

# PS13/5

Financial Services Authority

## The new FCA Handbook

Feedback on Regulatory Reform proposals relating to the FCA Handbook, including final Handbook rules



---

# Contents

Abbreviations used in this paper	5
1. Overview	7
2. CP12/24: FCA regimes relating to aspects of authorisation and supervision	14
2.1 Introduction	14
2.2 Changes to General Provisions and Definitions (GEN 2)	14
2.3 Changes to regulatory status disclosure (GEN 4) and use of the regulators' logos (GEN 5)	15
2.4 Changes to the Supervision manual (SUP 5): Reports by Skilled Persons	18
2.5 Changes to the Supervision Manual (SUP 6): Applications to vary and cancel Part IV permissions and requirements	19
2.6 Changes to the Supervision Manual (SUP 8): Waiver and modification of rules	20
2.7 Changes to the Supervision Manual (SUP 11): Controllers and close links	22
2.8 Changes to Supervision Manual Chapters 13, 13A, 14 and Appendix 3: Passporting and related issues	23
2.9 Changes to the Supervision Manual (SUP 15): Notifications to the FSA	25
2.10 Changes to the Supervision Manual: SUP 16.2, 16.3, 16.4 (Annual controllers report), 16.5 (Annual close links reports), 16.6 (Compliance reports) and 16.10 (Verification of standing data)	26

2.11	Changes to the Supervision Manual (SUP 18): Transfers of business	26
2.12	Other changes to the FCA Handbook	28
<b>3.</b>	<b>CP12/26: PRA and FCA regimes for Approved Persons</b>	<b>29</b>
3.1	Introduction	29
3.2	Background and high-level approach	30
3.3	The FCA's controlled functions and changes to SUP 10	31
3.4	Changes to the Statements of Principle and Code of Practice for Approved Persons	34
3.5	Cost benefit analysis	36
<b>4.</b>	<b>CP12/28 Regulatory fees and levies: Policy proposals for 2013/14 (Chapter 2: regulatory reform – fees transition to PRA and FCA)</b>	<b>37</b>
4.1	Introduction	37
4.2	Basis for the FCA minimum fee and a separate FCA prudential fee-block	38
4.3	Revised fee rate discounts for European Economic Area (EEA) branches	39
4.4	Restructuring Special Project Fees (SPFs)	39
<b>5.</b>	<b>CP12/34: FCA Handbook updates relating to supervision and threshold conditions and statement on the FCA's new power of direction over qualifying parent undertakings</b>	<b>41</b>
5.1	Introduction	41
5.2	Changes to the Supervision Manual (SUP 1): The FCA Approach to Supervision	41
5.3	Changes to the Supervision Manual (SUP 7): Individual requirements	44
5.4	Changes to the Threshold Conditions sourcebook (COND)	46
5.5	FCA powers over qualifying parent undertakings	50
<b>6.</b>	<b>CP12/37: Implementing markets powers, decision-making procedures and penalties policies</b>	<b>53</b>
6.1	Introduction	53
6.2	Sponsors	54
6.3	Notices regarding cancellations/suspensions	55

	of an issuer's securities at the issuer's request	
6.4	Primary information providers	55
6.5	Recognised Investment Exchanges	56
6.6	Decision Procedures and Penalties	57
<b>7.</b>	<b>CP13/3: Handbook transitional arrangements, the appointment of with-profits committee members and certain other Handbook amendments</b>	<b>62</b>
7.1	Introduction	62
7.2	General transitional provisions	62
7.3	Transitional arrangements for the approved persons regime	63
7.4	Dual-regulated members of a with-profits committee within the approved persons regime	63
7.5	Miscellaneous amendments to the FCA Handbooks	64
<b>8.</b>	<b>CP13/6: Regulatory Reform: FCA Handbook amendments relating to the Enforcement Guide</b>	<b>65</b>
<b>Annex 1:</b>	List of non-confidential respondents	
<b>Appendix 1:</b>	FCA statement of policy on the use of the power to direct qualifying parent undertakings	
<b>Appendix 2:</b>	Where SUP 11, 15 and 16 Notifications>Returns should be submitted	
<b>Appendix 3:</b>	Made rules (legal instruments) (published as a separate document)	

---

This Policy Statement (PS) reports on the main issues arising from the Consultation Papers (CPs) listed below. In some cases the CPs relate to both the FCA and PRA Handbooks. However, this PS only responds on those proposals which apply to the FCA, and sets out the final rules for the corresponding sections of the new Handbook. The PRA is responding separately on those proposals for which it has responsibility.

- CP12/24      *Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision*
- CP12/26      *Regulatory Reform: the PRA and FCA regimes for Approved Persons*
- CP12/28      *Regulatory fees and levies: Policy proposals for 2013/14  
(Chapter 2: Regulatory reform- fees transition to PRA and FCA)*
- CP12/34      *Regulatory Reform: FCA Handbook updates relating to supervision and threshold conditions and statement on the FCA's new power of direction over qualifying parent undertakings*
- CP12/37      *The Financial Services Bill: Implementing markets powers, decision making procedures and penalties policies*
- CP 13/03      *Regulatory Reform: Handbook transitional arrangements, the appointment of with-profits committee members and certain other Handbook amendments*
- CP13/06      *Regulatory Reform: Handbook amendments relating to the Enforcement Guide*

**Please address any comments or enquiries to:**

Conor Rafferty  
Policy, Risk and Research Division  
Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

**Telephone:** 020 7066 2982

**Email:** ps13\_05@fsa.gov.uk

---

Copies of this Policy Statement are available to download from our website – [www.fsa.gov.uk](http://www.fsa.gov.uk). Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

---

# Abbreviations used in this paper

<b>AIFMD</b>	Alternative Investment Fund Managers Directive
<b>APER</b>	The Statements of Principle and Code of Practice for Approved Persons
<b>CBA</b>	Cost Benefit Analysis
<b>CF</b>	Controlled function
<b>COAF</b>	Complaints Against the FSA scheme
<b>COBS</b>	Conduct of Business sourcebook
<b>COND</b>	Threshold Conditions sourcebook
<b>CP(s)</b>	Consultation Paper(s)
<b>CRD IV</b>	Capital Requirements Directive IV
<b>DEPP</b>	The Decision Procedure and Penalties Manual
<b>DTR</b>	Disclosure and Transparency rules sourcebook
<b>Dual-regulated firm</b>	Firms regulated by the PRA and FCA
<b>EEA Firms</b>	European Economic Area firms
<b>EG</b>	Enforcement Guide
<b>EMIR</b>	European Market Infrastructure Regulation
<b>EU</b>	European Union
<b>FCA</b>	Financial Conduct Authority
<b>FEES</b>	Fees Manual

<b>FSA</b>	Financial Services Authority
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>GEN</b>	General Provisions sourcebook
<b>ICOBS</b>	Insurance Conduct of Business sourcebook
<b>LCO</b>	Legal cutover (1st April 2013)
<b>Lloyd's</b>	Society of Lloyd's
<b>LR</b>	Listing Rules sourcebook
<b>MCOB</b>	Mortgages and Home Finance; Conduct of Business sourcebook
<b>MiFID</b>	EU Markets in Financial Instruments Directive
<b>MOU</b>	Memorandum of Understanding
<b>ONA</b>	Online Notifications and Applications system
<b>PERG</b>	Perimeter Guidance Manual
<b>PRA</b>	Prudential Regulatory Authority
<b>RAP</b>	Recognised Auction Platform
<b>RCH</b>	Recognised Clearing House
<b>RDC</b>	Regulatory Decisions Committee
<b>REC</b>	Recognised Investment Exchanges and Recognised Clearing Houses sourcebook
<b>RIE</b>	Recognised investment exchange
<b>SIF</b>	Significant-influence function
<b>Single-regulated firm</b>	Firms regulated by FCA but not PRA
<b>SUP</b>	Supervision Manual
<b>the Act</b>	The Financial Services and Markets Act 2000
<b>TC(s)</b>	Threshold condition(s)
<b>Treasury</b>	Her Majesty's Treasury
<b>UCITS</b>	Undertakings for Collective Investment in Transferable Securities
<b>2012 Act</b>	The Financial Services Act 2012

# 1

## Overview

---

### 1.1 Background

- 1.1.1** Since September 2012, the Financial Services Authority (FSA) has consulted on changes to existing regulatory rules and guidance on behalf of the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA). These changes were driven by the Financial Services Bill, which received Royal Assent on 19 December 2012. The resulting Financial Services Act 2012 (the 2012 Act) will come into force on 1 April 2013, a date we refer to as legal cutover (LCO). Various pieces of associated secondary legislation have also been made.
- 1.1.2** The rules and guidance set out in the instruments accompanying this Policy Statement (PS), (published in a separate document), have been made by the persons appointed by the FSA to discharge relevant rule-making and certain other functions as if they were the governing body of the FCA, in accordance with the secondary legislation that commences these powers ahead of LCO. The rules and guidance will come into effect at LCO, when the PRA and FCA formally come into existence. With the exception of our statement of approach concerning qualifying parent undertakings (see Chapter 5), all other rules and guidance published with this PS will form part of the FCA Handbook, except for the provisions in the instruments that have only been made by the PRA Board (and are designated as ‘PRA’ only).
- 1.1.3** The proposals set out in this PS are consistent with the overall approach we have taken to creating the new FCA and PRA Handbooks. As far as possible we have transitioned existing FSA rules and other provisions to the FCA Handbook, and only made changes to the existing Handbook that were necessary to implement the 2012 Act and support the creation of the new regulatory structure. Essentially, this approach has involved:
- i) ‘designating’ and badging existing provisions to be carried forward (by the FCA, the PRA, both, or sometimes neither, as appropriate), to create the foundation for the new FCA and PRA Handbooks;
  - ii) making ‘editorial’ and other drafting modifications that do not involve policy changes – for instance, to update references to the FSA or to changed legislation; and

iii) consulting on the more ‘substantive’ changes we need to make to align Handbook rules and guidance with the new legislation and the creation of the FCA and PRA. (Provisions affected by substantive changes are also ‘designated’ as appropriate).

- 1.1.4** A number of changes falling under (i) and (ii) above were made at the end of February and early March and have already been published as instruments and in the online version of the FCA and PRA Handbooks.
- 1.1.5** After LCO, the FCA (and PRA) will be free to review and amend its Handbook as it sees fit, in line with its objectives and functions, and in compliance with the consultation, cooperation and coordination mechanisms outlined in the amended Financial Services and Markets Act 2000 (FSMA) and other legal and EU obligations.
- 1.1.6** In general, we have sought to retain as much stability and certainty as possible in our rules during this transitional period. We have also conducted a review of 250 identified pieces of non-Handbook general guidance on our website and decided that it was not necessary to re-publish around 45% of this on the FCA website (though Finalised Guidance material relevant to the FCA has been re-published). We expect to review our Handbook rules and all general guidance in due course.

## 1.2 Consultation proposals

**1.2.1** This PS sets out the final version of FCA Handbook changes consulted on in the following FSA Consultation Papers (CPs):

- **CP12/24 (Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision)**

This CP consulted on:

- changes to the required wording firms must use to disclose who regulates them (and the transitional period for this) in letters and electronic equivalents;
  - a proposed restriction on firms using the FCA or PRA corporate logo (and a transitional period to stop using the FSA logo);
  - the future extended use of Skilled Persons by the FCA (and PRA) as provided for under the 2012 Act;
  - updates to our processes for variations of firms’ permissions, requirements/ limitations on firms’ permissions, waivers and modifications of rules and changes of control and close links; and
  - EU passporting, notifications and reporting requirements, insurance transfers of business (under Part 7 of FSMA) and a number of other minor Handbook changes.
- **CP12/26 (Regulatory reform: the PRA and FCA regimes for Approved Persons)**

This CP consulted on:

- changes to existing rules and guidance to reflect the proposed future split of responsibilities for controlled functions and approved persons approvals between the FCA and PRA; and
  - the application of the Statements of Principle and Code of Practice for approved persons to functions undertaken by approved persons outside the direct scope of their approval, where those functions relate to regulated activities.
- **CP12/28 (Regulatory fees and levies: Policy proposals for 2013/14 (Chapter 2: regulatory reform – fees transition to PRA and FCA))**

This CP consulted on:

- our annual proposed policy changes to the fees and levies regimes; and
  - changes to our fees methodology to provide for FCA and PRA funding for 2013/14.
- **CP12/34 (Regulatory Reform: FCA Handbook updates relating to supervision and threshold conditions and statement on the FCA's new power of direction over qualifying parent undertakings)**

This FCA-only CP consulted on:

- a revision of Chapter 1 of the Supervision Manual (SUP) overview of the FCA's supervisory model;
  - an update to the FCA's (SUP 7) own-initiative powers to vary or limit firms' permissions (aligned with the 2012 Act);
  - proposed amendments to the guidance in the FCA Threshold Conditions Sourcebook (TC) to reflect the Treasury's changes to the threshold conditions for firms under FSMA (as amended by the 2012 Act); and
  - the FCA's proposed approach to using its new power of direction in respect of unregulated holding companies of regulated entities.
- **CP12/37 (The Financial Services Bill: Implementing markets powers, decision making procedures and penalties policies)**

This FCA-only CP consulted on changes to:

- the Listing and Disclosure rules to cover changes introduced by the 2012 Act relating to the regimes for sponsors and primary information providers;
- the rules and guidance set out in REC arising from the 2012 Act, which from LCO will apply to recognised investment exchanges and recognised auction platforms only, following the transfer of clearing houses supervision to the Bank of England; and

- the Decision, Procedure and Penalties Manual (DEPP) arising from new statutory notice powers the FCA will get at LCO.
- **CP13/3 (Regulatory Reform: Handbook transitional arrangements, the appointment of with-profits committee members and certain other Handbook amendments)**

This CP consulted on:

- proposed general transitional provisions for FCA and PRA requirements and processes under the Handbooks;
  - specific transitional arrangements for the approved persons regime; and
  - the approved persons treatment of members of an insurer's with-profits committee; and a further set of minor miscellaneous changes to the Handbooks.
- **CP13/6 (Regulatory Reform: Handbook amendments relating to the Enforcement Guide)**

This CP consulted on our proposed amendments to the existing Enforcement Guide (EG) to create the new FCA Enforcement Guide, giving effect to the new powers being introduced by the 2012 Act, and supporting the creation of the new regulatory structure.

