

Quarterly consultation No.3

December 2013



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The Financial Conduct Authority invites comments on this Consultation Paper.

Comments on Chapter 2 should reach us by 17 January 2014 and comments on all other chapters by 6 February 2014.

Comments may be sent by electronic submission using the form on the FCA's website at www.fca.org.uk/your-fca/documents/consultation-papers/cp13-18-response-form.

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A confidential response may be requested from us 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 Tribunal.

You can download this Consultation Paper from our website: www.fca.org.uk. Or contact our order line for paper copies: 0845 608 2372.

Abbreviations used in this paper

AFM	authorised fund manager
APR	annual percentage rate
BCOBS	Banking: Conduct of Business sourcebook
BSOG	Building Societies Regulatory Guide
CBA	cost benefit analysis
CCA	Consumer Credit Act 1974
COBS	Conduct of Business sourcebook
COLL	Collective Investment Schemes sourcebook
CONC	Consumer Credit sourcebook
CP	consultation paper
CREDS	Credit Unions New sourcebook
DISP	Dispute Resolution: Complaints sourcebook
DTR	Disclosure and Transparency Rules
EEA	European Economic Area
EG	Enforcement Guide
EU	European Union
FC	Financial Crime: a guide for firms
FCA	Financial Conduct Authority
FEES	Fees manual
FSMA	Financial Services and Markets Act 2000
GEN	General Provisions
ICOBS	Insurance: Conduct of Business sourcebook

KII	key investor information
MCOB	Mortgages and Home Finance: Conduct of Business sourcebook
OFT	Office of Fair Trading
ONA	Online Notifications and Applications system
PERG	The Perimeter Guidance manual
PRIN	Principles for Businesses
PROF	Professional Firms sourcebook
PS	policy statement
RAO	Regulated Activities Order
SUP	Supervision manual
SYSC	Senior Management Arrangements, Systems and Controls sourcebook
UCITS	undertakings for collective investment in transferable securities
UK	United Kingdom
UKLA	UK Listing Authority

1. Overview

Chapter No	Purpose of proposed changes to Handbook	Consultation closing period
2	Minor amendments in relation to the transfer of consumer credit regulation from the OFT to the FCA.	17 January 2014
3	Introduce an administrative charge to recover costs of dealing with late publication by listed issuers of periodic financial reports under the disclosure and transparency rules.	6 February 2014
4	Extend the ability of authorised fund managers and others to communicate electronically with unitholders, including by the use of website-based communications.	6 February 2014
5	Amend our procedure for processing a waiver application: SUP 8.3.5G.	6 February 2014

2. Consumer credit – further amendments

Introduction

- 2.1** In this chapter, we propose some further consequential amendments to the FCA Handbook and non-Handbook guides, in relation to the transfer of consumer credit regulation from the Office of Fair Trading (OFT) to the Financial Conduct Authority (FCA) from 1 April 2014.
- 2.2** These amendments are in addition to those made in August 2013¹ and September 2013² and those proposed in Part A of FCA CP13/10.³ They arise because elements of the Consumer Credit Act (CCA) regime, including OFT guidance, are being revoked and incorporated into the FCA Handbook, particularly in the Consumer Credit sourcebook (CONC).
- 2.3** We also propose to make some minor amendments to the CONC elements of the draft Handbook text which we consulted on in CP13/10.
- 2.4** This consultation will be of interest to firms, their advisers and trade bodies.
- 2.5** The text of the proposed amendments, and the statutory powers they will be made under, are set out in Appendix 2.

Summary of proposals

- 2.6** We propose to amend the modules listed below which are considered in turn:
- Handbook text: Glossary of definitions, SYSC, GEN, COBS, MCOB, SUP, CREDS and CONC;
 - Non-Handbook guides: BSOG, EG, FC and PERG.

Glossary of definitions

- 2.7** Amendments are proposed to two terms in the Glossary of definitions. In each case, the change is very minor, but the entire definition is shown as the definitions will no longer be shared with the Prudential Regulation Authority.
- 2.8** ‘Connected contract’ is defined as including a hire-purchase agreement within the meaning of section 189(1) of the CCA. The proposed amendment replaces this with reference to a hire-purchase agreement (as defined in the Glossary).

¹ PS13/8, *FCA regime for consumer credit: carrying across some Consumer Credit Act secondary legislation into FCA rules* (August 2013).
² CP13/10, *Detailed proposals for the FCA regime for consumer credit* (October 2013).
³ CP13/10, *Detailed proposals for the FCA regime for consumer credit* (October 2013).

- 2.9** 'Regulatory system' is defined as the arrangements for regulating a firm or other person in or under the Financial Services and Markets Act (FSMA) including any relevant directly applicable provisions of an EU directive or regulation. The proposed amendment adds reference to the CCA, as this will be part of the FCA regulatory framework from 1 April 2014.

Senior Management Arrangements, Systems and Controls (SYSC)

- 2.10** SYSC 1 Annex 1 (Part 2) defines the scope of application of the common platform requirements set out in SYSC 4 to 10.
- 2.11** We propose to disapply SYSC 6.3 (financial crime, including the requirement to appoint a money laundering reporting officer) in relation to firms that are supervised under the Money Laundering Regulations by a professional body specified by HM Treasury⁴ and are not regulated for these purposes by the FCA. This avoids dual supervision.
- 2.12** There is an existing exclusion in SYSC 1 Annex 1 in respect of authorised professional firms, but not all of the specified professional bodies are 'designated professional bodies' for the purposes of Part 20 of FSMA.

General Provisions (GEN)

- 2.13** GEN 1.2.2AR(4) states that where a firm with a limited permission refers to its permission in a public statement or in relation to a client, it must explain in a fair, clear and not misleading way that the permission is a limited permission.
- 2.14** We propose to delete this provision as it is no longer considered appropriate given the changes to the status disclosure requirements in CP13/10. It is sufficient that, by virtue of CONC 3.3.1R, any communication or financial promotion must be clear, fair and not misleading.
- 2.15** There is a corresponding change to GEN 1.2.2AR(2).

Conduct of Business sourcebook (COBS)

- 2.16** COBS 4.1.1R(2) states that COBS 4 applies to a firm communicating or approving a financial promotion, other than specified promotions. The exceptions listed include a financial promotion of qualifying credit, a home purchase plan or a home reversion plan.
- 2.17** To ensure that financial promotions in relation to credit are not subject to two different sets of rules, the proposed amendment adds a further exception, namely a financial promotion of a credit agreement, a consumer hire agreement or a credit-related regulated activity.

Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

- 2.18** MCOB 1.6.1G states that variations made on or after 31 October 2004 to mortgage contracts entered into before that date are not subject to FCA regulation but may be subject to the CCA.
- 2.19** We propose to amend this provision to make clear that a contract entered into before 31 October 2004 will not be a regulated mortgage contract, even if it is varied on or after that date, but it may be a regulated credit agreement to which the CCA and CONC apply. However, if a new contract is entered into, replacing the previous contract, this new contract may be a regulated mortgage contract, as explained in PERG 4.4.13G.

⁴ See Schedule 3 to the Money Laundering Regulations.

- 2.20** MCOB 1.6.2G states that the FCA expects firms to take appropriate steps to determine whether a proposed mortgage is subject to FCA regulation. The proposed amendment adds that firms should also determine whether it is a regulated mortgage contract or a regulated credit agreement.
- 2.21** MCOB 1.6.4R states that if a mortgage which the firm has treated as unregulated turns out to be a regulated mortgage contract, the firm must inform the customer that it is a regulated mortgage contract subject to FCA regulation and (where relevant) that the CCA will not apply to the contract and any CCA rights or requirements set out previously will not apply.
- 2.22** The proposed amendment states that if a mortgage turns out to be a regulated mortgage contract, the firm must contact the customer and provide a statement to that effect. If the mortgage was treated as unregulated, the firm must inform the customer that it is subject to FCA regulation, stating in particular the position with regard to redress and compensation. If it was treated as a regulated credit agreement, the firm must inform the customer that it is subject to MCOB (and not the CCA or CONC) and that any rights or requirements arising under the CCA or CONC set out in previous communications will not apply.
- 2.23** A corresponding change is proposed to MCOB 1.6.5G.
- 2.24** MCOB 3.1.8G states that a financial promotion of qualifying credit is not subject to the CCA advertising provisions, but if it forms part of a communication which also consists of information relating to a different form of lending that is not qualifying credit (such as an unsecured personal loan) the latter information will need to comply with the CCA advertising provisions.
- 2.25** The proposed amendment states that a financial promotion is not subject to CONC 3 (which replaces the CCA advertising provisions) to the extent that it relates to qualifying credit; but where a communication consists of a financial promotion of qualifying credit, and a financial promotion of a form of lending that is not qualifying credit, the latter promotion will need to comply with CONC 3.
- 2.26** MCOB 5.6.102R and 9.4.102R refer to a mortgage lender providing the customer with contractual rights in relation to a mortgage credit card which are equal to or greater than those provided under the CCA.
- 2.27** The proposed amendments refer to rights being equal to or greater than those that the customer would have under the CCA and CONC if the card were issued under a regulated credit agreement.
- 2.28** MCOB 5.6.106R(1) and 9.4.106R(1) state that where additional features are included in a mortgage contract, and these are credit facilities that do not meet the definition of a regulated mortgage contract, the illustration in the offer document must include prescribed text stating that the additional feature is not regulated by the FCA.
- 2.29** The proposed amendments refer to the facilities not meeting the definition of a regulated mortgage contract or a regulated credit agreement.
- 2.30** MCOB 5.6.106R(2) and 9.4.106R(2) apply where the additional features are credit facilities regulated by the CCA. In such cases, the illustration must include prescribed text to this effect, stating that a separate credit agreement will be provided in respect of the additional feature.

