whether public or private) that such disciplinary or interventional action may be taken against the candidate or the firm?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
d	Been the subject of an investigation by any regulatory body, whether or not such an investigation resulted in a finding against the candidate or the firm?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
e	Been required or requested to produce documents or any other information to any regulatory body in connection with such an investigation (whether against the firm or otherwise)?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
f	Been investigated or been involved in an investigation by an inspector appointed under companies or any other legislation, or required to produce documents to the Secretary of State, or any other authority, under any such legislation?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
g	Ceased operating or resigned whilst under investigation by any such body or been required to cease operating or resign by any regulatory body?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
h	Decided, after making an application for any licence, authorisation, registration, notification, membership or any permission granted by any such body, not to proceed with it?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
i	Been the subject of any civil action related to any regulated activity which has resulted in a finding by a court?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
j	Provided payment services or distributed or redeemed e-money on behalf of a regulated firm or itself under any contractual agreement where that agreement was terminated by the regulated firm?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
k	Been convicted of any criminal offence, censured, disciplined or publicly criticised by any inquiry, by the Takeover Panel or any governmental or statutory authority or any other regulatory body (other than as indicated in this group of questions).	YES <input type="checkbox"/>	NO <input type="checkbox"/>

➔ I have supplied further information related to this page in Section 6[†] YES NO

[†] The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7 Long Form A – UK and Overseas Application to perform controlled functions under the approved persons regime Version 1

5.04.2 In relation to activities regulated by the FCA or any other regulatory body, has the *candidate* or any firm at which the *candidate* holds or has held a position of influence at any time during and within one year of the candidate's association with the firm ever:

- | | | | |
|----------|---|------------------------------|-----------------------------|
| a | Been found to have carried on activities for which authorisation or registration by the FCA or any other regulatory body is required without the requisite authorisations? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| b | Been investigated for the possible carrying on of activities requiring authorisation or registration by the FCA or any other regulatory body without the requisite authorisation whether or not such investigation resulted in a finding against the candidate? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| c | Been found to have performed a controlled function (or an equivalent function requiring approval by the FCA/PRA or any other regulatory body) without the requisite approval? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| d | Been investigated for the possible performance of a controlled function (or an equivalent function requiring approval by the FCA or any other regulatory body) without the requisite approval, whether or not such investigation resulted in a finding against the candidate? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| e | Been found to have failed to comply with an obligation under the Electronic Money Regulations 2011 or Payment Services Regulations 2009 to notify the FCA of the identity of a person acting in a position of influence over its electronic money or payment services business? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| f | Been the subject of disqualification direction under section 59 of the Financial Services Act 1986 or a prohibition order under section 56 FSMA, or received a warning notice proposing that such a direction or order be made, or received a private warning? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |



I have supplied further information related to this page in Section 6[†] YES NO

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5.05 Other Matters

5.05.1 Is the *candidate*, in the role to which the application relates, aware of any business interests, employment obligations, or any other circumstance which may conflict with the performance of the controlled functions for which approval is now being sought. Please include details of any financial or non-financial interests or relationships of the candidate and their close relatives to members of the management body and **key function holders** in the same institution, the parent institution and subsidiaries and shareholders? **For the purposes of this question management body[†] has the meaning in Directive 2014/65/EU.**

YES NO

5.05.2 Is the *candidate* or the *firm* aware of any other information relevant to this notification that we might reasonably expect from the *candidate*?

YES NO



I have supplied further information related to this page in Section 6[†]