## 1.3 Comments received

**1.3.1** We received between 15–40 responses to each of the CPs listed above. On a majority of points, there was general support for our proposals. Some respondents took the opportunity to make broader comments about the creation of the new UK regulatory structure, and how the FCA and PRA will work together, which are outside the scope of our Handbook consultations. Many early respondents also raised questions about transitional arrangements, which were subsequently answered by the Treasury's transitional Orders and by our own CP on transitional arrangements.<sup>1</sup>

**1.3.2** The Handbook issues that attracted most comments were:

- the six-month transitional period we proposed to allow firms to amend their business stationery to include the updated mandatory regulatory 'status' disclosure wording and to stop using the FSA logo;
- how we will make use of our wider power to appoint and contract directly with Skilled Persons in the future, and the criteria we will apply;
- the proposed split of responsibility for approvals of approved persons between the FCA and PRA, for dual-regulated firms;

---

<sup>1</sup> CP13/3

- the extension of the Statements of Principle and Code of Practice for approved persons to a wider range of activities carried on by an approved person;
- the proposed changes to our Threshold Conditions Sourcebook guidance – notably requesting greater clarity in distinguishing guidance that is relevant for dual-regulated firms vs. firms that are regulated by the FCA only; and requesting guidance on other aspects including when the threshold conditions will become effective for firms already authorised;
- our proposed use of our new power of direction over unregulated parent undertakings; and
- our proposed update to the procedures set out in DEPP.

**1.3.3** Each of these issues is considered in their respective chapters of this PS. In response to the comments received we are proposing to make only a few significant changes to the policy and the Handbook text on which we consulted. Several other minor adjustments to drafting have also been made to take account of points made where these seem sensible and cannot better be addressed through further clarifications and information published outside of the Handbook.

**1.3.4** The most significant policy changes relate to:

- an extension of the six-month transitional period for status disclosure and use of the FSA and FCA logos (GEN 4 & 5) to 12 months as detailed in Chapter 2;
- the division of responsibility for controlled functions for FCA/PRA dual regulated firms (SUP 10 & APER) as detailed in Chapter 3; and
- FCA decision-making regarding own-initiative requirements (DEPP) as detailed in Chapter 6.

**1.3.5** In response to questions raised about how (and to whom) various types of notifications and reports under SUP 11, 15 and 16 should be submitted, we have also produced a reference table setting this out. This is at Appendix 2 to this Policy Statement.

**1.3.6** The instruments published with this PS include the final version of the Handbook text on which we consulted. Some also include tables setting out how provisions in the same Handbook modules but which are not changing are simply being designated (FCA, PRA or both). We were not required to consult on these simple designations.

**1.3.7** In connection with some of the Supervision Manual chapters, we have made some updating modifications to forms for firms to use in relation to authorisations, approvals and similar matters. In keeping with other changes, at this stage we are making the minimum necessary updates to make the forms accurate and workable for the FCA and PRA. After LCO, further modifications will be made in accordance with the normal processes for this.

- 1.3.8** Our consultations also noted the fact that we would be making miscellaneous amendments to cross-references in the Handbook that resulted from the ‘substantive’ changes to ensure that the Handbook will work at LCO. As these amendments make no substantive changes themselves, we said that these would not be consulted on. A cross-references instrument in Appendix 3 sets out these updates.

## **1.4 Equality and Diversity**

- 1.4.1** There have been no changes to our original assessment of the impact of our proposals on equality and diversity matters.

## **1.5 Compatibility with FSMA objectives**

- 1.5.1** We do not believe that the changes in the instruments accompanying this Policy Statement adversely affect our original assessments of the compatibility of our proposals with the FCA’s objectives, general duties and regulatory principles. Where we have amended our original proposals on approved persons (Chapter 3) and status disclosure requirements (Chapter 2), we have commented on the compatibility of these changes against the FCA’s objectives, general duties and regulatory principles.
- 1.5.2** We do not believe that any amendments to the proposals we consulted on create a particular impact on mutual societies that is significantly different to other firms.

## **1.6 Cost benefit analysis (CBA)**

- 1.6.1** With the exception of amendments to our proposals to the approved persons and status disclosure requirements, there are no changes to our original analysis of costs and benefits of the policy proposals. Chapters 2 and 3 include our revised cost benefit analyses on the changes to the approved persons and status disclosure requirements.

## **1.7 Who should read this PS?**

- 1.7.1** This Policy Statement will interest all firms.

**CONSUMERS**

The rules and guidance set out in this Policy Statement and the instruments accompanying it are designed to reflect and give effect to the responsibilities and approach of the FCA. This Policy Statement will therefore interest all consumers of products and services provided by FCA-regulated firms.

---

# 2

---

## CP12/24: FCA regimes relating to aspects of authorisation and supervision

### 2.1 Introduction

2.1.1 In CP12/24<sup>2</sup> we consulted mainly on various necessary changes to Handbook provisions and explanations concerning aspects of the FCA and PRA authorisation and supervision regimes for LCO. This chapter provides our feedback on that consultation and indicates where final provisions have changed.

### 2.2 Changes to General Provisions and Definitions (GEN 2)

2.2.1 CP12/24 also contained proposed amendments to Chapter 2 of the General Provisions section in the Handbook (GEN 2), and to certain common Handbook definitions. The new material in GEN 2 aims to help users understand how provisions that appear in both FCA and PRA Handbooks will apply and should be interpreted. Other changes are aimed at ensuring that cross references and Handbook definitions continue to work after LCO. The final Handbook text of GEN 2 is included at Appendix 3.

#### Comments received

2.2.2 Respondents generally recognised that our proposed GEN 2 amendments were helpful and necessary to support the new FCA and PRA Handbooks, although several expressed the

---

<sup>2</sup> [www.fsa.gov.uk/static/pubs/cp/cp12-24.pdf](http://www.fsa.gov.uk/static/pubs/cp/cp12-24.pdf)

hope that ‘designation’ and the use of terms such as ‘the appropriate regulator’ would only be an interim approach.

### **Our response**

The FCA recognises that in the longer term it will be desirable to seek a clearer and more user-friendly approach to the presentation of Handbook material than has been possible for LCO. However, given that timescales for the completion of such work are not fixed, the provisions in GEN 2 have not been explicitly time-limited, as suggested by one respondent.

## **2.3 Changes to regulatory status disclosure (GEN 4) and use of the regulators’ logos (GEN 5)**

**2.3.1** In Chapter 3 of CP12/24 we set out our proposals for a set of updated wordings for different types of firms to use to disclose their regulatory status (i.e. who authorises and regulates them) and our proposals on the future use of the regulators’ logos, as a result of the creation of the FCA and the PRA. On the basis of the cost estimates provided by firms, we are persuaded to increase the proposed transitional period for these changes to 12 months. Feedback on the comments received and our responses are set out below. The final Handbook text of GEN 4 and GEN 5 is included at Appendix 3.

### **Comments received**

#### *Transitional period*

**2.3.2** The majority of respondents disagreed with our proposed six-month transitional period for the changes to GEN 4 and GEN 5. Most firms suggested a transitional period of 12 months, to reduce costs by allowing more time for implementation and to reduce wastage. However, some respondents agreed that our proposed transitional period was appropriate, and sufficient to update stationery (if not necessarily other documentation), and that a shorter transitional period would reduce the scope for consumer confusion.

#### *Status disclosure wording*

**2.3.3** There were 33 responses on our proposed new set of status disclosure wording. Most firms thought the proposed wording was too long, with consequential effects (including increased costs) on document design. It was also felt to be complicated. Some alternative wordings were suggested.

- 2.3.4 Some respondents commented that different wordings for dual-regulated and FCA-only regulated firms would incur additional costs for groups containing both types of firms. Some questioned whether a reference to the PRA was relevant for consumers.

### *Use of logo*

- 2.3.5 The majority of respondents agreed with our proposal to no longer grant a general licence for the use of the regulators' logos – although it was suggested that allowing firms to use the FCA and the PRA logos might help consumers to recognise the new regulators' brands.

## **Our response**

### **Transitional period**

- Our original proposals took account of the fact that firms have been made aware, at least since June 2012, that references to the FSA would need amending. We therefore felt that firms should have been able to run down existing stocks and plan to make the necessary changes in accordance with their cycles for reviewing documentation and other material. However, on the basis of the cost estimates provided by firms, we are now persuaded that, in this instance, a transitional period of 12 months is appropriate. (A 12-month transitional period was previously given for similar changes to GEN 4.)
- A 12-month transitional period will also apply to any materials where firms voluntarily refer to their regulator (GEN 4.5), to be consistent with the approach for firms' mandatory status disclosure (GEN 4.3). We are also providing a similar 12 months transitional period for 'KeyFacts' disclosure documents required under COBS, ICOBS and MCOB, as they now require firms to use the same relevant new status disclosure wording.
- We do not believe there is a risk of significant consumer detriment by extending the transitional period, although we encourage firms to make all these updates as soon as possible in order to minimise the period of potential confusion for customers where outdated references to regulators are retained.

### **Status disclosure wording**

- Having carefully considered the responses, we still intend to proceed with the set of wording we consulted on. The PRA's objectives of contributing to financial stability and protecting policyholders are important to consumers and including a reference to the PRA in the wording (where relevant) will support the achievement of these objectives. Even if necessarily lengthy, the proposed wordings also accurately reflect the respective remits of the PRA and the FCA in relation to the authorisation and regulation of firms.

This also includes incoming EEA firms, where we have amplified the notes in relation to the disclosure wording to reflect the FCA's responsibility for supervision of branch liquidity requirements of non-deposit taking branches of EEA credit institutions.

We believe that an accurate disclosure wording also helps consumers to take responsibility for their decisions, consistent with the general principle set out in section 3B(1) of amended FSMA.

- Individual firms will need to disclose their regulatory status accurately, irrespective of any group membership.

### Using logos

- In light of responses received, we are implementing the proposals we consulted on for using the regulators' logos. The promotion of the new regulators' brands will be a matter for each regulator to decide.
- We also remind firms that the terms of the general license provided in relation to the use of the FSA logo only permits its reproduction in letters and electronic equivalents. Using the logo in any other materials, including on firms' websites, amounts to an infringement of the FSA's intellectual property rights in the logo.

## Revised cost benefit analysis

**2.3.6** As we have acknowledged, the majority of respondents suggested that implementing the GEN 4 and GEN 5 changes within a six-month period would incur larger costs than we had estimated in our CBA in CP12/24. That CBA only considered the costs of updating materials mandated by GEN 4 (e.g. letter-heads and electronic equivalents bearing the statutory status disclosure required by GEN 4.3<sup>3</sup>). Responses from firms indicated that they would have a strong preference for updating, at the same time, voluntary references to the regulator (covered by GEN 4.5) but that it would be costly to update these within a six-month transitional period. Also, in some cases, it would be difficult and more costly for firms to update mandatory and voluntary references within different time scales (notably because of systems considerations) and the desirability of consistency in their communications with consumers.

**2.3.7** A 12-month transitional period thus allows firms a greater period of time to update all their documentation and recognises firms' desire to make both mandatory and *voluntary* updates to their communications at the same time, to maximise clarity for customers. Some respondents provided alternative cost estimates, suggesting that the cost of updating GEN 4 mandated<sup>4</sup> and non-mandated materials could range from £250,000 to £5m per firm (depending on the type

<sup>3</sup> The regulator's logo licence in GEN 5 can only be used for mandated disclosures.

<sup>4</sup> Including any consequential costs associated with the permitted use of the GEN 5 regulator's logo licence.

of firm and its business; the amount of material produced containing the status disclosure; the complexity of the firm's systems; and a firm's annual cycle for reviewing its documentation).

- 2.3.8 There will be no particular impact from our changes on mutual societies that is significantly different to other firms.

## 2.4 Changes to the Supervision manual (SUP 5): Reports by Skilled Persons

- 2.4.1 In CP12/24 we set out our proposals for aligning SUP 5 (Reports by Skilled Persons) and Chapter 3 of the Fees Manual with the new s166 and s166A powers introduced under the 2012 Act. We received 25 responses to our proposals. The final Handbook text of SUP 5 is at Appendix 3.

- 2.4.2 In summary, we proposed amendments to reflect:

- the extension of the s166 power for the FCA to cover recognised investment exchanges;
- the power of the regulators to contract directly with a Skilled Person, and rules to provide for the costs of a Skilled Person to be payable as a fee by the firm concerned; and
- the power of the regulators to commission a Skilled Person to collate or keep up-to-date information, where a regulated firm has breached regulatory requirements to do so (s166A).

### Comments received

- 2.4.3 The vast majority of respondents understood and agreed with the proposed amendments to SUP 5 and Fees 3. However, some requested additional guidance to clarify the process surrounding the power to contract directly with Skilled Persons, including:

- when the power to contract directly would be used;
- the criteria to be used when deciding to contract directly;
- the approach to be taken to commission a Skilled Person report using this power;
- the approach by the regulators to negotiating and managing the costs on an on-going basis; and
- how firms can provide feedback into the process, including on the quality of the Skilled Person and the costs incurred in conducting the review.

- 2.4.4 A number of respondents also commented that the power to contract directly with the Skilled Person should only be used in exceptional circumstances. Some suggested that when the regulator contracted directly, the Skilled Person could be less independent than if

contracted by the firm. Others asked for more clarity on the use of Skilled Persons under s166A, especially for smaller firms, and whether our proposals suggested fewer discussions taking place with firms about the use of Skilled Persons.