- 2.31** The proposed amendments refer to the credit facility meeting the definition of a regulated credit agreement regulated under the CCA and FSMA.
- 2.32** Corresponding changes are proposed to MCOB 6.4.4R(11) and 9.5.4R(10).
- 2.33** MCOB 10.3.2G states that the calculation of the annual percentage rate (APR) for regulated mortgage contracts is the same (with certain limited exceptions) as that described in the Consumer Credit (Total Charge for Credit) Regulations 1980, and MCOB 10 Annex 1G lists the substantively identical provisions in MCOB 10 and the 1980 Regulations. This information was intended as an aid to firms when the MCOB provisions were first introduced.
- 2.34** The proposed amendment deletes the table in MCOB 10 Annex 1G (and the corresponding reference in MCOB 10.3.2G), on the grounds that it is no longer needed. The remainder of MCOB 10.3.2G is amended to refer to the APR rules in CONC App 1.1 which replace the 1980 Regulations.
- 2.35** MCOB 12.3.2G refers to the 'Rule of 78' as contained in Schedule 2 to the Consumer Credit (Rebate on Early Settlement) Regulations 1983. We propose to delete reference to these regulations, as they have been superseded.
- Supervision manual (SUP)**
- 2.36** SUP 10A.10.3G states that the 'customer function' (as part of the approved persons regime) is to do with giving advice on, dealing and arranging deals in and managing investments, and has no application to banking or general insurance business.
- 2.37** The proposed amendment confirms, for the avoidance of doubt, that it also has no application to credit-related regulated activity, as 'advising on investments' (and the other similar activities referred to above) have specific meanings in the Handbook and do not extend to all 'investments' (which will include rights under a credit agreement or a consumer hire agreement).
- 2.38** SUP 12.7.1AR deals with notification of appointment of an appointed representative. A firm (other than a credit union) must submit the relevant form online, using the FCA's Online Notifications and Applications (ONA) system, unless the system fails and online submission is unavailable for 24 hours or more, in which case a paper form must be submitted. A credit union must submit a paper form in all cases, in accordance with SUP 15.7.4R to 15.7.9G, but may submit this by fax or email to the firm's usual supervisory contact.
- 2.39** The proposed amendment states that a firm which intends to appoint, or has appointed, an appointed representative to carry on only credit-related regulated activity must submit a paper form. This avoids the need for credit firms to familiarise themselves with the ONA system pending its replacement by a new system, which is expected to become operational from Q3 2014/15.
- 2.40** Corresponding changes are proposed in relation to SUP 12.7.8AR, dealing with notification of changes to appointed representatives, SUP 12.8.1AR dealing with notification of termination of an appointed representative relationship, SUP 15.5.9R dealing with notification of changes to core information requirements (such as name and address) and SUP 16.10.4AR dealing with notification of changes to standing data.
- 2.41** SUP 15.3.11R(1) requires firms to notify the appropriate regulator of a significant breach of a rule, or a breach of any requirement imposed by or under FSMA, or the bringing of a prosecution for, or a conviction of, any offence under FSMA.
- 2.42** The proposed amendment extends this requirement to include notification of a breach of any CCA requirement and a prosecution for, or conviction of, an offence under the CCA.

Credit Unions New sourcebook (CREDS)

- 2.43** CREDS 1.1.2G states that CREDS covers only requirements associated with permission to accept deposits, and that other permissions applicable to credit unions are covered elsewhere in the Handbook, including COBS, MCOB and ICOBS. For example, a credit union seeking permission to undertake regulated mortgage activity must comply with the requirements of MCOB.
- 2.44** The proposed amendment adds that a credit union seeking permission to undertake a credit-related regulated activity needs to comply with CONC.
- 2.45** CREDS 2.2.24G notes that SYSC 9.1.1R (record-keeping) requires credit unions to take reasonable care to make and retain adequate records of all matters governed by FSMA, secondary legislation under FSMA, or rules. The proposed amendment adds reference to matters governed by the CCA or by secondary legislation under the CCA.
- 2.46** CREDS 9.2.1R requires credit unions to provide the FCA, once a year, with a report in the format set out in CREDS 9 Annex 1R, containing information about the number of complaints received by the credit union during the reporting period, the numbers closed, upheld and outstanding, and the total redress paid. The current form comprises five product/service groupings and 25 categories. This largely mirrors the general complaints return form in DISP 1 Annex 1R, although (unlike other firms) credit unions are permitted to submit the form on paper rather than electronically.
- 2.47** CP13/10 proposes amendments to the form in DISP 1 Annex 1R, and the addition of a Part B covering the new consumer credit activities. Part B is sub-divided into 13 categories, of which nine relate to lending and the other four to non-lending activities. Annex 7 to CP13/10 confirmed our intention to consult on consequential changes to the CREDS form.
- 2.48** The proposed amendment adds a section 5A to the CREDS form, in respect of credit-regulated activities, but sub-divided into only two categories: 'other lending' (ie other than credit cards, overdrafts and mortgages, which are covered in sections 4 and 5) and 'all other credit-related activity'. This reflects the limited involvement of credit unions in regulated credit activities and the current low levels of complaints, and minimises any additional burdens. There are also some minor consequential changes to the remainder of the form (in line with DISP), and the accompanying Notes, and to the rule in CREDS 9.2.1R. A transitional provision in CONC 12 will enable credit unions to continue using the existing form while they have interim permission.
- 2.49** We considered whether it might be easier for credit unions to use the same form as other firms, on the grounds that the categories in DISP mirror the reporting categories in SUP 16 Annex 35AR (in respect of CCR002 consumer credit data). In addition, a credit union would have the option of using standard reporting software developed for firms generally. We concluded on balance that a simplified approach was preferable but would welcome views on this.

The Consumer Credit sourcebook (CONC)

- 2.50** Draft CONC 2.7.1R⁵ states that the distance marketing rules in CONC 2.7 apply to a firm that carries on any distance marketing activity from an establishment in the UK, with or for a consumer in the UK or another EEA State.

⁵ The draft CONC rules were set out in Appendix 2 to CP13/10.

- 2.51** The proposed amendment disapplies this in relation to an authorised professional firm with respect to its non-mainstream regulated activities. This is because PROF 5.4.1R specifies the requirements of the Distance Marketing Regulations with which such firms must comply in respect of such activities. A corresponding change is proposed to draft CONC 11.1.1R.
- 2.52** Draft CONC 10.1 deals with the application of the prudential rules for debt management firms. The proposed amendment states that a contravention of these rules does not give rise to a right of action by a private person under section 138D of FSMA, and there is a corresponding change to Schedule 5.
- 2.53** CONC 12⁶ disapplies or modifies certain Handbook provisions for firms with an interim permission. The proposed amendment also disapplies the above changes to CREDS 9.2 for firms with interim permission.
- 2.54** Draft CONC 14.1.1R states that CONC 14 (requirement in relation to agents) applies to a firm which carries on consumer credit lending or consumer hiring. The proposed amendment extends the application of CONC 14 to all credit-related regulated activity.
- 2.55** In addition, CONC 14.4.4R is added, which extends the requirements of SYSC 6.6.1R (policies and procedures to ensure compliance) and SYSC 10.1.3R (identifying conflicts of interest) to the activities of CONC 14 agents. They already apply in relation to employees and appointed representatives.
- The Building Societies Regulatory Guide (BSOG)**
- 2.56** We propose to delete reference to the Office of Fair Trading (OFT) from BSOG 1.1.3G which contains a list of frequently used terms in BSOG.
- The Enforcement Guide (EG)**
- 2.57** EG 10.19 relates to applications for injunctions under the Unfair Terms in Consumer Contracts Regulations, and states that where the person in question is not a firm or an appointed representative, the FCA will generally pass the case to the OFT.
- 2.58** The proposed amendment states that the FCA will liaise with the Competition and Markets Authority (which is the successor body to the OFT's consumer functions other than in relation to consumer credit) or, if appropriate, a qualifying body under the Regulations.
- Financial Crime: a guide for firms (FC)**
- 2.59** FC Annex 1 contains a list of common terms in the FC Guide. We propose to delete reference to the Office of Fair Trading and the OFT.
- The Perimeter Guidance manual (PERG)**
- 2.60** We propose to delete PERG 4.2.4G which states that even if a person does not require authorisation, he may still require a licence under the CCA to carry on an activity, as this will cease to apply from 1 April 2014.
- Assessment**
- 2.61** The amendments proposed in this chapter are minor and technical, and there are no substantive changes to the policy underlying CP13/10.

⁶ Made as part of the Instrument in Appendix 1 to CP13/10.

Q2.1: Do you have any comments on the proposed amendments?

Cost benefit analysis

- 2.62** Section 138I of FSMA requires us to publish a cost benefit analysis (CBA) if we consider that there will be an increase in costs, unless the increase will be of minimal significance.
- 2.63** A CBA of the proposed consumer credit regime accompanied CP13/10 and a summary was included in Annex 5. The expected incremental compliance costs of firms across the consumer credit sector were set out in section 1.2 and chapter 4 of the CBA.⁷
- 2.64** The consequential amendments proposed in this chapter either do not add to the costs estimated in the CBA or any increase is of minimal significance.
- 2.65** The proposed amendment to the definition of 'regulatory system' merely reflects the broadened scope of the FCA regime from 1 April 2014.
- 2.66** CREDS 9.2.1R – The proposed requirements for complaints reporting were set out in chapter 11 of CP13/10, including the addition of a new section to the general form in respect of the new consumer credit activities. All authorised firms will be required to complete this, where applicable.
- 2.67** The costs and benefits of this approach, including its application to credit unions, were assessed at section 3.9 of the CBA. The costs in relation to credit unions are minimal because credit unions have the option to submit data on paper rather than electronically, and complaints levels typically are low.
- 2.68** SUP 15.3.11R – The proposed reporting requirements were set out in chapter 4 of CP13/10, and the costs and benefits were assessed at section 3.7 of the CBA. In particular, it was noted that credit firms will be required to verify standing data each year, and to notify the FCA of any changes.
- 2.69** Credit firms are required under the CCA to notify the OFT of certain changes in circumstances, including criminal convictions.⁸ They are not currently required to notify other breaches of the CCA, or relevant prosecutions. As such, the proposed amendment to SUP 15.3.11R may impose additional costs on firms. However, it is expected that these will be of minimal significance. The requirement will impact only on firms that breach the legislation, so has no implications for compliant firms (which should already have systems in place to detect and record breaches). It mirrors the requirements already imposed on FCA-regulated firms in respect of a breach of the FSMA regime. In addition, the incidence of such reporting is likely to be low and the cost of these notifications is minimal. Therefore, incremental costs to firms are expected to be of minimal significance.