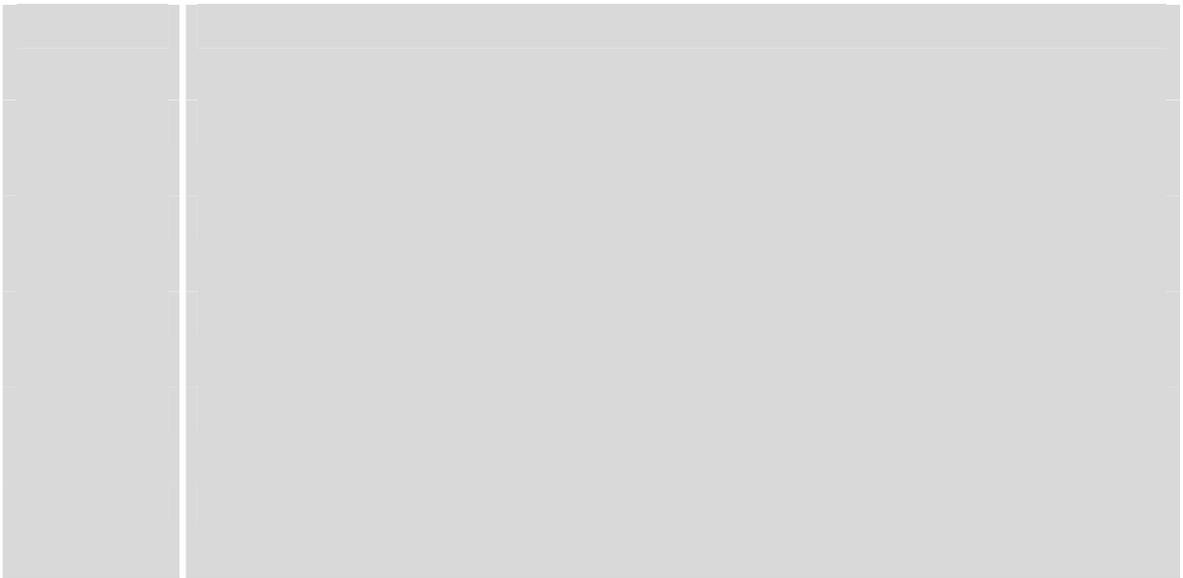
YES NO

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- 6.00
- If there is any other information the *candidate* or the *firm* considers to be relevant to the application, it must be included here.
 - Please provide full details of:
 - why the candidate is competent and capable to carry out the controlled function(s) applied for;
 - why the appointment complements the firm's business strategy, activity and market in which it operates;
 - how the appointment was agreed including details of any discussions at governing body level (where applicable);
 - the minimum time that will be devoted to the performance of the person's functions within the firm (please provide an indication of the time spent per month and per annum);
 - the human and financial resources devoted to the induction and training of the candidate (please provide an indication of the time spent per annum);
 - details of any previous assessments of the candidate's fitness and propriety as a controller or director which have been undertaken by any other regulatory body (if known) (please include the date of the assessment, the name of the regulatory body and details of the outcome);
 - a copy of the *candidate's*:
Curriculum Vitae (C.V.) including details of relevant education and professional training and professional experience.
The candidate's C.V. should include the names of all organisations where the candidate has worked during the past ten years, details of the nature and duration of the functions performed at those organisations and details of any activities at those organisations which are related to the role for which approval is being sought. The C.V. should also include details of all delegated powers and internal decision-making powers and details of the areas of operations for which the candidate was responsible whilst working at the organisations above. The information above does not need to be included in the C.V. if it has been provided in Section 4 of this form.
 - References in relation to the candidate's reputation and experience (including contact details of the referees).
 - Please also include here any additional information indicated in previous sections of the Form.
 - **Please include a list of all directorships currently or previously held by the *candidate* in the past 10 years (where *director* has the meaning given in the *Glossary*.)**
 - If there is insufficient space, please continue on a separate sheet of paper and clearly identify the section and question to which the additional information relates.
 - **Full details must be provided here if there were any issues that could affect the Fitness and Propriety of the individual that arose when leaving an employer listed in section 4 or if any question has been answered 'yes' in section 5.**

Question	Information

† The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7 Long Form A – UK and Overseas Application to perform controlled functions under the approved persons regime Version 1



Declaration of *Candidate*

Knowingly or recklessly giving the *FCA* information which is false or misleading in a material particular may be a criminal offence (section 398 of the Financial Services and Markets Act 2000).

It should not be assumed that information is known to the *FCA* merely because it is in the public domain or has previously been disclosed to the *FCA* or another regulatory body. If there is any doubt about the relevance of information, it should be included.

For the purposes of complying with the Data Protection Act, the personal information provided in this Form will be used by the *FCA* to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation, and will not be disclosed for any other purpose without the permission of the applicant.

With reference to the above, the *FCA* may seek to verify the information given in this Form including answers pertaining to fitness and propriety. This may include a credit reference check.

In signing the form below:

a) I authorise the *FCA* to make such enquiries and seek such further information as it thinks appropriate in the course of verifying the information given in this Form. Individual candidates may be required to apply to the Disclosure and Barring Service for a search to be made as to whether any criminal records are held in relation to them and to disclose the result of that search to us. I also understand that the results of these checks may be disclosed to the firm submitting this application.

b) I confirm that the information in this Form is accurate and complete to the best of my knowledge and belief and that I have read the notes to this Form.

c) I confirm that I understand the regulatory responsibilities of my proposed role as set out in the Statements of Principle and Code of Practice for Approved Persons

(<https://www.handbook.fca.org.uk/handbook/APER>)

Tick here to confirm you have read and understood this declaration:

7.01 *Candidate's* full name[†]

7.02 Signature*

Date [†]

[†] The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7
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Declaration of Firm

Knowingly or recklessly giving the *FCA* information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). *SUP* 15.6.1R and *SUP* 15.6.4R require an *authorised person* to take reasonable steps to ensure the accuracy and completeness of information given to the *FCA* and to notify the *FCA* immediately if materially inaccurate information has been provided.

APER 4.4.7E provides that, where an *approved person* is responsible for reporting matters to the *FCA*, failure to inform the *FCA* of materially significant information of which he is aware is a breach of *Statement of Principle* 4. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the *FCA*. It should not be assumed that information is known to the *FCA* merely because it is in the public domain or has previously been disclosed to the *FCA* or another regulatory body. If there is any doubt about the relevance of information, it should be included.

In making this application the *firm* believes on the basis of due and diligent enquiry that the candidate is a fit and proper person to perform the controlled function(s) listed in section 3. The firm also believes, on the basis of due and diligent enquiry, that the candidate is competent to fulfil the duties required in the performance of such function(s).

In signing this form on behalf of the firm:

- a) I confirm that the information in this Form is accurate and complete to the best of my knowledge and belief and that I have read the notes to this Form.
- b) I confirm that I have authority to make this application, and sign this Form, on behalf of each *firm* identified in section 3.05. I also confirm that a copy of this Form, as submitting to the *FCA*, will be sent to each of those *firms* at the same time as submitting the Form to the *FCA*.
- c) I confirm the candidate has been made aware of the regulatory responsibilities of the proposed role as set out in the Statements of Principle and Code of Practice for Approved Persons

(<https://www.handbook.fca.org.uk/handbook/APER>)

7.03	Name of the <i>firm</i> submitting the application [†]	
7.04	Name of <i>person</i> signing on behalf of the <i>firm</i> [†]	
7.05	Job title [†]	
7.06	Signature [*]	
	Date [†]	

[†] The above question(s) should be completed whether submission of this form is online or in one of the other ways set out in *SUP* 15.7
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Financial Conduct Authority



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