- 2.4.5** Several respondents expressed interest in how the use of Skilled Person Reports would be considered in the FCA's Discussion Paper on regulatory transparency.

### Our response

- We recognise that further clarity on how the power to contract directly with a Skilled Person will operate in practice will be beneficial to firms and additional guidance will be added, where appropriate, to the FCA website in due course.
- We note the comments requesting additional guidance on how s166A will be used by the regulators, especially for small companies. Although we will not provide additional guidance at this time, we will review this.
- Our amendments to SUP 5.4.11 were to reflect the existing practice whereby bilateral as well as trilateral meetings are seen as common practice during the Skilled Person process. (A question was raised on this point.)
- It is not intended that additional guidance will be provided at this time on the contractual arrangements to be made between the regulator and the Skilled Person.
- The use of Skilled Person Reports is covered in the FCA's Discussion Paper on regulatory transparency published in March 2013<sup>5</sup>, and firms are encouraged to respond to the paper directly.

## 2.5 Changes to the Supervision Manual (SUP 6): Applications to vary and cancel Part IV permissions and requirements

- 2.5.1** SUP 6 sets out the process by which firms can apply to vary or cancel their 'permission' (under Part 4A of amended FSMA) to carry out FCA-regulated activities. CP12/24 contained proposals to amend SUP 6 to reflect the procedural changes to authorisations under the Act. We received seven responses on this, but there were no substantive comments on the drafting of the Handbook text. We have not therefore amended the SUP 6 changes we consulted on in CP12/24. The final Handbook text is included in Appendix 3.

- 2.5.2** In summary, we proposed:

- to replace references to Part IV permissions with Part 4A permission;

<sup>5</sup> [www.fsa.gov.uk/static/pubs/discussion/dp13-01.pdf](http://www.fsa.gov.uk/static/pubs/discussion/dp13-01.pdf)

- changes to how firms submit applications to vary and/or cancel permissions;
- a clearer separation of material on our procedures for ‘requirements’ from those for permissions;
- material on the imposition, variation and cancellation of requirements by the FCA and PRA; and
- recognition of the relevant obligations of the FCA and PRA to consult each other and seek consent.

### Comments received

- 2.5.3** Questions were raised about the practical application of the requirement for consultation between regulators, seeking clarity about what point in the process the FCA and PRA would consult each other on an application.
- 2.5.4** Respondents welcomed the FCA’s intention to set out its approach to ‘own initiative’ requirements in the Handbook.

#### Our response

- In the cases that require the consent of the PRA, or where the PRA must be consulted, the FCA will work closely with the PRA throughout the application process, and share the application and other relevant information in order to ensure that the process is efficient.

## 2.6 Changes to the Supervision Manual (SUP 8): Waiver and modification of rules

- 2.6.1** SUP 8 sets out rules and guidance on the waiver and modification of rules, and CP12/24 proposed amendments to reflect the amended Act and the existence of two regulators. We received eight responses to our proposals, but there were no substantive comments on the proposed Handbook text. We have not therefore amended the SUP 8 changes we consulted on in CP12/24. The final Handbook text is included in Appendix 3.
- 2.6.2** In summary, those changes covered:
- how the FCA and PRA can waive and modify rules;
  - the form and method of applying for a waiver/modification of the rules;
  - the change in the statutory test in relation to the advancement of regulatory objectives; and

- the publication of directions.

### Comments received

- 2.6.3** Several responses requested further information on the transitional arrangements for waivers granted before LCO.
- 2.6.4** Clarification was sought on how, and under what timescales, any difference of view between the PRA and FCA on a waiver or rule modification would be resolved. There was a concern that any difference between the FCA and the PRA could lead to delays in reaching a decision.
- 2.6.5** There was a request for further guidance on the information that would be required to support both a new waiver application and a modification to an existing waiver.
- 2.6.6** Given the different objectives of each regulator, there were some concerns about the difficulties this might give rise to when a firm applies for a waiver on behalf of a number of entities across a group. There was a question about whether it would be possible to apply to both regulators for a joint waiver applicable across a group via a single application.
- 2.6.7** There was a request for guidance for credit unions to make it clear which regulator should be approached when submitting an application for a waiver and/or modification.

### Our response

- The Treasury has provided<sup>6</sup> that existing waivers will be ‘grandfathered’ to the new regulator(s), as appropriate<sup>7</sup>, at legal cutover. Thereafter, any changes to existing waivers or modifications will need to be assessed against the factors set out in s138A of amended FSMA. Otherwise, we expect it should be possible for existing waivers to be continued until expiry, as long as the requirement in question remains, and no circumstances arise under which the new regulator considers that a ‘grandfathered’ waiver or rule modification no longer satisfies the criteria set out in s138A of the amended FSMA.
- Regarding the time it will take to consider an application for a waiver and/or modification, the FCA and PRA will work closely together and make every effort to determine applications as efficiently as possible having regard to our new powers. However, as with any application, firms should seek to submit their waiver application as early as possible.
- With regard to a firm applying for a waiver on behalf of a number of entities across a group, it is anticipated that a single application will need to be submitted as is currently the case. This single application will then be

<sup>6</sup> The Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013.

<sup>7</sup> The new regulator will be the one which has been designated the rule to which the existing waiver relates.

considered by the relevant regulator(s) for each individual entity and by the regulator that is the consolidated supervisor of the group (where relevant).

- We maintain general guidance on our website, which outlines additional information that firms would be expected to submit in particular circumstances, which will continue to be available. As indicated in the revised SUP 8, after LCO applicants will need to demonstrate how the FSMA s138 statutory test has been met, to enable the waiver to be considered.
  - Credit unions will be dual- regulated and therefore, as a general rule, all waiver applications will need to be submitted to the PRA. However, if the rule is designated as 'FCA-only', then the waiver application should be submitted to the FCA.
- 

## 2.7 Changes to the Supervision Manual (SUP 11): Controllers and close links

2.7.1 SUP 11 sets out our requirements relating to a proposed change in control and changes to a firm's close links. CP12/24 proposed changes to align the material with the amendments to FSMA. Three respondents commented on our proposed changes but there were no substantive comments on the draft Handbook text. We have not amended the SUP 11 changes we consulted on in CP12/24. The final Handbook text is included in Appendix 3.

2.7.2 In summary, the proposed changes related to:

- which regulator should receive the notification, depending on the nature of the proposed controller and target firm, and use of the term 'appropriate regulator';
- the form and method of application for controllers and close links notifications;
- single joint section notifications; and
- the process by which the regulators may raise objections.

### Comments received

2.7.3 Firms sought reassurance and further details about how the cooperation between regulators will be ensured, including information on how the use of common systems and methods will be used to avoid duplicative efforts where possible.

2.7.4 There was some confusion about whether dual-regulated firms would need to submit notifications to both regulators and the duplication this might create. There was a question about whether a group would be allowed to continue to submit a single close links notifications on behalf of all its regulated entities.

- 2.7.5** One respondent requested sight of the new revised Change in Control form which firms will be required to complete to notify the appropriate regulator about a change in control. The respondent felt it was important to ensure the form recognises the nature of the firm and/or group and the risks posed by the firm and/or group to the appropriate regulator's statutory objectives.

### Our response

- In the cases that require the consent of the other regulator, or where the other regulator must be consulted, the PRA and FCA will work closely throughout the application process and share the application and other relevant information to ensure that the process is efficient.
- Concerns regarding submission of notifications by dual-regulated firms have been noted. Both close links and controllers notifications are intended to be submitted to a single collection point notifications from dual-regulated firms will then be shared, so reducing duplication.
- In response to the requests for further information about submissions, applications and reports to the new regulators, we have produced a reference table setting out where the different types of notifications under SUP 11, 15 and 16 should be submitted. This is included at Appendix 2.
- A group will still be able to submit a single close link notification on behalf of its regulated entities. This notification, as per existing requirements, must include the individual names of the entities together with their relevant Firm Registration Numbers.
- The updated forms are now available on our website.

## **2.8 Changes to Supervision Manual Chapters 13, 13A, 14 and Appendix 3: Passporting and related issues**

- 2.8.1** We received seven responses that commented on our proposals for aligning SUP 13 (Exercise of passport rights by UK firms), 13A (Qualifying for authorisation under the Act) and SUP 14 (Incoming EEA firms changing details, and cancelling qualification for authorisation) with the division of FCA and PRA roles and responsibilities under the 2012 Act.
- 2.8.2** Responses were generally supportive of the revisions we proposed. However, we propose to amend the original draft text to:
- clarify the relevant competent authority for UCITS management companies (the FCA), now that the HMT's intentions are clear; and

- include updated SUP 13A Annexes 1 and 2, which explain how Handbook requirements apply to inwardly passporting EEA firms. The updated SUP 13A Annexes merely reflect the other updates and amendments being made to the Handbook provisions referenced in those Annexes.

2.8.3 The full updated Handbook text for SUP 13, 13A, 14, and SUP Appendix 3 (additional guidance on general passporting issues) is set out in at Appendix 3.

### Comments received

2.8.4 The only substantive comments received related to:

- requests for clarification that any necessary consultation between the FCA and PRA would still be done within the timescales set by the relevant EU Directives and would not result in an extension of those timescales;
- requests for examples of circumstances in which consent (by whichever regulator) to an outward passporting notification from a UK-authorized firm might be refused;
- the potential confusion for other EEA regulators in establishing to which UK regulator notifications should be sent; and
- the need to ensure that online and paper-based notification forms were consistent and user-friendly.

### Our response

- Any necessary consultation between the FCA and PRA will be done within the timescales set by the relevant EU Directives and will not result in an extension of those timescales.
- Circumstances in which consent by one regulator to an outward passporting notification from a UK-authorized firm might be refused will be the same as they were before LCO, as provided for by the relevant Directives, and as indicated in SUP 13. The scope for each regulator to raise any issues or concerns will be consistent with its respective regulatory remit and focus. For example, in the case of a branch notification, consent might be withheld if the appropriate UK regulator has reason to doubt the adequacy of the UK firm's resources or its administrative structure, or reason to question the reputation, qualifications or experience of the directors or managers of the firm or its proposed agent.
- We have explained to our EEA counterparts how the new UK division of roles and responsibilities will operate, including the point about to which UK regulator notifications should be sent. Going forward, the regulators will endeavour to inform their counterparts when notifications have been sent to

the wrong regulator and forward them on where possible, to assist with the transition to the new structure.

- Online and paper-based passporting forms have been reviewed and updated during the preparations for LCO. Any remaining minor inconsistencies will be corrected after LCO. The operation of the process for submitting forms will also be kept under review and updated as necessary, including where necessary for the implementation of new EU legislation.

## 2.9 Changes to the Supervision Manual (SUP 15): Notifications to the FSA

**2.9.1** SUP 15 sets out notification requirements related to significant incidents (for example, a firm failing to meet the threshold conditions) and other non-routine notifications. CP12/24 proposed changes to clarify which regulator firms would be required to notify. Given the responses we received, we have not amended the SUP 15 changes we consulted on in CP12/24. The final Handbook text is included in Appendix 3.

**2.9.2** In summary, those changes covered:

- the use of the term ‘appropriate regulator’; and
- how dual-regulated firms should submit notifications.

### Comments received

**2.9.3** We received four responses to the proposed changes. Some concerns were raised about the number of reports and/or notifications that dual-regulated firms would be required to submit to both the PRA and FCA, with respondents suggesting instead that a single notification be submitted to one regulator which could then be shared with the other.

**2.9.4** One respondent suggested that the useful reference table provided in CP12/24<sup>8</sup> should be made more widely available to help smaller firms understand which regulatory body they should make their notification to, and in which instance.

### Our response

- Given the potential significance of notifications made under SUP 15 and the implications they may have for the regulators’ objectives, we believe that a firm must be responsible for notifying its regulator(s) directly, which may mean both the FCA and the PRA.

<sup>8</sup> Paragraph 9.10

- A reference table setting out where the different types of notifications under SUP 11, 15 and 16 should be submitted is included at Appendix 2.
- 

## **2.10 Changes to the Supervision Manual: SUP 16.2, 16.3, 16.4 (Annual controllers report), 16.5 (Annual close links reports), 16.6 (Compliance reports) and 16.10 (Verification of standing data)**

**2.10.1** SUP 16 contains information relating to the firm's regulatory notification and reporting requirements. In light of responses we received, we have not amended the changes we consulted on in CP12/24. The final Handbook text is included in Appendix 3.

**2.10.2** In summary, the proposed changes covered:

- the submission of notifications and returns under SUP 16; and
- which regulator will review submissions.

### **Comments received**

**2.10.3** We received four responses to our proposed amendments. The main point raised was again concern about potential duplication on the grounds that dual-regulated firms would have to submit a number of reports to both the PRA and FCA, with a suggestion that a single submission to the lead regulator, which can then be shared with the FCA, would be less burdensome.

### **Our response**

- The proposals in CP12/24 set out which regulator would be *reviewing* which report and did not contain information relating to the submission mechanism for SUP 16 reports. We have now produced a reference table setting out where the different types of notifications under SUP 11, 15 and 16 should be submitted, and this is included at Appendix 2.
- 

## **2.11 Changes to the Supervision Manual (SUP 18): Transfers of business**

**2.11.1** We received four responses on our proposed changes to SUP 18, which sets out guidance on transfers of insurance business. These responses were generally supportive of the revised guidance drafted to reflect the new regulatory framework as set out in the 2012 Act. We have not therefore significantly amended the text we consulted on in CP12/24. The final Handbook text is included in Appendix 3.