⁷ *A New Consumer Credit Regime: Benefits, Compliance Costs and Firm Behaviour*, Europe Economics (October 2013).

⁸ OFT General Notice No 75.

- 2.70** SUP 12.7.1AR etc – The proposed amendments avoid the need for changes to the FCA’s ONA system, to encompass credit firms, for what is likely to be a relatively short period pending its replacement by a new online system. It also avoids the need for credit firms to become familiar with ONA during the interim period. In addition, changing the system could increase the risk of system failures which would impact on all firms using the system.
- 2.71** It will be open to firms to email or fax the forms to the FCA, so it is envisaged that any cost implications will be of minimal significance.
- 2.72** CONC 14.1.1R – The FCA’s proposed position on self-employed agents was considered in section 3.3 of the CBA:
- ‘It is noted that in the home credit arena and in mail order — where self-employed agents are an important part of the business model for most firms — these are not required to hold an OFT licence at present and would not be required to become appointed representatives or to be authorised directly by the FCA. (Instead the proposed approach is to permit continuation of the current arrangements regarding self-employed agents in these areas)’.
- 2.73** The assumption in CP13/10 was that the FCA proposal would allow self-employed agents who are legitimately carrying on regulated credit activities as agents of authorised firms to continue to do so and that consequently it was a zero-cost proposal.
- 2.74** The proposed amendment broadens the scope of application of CONC 14 to all credit-related regulated activity, in line with the original policy intention. It is part of a package of proposals that are designed to make clear that an agent can choose the lower-cost option of acting as an agent of an authorised firm, as opposed to being an appointed representative of the firm, if the agent can be properly considered to be carrying on the business of the authorised firm (rather than carrying on its own business) in line with the FCA’s proposed criteria.
- 2.75** We do not consider that this proposal should give rise to any significant costs. Indeed, it should lead to a lowering of costs for a wider group of individuals and firms – not limited to firms involved in lending or consumer hiring. We believe it will have no negative impact on consumer protection in the market and will be broadly beneficial on balance.

Compatibility statement

- 2.76** Section 1B of FSMA requires the FCA to explain why it considers that proposed rules are compatible with its strategic objective, and advance one or more of its operational objectives, and promote effective competition in the interests of consumers.
- 2.77** A compatibility statement in relation to the proposed consumer credit regime was set out in Annex 7 to CP13/10.
- 2.78** We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. Most are purely consequential or broadly neutral, and a number are deregulatory. In particular, the proposal in relation to CONC 14 helps ensure that small-scale activity remains practicable under the new credit regime, and so promotes effective competition in the interests of consumers.

Mutual societies

- 2.79** Section 138K of FSMA requires us to prepare a statement about the impact of proposed rules on mutual societies, and in particular whether this will be significantly different than it is for other authorised persons.
- 2.80** A statement in relation to the proposed consumer credit regime was set out in Annex 8 to CP13/10. We are satisfied that the proposed amendments do not impact on mutual societies, such as building societies and friendly societies, to a greater extent than they will for other authorised firms. The process in relation to complaint reporting by credit unions will be simpler than it is for other firms.

Equality and diversity

- 2.81** We are required, under the Equality Act 2010, to consider whether our proposals could have a potentially discriminatory impact on groups with protected characteristics (such as age, disability, gender or race).
- 2.82** An equality impact assessment was set out in Annex 6 to CP13/10. The proposed amendments do not have a negative impact on this. The proposal in relation to CONC 14 may have a positive impact on self-employed agents who will be enabled to work on a part-time and/or flexible hours basis. This working practice in general advances the equality and diversity agenda.

3.

UK Listing Authority: introduction of administrative charge

Introduction

- 3.1 We are proposing an administrative charge of £250 to cover our costs, as the UK Listing Authority (UKLA), in dealing with late publications of periodic financial reports by listed issuers under our disclosure and transparency rules (DTRs).
- 3.2 This chapter will be of interest to issuers of securities who have been admitted to the official list.
- 3.3 The proposed amendments, and the statutory powers they will be made under, are set out in Appendix 3.

Summary of proposals

- 3.4 Listed issuers are required to make financial reports public within timescales set out in the DTRs - no later than two months after the reporting period for half-yearly reports and four months for yearly reports. When an issuer breaches the deadline or is at risk of breaching the deadline, we incur administrative costs as we have to note the failure and then correspond with the issuer to ensure that it takes steps to correct the position and a suspension of listing may also be required. At present, these costs are being recovered through fees paid by the wider population of issuers. We believe this is unreasonable and that the costs should instead fall on the issuers that are generating the work. Our experience indicates that £250 covers the average resource cost of dealing with cases of this sort. We propose to recover these costs by invoicing issuers after they breach the relevant deadline.
- 3.5 The new charge would be added to the application and administrative fees in relation to listing rules in FEES 3 Annex 4. It would come into effect from 1 April 2014.

Q3.1: Do you agree with our proposal to charge an administrative fee of £250 to cover our costs in dealing with the late publication by listed issuers of financial reports under the disclosure and transparency rules?

Cost benefit analysis

- 3.6** Under section 138I of the Financial Services and Markets Act 2000 (FSMA), we are exempt from the requirement to carry out a cost benefit analysis in relation to fees rules.

Compatibility statement

- 3.7** Our fees raise the funding we need each year to undertake our responsibilities under FSMA. They are not intended directly to influence the way we undertake those responsibilities, nor to influence the behaviour of firms or affect markets. In preparing proposals for consultation, we take care to ensure that they conform with the regulatory principles set out in s38 of FSMA. As the objective of this proposal is to improve the targeting of our cost recovery, we believe it conforms, in particular, to the principle that a burden or restriction should be proportionate to the benefits.
- 3.8** This proposal does not affect mutual societies.

Equality and diversity

- 3.9** We do not believe this proposal has any relevance to the equality and diversity agenda but would welcome comments on any equality and diversity issues that you believe may arise from it.

4.

Amendments to the Collective Investment Schemes sourcebook

Introduction

- 4.1** The Collective Investment Schemes sourcebook (COLL) contains rules and guidance on how notices and documents may be sent to direct investors in authorised funds. For example, if an investor wishes or expects to receive communications relating to the fund, such as short reports and accounts, electronically rather than on paper, the authorised fund manager (AFM) may send them in that form.
- 4.2** However, the rules in COLL do not currently allow all notices and documents to be sent to investors by means of publication on a website. Some AFMs have requested to do this, on the grounds that it is preferred by investors and is cheaper and more convenient than other forms of communication. They have pointed out that this flexibility is available to companies under the Companies Act 2006, subject to certain conditions.
- 4.3** This chapter will be of interest to consumers who invest in units of authorised funds, and to AFMs, service providers such as platforms or third-party administrators, and depositaries.
- 4.4** The proposed amendments, and the statutory powers they will be made under, are set out in Appendix 4.

Summary of proposals

- 4.5** In this chapter, we propose rules and guidance to extend the ability of AFMs and other persons, such as depositaries, to communicate electronically with investors, including by the use of website-based communications, if the investors agree to it.
- 4.6** We consider that an AFM should be able to make information available on a website, as a substitute for sending it directly to the investor, if the change does not disadvantage investors. The prospectus of an authorised fund will need to specify which types of notice and document will be made available on a website to investors who agree to access them in that way.
- 4.7** We propose two ways for the AFM to make the change and get an investor's consent. One way, based on the Companies Act 2006 procedure, will apply where a resolution is passed at a meeting of unitholders. The other applies where the change is treated as a significant change under COLL 4.3.6R. The difference between these two methods is in the way the agreement of unitholders is obtained. In both cases, unitholders will still have the right to receive paper copies of all documents if they prefer.

- 4.8** We will also require AFMs to ensure that investors will have continuous access to each item of information (or be able to reproduce it in hard copy) for a reasonable length of time, and that they can rely on the information being unchanged unless they have been notified of a change.

Background

- 4.9** There are several existing measures that we have taken account of in developing our proposed rules.
- 4.10** COLL 4.4.12R and 4.4.13R currently specify how notices or documents are sent electronically to a unitholder. If the unitholder has provided an email address and it is reasonable to suppose they wish or expect it to be used for communications concerning the investment, these rules allow the AFM (and other parties such as the depositary, where it falls to them to serve a notice on or issue a document to a unitholder) to do so without the unitholder's explicit consent. This enables the AFM to send any document to the unitholder as an attachment to an email, rather than sending a hard copy.
- 4.11** In our view, if there is a duty to send a document and electronic delivery is used, publishing it on a website is not automatically an acceptable option in every case. However, for some documents, such as the key investor information (KII) document and the prospectus, the Directive on undertakings for collective investment in transferable securities (UCITS) specifies that delivery using a 'durable medium' is permissible, which may include publishing them on a website under certain conditions.⁹
- 4.12** We have also made rules in COBS 14.4 (although we are proposing to defer their implementation until the end of 2015) requiring intermediate unitholders in an authorised fund, such as certain kinds of nominee company, to notify the underlying beneficial owners of any document or other information that has been issued to unitholders. These rules will allow the document or information to be published on a website controlled by the intermediate unitholder, who must send the underlying investor an electronic notice containing a hyperlink to the website.
- 4.13** The Companies Act 2006 allows a company to issue communications to its shareholders (and debenture holders) electronically, including by publication on a website, under certain conditions.¹⁰ A company that wishes to publish documents on a website instead of sending them must get the approval of the company's members by a resolution passed at a meeting, unless this option is already provided for in the articles of association. Once the company has the necessary power, it can invite each shareholder to receive reports and other documents by accessing a website operated by or on behalf of the company. This option is provided on an 'opt-out' basis, so the company can assume a shareholder has given their consent unless they refuse the invitation within a specified period. Although authorised funds are not subject to this part of the Act, we consider it sets a relevant precedent.

Obtaining investors' consent

- 4.14** We propose to introduce a rule similar to the Companies Act provision for allowing website publication. The prospectus of a new fund or sub-fund (or for a new class of units in an existing fund) can offer this ability from the outset, or it can be introduced by a resolution passed at a meeting of unitholders. Unitholders can then be invited to agree, on an 'opt-out' basis, to receive the specified types of report or communication by accessing a website. Each time a new document is published, the AFM (or another person) will have to send the unitholder a message with an embedded hyperlink that takes the reader directly to the relevant website page.

⁹ Article 38 of Commission Regulation 583/2010, reproduced in the Appendix to COLL.

¹⁰ Sections 1143 to 1148 and Schedule 5.

4.15 However, authorised funds – unlike companies subject to the Companies Act requirements – do not usually have regular unitholder meetings. If there are no plans to hold a unitholder meeting for another purpose, it would be expensive for the AFM to convene a meeting purely to propose making this change. So, as an alternative to the procedure described in paragraph 4.14, we are proposing to allow the AFM to amend the prospectus of a fund to provide the facility of website access for those investors who consent to it, and to introduce this as a significant change under COLL 4.3.6R.

4.16 If a firm uses the significant change procedure, we do not think it would be fair to investors to presume their consent to the change on the basis of an ‘opt-out’ invitation because it would be easy for them to overlook the notification or misunderstand its significance. So, under this method, the AFM would have to ask for and receive the unitholder’s explicit agreement about which notices and documents they were willing to access through a website; in other words, unitholders would give their consent on an ‘opt-in’ basis. This is in line with the current procedure for publishing the KII document in a durable medium.

Other elements of the proposals

4.17 The new draft rules are set out in COLL 4.4.16R to 4.4.20R, together with amendments to the notification rules and guidance in COLL 4.3. A number of the elements in the new rules are based on the Companies Act provisions: for instance, access to the website cannot depend on payment of a fee or otherwise be restricted, except for legal reasons, and the unitholder still has the right to receive a hard copy of any document free of charge. Other elements are based on the concepts of a ‘durable medium’ and ‘website conditions’, which derive from EU legislation and are defined in the Glossary.

4.18 Where the change to the prospectus is introduced as a significant change, and relates to reports and accounts, we propose that notice should be given to unitholders before the end of the relevant accounting period. This will allow unitholders who sell units after the end of the period to opt-in to receiving their report and accounts through a website.

4.19 We also propose to add guidance in COLL 4.4.19G on what we think is a reasonable length of time for information to be kept available on a website. It may be useful for investors to have access to an archive of all published material, but some AFMs may take the view that information should be kept available for no longer than necessary, to avoid cluttering the website or confusing users. AFMs could consider making the most useful documents for investors, such as the prospectus and the reports and accounts, available permanently or at least for longer than other items.

4.20 We do not consider it necessary to introduce new rules or guidance about what information should be disclosed in the prospectus. COLL 4.2.5R(23)(b), which requires details of ‘the manner in which any notice or document will be served on unitholders’, is sufficiently broad. We expect the prospectus to explain, as a minimum, which types of document can be accessed in this way, how a unitholder is given access to them, and what the unitholder needs to do to begin or cease receiving information in this way.

Q4.1: Do you agree that we should allow notices and documents to be communicated to unitholders by making them available on a website?

Q4.2: Do you agree with our proposals on how AFMs should obtain the consent of unitholders? Are there any other measures we should take to ensure unitholders are treated fairly when this change is introduced?

Cost benefit analysis

- 4.21** These proposals are optional and do not impose any unavoidable costs on the Financial Conduct Authority or firms. Allowing a range of documents to be communicated by publishing them on a website will reduce costs to some firms, by reducing the regular printing and postage expenses associated with sending hard copies of the document to every investor. It will also be simpler than sending the document electronically, as an email attachment, which may result in a marginal saving of costs for some firms.
- 4.22** These measures are likely to be particularly beneficial for the issue of short reports to unitholders. We have obtained data from a limited number of fund managers and third-party administrators, estimating the cost of printing and distributing paper copies of a short report to be in the range of £0.55 to £5 for one item. The amount depends on the size of the print run (a larger run results in a lower unit cost), and postage costs determined by the size and weight of the document pack. One manager estimated that a typical unit cost of £1 for sending a hard-copy report could be reduced to as little as £0.05 for an electronic notification.
- 4.23** Firms may need to take steps to remind investors of the importance of providing an up-to-date email address to ensure that documents can be delivered but this should involve costs of only minimal significance.
- 4.24** There may be some one-off costs to AFMs when introducing the change, either because they organise a unitholder meeting to approve it or because they need to contact investors individually to get their consent. Firms have the option of which method to choose and can select the timing of when they contact investors to coincide with a communication issued for another purpose. For example, when sending a set of report and accounts they can invite unitholders to agree to receive the next report and accounts electronically through a website. This should enable firms to minimise the one-off costs.
- 4.25** We also expect these proposals to result in a benefit to consumers, by ensuring that notices and documents are delivered to them in a manner appropriate to the way in which their other business with the firm is conducted, while giving them the option to choose an alternative method if they prefer.

Compatibility statement

- 4.26** Permitting notices and documents, such as short reports, to be delivered by electronic communication through a website will provide an appropriate degree of protection for consumers by ensuring that information about their investments is delivered in a timely manner, and in a format that is appropriate to the way their business is conducted with the authorised firm.
- 4.27** We do not expect any competition implications to arise as a result of these proposals.
- 4.28** We are not aware of any mutual societies within the scope of the proposed rules and guidance. So, we do not believe that the changes described in this chapter will have a different impact on mutual societies compared to other authorised persons.

Equality and diversity

- 4.29** Having conducted an Equality Impact Assessment, we consider that these proposals do not give rise to discrimination and are of low relevance to the equality agenda. However, we would welcome any comments respondents may have on any equality issues they believe arise as a result of these proposals.

5.

Amendment to the procedure for processing waiver applications

Introduction

- 5.1** This chapter sets out our proposal to amend the procedure we use when we receive a waiver application, as contained in Chapter 8 of the Supervision manual (SUP).
- 5.2** The proposal will be of interest to firms applying for a waiver.
- 5.3** The proposed amendment and the statutory powers it will be made under are set out in Appendix 5.

Summary of proposals

- 5.4** We propose to amend SUP 8.3.5G by removing our stated aim of giving waiver decisions within 20 business days as we believe this does not usefully serve firms for the following reasons:
- When firms seek a waiver extension, they consider the expiry date of a previous waiver to be the prime factor in the timing, not our standard of giving a decision within 20 business days.
 - The date on which a new rule or directive comes into effect is commonly a driver for when a waiver decision is needed, eg the Retail Distribution Review
- 5.5** In addition, by adhering to the standard of giving decisions within 20 business days, we are less able to respond quickly when firms specify faster turnaround times in line with commercial requirements.
- 5.6** The proposed change will allow us to utilise our resources more effectively and economically to meet the needs of firms, and thereby those of their customers.
- 5.7** If, following the consultation process, we decide to remove the aim of giving waiver decisions within 20 business days, we will publish more information on our website to help firms understand the turnaround times for decisions on waivers.

Q5.1: Do you have any comments on the proposal to remove our stated aim of giving waiver decisions within 20 business days?

Cost benefit analysis

- 5.8** We are not required to publish a cost benefit analysis for our proposal as it relates to guidance under section 139A of the Financial Services and Markets Act 2000 (FSMA).
- 5.9** The proposed amendment will not entail an increase in costs and will enable us to respond more effectively to firms' waiver applications.

Compatibility statement

- 5.10** We have had regard to the principles of good regulation as set out in FSMA and the proposed change does not undermine any of these principles.
- 5.11** The proposed amendment removes an unnecessary procedural measure and enables us to use our resources in the most efficient and economical way. It is also compatible with our approach of being more transparent about our regulatory activities.
- 5.12** The proposed change is not expected to have a significantly different impact on mutual societies.

Equality and diversity

- 5.13** We have considered whether equality and diversity issues arise from our proposal and have concluded that it does not give rise to discrimination and is of low relevance to the equality agenda.

Appendix 1

List of questions

Chapter 2:

Q2.1: Do you have any comments on the proposed amendments?

Chapter 3:

Q3.1: Do you agree with our proposal to charge an administrative fee of £250 to cover our costs in dealing with the late publication by listed issuers of financial reports under the disclosure and transparency rules?

Chapter 4:

Q4.1: Do you agree that we should allow notices and documents to be communicated to unitholders by making them available on a website?

Q4.2: Do you agree with our proposals on how AFMs should obtain the consent of unitholders? Are there any other measures we should take to ensure unitholders are treated fairly when this change is introduced?

Chapter 5:

Q5.1: Do you have any comments on the proposal to remove our stated aim of giving waiver decisions within 20 business days?

Appendix 2

Consumer credit

CONSUMER CREDIT (NO 2) INSTRUMENT 2014**Powers exercised by the Financial Conduct Authority**

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers); and
 - (c) section 139A (Power of the FCA to give guidance); and
 - (2) 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 referred to above are specified for the purpose of section 138G (2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2014.

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).