## Comments received

**2.11.2** It was suggested that the overriding principle for each regulator in relation to such proposed transfers of business should be to protect the interests of consumers and to ensure that no policyholder is disadvantaged. It was also suggested that the wider interests of consumers should be fully considered in the process. Other comments concerned:

- the method of application for a transfer and the way in which other documents may be sent to the regulators;
- the proposed lead time of six weeks for the production of documents before the final hearing on a transfer.

### Our response

- Both regulators will seek to advance their objectives of providing an appropriate degree of protection for policyholders (and potential policyholders) when assessing a proposed scheme of transfer, and will consider the effect on the different identified classes of policyholder. But this would not necessarily extend to ensuring that *no* policyholder may be disadvantaged by the transfer. The regulators will wish to be satisfied that the policyholders involved in a transfer have received sufficient clear and timely information to consider the proposed transfer and to raise any objections. In addition, the PRA will have equal regard to its general objective to promote the safety and soundness of firms.
- The 2012 Act does not empower either the PRA or the FCA to delay or block a transfer. Section 110 of FSMA does give the regulators the right to participate in Part VII proceedings, but only the Court can sanction an insurance business transfer scheme or make any other order as it thinks fit. The regulators are, of course, entitled to form their own opinion on a transfer, including submitting any objection they may have to the Court.
- In response to the other points raised:
  - We will continue to receive applications by any reasonable means (including documents by post or email), although we would anticipate that most would be submitted electronically, other than papers for Court hearings.
  - The six-week lead time is a guide to firms. Firms may discuss with their supervisors whether a shorter period may be appropriate or suitable, depending on the circumstances of their individual case.

## **2.12 Other changes to the FCA Handbook**

- 2.12.1** The final chapter of CP12/24 consulted on certain other proposed changes to the FCA and PRA Handbooks; notably a list of certain provisions that we proposed not to carry forward to the new Handbooks – either not to be carried forward by both the FCA and PRA or, in some cases, not to be carried forward by the PRA. (A further list of provisions not to be carried forward was included in CP13/03.) We explained why this was proposed in each case.
- 2.12.2** We received few specific comments on the changes, and the proposals are being followed. However, we have decided that an instrument making these deletions is not legally necessary, so the draft instrument included in CP12/24 is not being made.

# 3

## CP12/26: PRA and FCA regimes for Approved Persons

### 3.1 Introduction

- 3.1.1** In CP12/26 we explained the proposals for the FCA and PRA's approved persons regimes. We received 34 responses to the consultation. Respondents were generally supportive of our proposals, although some concerns were also raised.
- 3.1.2** This chapter confirms the arrangements for the FCA's approved persons regime<sup>9</sup>, effective from LCO, and how it will interact with the PRA's equivalent regime for dual-regulated firms. This chapter also covers the arrangements for firms' with-profits committee members (consulted on in CP13/3). Dual-regulated firms should also read the equivalent chapter of the PRA Policy Statement covering CP12/26 and CP13/3, being published alongside this document.
- 3.1.3** In response to the feedback received, we have made some amendments to our approach for dual-regulated firms. These are described below. The final text is included in Appendix 3.
- 3.1.4** In developing the changes to the regime we have had regard to the FCA's objectives, which includes promoting effective competition. The main purpose of the changes is to achieve an effective transition from the existing to the new legislative framework (i.e. to continue to advance the purposes of the existing approved persons regime) and in some cases to enhance the benefits of the existing regime in light of new powers. The main purposes of the approved persons regime are consumer protection and the protection of the UK financial system. While the changes do not themselves promote effective competition we do not believe an alternate approach to meeting the purposes of the changes we are making would have had a more beneficial impact on competition in the regulated markets.

<sup>9</sup> In addition, two new Controlled Functions are being created as part of the new FCA regime for the regulation and supervision of benchmarks. A separate Policy Statement on the new regime is being published.

**3.1.5** CP12/26 also included a question on an interim solution to the implementation of a new Controlled Function: the CF31 mortgage customer function. This chapter does not provide specific feedback on this issue, but industry trade bodies have reacted positively to our invitation to explore how we could implement an interim regime. We continue to support a solution that can be developed in a reasonable timescale and are actively working with the trade bodies on this.

## **3.2 Background and high-level approach**

**3.2.1** This section sets out the background to the final approach, summarising the relevant provisions in the 2012 Act and outlining the high-level approach that the FCA and PRA intend to take to the approved persons regime at LCO.

**3.2.2** The 2012 Act provides for the continuation of the existing approved persons regime, and the regulator's powers to make rules applying to these persons. It also includes certain new provisions, which were detailed in CP12/26 and are summarised here:

- the FCA may specify customer-dealing functions, for both FCA-only and dual-regulated firms;
- only the FCA may specify Significant Influence Functions (SIFs) for FCA-only regulated firms;
- both regulators may specify SIFs for dual-regulated firms;
- the FCA must minimise the likelihood that SIF approvals fall to be given by both the FCA and the PRA for the same person in relation to the same dual-regulated firm;
- the PRA cannot approve an application without the consent of the FCA;
- each regulator can apply their Statements of Principles and Code of Practice for Approved Persons (APER) to conduct expected of persons, not just in relation to the controlled functions they perform, but also in relation to other functions they perform as part of their wider role, where those functions relate to regulated activities;
- each regulator can discipline an approved person who has breached an APER statement of principle that it has issued, regardless of which regulator gave approval (but only the FCA can take action against individuals approved to perform a customer dealing function); and
- either regulator may withdraw approval from a person who is carrying on a SIF in connection with a dual-regulated firm, regardless of which regulator gave approval.

**3.2.3** The final FCA approach, set out in the following sections, takes into account the above changes and exercises the new powers relating to APER. The changes seek to minimise the risk of regulatory failure in the future by helping to ensure that there is legal certainty and clarity for firms in relation to the FCA's (and PRA's) approved persons regimes.

- 3.2.4** In general terms, for dual-regulated firms, at LCO the FCA will specify all of the current FSA SIF functions that are not being specified by the PRA. For FCA-only regulated firms, there will be no material change (the FCA will specify all of the current FSA functions except the actuarial controlled functions – which are only carried on by dual-regulated firms).
- 3.2.5** Our focus to date has been on delivering an approved persons regime for LCO. Further consideration will be given, after LCO, to whether longer-term changes are necessary to the FCA's approved persons regime. Any relevant recommendations made by the Parliamentary Commission on Banking Standards will also be taken into account. The FCA will liaise with the PRA regarding any future policy proposals and work together with the PRA to minimise the operational impact on firms.

### 3.3 The FCA's controlled functions and changes to SUP 10

- 3.3.1** This section considers the comments received to the proposed changes to SUP 10, for FCA-only regulated firms and dual-regulated firms.

#### Changes to controlled functions for firms regulated by the FCA only

- 3.3.2** The FCA will implement the approach set out in CP12/26<sup>10</sup> for FCA-only regulated firms. No objections to these proposals were received.
- 3.3.3** FCA-only regulated firms, and their approved persons, will see no material difference between the existing and the new SUP 10 arrangements. The controlled functions that will apply are set out in Table 1 below. The governing and customer controlled functions in Table 1 will also apply to appointed representatives (of both FCA-only and dual-regulated firms).

**Table 1**

<b>FCA controlled function for FCA-only regulated firms</b>
<b>Governing functions</b>
CF1 Director
CF2 Non-executive director
CF3 Chief executive
CF4 Partner
CF5 Director of an unincorporated association
CF6 Small friendly society
<b>Required functions*</b>
CF8 Apportionment and oversight
CF10 Compliance oversight
CF10a CASS operational oversight
CF11 Money laundering reporting

<sup>10</sup> Chapter 3 of CP12/26 which can be viewed at: [www.fsa.gov.uk/static/pubs/cp/cp12-26.pdf](http://www.fsa.gov.uk/static/pubs/cp/cp12-26.pdf)

<b>FCA controlled function for FCA-only regulated firms</b>
<b>Systems and controls function</b>
CF28 Systems and controls
<b>Significant management function</b>
CF29 Significant management
<b>Customer dealing functions</b>
CF30 Customer function

\* CF12 (Actuarial), CF12A (With-profits actuary) and CF12B (Lloyd's actuary) are not included in this list as they would not apply (because these cover functions that are only carried out in dual-regulated firms).

### **Changes to controlled functions for firms regulated by both the PRA and FCA**

- 3.3.4 CP12/26<sup>11</sup> set out proposals for how the existing FSA controlled functions would be divided between the FCA and PRA, how the need for someone to seek approval from both regulators would be minimised, and how the framework would work in practice. In addition, CP13/3 included the proposal that with-profits committee members form part of the PRA's non-executive director function, where that person is not already approved to perform the CF1 function or approved as a non-executive director of the firm.

#### **Comments received**

- 3.3.5 Respondents generally supported the intention to reduce the need for applications to be sent to both regulators, while ensuring that both were able to assess a person's suitability for relevant roles. A majority also agreed that we had identified the right combinations of PRA and FCA controlled functions that were most likely to be performed by the same person for the same firm.
- 3.3.6 One of the main concerns raised was that the proposals would create duplication and additional costs for firms. There was also concern that, in certain scenarios, only the PRA-approved controlled function (where it was proposed that PRA approval would encompass a FCA SIF function) would be displayed on the future Financial Services Register. Feedback argued that the PRA should specify more SIFs, to recognise the way firms' boards operate in practice and to ensure a firm's board is suitable as a whole.
- 3.3.7 With regard to the CP13/3 proposal for with-profits committee members, three responses were received. Two supported the proposal, and one felt that the FCA should be responsible for approving individuals to perform this function.

11 Chapter 3 of CP12/26 which can be viewed at: [www.fsa.gov.uk/static/pubs/cp/cp12-26.pdf](http://www.fsa.gov.uk/static/pubs/cp/cp12-26.pdf)

## Our response

In designing the FCA regime, consideration has been given to ensuring the new framework meets the new requirements set out in the 2012 Act, to maintain the standards and benefits provided by the existing regime, and to ensure that the new regime is as simple and straightforward to operate as possible, for firms and individual applicants as well as for the regulators. With this in mind, and having reflected on the feedback provided from the consultation, some changes have been made.

We have decided that the PRA should now specify all the governing functions. The original proposal was for PRA to take CF3 (chief executive) and certain CF2 (non-executive director) roles from this category. This means that the PRA will determine applications for these functions, with FCA consent required before PRA approval can be given. This does not affect the relative importance of both prudential and consumer issues. Both regulators will assess these applications in line with their own objectives. It also means that there is now no need to split the CF2 controlled function between the PRA and FCA as proposed, as CF2 as a whole will go to the PRA (including the with-profits committee members element of it). The new framework of controlled functions, set out in Table 2, will take effect for any new approvals applied for and granted after LCO.

The possibility of someone performing both a PRA function and a FCA governing function has now been removed. This change should result in a simpler process, and help to maintain the standard of information in the Register.

One scenario where an overlap may still occur, however, is between the PRA governing functions and the FCA's CF8 (apportionment and oversight), and we will be retaining the approach consulted on for candidates applying for approval to perform a PRA governing function and CF8. We consider it is unlikely that other potential overlaps will arise in practice, but we will review whether this is the case after LCO, in light of experience.

**Table 2**

<b>PRA controlled functions for dual-regulated firms</b>	<b>FCA controlled functions for dual-regulated firms</b>
<b>Governing functions</b>	<b>Governing functions</b>
CF1 Director	None
CF2 Non-executive director	
CF3 Chief executive	
CF4 Partner	
CF5 Director of an unincorporated association	
CF6 Small friendly society	
<b>Required Functions</b>	<b>Required functions</b>
CF12 Actuarial	CF8 Apportionment and oversight

<b>PRA controlled functions for dual-regulated firms</b>	<b>FCA controlled functions for dual-regulated firms</b>
CF12A With-profits actuary	CF10 Compliance oversight
CF12B Lloyd's actuary	CF10a CASS operational oversight
	CF11 Money laundering reporting
<b>Systems and controls function</b>	<b>Systems and controls function</b>
CF28 Systems and controls	None
<b>Significant management function</b>	<b>Significant management function</b>
None	CF29 Significant management
<b>Customer dealing functions</b>	<b>Customer dealing functions</b>
Not Applicable	CF30 Customer function

### 3.4 Changes to the Statements of Principle and Code of Practice for Approved Persons

3.4.1 Chapter 4 of CP12/26 set out proposals for amending the Statements of Principle and Code of Practice for Approved Persons (APER), to take account of new powers in the 2012 Act. APER provides the main basis for sanctions against approved persons, and the 2012 Act allows:

- both the PRA and FCA to take action against an approved person based in a dual-regulated firm regardless of which regulator approved the controlled function (though only the FCA can take action against individuals approved to perform a customer function); and
- that the Statements can apply to activities carried on by an approved person outside their controlled function, but only where it relates to a regulated activity.

3.4.2 These changes were proposed to preserve the status quo of the regime at LCO, in that an approved person will, as now, be expected to meet standards, and be liable to disciplinary proceedings if they fail to meet them, in relation to both prudential and conduct matters. In addition, the changes would also make it clear that we expect individuals to apply the same standards of behaviour in their wider roles regardless of whether specific activities are caught under a controlled function or not.

3.4.3 It was also proposed that Statement of Principle 4 be amended to make it clear that the FCA could take action against a person failing to report something to the PRA of which the PRA could reasonably have expected notice, and vice versa.

3.4.4 Careful consideration has been given to the issues arising from the consultation, and our response to the main concerns is set out below. However, it has been decided that FCA will exercise these additional powers and amend APER as consulted on.