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
General Provisions (GEN)	Annex C
Conduct of Business sourcebook (COBS)	Annex D
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex E
Supervision manual (SUP)	Annex F
Credit Unions New sourcebook (CREDS)	Annex G
Consumer Credit sourcebook (CONC)	Annex H

Material outside the Handbook

- E. The Building Societies Regulatory Guide (BSOG) is amended in accordance with Annex I to this instrument.
- F. The Enforcement Guide (EG) is amended in accordance with Annex J to this instrument.

- G. The Financial Crime: a guide for firms (FC) is amended in accordance with Annex K to this instrument.
- H. The Perimeter Guidance manual (PERG) is amended in accordance with Annex L to this instrument.

Citation

- I. This instrument may be cited as the Consumer Credit (No 2) Instrument 2014.

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

Annex A

Amendments to the Glossary of definitions

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

*connected
contract*

(A) in the PRA Handbook:

...

(B) in the FCA Handbook:

a non-investment insurance contract which:

- (a) is not a contract of long-term insurance (as defined by article 3 of the Regulated Activities Order);
- (b) has a total duration (including renewals) of five years or less;
- (c) has an annual premium (or the equivalent of annual premium) of €500 or less;
- (d) covers the risk of:
 - (i) breakdown, loss of, or damage to, non-motor goods supplied by the provider; or
 - (ii) damage to, or loss of, baggage and other risks linked to the travel booked with the provider ("travel risks"); in circumstances where:
 - (A) the travel booked with the provider relates to attendance at an event organised or managed by that provider and the party seeking insurance is not an individual (acting in his private capacity) or a small business; or
 - (B) the travel booked with the provider is only the hire of an aircraft, vehicle or vessel which does not provide sleeping accommodation;
- (e) does not cover any liability risks (except, in the case of a contract which covers travel risks, where the cover is ancillary to the main cover provided by the contract);
- (f) is complementary to the non-motor goods being supplied or service being provided by the provider; and
- (g) is of such a nature that the only information that a person

requires in order to carry on one of the *insurance mediation activities* is the cover provided by the contract.

In this definition:

- (h) the transfer of possession of an aircraft, vehicle or vessel under an agreement for hire which is not:
- (i) a hire-purchase agreement; or
 - (ii) any other agreement which contemplates that the property in those goods will also pass at some time in the future;

is the provision of a service related to travel, not a supply of goods;

- (i) "small business" means a sole trader, *body corporate*, *partnership* or an unincorporated association which had a turnover in the last financial year of less than £1,000,000 (but where the small business is a member of a group within the meaning of section 262(1) of the Companies Act 1985 (and after the repeal of that section, within the meaning of section 474(1) of the Companies Act 2006), reference to its turnover means the combined turnover of the group);
- (j) "turnover" means the amounts derived from the provision of goods and services falling within the business's ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on the amounts so derived.

regulatory
system

(A) in the *PRA Handbook*:

...

(B) in the *FCA Handbook*:

the arrangements for regulating a *firm* or other *person* in or under the *Act*, including the *threshold conditions*, the *Principles* and other *rules*, the *Statements of Principle*, codes and *guidance*, or in or under the *CCA*, and including any relevant directly applicable provisions of a *Directive* or *Regulation* such as those contained in the *MiFID implementing Directive* and 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 Annex 1 Detailed application of SYSC

...

Part 2 Application of the common platform requirements (SYSC 4 to 10)

...

2.5A R The common platform requirements on financial crime do not apply to a firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.

...

Part 3 Tables summarising the application of the common platform requirements to different types of firm

...

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 6	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 and full-scope UK AIFMs of unauthorised AIFs
...				
<i>SYSC 6.3.1R</i>	Rule	Rule	Rule	Rule <i>For firms carrying on a credit-related regulated activity, applies only where Money Laundering</i>

				<p><i>Regulations</i> apply to the <i>firm</i>. <u>Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
SYSC 6.3.2G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. <u>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
SYSC 6.3.3R	Rule	Rule	Rule	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. <u>Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not</u></p>

				<p><u>the FCA, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
SYSC 6.3.4G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. <u>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the FCA, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
SYSC 6.3.5G	Guidance	Guidance	Guidance	<p>Guidance. For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. <u>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the FCA, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
SYSC 6.3.6G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related</i></p>

				<p><i>regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. <u>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
SYSC 6.3.7G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. <u>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
SYSC 6.3.8R	Rule	Rule	Rule	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Rule does not apply to <i>firm</i> with a <i>limited permission</i> for entering into a</p>

				<p><i>regulated credit agreement as lender.</i> <u>Rule does not apply to a firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
SYSC 6.3.9R	Rule	Rule	Rule	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Rule does not apply to <i>firm</i> with a <i>limited permission</i> for <i>entering into a regulated credit agreement as lender.</i> <u>Rule does not apply to a firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
SYSC 6.3.10G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. <u>Guidance does not apply to a</u></p>

				<p><u>firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>
<p>SYSC 6.3.11G</p>	<p>Guidance</p>	<p>Guidance</p>	<p>Guidance</p>	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, applies only where <i>Money Laundering Regulations</i> apply to the <i>firm</i>. <u>Guidance does not apply to a firm for which a professional body listed in Schedule 3 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations.</u> (FCA Handbook only)</p>

Annex C

Amendments to the General Provisions (GEN)

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

- 1.2.2A R (1) ...
- (2) Paragraph (1) does not apply to statements that explain, in a way that is fair, clear and not misleading, that:
- (a) ...
- (b) ~~the firm has a limited permission;~~ [deleted]
- (c) ...
- ...
- (4) ~~Where a firm with a limited permission refers to its permission in a public statement or in relation to a client, it must explain in a fair, clear and not misleading way that the permission is a limited permission.~~ [deleted]

Annex D

Amendments to the Conduct of Business sourcebook (COBS)

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

4.1 Application

Who? What?

4.1.1 R This chapter applies to a *firm*:

- (1) ...
- (2) *communicating or approving a financial promotion* other than:
 - (a) ...
 - (b) *a financial promotion* in respect of a *non-investment insurance contract*; or
 - (c) a promotion of an *unregulated collective investment scheme* that would breach section 238(1) of the *Act* if made by an *authorised person* (*firms* may not *communicate or approve* such promotions); or
 - (d) *a financial promotion in relation to a credit agreement, a consumer hire agreement or a credit-related regulated activity.*

Annex E

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

1.6 ~~Application to mortgages in relation to the Consumer Credit Act 1974~~ Distinguishing regulated mortgage contracts and regulated credit agreements

1.6.1 G *MCOB* applies to *regulated mortgage contracts* entered into on or after 31 October 2004. ~~Variations made on or after that date to contracts entered into before that date are not subject to FCA regulation but may be subject to the Consumer Credit Act 1974.~~ A contract that was entered into before 31 October 2004, and that is subsequently varied on or after that date, will not be a *regulated mortgage contract* but may be a *regulated credit agreement* to which the *CCA* and *CONC* apply. If, however, a new contract is entered into on or after 31 October 2004, replacing the previous contract, this may be a *regulated mortgage contract*. *PERG* 4.4.13G contains *guidance* on the variation of contracts entered into before 31 October 2004.

1.6.2 G *Principle 2* requires a *firm* to conduct its business with due skill, care and diligence. The purpose of *MCOB* 1.6.3R is to reinforce this. The *FCA* would expect *firms* to take appropriate steps to determine whether any mortgage it proposes to enter into is subject to *FCA* regulation and, if so, whether it is a *regulated mortgage contract* or a *regulated credit agreement*.

...

1.6.4 R If, notwithstanding the steps taken by a *firm* to comply with *MCOB* 1.6.3R, it transpires that a mortgage which the firm has treated as unregulated or as a *regulated credit agreement* is in fact a *regulated mortgage contract*, the *firm* must as soon as practicable after the correct status of the mortgage has been established:

- (1) contact the *customer* and provide him with the following information in a *durable medium*:
 - (a) a statement that the mortgage contract is a *regulated mortgage contract* ~~subject to FCA regulation, stating in particular the position with regard to redress and compensation;~~ and
 - (b) ~~(where relevant) a statement that the Consumer Credit Act 1974 will not apply to the mortgage contract and that any Consumer Credit Act rights or requirements set out in previous communications will not apply;~~

- (i) where the *firm* has treated the mortgage as unregulated, a statement that the mortgage contract is subject to *FCA* regulation, stating in particular the position with regard to redress and compensation; or
- (ii) where the *firm* has treated the mortgage as a *regulated credit agreement*, a statement that;
- (A) neither the *CCA* nor *CONC* will apply to the mortgage contract;
- (B) any rights or requirements arising under the *CCA* or *CONC* set out in previous communications will not apply; and
- (C) *MCOB* will apply to the mortgage contract.
- (2) ...
- 1.6.5 G ...
- (3) *MCOB* 1.6.3R and *MCOB* 1.6.4R do not override the application of *MCOB* to any *regulated mortgage contract*. *MCOB* applies notwithstanding a *firm's* genuine belief that a mortgage is unregulated or is a *regulated credit agreement*. In deciding whether to take disciplinary action as a result of a breach of *MCOB*, the *FCA* will take into account whether the action by the *firm* was reckless or deliberate (see *DEPP* 6.2.1G(1)(a)).
- ...
- 3.1.8 G As a result of ~~articles 90 and 91 of the *Regulated Activities Order*~~ this chapter and *CONC* 3:
- (1) ~~a *financial promotion* of *qualifying credit* is not subject to the advertising provisions of the Consumer Credit Act 1974, unless it is an *exempt generic promotion*~~ *CONC* 3 to the extent that it relates to *qualifying credit*; and
- (2) where a *firm* makes a *communication*, which consists of a *financial promotion* of *qualifying credit* and ~~information relating to a *financial promotion*~~ of a different form of lending that is not *qualifying credit* (for example an unsecured personal loan), the content of the latter will need to comply with the relevant advertising provisions of the Consumer Credit Act 1974 *CONC* 3.
- ...
- 5.6.102 R Under the sub-heading 'Credit card', the *illustration* must:
- ...