## Comments received

- 3.4.5** Many respondents were generally supportive of the proposals, but some objected or raised concerns regarding the proposed scope changes. A main point arising was that the change could lead to the ‘double jeopardy’ of both the FCA and PRA taking action against a person in relation to the same issue. Similarly, with reference to proposed amendments to Principle 4, some respondents requested examples of when the regulators would and would not enforce against an individual for not adhering to the other regulator’s requirements.
- 3.4.6** Some respondents were concerned that applying APER to activities outside of a person’s controlled function role was a significant change and requested clarification of what it would mean in practice to apply standards outside of someone’s controlled function. There was also some concern that the increased scope could discourage people from performing an approved person role. Some commented that the change has the potential to undermine the focus on senior management responsibility.
- 3.4.7** Concerns were also raised about the possibility of the FCA’s and PRA’s APERs diverging and possibly conflicting over time, making it difficult for an approved person to comply with both.

## Our response

If there is potential misconduct relating to both prudential and conduct matters, it is appropriate that both regulators have the right to take action. While there may be cases where it is more efficient for one regulator to lead an enforcement case, it is important that the FCA has the right to take action in a case relevant to its objectives, irrespective of whether the PRA is also taking action in relation to its own objectives.

The FCA does not expect the extension in scope to require a significant change in an approved person’s behaviour. Many approved persons may have responsibilities, connected to regulated activities that form part of their job but not necessarily part of their controlled function role. The scope of these responsibilities will naturally vary between approved persons, depending on the role they carry out and the way their firm is organised. In such situations, approved persons are not expected to apply lesser standards to any wider role they may undertake for a firm.

Therefore, at this stage we have not added guidance to clarify, for example, what specific non-controlled function actions or responsibilities could be within scope. We consider this change to be consistent with our obligations toward consumer protection and financial crime, and it recognises that conduct outside of a person’s approved persons role can be equally damaging to the firm or to consumers. The FCA will use these powers in a targeted and proportionate

manner, taking into account the likely impact of the various other measures aimed at incentivising improved behaviour by individuals in FCA firms.

We consider that the approach we have consulted on is right for the FCA at LCO. We will keep the regime under review; for example, to take into account any relevant recommendations made by the Parliamentary Commission on Banking Standards. Therefore it is possible that the FCA's and the PRA's APERs may diverge over time, to support each regulators' specific objectives. However, the FCA will liaise with PRA regarding any future policy proposals (and vice versa) and seek to avoid incompatible requirements or policy.

---

### **3.5 Cost benefit analysis**

- 3.5.1** The cost benefit analysis in CP12/26 stated that the proposals would give rise to some costs but that these were not thought to be material.
- 3.5.2** Making all the governing functions PRA-controlled functions means that a greater number of applications will be assessed by both the PRA and FCA. Given that there will be a single portal for applications, as noted in CP12/26<sup>12</sup>, this should not generally have any impact on firms. It will result in some additional liaison between the two regulators, but the costs of this are not expected to be material.
- 3.5.3** The original proposals did not address market failures and therefore were not expected to result in economic benefits. Rather they sought to minimise the risk of regulatory failure in future by ensuring legal clarity and certainty for firms at LCO. Based on feedback from the consultation, we believe that the change to the split of controlled functions could further minimise such risks of regulatory failure, as the division between the PRA and FCA will now be more straightforward.
- 3.5.4** There will be no particular impact from our changes (as set out in section 3.3 and 3.4) on mutual societies that is significantly different to other firms.

---

<sup>12</sup> Paragraphs 3.46–3.48 of CP12/26 which can be viewed at: [www.fsa.gov.uk/static/pubs/cp/cp12-26.pdf](http://www.fsa.gov.uk/static/pubs/cp/cp12-26.pdf)

# 4

---

## CP12/28 Regulatory fees and levies: Policy proposals for 2013/14 (Chapter 2: regulatory reform – fees transition to PRA and FCA)

### 4.1 Introduction

4.1.1 In Chapter 2 of CP12/28<sup>13</sup> we consulted on the substantive changes to the Fees Manual (FEES) that were proposed to enable FEES rules to be fully adapted for the FCA and PRA for fee-year 2013/14.

4.1.2 We consulted on:

- the basis for the FCA minimum fee and separate FCA prudential fee;
- revised fee rate discounts for European Economic Area (EEA) branches; and
- restructuring Special Project Fees (SPFs).

4.1.3 In this chapter we set out the outcome of this consultation and feedback on the responses we received on the changes to FEES that relate to the FCA. The final instrument at Appendix 3 is different from the draft included in CP12/28, to reflect changes to:

---

13 [www.fsa.gov.uk/static/pubs/cp/cp12-28.pdf](http://www.fsa.gov.uk/static/pubs/cp/cp12-28.pdf)

- the structure of the rules to distinguish more clearly PRA rules from those shared with the FCA and those that apply to the FCA only (including consequential changes to other parts of the Handbook);
- accommodate the consequential impact arising from the PRA financial year being 1 March to 28 February and the FCA financial year being 1 April to 31 March; and
- transitional rules to cover on-account payments and restructuring SPFs.

4.1.4 The final instrument at Appendix 3 also includes the fees rules relating to our proposals on:

- Reports by Skilled Persons that were originally consulted on in CP12/24. Feedback on responses to our proposals is provided in Chapter 2; and
- Recognised Investment Exchanges that were originally consulted on in CP12/37. Feedback on responses to our proposals is provided in Chapter 6.

## 4.2 Basis for the FCA minimum fee and a separate FCA prudential fee-block

4.2.1 In CP12/28 we proposed:

- The minimum fees for dual-regulated firms would be split 50:50 between the FCA and the PRA for 2013/14 and minimum fees will no longer reflect the costs of specified functions. This would allow each regulator to consult in the future on a different minimum fee basis from the baseline levels on commencement.
- The introduction of a separate FCA prudential fee-block to enable the FCA to target recovery of its prudential regulation costs to only its solo-regulated firms. The amount of FCA annual funding requirement (AFR) allocated to this fee-block would be recovered from FCA-only regulated firms in proportion to the total fees they pay through the FCA-only regulated activity fee-blocks to which they belong. Small FCA-only regulated firms that only pay the FCA minimum fee would not pay FCA prudential fees. This approach being consistent with the approach taken by the FSA where minimum fees did not include any prudential supervisory costs.

### Comments received

4.2.2 We received 12 responses to the overall proposals in Chapter 2 of CP12/28. No issues were raised regarding the minimum fees or the FCA Prudential fee-block proposals.

### 4.3 Revised fee rate discounts for European Economic Area (EEA) branches

- 4.3.1 Fee discounts for EEA branches are intended to take account of the fact that the home state is largely responsible for the prudential regulation of an EEA firm and the host state is responsible for conduct regulation. FSA discounts reflected that the FSA carried out both prudential regulation and conduct regulation. We proposed revised separate discounts for the PRA as prudential regulator and the FCA as conduct regulator to reflect the difference between the levels of prudential and conduct resources applied to regulating incoming passported EEA branches compared to UK-based firms under ‘twin peaks’ regulation.
- 4.3.2 We proposed that the FCA EEA discounts be set at 0% for banks and insurers dual-regulated by the FCA and PRA to reflect that conduct regulation of these branches would be primarily undertaken by the FCA as the host state. For investment firms and insurance intermediaries we proposed that the discounts also be set at 0% for the same reasons, and in addition because such passported EEA branches would not contribute to the FCA prudential fee-block. As the levy rules for the Money Advice Service will mirror the FCA’s (as they did the FSA’s) we proposed that the Money Advice Service levy discount should be set at 0%.

#### Comments received

- 4.3.3 We had two responses from trade bodies representing banks and insurers. Both challenged the proposed 0% FCA discount and highlighted that given there has been no change in the home/host state allocation of supervisory responsibilities there was no justification for not giving any discount on the conduct side. It was also questioned whether we had taken into account the implications of the revised Markets in Financial Instruments Directive and Regulation (MiFID II) for supervisory responsibilities. They also raised concerns regarding mirroring the 0% discount for the Money Advice Service.

#### Our response

We have considered the level of FCA EEA Branches discounts and the impact on Money Advice Service discounts. We will be consulting on revised proposals in the FCA fees rates consultation paper scheduled to be published on 9 April 2013.

### 4.4 Restructuring Special Project Fees (SPFs)

- 4.4.1 These SPFs are levied where firms, for example, undertake mergers/acquisitions or significant refinancing. We proposed that both the FCA and the PRA will separately levy these SPFs where their costs exceed £50,000. This approach will continue to ensure that small firms are not subject to these SPFs.

## Comments received

- 4.4.2 All the respondents who commented broadly agreed with our proposals. However, some emphasised the need for the regulators to be clear and transparent about the basis for levying these SPFs.

### Our response

FEES 3 Annex 9 sets out the basis for levying restructuring SPFs.

# 5

---

## CP12/34: FCA Handbook updates relating to supervision and threshold conditions and statement on the FCA's new power of direction over qualifying parent undertakings

### 5.1 Introduction

5.1.1 This chapter provides feedback on the proposals we consulted on in CP12/34<sup>14</sup>, the scope of which is indicated by the heading to this chapter. Changes to our proposals are explained below.

### 5.2 Changes to the Supervision Manual (SUP 1): The FCA approach to supervision

5.2.1 We received ten responses on our proposed revisions to Chapter 1 of the Supervision Manual. The changes are aimed at bringing the FCA's approach to supervision into line with

---

14 [www.fsa.gov.uk/static/pubs/cp/cp12-34.pdf](http://www.fsa.gov.uk/static/pubs/cp/cp12-34.pdf)

the changes to the Act and the overall vision set out in the *Journey to the FCA* document published in October 2012.<sup>15</sup>

**5.2.2** We have made two changes to our SUP 1 proposals to take account of comments received. We have amended SUP 1 to indicate that the FCA will communicate the outcome of its pillars of supervision within an appropriate time frame, and included a cross reference to the existence of the FCA/PRA Memorandum of Understanding. The final text of SUP 1A is set out at Appendix 3.

### Comments received

**5.2.3** The majority of respondents believed the amendments to SUP 1 reasonably reflected the FCA's overall objectives and the approach set out in the *Journey to the FCA*, although some respondents raised questions concerning the new regulatory structure and the interaction between the PRA and FCA after LCO. Other respondents queried whether the FCA's 'pre-emptive' decision-making approach effectively meant that it would be acting as a shadow director.

**5.2.4** Several respondents requested further clarification and guidance on:

- how the FCA will exercise its responsibilities in relation to the competition objective;
- how widely firms should interpret the definition of senior management when considering the responsibilities in SUP 1A.1.4G;
- the remit and powers of the FCA for firms that are operating internationally;
- the FCA's approach to conducting peer reviews, in particular how the FCA will determine a firm's peers;
- the extent to which the PRA will use the tools in SUP 1A.4.5G to monitor firms regulatory compliance;
- the extent to which the FCA will consider the long term impact of regulatory decisions when assessing what is best for the consumer; and
- how the new supervisory model will take account of the impact of EU regulation.

**5.2.5** One respondent suggested that we should explicitly emphasise the importance of proportionality in setting out the principles on which our supervisory model is based, while it was also suggested that all the regulatory principles in the Act should be expressly set out in SUP 1A.

**5.2.6** Several respondents queried the restriction on firms disclosing the outcome of their risk assessments to third parties (SUP 1A.3.6G).

---

<sup>15</sup> [www.fsa.gov.uk/about/what/reg\\_reform/fca](http://www.fsa.gov.uk/about/what/reg_reform/fca)

## Our response

- Although this consultation was not intended to focus on the overall vision and approach of the FCA, we received a number of general comments relating to the new regulatory structure. As the Handbook Guidance in SUP 1A is intended to provide a high-level introduction to the FCA's overall supervisory approach for the purposes of the Supervision Manual, we do not propose to deal with these wider policy considerations in this PS. These broader questions will have either been considered in our discussions around the *Journey to the FCA*, or will be picked up in our on-going firm communications leading up to and after LCO.
- While several of the requests for further clarification and Guidance relate to the FCA's supervisory approach, many of the points raised concern over individual firms' supervisory relationship with the FCA. Over the coming months supervisory colleagues will continue to engage with individual firms on our regulatory expectations. However, there are a number of specific points we would address here:
  - Although the FCA approach to its competition objective is considered in the *Journey to the FCA*, the FCA will also be issuing further communications in this area. As we indicated in the approach document, we also anticipate that, where appropriate, supervisory colleagues will discuss the competition objective with individual firms when carrying out their business model and strategy analysis.
  - As is now the case, we believe that the reference to senior management regulatory responsibilities extends beyond those employees who are approved persons.
  - We think that SUP 1A.2.2 G already provides a clear statement of how our supervisory approach will take account of a firm's international activities and the high level factors we will take into account. The FCA's responsibilities for internationally active firms will also differ if the firm is PRA authorised.
  - Peer reviews will form part of our overall supervisory approach, although the exact process for determining a firm's peers is yet to be finalised. However, it is clear that this process will have to take account of the size of the firm, the sectors in which the firm operates, whether the firm operates on a cross-border basis and the potential consumer impact of identified risks.
  - The tools set out in SUP 1A.4.5 G will be used by the FCA. Although the FCA and PRA will cooperate and share information as required, it will be for the PRA to decide which tools it will use to carry out its statutory responsibilities.