- (2) if a credit card is offered and it is a *mortgage credit card*:

...

- (b) where the *mortgage lender* provides the *customer* with contractual rights in relation to a *mortgage credit card* equal to or greater than ~~those provided~~ the rights that the *customer* would have under the Consumer Credit Act 1974 and *CONC* if the card were issued under a *regulated credit agreement*, include the following text: 'This card will not give you a number of the statutory rights associated with traditional credit cards. However, [insert name of *mortgage lender*] will ensure that you will be treated no differently from the user of a traditional credit card. Your mortgage offer will tell you more about this.'

...

- 5.6.106 R (1) Where additional features are included in accordance with *MCOB* 5.6.92R and these are credit facilities that do not meet the definition of a *regulated mortgage contract* or a *regulated credit agreement*, the relevant parts of Section 12 of the *illustration* must include the following text:

'This additional feature is not regulated by the *FCA*'.

- (2) Where additional features are included in accordance with *MCOB* 5.6.92R and these are credit facilities that meet the definition of a *regulated credit agreement* regulated by the Consumer Credit Act 1974 and the *Act*, the relevant parts of Section 12 of the *illustration* must include the following text ~~after the text in (1):~~ 'but is regulated under the Consumer Credit Act 1974. This additional feature is regulated under the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. You will receive a separate credit agreement with any offer document for this additional feature, describing the detailed terms on which this feature is available.'

...

- 6.4.4 R The *illustration* provided as part of the *offer document* in accordance with *MCOB* 6.4.1R(1) must meet the requirements of *MCOB* 5.6 (Content of illustrations) with the following modifications:

...

- (11) where additional features are included in accordance with *MCOB* 5.6.92R and these are credit facilities that meet the definition of a *regulated credit agreement* regulated by the Consumer Credit Act 1974 and the *Act*, the relevant parts of Section 12 of the *illustration* that is part of the *offer document* must include the following text: "This credit facility is regulated under the Consumer Credit Act

1974 and the Financial Services and Markets Act 2000. Please refer to the separate credit agreement which describes the facility and the terms on which the credit is available";

...

...

9.4.102 R Under the sub-heading "Credit card", the *illustration* must:

...

(2) if a credit card is offered and it is a *mortgage credit card*:

...

(b) where the *mortgage lender* provides the *customer* with contractual rights in relation to a *mortgage credit card* equal to or greater than ~~those provided~~ the rights that the *customer* would have under the Consumer Credit Act 1974 and CONC if the card were issued under a regulated credit agreement, include the following text: "This card will not give you a number of the statutory rights associated with traditional credit cards. However, [insert name of *mortgage lender*] will ensure that you will be treated no differently from the user of a traditional credit card. Your lifetime mortgage offer will tell you more about this."

...

9.4.106 R (1) Where additional features are included in accordance with *MCOB* 9.4.91R and these are credit facilities that do not meet the definition of a *regulated mortgage contract* or a regulated credit agreement, the relevant parts of Section 14 of the *illustration* must include the following text:

"This additional feature is not regulated by the *FCA*."

(2) Where additional features are included in accordance with *MCOB* 9.4.91R and these are credit facilities that meet the definition of a regulated credit agreement regulated by the Consumer Credit Act 1974 and the Act, the relevant parts of Section 14 of the *illustration* must include the following text ~~after the text in (1):~~ "but is regulated under the Consumer Credit Act 1974. This additional feature is regulated under the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. You will receive a separate credit agreement with any offer document for this additional feature, describing the detailed terms on which this feature is available."

...

- 9.5.4 R The *illustration* provided as part of the *offer document* in accordance with *MCOB* 6.4.1R(1) must meet the requirements of *MCOB* 9.4, with the following modifications:
- ...
- (10) for a *lifetime mortgage*:
- (a) where additional features are included in accordance with *MCOB* 9.4.91R and these are credit facilities that meet the definition of a regulated credit agreement regulated by the Consumer Credit Act 1974 and the Act, the relevant parts of Section 14 of the *illustration* that is part of the *offer document* must include the following text: "This credit facility is regulated under the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. Please refer to the separate credit agreement which describes the facility and the terms on which the credit is available.";
- ...
- ...
- 10.3.2 G This calculation method is the same (with the exception of *MCOB* 10.3.8R(1) and (2)) as that described in ~~the Consumer Credit (Total Charge for Credit) Regulations 1980 (SI 1980/51) as amended~~ CONC App 1.1. ~~Because of this, some~~ Some of the terminology is different from that used elsewhere in *MCOB*, e.g. the references to 'transactions' should be read as relating to *secured lending*. ~~As a guide for firms, MCOB 10 Annex 1 G lists the substantively identical provisions in MCOB 10 and the 1980 Regulations.~~
- ...
- MCOB* 10 Annex 1G (A guide to the substantively identical provisions of *MCOB* 10 and the Consumer Credit (Total Charge for Credit) Regulations 1980) is deleted in its entirety. The deleted text is not shown.
- ...
- 12.3.2 G A *firm* can choose the method it employs for calculating *early repayment charges* in accordance with *MCOB* 12.3.1R. A ~~firm~~ firm should not use the 'Rule of 78' ~~(as contained in Schedule 2 of the Consumer Credit (Rebate on Early Settlement) Regulations 1983)~~, which is not appropriate as it effectively overstates the cost to the mortgage lender.
- ...

Annex F

Amendments to the Supervision manual (SUP)

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

10A.10.3 G The *customer function* has to do with giving advice on, *dealing* and arranging deals in and *managing investments*; it has no application to banking business such as deposit taking and lending, nor to general insurance business nor to *credit-related regulated activity*.

...

12.7.1A R (1) A *firm* other than;

(a) a *credit union*; or

(b) a *firm* which intends to appoint, or has appointed, an appointed representative to carry on only *credit related-regulated activity*;

must submit the form in SUP 12 Annex 3R online at <http://www.fca.org.uk> using the *FCA's* ONA system.

(2) A *credit union* or a *firm* which intends to appoint, or has appointed, an appointed representative to carry on only *credit related-regulated activity* must submit the form in SUP 12 Annex 3R in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

...

...

12.7.8A R (1) Subject to (2A), A a *firm* other than a *credit union* must submit the form as set out in SUP 12 Annex 4R online at <http://www.fca.org.uk> using the *FCA's* ONA system.

(2) ...

(2A) If the notification:

(a) relates to an appointed representative whose scope of appointment covers only *credit-related regulated activity*;
or

(b) is of a change to the scope of appointment of an appointed representative to add or remove *credit-related regulated activity*;

the *firm* must submit the form in SUP 12 Annex 4R in the way set

out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

...

...

12.8.1A R (1) Subject to (2A), a ~~A~~ firm other than a *credit union* must submit any notification under SUP 12.8.1R(1) in the form set out in SUP 12 Annex 5R, online at ~~www.fsa.gov.uk~~ www.fca.org.uk using the FCA's ONA system.

(2) ...

(2A) A firm must submit any notification under SUP 12.8.1R(1) that relates to an appointed representative whose scope of appointment covers only credit-related regulated activity in the form set out in SUP 12 Annex 5R and in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

(3) ...

...

Breaches of rules and other requirements in or under the Act or the CCA

15.3.11 R (1) A *firm* must notify the *appropriate regulator* of:

(a) ...

(b) a breach of any requirement imposed by the *Act* or by regulations or an order made under the *Act* by the Treasury (except if the breach is an *offence*, in which case (c) applies);

(ba) a breach of any requirement imposed by the CCA or by regulations or an order made under the CCA (except if the breach is an offence, in which case (c) applies); or

(c) the bringing of a prosecution for, or a conviction of, any *offence* under the *Act* or the CCA; or

...

...

...

15.5.9 R (1) A *firm* other than:

(a) a credit union; or

(b) a firm with permission to carry on only credit related-regulated activity;

must submit any notice under SUP 15.5.1R, SUP 15.5.4R and SUP 15.5.5R by submitting the form in SUP 15 Ann 3R online at the appropriate regulator's website.

(2) A credit union or a firm with permission to carry on only credit related-regulated activity (other than a firm with only an interim permission to which the modifications to SUP 15 in CONC 12 apply) must submit any notice under SUP 15.5.1R, SUP 15.5.4R, SUP 15.5.5 R and SUP 15.5.7R by submitting the form in SUP 15 Ann 3R in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).

...

...

16.10.4A R (1) A firm other than:

(a) a credit union; or

(b) a firm with permission to carry on only credit-related regulated activity;

must submit any corrected *standing data* under SUP 16.10.4R (3) online at the appropriate regulator's website using the ONA system.

(2) A credit union or a firm with permission to carry on only credit-related regulated activity must submit any corrected *standing data* under SUP 16.10.4R (3) to static.data@fca.org.uk or via post or hand delivery to the FCA marked for the attention of the 'Static Data team'.

...

Annex G

Amendments to the Credit Unions New sourcebook (CREDS)

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

- 1.1.2 G (1) ...
- (2) Other *permissions* are covered elsewhere in the *Handbook*. So, for example, a *credit union* seeking a *permission* to undertake a *regulated mortgage activity* would need to comply with the requirements in the Mortgages and Home Finance: Conduct of Business sourcebook (*MCOB*), ~~and~~ a *credit union* seeking a *permission* to undertake *insurance mediation* in relation to *non-investment insurance contracts* would need to comply with the requirements in the Insurance: Conduct of Business sourcebook (*ICOBS*) and a *credit union* seeking a *permission* to undertake a *credit-related regulated activity* would need to comply with the requirements in the Consumer Credit sourcebook (*CONC*).
- ...
- ...
- 2.2.24 G *SYSC* 9.1.1R requires that a *credit union* takes reasonable care to make and retain adequate records of all matters governed by the *Act* or the *CCA*, *secondary* legislation under the *Act* or the *CCA*, or *rules* (including accounting records). These records should be capable of being reproduced in the English language and on paper.