- Any assessment of consumer protection will consider both the immediate and long-term interests of consumers as a whole, consistent with the FCA's statutory objectives.
  - As is currently the case, we believe that the principles on which our supervisory model is based are entirely consistent with EU regulation and the way in which they are applied will continue to be in line with our EU regulatory responsibilities.
  - In response to the points raised on the supervisory principles set out in SUP 1A, we believe that these principles are an indication of how our supervisory model will be adapted to reflect our new regulatory remit and focus. Although we have not expressly set out all the 2012 Act's regulatory principles, we will apply them all when carrying out our supervisory responsibilities. It is also worth highlighting that SUP 1A is a living document, which will be kept updated as necessary as our new model develops.
  - In response to the suggestion that firms should be able to disclose the outcome of their risk assessment to third parties, we note that SUP 1A.3.6 G already provides for disclosure in certain circumstances where it is required, e.g. disclosure to auditors. We do not agree that this disclosure should be acceptable in all circumstances as the assessment is focused on the risks posed by a firm to the FCA's objectives. Inappropriate disclosure could result in an assessment outcome being reported or used out of context, or for other purposes such as comparing a firm's products or services against a competitor, without providing the true context in which the assessment rating was determined.
  - We agree with the view expressed by a number of respondents that SUP 1A.3.6 G should be amended to confirm that the FCA will communicate the outcome of the pillars of supervision within an appropriate timeframe. We also accept the comment that the FCA/PRA Memorandum of Understanding could usefully be expressly referenced in SUP 1A. We have therefore amended SUP 1A.3.8 G to reflect this.
- 

## 5.3 Changes to the Supervision Manual (SUP 7): Individual requirements

5.3.1 In CP12/34 we consulted on proposals to align the guidance in Chapter 7 of the Supervision Manual (SUP 7) with the relevant provisions in the 2012 Act. From LCO, SUP 7 will only appear in the FCA Handbook and not in the PRA Handbook, so our proposed revisions also reflected this fact. However, as we explained, SUP 7 will continue to be relevant to all FCA-regulated firms, including firms that are also PRA authorised, and also potentially to non-UK firms operating in the UK. Our proposals did not involve significant changes of policy.

**5.3.2** Eight responses to CP12/34 commented on our SUP 7 proposals, but we do not believe that changes to our updated SUP 7 were required, for the reasons we explain below. The only change we have made to our proposals is to amalgamate the draft definitions of own initiative powers proposed in CP 12/24 and in CP12/34 to avoid any inconsistency. The final new text of SUP 7 is at Appendix 3.

### Comments received

**5.3.3** The comments we received covered the following points:

- some respondents commented that the guidance in SUP 7 is not exhaustive and is sometimes quite broadly worded;
- clarification was requested as to what might be a ‘reasonable’ notice period ahead of a variation of permission by the FCA;
- clarification was also requested on when the FCA might add a new regulated activity to a dual-regulated firm’s permission;
- two respondents commented on the ‘new’ factor listed in SUP 7.2.2G that might trigger the variation of a firm’s Part 4A permission or the imposition of a requirement; namely where a firm has not carried out a relevant regulated activity for 12 months; and
- some respondents commented that variation of permission should be used as a last resort, particularly given the FCA’s on-going supervisory relationship with its regulated firms, and (where concerns about new products arise) the new FCA product intervention powers.

### Our response

In response to the points raised we have the following comments:

- We accept that the Guidance in SUP 7 is not exhaustive. This is intentional and has always been the approach taken in SUP 7. We do not feel it is appropriate to seek to provide an exhaustive list of exactly when the own initiative variation powers could be used, since the circumstances could be numerous and wide-ranging (within the powers available under amended FSMA).
- In response to the query on what constitutes ‘reasonable’ notice, we believe that this may vary in different circumstances, but we confirm that we aim for notice periods to be realistic and practical as well as effective. However, we retain a wide discretion about what may constitute reasonable notice, as set out in SUP 7.3.4 G. If we consider that a delay may create a risk to any of our statutory objectives we may act immediately.
- In response to the request for clarification on when the FCA might add a new regulated activity to a dual-regulated firm’s permission, we believe changes

in the FCA's regulatory scope could provide such examples in the future. As another respondent correctly noted, such variations for dual-regulated firms will involve consultation between the FCA and the PRA.

- In response to the 'new' factor listed in SUP 7.2.2G we should highlight that this factor is included in the 2012 Act and is not new (already featuring in EU law). However, it was not previously mentioned in the SUP 7 indicative list and we thought it should be as part of our alignment of SUP 7 with the 2012 Act.
  - We agree that the FCA should seek the most appropriate and effective power to use in particular circumstances and within the context of the on-going supervisory relationship between the FCA and the firms it regulates. However, we do not think a variation of permission should only be used when other regulatory tools have been exhausted, because there may be circumstances where the use of our variation of permission powers is more effective than other regulatory tools available.
- 

## **5.4 Changes to the Threshold Conditions sourcebook (COND)**

- 5.4.1** We received nine responses to our proposed amendments to the Threshold Condition sourcebook (COND).
- 5.4.2** The Treasury has reviewed the Threshold Conditions (TCs) in light of the changes to the UK regulatory regime. As a result, new FCA and PRA TCs have been made by the Treasury and introduced via secondary legislation (the Threshold Conditions Order), under the 2012 Act.
- 5.4.3** COND currently copies out the FSA TCs in Schedule 6 of FSMA, and provides our guidance on them. So amendments to COND will be necessary to align the FCA Handbook with the FCA's TCs contained in the Threshold Condition Order, having regard to the future objectives and functions of the FCA.
- 5.4.4** In addition to the amendments proposed in CP12/34, we have also now deleted COND 2.2A (re the appointment of claims representatives). Further details are set out below.
- 5.4.5** We did not consult on the TCs themselves in CP12/34. Our consultation was on the proposed changes to the guidance. The following section sets out the comments received to our proposed changes and our responses.

### **Comments received**

- 5.4.6** All respondents welcomed the proposal to retain the COND sourcebook for the FCA's Handbook, while most welcomed the idea of distinguishing the guidance that applies to dual-regulated firms and that which applies to firms regulated by the FCA only. However, some respondents indicated that the distinction could be made clearer in the Handbook text.

**5.4.7** In relation to the guidance on the business model TC, we received the following comments:

- A suggestion to amend COND 2.7.8G (2) so that it references business a firm ‘continues to do’.
- Many respondents suggested that some detailed guidance on the suitability of the business model would be useful. These respondents also noted that if the business model TC was not applied appropriately, then the regulator could be involved in commercial decisions rather than regulatory considerations, which may consequently stifle firms’ innovation and development, and limit consumer choice and competition in the market.
- There was a request for further clarity on the business model guidance with regard to other areas the business model should include.
- A suggestion that the FCA will only be interested in seeing certain elements of a firm’s business model, and in particular for dual-regulated firms.
- A request for further information about how the FCA will determine peer groups for firms in its C2 and C3 categories, as they are likely to have a broader range of business models and ‘footprints’ than other categories.
- A few respondents requested that both the FCA and PRA effectively coordinate their activities when undertaking reviews of a firm’s business model to reduce any burden on dual-regulated firms in particular, as far as is practical, to avoid duplication of information requests, etc.

**5.4.8** Several respondents wanted clarity on how and when the TCs would apply to currently authorised firms and whether they would be required to take any action immediately to comply with the TCs – including whether the FCA intended to conduct any specific activity to ensure firms remain compliant with the business model TC.

**5.4.9** Other respondents requested further clarity on:

- whether there will be a single ‘point of entry’ for dual-regulated and FCA regulated firms, in the instance where a firm is seeking authorisation; and
- certain specific other aspects of the revised TCs, such as what is meant by the term ‘appropriate resources’.<sup>16</sup>

### **Our response**

We accept the need to provide greater clarity in terms of the application of COND to dual-regulated firms and have sought to address this concern by expanding our guidance in COND 1.1A.1G and COND 1.1A3.1G.

<sup>16</sup> See para 3.19, 3.31 and 3.24 in the Treasury Consultation at: [www.hm-treasury.gov.uk/d/condoc\\_fin\\_regulation\\_draft\\_secondary\\_leg.pdf](http://www.hm-treasury.gov.uk/d/condoc_fin_regulation_draft_secondary_leg.pdf)

In relation to the points made on the business model TC we have the following observations:

- We agree with the suggestion to amend COND 2.7.8G (2) so that it references business the firms 'continues to do', as this better reflects the continuing nature of the need to comply with the threshold conditions. We have amended the guidance accordingly.
- With respect to the risk that the FCA's assessment of the business model may stifle competition, the FCA will apply TCs appropriately and proportionately in making assessments of firms. Deficiencies in business models can leave firms vulnerable and expose consumers to potential harm. The FCA's assessment of a firm's business model will not seek to stifle innovation or reduce competition, but will allow us to form a view of the sustainability of the business and where future risks might lie.
- We would reiterate the point we made in CP12/34<sup>17</sup>, that the revised business model TC makes explicit what is already implicit, and as a result we believe our new guidance reflects existing practice.
- With regard to expanding the business model guidance, the text in the COND sourcebook is intended to provide high level guidance, setting out areas a firm may wish to consider when developing and or reviewing its business model. The guidance is not intended to be an exhaustive list of what a firm's business model should cover for us to deem it suitable. By issuing more guidance we are at the risk of being overly prescriptive and this could run the risk of encouraging firms towards a 'tick box' approach rather than concentrating on designing a business model appropriate for the firm.
- While it is true that the FCA will only be concerned with the conduct aspects of a dual-regulated firm's business, it may need to look at many aspects of the firm's business model to get a complete picture of how this relates to conduct. So, for the FCA to judge whether the firm's strategy for doing business is suitable, the FCA will need to be able to consider a firm's business model in its entirety. Only then will the FCA be able to consider how a firm's business model affects or considers its operational objectives, particularly for firms that will be dual-regulated.
- Further information relating to firm categorisation can be found in the *Journey to the FCA* document.

In response to the comments regarding cooperation between the two regulators, this is already required by the general duty on the PRA and FCA to coordinate the exercise of their functions (section 3D of amended FSMA).

---

<sup>17</sup> Paragraph 4.21

In response to the requests for further clarity on the points set out above we have the following comments:

- The revised TCs will take effect at the same time that the rest of the amendments to FSMA are introduced, on 1 April 2013, for both existing authorised firms and all ‘in-flight’ cases. This also means that the guidance in the COND sourcebook will also take effect for all firms at the same time.
- The revised TCs are not significantly different to the current set of TCs made under FSMA. Rather, they place greater emphasis on some aspects of firm standards, for example business models, as a reflection of the FCA’s statutory objectives. As is the case with the current TCs, firms will be required to adhere continuously to the new TCs from 1 April 2013, and the extent to which firms are meeting TCs will be considered by FCA supervisors when carrying out assessments and other work.
- Dual-regulated firms will be subject to both the PRA’s and FCA’s threshold conditions.
- As stated in CP12/34<sup>18</sup>, firms are expected to take any steps necessary to ensure they become familiar with the TCs and guidance so that they can comply when they become effective.
- From legal cutover, a dual-regulated firm (i.e. a firm that is authorised by the PRA but is regulated by the FCA for conduct purposes) will be able to submit a single application.
- We note the requests for further clarity and guidance on certain aspects of the revised TCs – e.g. what is meant by the term ‘appropriate resources’. However, the Treasury’s revised TCs are already more explicit than the current TCs. COND does currently contains guidance which supports the ‘Appropriate Resources’ TC and therefore we believe that issuing more guidance introduces a risk of being too prescriptive.
- The final threshold conditions order was made on 7 March and comes into force on 1 April 2013. This order can be found at:  
<http://www.legislation.gov.uk/ukxi/2013/555/contents/made>.

## **Deletion of COND 2.2A: Appointment of Claims Representatives**

- 5.4.10** Section 55C of amended FSMA gives the Treasury the power to amend Schedule 6 of FSMA setting out the threshold conditions. The Treasury exercised this power by making The FSMA (Threshold Conditions) Order 2013 and one of the effects of the Order is that the former FSA ‘Appointment of claims representatives’ threshold condition has not been included in the new FCA or PRA threshold conditions.

<sup>18</sup> Para 4.24

5.4.11 We have now reflected this change in the FCA Handbook:

- Firstly, Chapter 2A of the FSA COND, which contained guidance on the deleted threshold condition relating to the appointment of claims representatives, is not included in the FCA COND.
- Secondly, in the Insurance Conduct of Business sourcebook (ICOBS), ICOBS 8.2.2G, which contained guidance on Threshold Condition 2A, has been deleted and replaced by a new rule (ICOBS 8.2.2AR) to replicate the requirement, derived from the EU 4th Motor Insurance Directive, to appoint a claims representative.

5.4.12 As ICOBS 8.2.2AR replicates a pre-commencement threshold condition and comes into force on 1 April 2013, the FCA can make it without consultation under Article 8 of FSMA (Rules and Miscellaneous Provisions) Order 2013.

## 5.5 FCA powers over qualifying parent undertakings

5.5.1 In Chapter 5 of CP12/34 we set out our proposals on the use of the FCA's powers over qualifying parent undertakings introduced under amended FSMA.

5.5.2 We received 15 responses to our draft statement of policy on using our new power to direct a qualifying parent undertaking, under s192C of amended FSMA. Apart from providing additional clarifications in our responses below, we do not believe that significant changes to the draft statement are required as a result of the feedback.

5.5.3 However, we have made two changes to our proposed statement. We have added another possible direction, which the FCA may consider making in relation to the raising of new capital. This amendment is intended to align our approach with the analogous statement of policy being issued by the PRA. We have also amended the statement to provide greater clarity on the types of firms the powers may apply to.

5.5.4 The final text of the statement of policy is at Appendix 1.

### Comments received

5.5.5 Some respondents expressed the view that our draft statement of policy gave the FCA greater discretion than was initially intended by the 2012 Financial Services Bill. Others requested greater clarity on when our power to direct qualifying parent undertakings would be used, while others felt that our powers in this area should only be used as a last resort after all other regulatory options have failed.

5.5.6 A number of responses made points on a variety of issues, including:

- It was suggested that some scenarios presented in Annex 1 of the statement were capable of being addressed through alternative regulatory powers already available to

the FCA, while one respondent queried why the list in Annex 1 of the statement was not exhaustive.

- It was suggested that the draft statement of policy provides no reference point against which fitness and propriety should be tested.
- It was suggested that some of the directions set out in Annex 2 of the statement should be directed at the regulated entity and not the ‘qualifying parent undertaking’.