9.2 Reporting

- 9.2.1 R A *credit union* must provide the *FCA*, once a year, with a report in the format set out in *CREDS* 9 Annex 1R (Credit Union complaints return) which contains (for the relevant reporting period) information about:
- (1) the total number of *complaints* received by the *credit union*;
- (2) (for the product/service groupings within section 5) the number of *complaints* closed by the *credit union*:
- (a) within eight weeks of receipt; and
- (b) more than eight weeks after receipt;
- (2A) (for other lending or credit-related activity within section 5A) the number of *complaints* closed by the *credit union*;

- (3) the total number of *complaints*:
 - (a) upheld by the *credit union* in the reporting period;
 - (b) outstanding at the start of the reporting period; and
- (4) the total amount of redress paid in respect of *complaints* during the reporting period.

[**Note:** a transitional ~~provision applies~~ provisions apply to this *rule*: see *CREDS* TP 1.16 and *CONC* 12.1.4R.]

...

9 Annex 1R Credit union complaints return

(for FCA use only)

--

Credit union complaints return

FCA Handbook Reference: CREDS 9 Annex 1R
This is the report referred to in CREDS 9.2.1R

Please read the notes on completion before completing this return

Firm details and reporting period	Section 1
--	------------------

1.01	Firm reference number																			
1.02	Name of credit union																			
1.03	Reporting period	From	mm	yyyy	To	mm	yyyy													

Nil return declaration	Section 2
-------------------------------	------------------

SECTIONS 1 AND 6 MUST STILL BE COMPLETED.

2.01	We wish to declare a Nil Return (Tick the box if applicable)	Nil return	<input type="checkbox"/>
------	---	------------	--------------------------

Complaints outstanding	Section 3
-------------------------------	------------------

3.01	Number of complaints outstanding as at reporting period start date	
------	--	--

Complaints opened during reporting period

Section 4

Product/service grouping	Product/service	Advising, selling and arranging	Terms and disputed sums/charges	General admin/customer service	Arrears related	Other
Banking and credit cards	Current accounts					
	Credit cards					
	<u>Overdrafts</u>					
	<u>Unregulated loans</u>					
	Savings (inc. Cash ISA) and other banking					
Home finance	Equity release products					
	Impaired credit mortgages					
	Other regulated home finance products (including second and supplementary charge mortgages)					
	Other unregulated home finance products					
General insurance and pure protection	Payment protection insurance					
	Other general insurance					
	Critical illness					
	Income protection					
	Other pure protection					
Decumulation, life and pensions	Personal pensions and FSAVCs					
	Investment linked annuities					
	Income drawdown products					
	Endowments					
	Other decumulation, life and pensions					
Investments	Investment bonds					
	PEPs/ISAs (exc. cash ISAs)					
	Unit trusts/OEICs					
	Investment trusts					
	Structured products					
	Other investment products/funds					
	Investment management/services (inc. platforms)					

Complaints closed during reporting period

Section 5

Product/service grouping	Number of complaints closed within 8 weeks	Number of complaints closed after more than 8 weeks	Number of complaints upheld by the credit union in the period	Total amount of redress paid to consumers in the period
Banking and credit cards				
Home finance				
General insurance and pure protection				
Decumulation, life and pensions				
Investments				

Credit-related complaints

Section 5A

<u>Activities</u>	<u>Total complaints outstanding at reporting period start date</u>	<u>Complaints Received</u>	<u>Complaints Closed</u>	<u>Complaints Upheld by firm</u>	<u>Total Redress paid £</u>
<u>Other lending</u>					
<u>All other credit-related activity</u>					

Declaration and signature

Section 6

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) and a breach of regulatory requirements.

In signing this form, the credit union acknowledges that the data supplied may be used by the FCA in a variety of different ways (including making it publicly available) in support of its principal functions and statutory objectives as provided for under the Financial Services and Markets Act 2000.

I confirm that I have read the notes and that the information given in this return about complaints received by the credit union named at Section 1.02 is accurate and complete to the best of my knowledge and belief.

6.01	Name of person completing on behalf of the credit union	
6.02	Job title	

6.03	Signature	
------	-----------	--

6.04	Date	
------	------	--

Notes on completion of this return

Completing this return

The return must be completed in black ink and (if in manuscript) in BLOCK LETTERS.

All dates must be provided in numeric form (for example: 29/02/2006 for 29 February 2006).

The credit union is responsible for the accuracy of the data and completion of the return.

Section 2 – Nil returns

If no complaints have been received during the reporting period, and no complaints were outstanding at the beginning of the period, the credit union may submit a NIL RETURN by ticking the relevant box on the front of the form.

Sections 1 and 6 must still be completed.

Section 4 – Complaints opened during reporting period

Enter the number of complaints for each product according to the category of complaint. Leave blanks where no complaints have been received.

All credit unions provide the products “Savings (inc Cash ISA) and other banking” (members’ shares) and “Unregulated loans” (members’ loans not secured on land) and may receive complaints for these products this product. The corresponding rows in the form ~~have~~ has been left shaded to help credit unions with completion; all other rows are clear. Some categories of complaint (shown in the column headings) may not apply to those products.

Some credit unions may also provide other products (for which they may require further permission). If so they should enter the number of complaints received for these products in the relevant boxes, even though they are clear.

Section 5 – Complaints closed during reporting period

Credit unions will usually receive complaints relating to the 'Banking and credit cards' product/service grouping only and this row is shaded to help with completion. As above – some credit unions may also provide other products; if so they should also fill in the appropriate row even though it is not shaded.

Section 5A – Credit-related complaints

All credit unions carry on “Other lending” (i.e. lending other than credit cards, overdrafts or loans secured on land) and may receive complaints about those activities. The corresponding row in the form has been left shaded to help credit unions with completion (a complaint should only be reported in section 5A if it is not covered by a specific category in sections 4 and 5). Complaints should be included irrespective of whether the lending is regulated under the Consumer Credit Act 1974 and CONC, or is exempt.

Some credit unions may also carry on other credit-related activities (such as debt counselling or debt adjusting), for which they may require further permission. If so they should enter the number of complaints received in relation to these activities in the box for “All other credit-related activity”.

Section 6 – Declaration & signature

The declaration must be signed by an appropriate individual for the credit union submitting this return.

If you have any questions or need help with this return, please approach your usual supervisory contact at the ~~FSA~~ FCA.

REPORTS SENT BY POST MUST BE ADDRESSED

TO: THE FINANCIAL CONDUCT AUTHORITY
P O BOX 35747
LONDON E14
5WP UNITED
KINGDOM

Hand delivered returns should be marked for the attention of Central Reporting Department and be delivered to 25 The North Colonnade, Canary Wharf, London E14 5HS.

Annex H

Amendments to the Consumer Credit sourcebook (CONC)

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

2.7 Distance marketing

Application

- 2.7.1 R (1) ~~Subject to (2), this~~ This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *UK*, with or for a consumer in the *UK* or another *EEA State*.
- (2) This section does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*.

...

10.1 Application, ~~and purpose~~ and general provisions

...

- 10.1.6 R A contravention of the *rules* in this chapter does not give rise to a right of action by a *private person* under section 138D of the *Act* (and each of those *rules* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

...

- 11.1.1 R Except as provided for in *CONC* 11.1.2R or where *PROF* 5.4.1R(1) or (2) applies, a *customer* has a right to cancel a *distance contract* without penalty and without giving any reason, within 14 calendar days where that contract is:

...

...

12 Requirements for firms with interim permission for credit-related regulated activities

...

- 12.1.4 R ...

Module

Disapplication or modification

...	
Dispute Resolution: Complaints sourcebook (<i>DISP</i>)	...
<u>Credit Unions New sourcebook (CREDS)</u>	<u>CREDS 9.2 (Reporting) applies to a credit union with an interim permission that is treated as a variation of permission with respect to credit-related regulated activity as if the changes to CREDS 9.2 effected by the Consumer Credit (No. 2) Instrument 2014 had not been made.</u>

...

14 Requirement in relation to agents

14.1 Application

14.1.1 R This section applies to a *firm* with respect to ~~consumer credit lending or a firm with respect to consumer hiring~~ a credit-related regulated activity.

...

14.1.3 G ...

14.1.4 R Where a firm appoints an agent in accordance with CONC 14.1.2R to carry on the business of the firm:

- (1) the firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the agent with the firm's obligations under the regulatory system; and
- (2) the firm must take all reasonable steps to identify conflicts of interest between the agent and a client of the firm that arise or may arise in the course of the firm carrying on regulated activities or ancillary activities.

Sch 5 Rights of action for damages

...

			Right of action under section 138D			
Chapter/	Section/	Paragraph	For private	Removed?	For other	

Appendix	Annex		person?		person?	
The clear, fair and not misleading <i>rule</i> in <i>CONC</i> 3.3.1R			Yes (Notes 2 & 3)	In part (Note 1)	No	
<u>The prudential rules for debt management firms in <i>CONC</i> 10</u>			<u>No</u>	<u>Yes,</u> <u><i>CONC</i></u> <u>10.1.6R</u>	<u>No</u>	
All other <i>rules</i> in <i>CONC</i>			Yes (Notes 2 & 3)	No	No	

Annex I**Amendments to the Building Societies Regulatory Guide (BSOG)**

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

1.1.3 G ...
“official list” ...
~~“OFT”~~ Office of Fair Trading
...

Annex J

Amendments to the Enforcement Guide (EG)

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

10.19 Where the *person* is not a *firm* or an *appointed representative*, the *FCA* will ~~generally pass the case to the Office of Fair Trading, with a recommendation that it take the enforcement action. The Office of Fair Trading may then decide whether or not to take enforcement action~~ liaise with the Competition and Markets Authority or (as appropriate) a qualifying body under the *Unfair Terms Regulations*.