#### 5.5.7 Several respondents requested further clarification and guidance on:

- when the FCA might use the powers against the ultimate parent undertaking or against an intermediate parent undertaking;
- why the draft statement of policy does not include a statement on the right to appeal;
- the circumstance when we would consider an overseas company as having a place of business in the UK; and
- how the powers will differ for FCA-only and dual-regulated firms.

### Our response

In response to the concern that our statement of policy gives the FCA greater discretion than was initially intended by the legislation, we believe that the statement reflects the circumstances that enable the FCA to use the power of direction under the 2012 Act (sections 192A – 192N). So the use of the power is subject to the relevant conditions under the 2012 Act being satisfied. The FCA will consider whether it is appropriate and proportionate to use the power on a case-by-case basis and after careful consideration of the specific risks in particular circumstances. It is worth noting that under section 192E, a formal procedure has to be followed once the regulator proposes to give a direction.

We also take the view that in accordance with section 192C(5) of the Act, the FCA will, when appropriate, exercise other regulatory tools before using the powers. However, this does not preclude the FCA from using the powers in any other circumstance as and when necessary. We do not want to fetter our discretion to make use of the powers in parallel with, or before, other regulatory tools if and when we consider it appropriate to do so (for example, where action to advance the FCA’s objectives taken at the ‘qualifying parent undertaking’ is believed to be more effective than at the authorised firm level).

In response to the other points, we take the view that:

- Annex 1 (of the statement) sets out the circumstances in which we will consider using the powers. As just said, where appropriate, we will address the scenarios in Annex 1 (of the statement) using other regulatory tools at

the disposal of the FCA. The scenarios are not an exhaustive list because, due to the developing nature of the financial services industry, it would be impossible to set out all the scenarios in which we would expect to make use of the powers and we cannot fetter our discretion to make use of the power of direction in other circumstances where it is appropriate to do so.

- We would envisage making use of the powers to direct a qualifying parent undertaking to take steps to remove an individual who is exercising a significant influence over it, but who is not an approved person, where we have sufficient concerns over that individual's reputation, experience or suitability.
- Annex 2 (of the statement) is also a non-exhaustive list of possible directions which the FCA may consider making. Some of the intended outcomes may be achieved through the use of other regulatory tools, but again this does not preclude the FCA from using the powers of direction where it considers it appropriate to do so.

In response to the request for further clarification and guidance on the issues set out above, we take the view that:

- We will use the powers in line with paragraph 5 of the statement:  

‘where the ultimate parent undertaking is not a qualifying parent undertaking under the 2012 Act then the FCA may consider that the use of the Power of Direction over another qualifying parent undertaking in the ownership chain may still be helpful in addressing group risks on a more regional or local level’.
- Paragraph 6 of the statement also highlights that the powers can be used on an intermediary qualifying parent undertaking if the ultimate parent undertaking fails to act.
- Section 192G in the Act outlines the procedure that the FCA will follow in respect of appeal, which provides that a person who is aggrieved by the use of powers under section 192C may refer the matter to the Tribunal. Also, under section 192E of the Act, the individual must be informed of their right to refer the matter to the tribunal.
- Although we do not have a legal definition for a place of business, given the definition of a qualifying parent undertaking we understand place of business to include any establishment from which a firm carries out its business, which typically will be the branch office of a non-UK incorporated entity.
- In line with CP12/34<sup>19</sup>, the FCA will exercise the power to address issues that fall within its remit. For dual-regulated firms, these will be limited to conduct matters. We may exercise the power for both conduct and prudential matters in relation to FCA-only regulated firms.

---

<sup>19</sup> paragraph 5.13

# 6

## CP12/37: Implementing markets powers, decision-making procedures and penalties policies

### 6.1 Introduction

- 6.1.1** In CP12/37<sup>20</sup>, we outlined proposals for how we will implement our new powers for sponsors, primary information providers, recognised investment exchanges and notices regarding the cancellation/suspension of an issuer's securities at the issuer's request.
- 6.1.2** CP12/37 also covered our proposed amendments to our decision-making procedures and penalties policies (as set out in the DEPP Handbook module), arising from new statutory notice powers that the FCA will acquire at LCO. These amendments were to fulfil the requirements that the FCA issue statements of policy setting out various aspects of its decision-making procedures, the FCA's policy regarding the imposition and amount of penalties under FSMA, the FCA's policy regarding the imposition of suspensions or restrictions and the period for which those suspension or restrictions are to have effect, under FSMA.
- 6.1.3** The new powers on sponsors increase the flexibility and proportionately to our supervision of the sponsor regime by increasing the range of tools we have to deal with situations as they arise. We will also have powers of approval and supervision of primary information providers. Our proposals for how we would implement these powers were largely based on the Criteria for Regulated Information Services. The legislative changes applying to the regulation of Recognised Investment Exchanges (RIEs) and Recognised Auction Platforms (RAPs) address the transfer of responsibility for the supervision of Recognised Clearing Houses (RCHs) to the Bank of England, new supervisory and disciplinary powers over RIEs and the modification of existing powers and roles.

<sup>20</sup> [www.fsa.gov.uk/static/pubs/cp/cp12-37.pdf](http://www.fsa.gov.uk/static/pubs/cp/cp12-37.pdf)

- 6.1.4** The powers for notices regarding cancellation and suspensions of an issuer's securities at the issuer's request amended the form and content of the notice given by the FCA, including a new power to give notice with an oral notification to an issuer.
- 6.1.5** These proposals reflected the initial changes required under the revised FSMA. As noted, at LCO, the FCA will have a new competition objective, consisting of the promotion of effective competition in the interests of consumers in the markets for, among other things, services provided by a RIE. We are considering how the FCA is going to deliver on this aspect of its new competition mandate effectively, which may involve new proposals later in 2013 as part of this work.

## **6.2 Sponsors**

- 6.2.1** Five sponsors (out of a total of over 50 on the list of sponsors) responded to our proposals on the sponsors regime. Some of the feedback raised concerns over the FCA's new powers. However, our consultation was on the way the FCA will use its new powers rather than whether or not it should have them in the first place. These are statutory powers granted under the amended FSMA and, as we explained in CP12/37, we believe they will give the FCA additional tools, which will enable it to regulate sponsors proportionately and effectively.
- 6.2.2** We note some respondents' concerns relating to the distinction drawn between sponsor services on investment fund transactions and commercial company transactions. We believe this distinction is supported by our experience to date of dealing with sponsors in a number of specific circumstances. We are currently analysing the different workstreams and skill sets required to undertake sponsor services and, depending on the outcome of this analysis, we may consult sponsors on further changes to Chapter 8 of the Listing Rules (LR 8) or consult on guidance.
- 6.2.3** Some respondents raised concerns over the FCA's ability to impose post-approval limitations or restrictions on sponsors, believing, for instance, that market conditions often prevent sponsors from undertaking certain types of transaction and it would therefore be unfair to penalise sponsors for something outside of their control. Another respondent felt there should be more detailed guidance in LR 8.7.2BG on when the FCA would propose to use this power. In response to these concerns and others raised, sponsors should be aware that, as stated in paragraph 2.21 of CP12/37, it is our intention to continue to interact with sponsors using our general supervisory powers and to use our new statutory powers only in a proportionate and reasonable manner. The new powers will bring added flexibility to the sponsor regime by increasing the options open to us to deal with situations as they arise.

## **6.3 Notices regarding cancellations/suspensions of an issuer's securities at the issuer's request**

**6.3.1** We received no comments on our proposals. We have, however, made one small change to the draft instrument included in CP12/37. As there is already a reference to the relevance of the Decision Procedure and Penalties Manual (DEPP) to issuers in LR5.5.1G and LR1.1.1G, we have deleted the note proposed in LR5.3.8G.

## **6.4 Primary information providers**

**6.4.1** In Chapter 4 of CP12/37, we set out our proposals for the use of the powers being given to us under amended FSMA in relation to primary information providers (PIPs). In summary, we proposed to base our new regime on the existing framework set out in our Criteria for Regulated Information Services, and in doing so to take the opportunity to make changes in a number of areas to update, simplify or enhance the current requirements. We also set out proposals for transitional arrangements.

**6.4.2** We received six responses. These raised a number of technical questions. The most important of these were in relation to:

- continuity of service;
- timing and prioritisation in disseminating regulated information;
- the publication of fees charged by PIPs;
- general notification requirements;
- audit requirements; and
- identifying new and emerging risks.

**6.4.3** Responses also raised an issue in relation to the status of Information Society Services operating under the terms of the E-Commerce Directive, and the interaction of this legislation with our proposals.

**6.4.4** We have separately consulted on the fee regime for PIPs in CP13/5. Taking the responses from both consultations into account, we have decided that it would be appropriate to combine our feedback on both consultations. We will provide this feedback as soon as possible.

**6.4.5** The practical consequence of this decision is that the new regime for PIPs will come into force later than 1 April 2013. We will contact existing Regulated Information Services to discuss any detailed issues arising.

## 6.5 Recognised Investment Exchanges

- 6.5.1** We received six responses that commented on our proposed revisions to the Recognised Investment Exchanges and Recognised Clearing Houses (REC) sourcebook, which were aimed at bringing it into line with the changes to FSMA and associated secondary legislation.
- 6.5.2** We have made one change to our REC proposals to take account of these comments. We have chosen to remove some guidance on the requirement in the Recognition Requirements Regulations (RRRs) for an RIE to have default rules, pending consideration by the Treasury of the detailed statutory provisions on which it is based (see below). The final text of REC (now to be named the Recognised Investment Exchanges sourcebook) is at Appendix 3, along with unchanged consequential revisions to our Handbook Glossary and to the Fees Manual (FEES), on which there were no comments.

### Comments received

- 6.5.3** A majority of respondents commenting on our proposals urged the FCA to be cautious in its use of any of the enhanced or amended powers given by the 2012 Act in relation to an RIE. It was suggested that, consistent with the regulatory responsibilities of an RIE, the market benefits from the cooperative and constructive relationships that exist with the FSA under its model of ‘close and continuous supervision’. This approach, they said, should be continued by the FCA, and the use of formal powers should therefore be unnecessary, except as a last resort.
- 6.5.4** Some of the responses therefore recommended that REC should be amended, to include specific thresholds to be satisfied before the FCA would consider using a formal power (for example, by introducing consultation as a prerequisite to the FCA’s use of its power to obtain information,).
- 6.5.5** In addition, several respondents noted that the period for making representations in relation to a proposal to issue a direction will, in future, be as specified in the notice given by the FCA (as opposed to a minimum two-month period). Those respondents suggested that it would be helpful for REC to set out a minimum period, reflecting a reasonable period for an RIE to consider a proposal and prepare a response.
- 6.5.6** In response to the specific question (Q8) about an RIE’s default rules in relation to market contracts, a majority of responses set out the view that the responsibilities of an RIE need to be clear, including for the separate roles of an RIE and RCH where an on-exchange transaction is centrally cleared. These respondents suggested an amendment of REC 2.17.4G to ensure no confusion or overlap between the obligations of an RIE and those of an RCH which is a party to a market contract.

## Our response

- We agree with the view that the FSA's existing approach of close and continuous supervision is effective in ensuring good regulatory outcomes. The FCA will continue to place the open and constructive relationships that exist with RIEs at the centre of its supervisory approach.
- We will therefore continue to seek to address issues via close and continuous supervision, and would usually only consider use of a formal power if other approaches were not achieving the desired regulatory results. We do not plan, however, to introduce in REC conditions or thresholds in relation to the use of formal powers that are not envisaged by the Act, and that would not apply where the FCA uses the same kind of formal power in relation to other types of FCA-regulated entities.
- We agree with respondents that the period given to an RIE to make representations in relation to a proposed direction should be reasonable, having regard to the nature of the proposal and all the circumstances of the case. If it were necessary for the FCA to exercise the power of direction, we would – in accordance with regulatory principles set out in section 3B of FSMA – apply the principle of proportionality and exercise our functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements under the Act, including when setting a period for representations. As such, we do not consider it necessary or appropriate for REC to specify any fixed minimum period in this context.
- On Q8, we agree with the views of respondents that REC should be clear in relation to the responsibilities of an RIE in scenarios where a market contract is, and is not, centrally cleared. We are aware that the Treasury is reconsidering the detailed provisions of the legislation in this area, which may lead to appropriate amendments and consequential amendments to our REC guidance. So we propose to delete the guidance set out in REC 2.17.4G and REC 2.17.5G for the time being and consider appropriate amended guidance in due course, consistent with any changes to the legislation.

## 6.6 Decision Procedures and Penalties

- 6.6.1** In CP12/37, we also consulted on our proposed amendments to the Decision Procedure and Penalties Manual (DEPP) arising from new statutory notice powers that the FCA will acquire at LCO. In particular, we consulted on:

- A statement of the procedure that it proposes to follow in deciding whether to exercise each power (amended FSMA s.395(1)(b)(i)).
- For the new disciplinary powers, a statement of its policy on the imposition of penalties, suspensions or restrictions, the amount of penalties and the period for which suspensions or restrictions are to have effect (amended FSMA s.88C, s.89S, 192N, 312J and 345D).
- A statement of the procedure that it proposes to follow when proposing or deciding to refuse consent to the PRA giving permission to a firm to carry on regulated activities, varying a permission at the firm's request or approving an individual to hold controlled functions (amended FSMA s.395(1)(b)(ii)).
- A statement of the procedure that it proposes to follow when deciding whether to publish information about the matter to which a warning notice relates (amended FSMA s.395(1)(d)).