...

19.41 The Community legislation falling within the *FCA*'s scope under the Enterprise Act is:

- the Unfair Terms in Consumer Contracts Directive;¹⁴
- the Comparative and Misleading Advertising Directive;¹⁵
- the E-Commerce Directive;¹⁶
- the Distance Marketing Directive;¹⁷ ~~and~~
- the Unfair Commercial Practices Directive;¹⁸ and
- the Consumer Credit Directive.¹⁹

¹⁹ Directive 2008/48/EC

...

The Consumer Protection Co-operation Regulation²²

19.66 The *FCA* is a competent authority under the CPC Regulation, which aims to encourage and facilitate co-operation between competent authorities across the EU in consumer protection matters. The *FCA* is a competent authority for the purposes of specified EU consumer protection laws²³ in the context of the regulated activities of authorised firms and of breaches by UK firms concerning “specified contracts” as defined in the Financial Services (Distance Marketing) Regulations 2004 (for which see paragraphs 19.60 to 19.62).

²³ These are the Unfair Terms in Consumer Contracts Directive; the Comparative and Misleading Advertising Directive; the E-Commerce Directive; the Distance Marketing Directive; ~~and~~ the Unfair Commercial Practices Directive; and the Consumer Credit Directive.

Annex K

Amendments to the Financial Crime Guide (FC)

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

Annex 1: Common Terms

...

Term	Meaning
------	---------

...

occasional transaction	...
------------------------	-----

Office of Fair Trading (OFT)	The Office of Fair Trading has responsibilities under the Money Laundering Regulations 2007 to supervise many lenders and estate agents.
---	---

OFT	See 'Office of Fair Trading'.
-----	-------------------------------

...

Annex L

Amendments to the Perimeter Guidance manual (PERG)

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

- 4.2.4 G ~~Even if the *person* does not require *authorisation*, he may still require a licence under the Consumer Credit Act 1974 to carry on the activity (see *PERG 4.17 (Interaction with the Consumer Credit Act 1974)*). [deleted]~~

Appendix 3

UKLA administration charge

FEES (LATE PUBLICATION OF REPORTS) INSTRUMENT 2014

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 73A (Part 6 rules);
 - (2) section 137A (The FCA’s general rules);
 - (3) section 137T (General supplementary powers); and
 - (4) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*]

Amendments to the Handbook

- D. The Fees manual (FEES) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Fees (Late Publication of Reports) Instrument 2014.

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

Annex

Amendments to the Fees manual (FEES)

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

3 Application fees

...

3.2 Obligation to pay fees

...

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

<u>Part 1</u>		
(1) Fee payer	(2) Fee payable	(3) Due date
...

<u>Part 2</u>		
<u>(1) Fee payer</u>	<u>(2) Fee payable</u>	<u>(3) Due date</u>
<p>(a)</p> <p><u>(i) An issuer which has not made public its annual financial report before the latest time specified in DTR 4.1.3R.</u></p> <p><u>(ii) An issuer which has not made public its half-yearly financial report before the latest time specified in DTR 4.2.2R(2).</u></p>	<p><u>(i) Where the issuer has not made public its annual financial report before the latest time specified in DTR 4.1.3R, £250 in respect of that annual financial report.</u></p> <p><u>(ii) Where the issuer has not made public its half-yearly financial report before the latest time specified in DTR 4.2.2R(2), £250 in respect of that half-yearly financial report.</u></p>	<p><u>Within 30 days of the date of the invoice.</u></p>

...

Appendix 4

Changes to COLL

COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (ELECTRONIC COMMUNICATIONS) (NO 2) INSTRUMENT 2014

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under::
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 139A (Power of the FCA to give guidance);
 - (c) section 247 (Trust scheme rules);
 - (d) section 248 (Scheme particulars rules);
 - (2) regulation 6(1) (FCA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other powers and related provisions 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 [*date*].

Amendments to the Handbook

- D. The Collective Investment Schemes sourcebook (COLL) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Collective Investment Schemes Sourcebook (Electronic Communications) (No 2) Instrument 2014.

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

Annex

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

4.3 Approvals and notifications

...

Significant change requiring pre-event notification

4.3.6 R ...

- (4) In the case of a change to the method by which reports and accounts are to be sent or made available to *unitholders*, which is to take effect at the publication of the next report due, notice under (1) must be given no later than the end of the *annual accounting period* or *half-yearly accounting period* to which that report relates.

Guidance on significant changes

4.3.7 G ...

- (2) For the purpose of *COLL* 4.3.6R a significant change is likely to include:

...

- (c) an increase in....a *group savings plan*; ~~or~~
- (d) a change in the *pricing* arrangements....or vice versa; or
- (e) a change in the arrangements for sending any notice or document (for example, the short report) to *unitholders*, such as inviting them to access it via a website instead of sending them a hard copy or electronic copy.

4.4 Meetings of unitholders and service of notices

...

Publication by means of a website

4.4.16 R (1) Any notice or document that is required to be served upon or sent to a *unitholder* in accordance with *COLL* may be served or sent by being made available on a website, provided that:

- (a) the availability of the notice or document meets the conditions in *COLL* 4.4.17R; and

(b) the *unitholder* has given informed consent to receive information via a website in accordance with COLL 4.4.18R.

(2) The *person* responsible for serving or sending the notice or *document* must ensure that the *unitholder* is notified electronically, as soon as the notice or *document* is available on the website, of the address of that website and the exact place on the website where the information may be accessed, and that the notification contains a hyperlink for that purpose.

(3) If the *person* responsible for sending or serving the notice or *document* has reason to believe that a notice or *document* sent to that electronic address will not reach the *unitholder*, it must send it in accordance with COLL 4.4.12R(1)(a)(i).

4.4.17 R The *AFM*, the *ICVC*, the *directors* of the *ICVC* or the *depository* may make a notice or *document* available on a website in accordance with COLL 4.4.16R provided that:

(1) the website is maintained by or on behalf of the *AFM*, the *ICVC* or the *depository* and identifies that *person*;

(2) access to the notice or *document* on the website is not conditional on the payment of a fee or otherwise restricted, except in so far as necessary to comply with any law or regulatory requirement in the *United Kingdom*;

(3) the version of the notice or *document* available on the website is kept up to date if any version of it available in another medium is modified; and

(4) the notice or *document* remains continuously available in a *durable medium* for such period of time as the *unitholder* may reasonably need and expect to have access to it, unless the interruption to its availability is wholly attributable to circumstances that the *person* making it available could not have reasonably prevented or avoided.

4.4.18 R A *person* responsible for serving or sending a notice or *document* may do so in accordance with COLL 4.4.16R if the *unitholder*:

(1) (a) has either explicitly agreed (generally or specifically) that the notice or *document* may be served or sent in that manner; or

(b) is deemed to have so agreed in accordance with COLL 4.4.20R; and

(2) has supplied an e-mail address to the *AFM*, the *ICVC* or the *depository*;

but the *unitholder* may at any time require the *person* responsible for issuing the notice or *document* to send him, without charge, a version of it in hard

copy form.

- 4.4.19 G (1) The period of time for which a *unitholder* may reasonably need or expect a notice or *document* to be available on a website will depend on its purpose. Notices relating to meetings of *unitholders* should remain available at least until the meeting has been convened and its business concluded. Reports and accounts for the *annual accounting period* or *half-yearly accounting period* of a *scheme* should remain available at least until the next set of reports and accounts has been published.
- (2) Where a *unitholder* exercises the right to receive a notice or *document* in hard copy form, the *person* responsible for serving or sending it should respond to the request within a reasonable period of time, having regard to the purpose of the notice or *document* and any deadline by which the *unitholder* is asked to take any action.

Deemed consent of unitholders to receive notices and documents via a website

- 4.4.20 R If a *unitholder* has not given explicit consent in accordance with COLL 4.4.18R(1)(a), neither the *AFM*, the *ICVC* and its *directors*, nor the *depository* may deem a *unitholder* to have consented to receive a notice or *document* by means of access to a website, unless the following conditions have been met:
- (1) (a) either at the time *units* of the *scheme* (or the *class* of *units* held by the *unitholder*) were first *issued*, its *prospectus* provided for notices or *documents* of that kind to be made available on a website; or
- (b) a resolution has been passed at a meeting of *unitholders* authorising a change to the *prospectus* to permit notices or *documents* of that kind to be made available in that way;
- (2) the *AFM* has sent the *unitholder* an individual notice of an invitation to agree that the *AFM* (or any other *person* identified in the invitation) may serve or send him notices or *documents* generally, or the notice or *document* in question, by means of a website, and has explained that the *unitholder's* consent will be deemed received unless he objects within a specified period; and
- (3) the *AFM* has not received a response from the *unitholder* within 28 days from the date that the notice containing the invitation is deemed to have been served;

but if a *unitholder* declines the *AFM's* invitation, the *AFM* may not repeat any such invitation to that *unitholder* for at least twelve months after the date of his refusal.

Appendix 5

Waiver applications

**SUPERVISION MANUAL (WAIVER PROCESS) (AMENDMENT) INSTRUMENT
2014**

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers in section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on [1 April 2014].

Amendments to the Handbook

- C. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Supervision Manual (Waiver Process) (Amendment) Instrument 2014.

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

Annex

Amendments to the Supervision manual (SUP)

In this Annex, striking through indicates deleted text.

8.3 Applying for a waiver

...

Procedure on receipt of an application

- 8.3.5 G The *appropriate regulator* will acknowledge an application promptly and if necessary will seek further information from the *firm*. The time taken to determine an application will depend on the issues it raises. ~~However, the *appropriate regulator* will aim to give waiver decisions within 20 business days of receiving an application which includes sufficient information. If the *appropriate regulator* expects to take longer, it will tell the *firm* and give an estimated decision date.~~ A *firm* should make it clear in the application if it needs a decision within a specific time.

Financial Conduct Authority



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