### Comments received

- 6.6.2** We received 20 responses that commented on our proposed amendments to DEPP.
- 6.6.3** All of the respondents to questions 10 to 14 agreed with the proposed allocation of decision making between the RDC and the FCA Executive for the new approval and supervision powers regarding sponsors and PIPs.
- 6.6.4** All eight respondents to question 15 expressed support for the proposed role of the RDC as the decision-maker in respect of the FCA's new disciplinary powers.
- 6.6.5** All seven respondents to question 16 agreed that the current split between the RDC and the Executive should be maintained for own-initiative variations. However, six also argued that a similar split should be put in place for own-initiative requirements (i.e. that decisions on 'fundamental' requirements should be taken by the RDC).
- 6.6.6** Of the nine respondents to question 17, eight were in favour of the FCA Executive deciding whether to issue financial promotions directions; one respondent argued for the RDC's involvement in these statutory notice decisions.
- 6.6.7** In response to question 18 regarding the appropriate decision-maker at the warning and decision notice stages when applications are made to the PRA for permission, variation and approval in relation to dual-regulated firms, while some of the nine respondents understood our aim of simplifying the process, five respondents argued that the process ought to be consistent with that for FCA-only firms, i.e. that the RDC should be the decision-maker at the decision notice stage.
- 6.6.8** There was universal support from the 14 respondents to question 19 for our proposal that the RDC should be the decision-maker under the new power to publish details of a warning notice. However, the respondents expressed concern that the seven-day period we

propose to give in most cases would not give the subject of a warning notice sufficient time to respond to the RDC's decision in principle to publish. Some respondents suggested that this period be doubled, while two respondents suggested that 28 days might be an appropriate period to respond.

- 6.6.9** The majority of those who responded to question 20 agreed with our proposal of applying the existing penalties and suspensions policy to the new disciplinary powers.

### Our response

In light of these responses, we have decided to adopt the approach consulted on regarding:

- decision-making procedures for sponsor and PIP approval and supervision powers, disciplinary powers and financial promotions directions powers; and
- policies for imposing penalties and suspensions.

The remainder of the responses to the consultation give rise to three main issues:

- Whether the RDC should be the decision-maker for fundamental own-initiative requirements, or whether FCA senior executives should make all own-initiative requirement decisions regardless of their impact on the person concerned.
- Whether the RDC should be the FCA decision-maker at the decision notice stage for dual-authorised firm cases.
- Whether the time period for responding to the RDC's initial decision to publish details of a warning notice should be longer than seven days.

In light of the responses received, we have reconsidered our proposal to allocate decision-making for own-initiative requirements solely to FCA staff under executive procedures. As asset requirements imposed under amended FSMA s.55P (or the refusal of an application to vary or cancel such a requirement) affect third parties and are in some respect similar to injunctions, we have decided that such requirements should continue to form part of the definition of fundamental in DEPP 2.5.8 G. However, we remain of the view that decisions to impose requirements that result in the restriction of a firm from taking on new business, dealing with a particular category of client or handling client money are decisions that can and should be taken by FCA Executives when exercising supervisory judgments about firms. The imposition of a requirement is just one of a range of measures that the FCA will be able to use in its supervision of firms – many significant decisions regarding firms are made by FSA senior executive committees which do not involve the issue of a statutory notice or which do not fall under the current definition of 'fundamental'. Significant decisions will be taken at an appropriate level of seniority and the decision

makers will be directly accountable to the Board.

We recognise that our proposal for dual authorisations and approvals decision-making will result in a different process for PRA-authorised firms and individuals than for firms and individuals solely regulated by the FCA. However, we regard this as a consequence of moving to the new regulatory structure and consider that, in a process where the PRA and FCA are expected to work closely together, the FCA's decision-making procedure should be closely aligned with the decision-making procedure of the PRA, the authorising regulator for these decisions. The PRA's decisions will largely be taken by executive committees, while the most significant decisions will be taken by the Regulatory Sub-Committee (RSC) of the PRA's Board of Directors composed of the Governor, the PRA's Chief Executive, the Deputy Governor for Financial Stability and all other members of the PRA's Board except the FCA Chief Executive. By comparison the RDC will not be able to escalate decisions to the FCA Board of Directors. We remain of the view that involving three decision-making bodies (i.e. the PRA's decision-maker, the FCA's executive committee and the RDC) would add unnecessary complexity to the process, particularly in arranging representation meetings at the decision notice stage. Instead, we have decided that the FCA Executive will decide whether to refuse consent to the PRA at both warning notice and decision notice stage. The FSA Executive currently issues warning notices on behalf of the FSA when refusing applications for authorisation or approval and issues both warning and decision notices in change in control matters.

The main purpose behind the introduction of the new warning notice publicity power is to increase transparency in the regulators' enforcement processes at an earlier stage than is currently the case for the FSA. The decision whether to exercise the power therefore ought to be taken at an early stage in the RDC process after the RDC has decided to issue a warning notice. The decision also ought to be taken before the RDC has considered the subject's representations on the substance of the matters set out in the notice because, if the RDC having considered those representations decides to issue a decision notice, the FCA can at that stage publish the decision notice. So the warning notice publicity power becomes redundant unless decisions to publish are taken early in the RDC proceedings. For the same reason we proposed that the Panel Chair take these decisions (rather than wait to reconvene the Panel) and that there will be no need in most cases for firms to make their views heard in person. However, having considered the industry's concerns regarding our proposals, we have decided to extend the seven day period to 14 days. We have added a sentence in DEPP 1.1.1 to refer to the procedure in DEPP 3.2.14A to 3.2.14H.

We consult on the guidance we intend to add to the Enforcement Guide, explaining how we intend to use this power, in a separate Consultation Paper published in March.

We have noted that in CP12/37 all of DEPP Schedule 4 was marked for deletion in

error. We have corrected this mistake in the instrument set out at Appendix 3 and updated the table in DEPP Schedule 4.1 with references to the relevant new powers.

# 7

---

## CP13/3: Handbook transitional arrangements, the appointment of with-profits committee members and certain other Handbook amendments

### 7.1 Introduction

7.1.1 This chapter provides feedback on the proposals we consulted on in CP13/3<sup>21</sup>, which covered proposed transitional provisions for various requirements and processes under the Handbook (including arrangements for approved persons), approvals for members of firms' with-profits committee, and further miscellaneous minor necessary Handbook changes.

### 7.2 General transitional provisions

7.2.1 In CP13/3 we consulted on introducing general transitional provisions covering all parts of the Handbook not covered by a specific transitional arrangement. The provisions consulted on provided that actions taken before LCO by firms or other persons to whom the rules apply remain effective after LCO.

---

<sup>21</sup> [www.fsa.gov.uk/static/pubs/cp/cp13-03.pdf](http://www.fsa.gov.uk/static/pubs/cp/cp13-03.pdf)

- 7.2.2** We received 11 responses. All respondents were generally supportive of our approach and so we do not propose to amend the general transitional provisions consulted on. The final Handbook text is included in Appendix 3.
- 7.2.3** Many of the respondents took the opportunity to make points about the CP12/24 proposals relating to the transitional arrangement for firms' regulatory status disclosure. Our response to these concerns is already covered in Chapter 2 of this Policy Statement.

### **7.3 Transitional arrangements for the approved persons regime**

- 7.3.1** CP13/3 set out our proposals for transitioning existing FSA approvals to the PRA and FCA. Given that a final split of functions had not been confirmed at the time the CP was published, the focus was on setting out some high-level principles, with the final transitional arrangements to follow.

#### **Comments received**

- 7.3.2** We received 11 responses to the proposed transitional arrangements for approved persons. There was general support for high-level principles set out in the consultation. The main query that respondents raised was in relation to existing CF2 approvals for dual-regulated firms.

#### **Our response**

Our final decisions on approved persons are explained in Chapter 3 of this Policy Statement, and the final text of transitional arrangements for the approved persons regime is at Appendix 3. Although our final decisions on the regime affect the detail of the transitional arrangements, they will still follow the key principles set out in CP13/3; that is all existing approvals will be 'grandfathered' to whichever of the PRA or FCA will specify that controlled function in its rules after LCO, without the need for any action by firms or their approved persons.

### **7.4 Dual-regulated members of a with-profits committee within the approved persons regime**

- 7.4.1** The proposals relating to with-profits committee members forming part of the PRA's non-executive function are considered in Chapter 3 of this PS and will be picked up in the PRA's feedback to CP13/3.

## **7.5 Miscellaneous amendments to the FCA Handbooks**

- 7.5.1** There were no comments disagreeing with the further list of FSA Handbook provisions that we proposed would not be carried forward by either the FCA or the PRA.
- 7.5.2** In addition, there was no disagreement to our proposed addition to Chapter 21 of the FCA Supervision Manual, to align the factors that the FCA will take into account with a waiver for an energy market participant with the updated factors set out in SUP 8 for other waivers. This amendment is therefore included in Appendix 3.

# 8

## CP13/6: Regulatory Reform: FCA Handbook amendments relating to the Enforcement Guide

- 8.1.1** This chapter summarises the responses we received to CP13/6 and explains how we have addressed respondents' concerns.
- 8.1.2** In CP13/6 we proposed changes we need to make to update the Enforcement Guide (EG) to reflect the new powers introduced by the 2012 Act and to support the creation of a new regulatory structure.
- 8.1.3** We proposed adding references to the FCA's new disciplinary powers to the existing lists in EG 1.2 and EG 7.2. We also proposed changes to Chapter 3 of the EG to reflect the fact that the FCA will have a new power to appoint a skilled person directly, and to appoint a skilled person where it considers that an authorised person has breached a requirement to collect information or keep it up-to-date (see chapter 2 of this PS). We proposed amendments to Chapter 8 of the EG to reflect the replacement of Part 4 of FSMA with the new Part 4A (re permissions).
- 8.1.4** Other proposed changes were prompted by the new regulatory structure, the creation of the FCA and PRA, and the need for the two regulators to consult one another in certain circumstances and, on occasion, conduct joint investigations into the same misconduct. Finally, changes were proposed to reflect a closer working relationship between the FCA's Enforcement and Supervision functions.

### Comments received

- 8.1.5** There were nine respondents to CP13/6 and their comments focussed on the following three main issues:

- Appointment of skilled persons: a number of respondents requested more guidance on the FCA's new power to appoint skilled persons directly.
- The involvement of Supervision in Enforcement investigations: the feedback on amendments to EG 4.14 to reflect the closer working relationship that will exist between FCA Supervision and FCA Enforcement was mixed. One respondent welcomed the proposal for staff in the Enforcement Division to work more closely with staff from FCA Supervision, whilst another considered that there ought to be a clear separation between the responsibilities of Enforcement and Supervision. A number of respondents also expressed concern about the deletion of the last sentence in EG 4.12 (the FSA team for the purposes of scoping discussions will normally include the supervisor if the subject is a firm which is relationship managed). stating that scoping discussions should continue to include the supervisor.
- Joint investigations with the PRA: several respondents commented on the paragraphs added at EG 2.15A, EG 4.34 and EG 4.35, which deal with joint investigations with the PRA. Many respondents welcomed the statements in the EG that the FCA will attempt to ensure that the subject of the investigation is not prejudiced or unduly inconvenienced by the fact that there are two investigating authorities and encouraged the regulators to coordinate their enforcement actions. Some suggested that the guidance should go further and state that subjects will never be prejudiced by a joint investigation.

### Our response

- The detailed rules and guidance that apply whenever the FCA uses its powers under sections 166 and 166A are set out in SUP 5. Changes to SUP 5 were consulted on in CP12/24 and the feedback on that consultation is summarised in Chapter 2 of this Policy Statement.
- As we set out in the *Journey to the FCA* document in October 2012, Enforcement intends to work more closely with other FCA departments to address the causes of problems and to prevent risk from materialising, alongside taking action once poor conduct has occurred and problems have arisen. Therefore, we do not propose to alter the amendments to EG 4.14. The last sentence in EG 4.12 was deleted on the basis that there were going to be fewer relationship-managed firms following LCO. In light of the comments received, we shall reinstate the sentence to apply it to fixed portfolio firms.
- We consider that the guidance in EG 2.15A, EG 4.34 and EG 4.35 is sufficient to describe how the FCA will conduct joint investigations with the PRA. Further details are set out in the Memorandum of Understanding between the PRA and the FCA.
- We have also clarified the guidance in EG 8.5 1(d) following feedback.

## Annex 1

---

# List of non-confidential respondents

### CP12/24

Allianz Insurance plc

Association of British Insurers

Association of British Credit Unions Limited

Association for Financial Markets in Europe

Association of Professional Financial Advisers

Aviva plc

Barclays Bank plc

British Bankers' Association

Building Societies Association

Business and Compliance Services Limited

Council of Mortgage Lenders

Electronic Money Association

Financial Services Consumer Panel

Friends Life Group

Gatehouse Bank plc

InterGlobal

Investment & Life Assurance Group Limited

Legal & General Group

Liverpool Victoria Friendly Society Limited

Lloyd's

Lloyd's Market Association

M&G Investments

Matthew Speck

RBS Group plc

Royal & Sun Alliance Insurance plc

Smaller Businesses Practitioner Panel

Standard Life Group

St. James's Place Wealth Management Group

T.Rowe Price International Limited

The Association of Private Client Investment Managers and Stockbrokers

**CP12/26**

Amlin	International Underwriting Association
Association for Financial Markets in Europe	Investment and Life Assurance Group Limited
Association of British Credit Unions	Liverpool Victoria
Association of British Insurers	Lloyds
Aviva plc	Lloyds Banking Group plc
Berwin Leighton Paisner	Lloyd's Market Association
BNY Mellon	Lockton Companies LLP
British Banking Association	Phoenix Group: Phoenix Life Limited, Phoenix Life Assurance Limited, National Provident Life Limited, BA(GI)
Building Societies Association	Prudential plc
Co-operative Banking Group	Royal Sun Alliance Insurance plc
Council of Mortgage Lenders	RBS Group plc
Direct Line	The City of London Law Society
Financial Services Consumer Panel	Virgin Money
IFACT	Zurich Financial Services (UKISA) Limited/ Zurich Financial Services Group
Institute and Faculty of Actuaries	
International Financial Data Services	

**CP12/28**

Association for Financial Markets in Europe	Cambourne Financial Planning Limited
Association of British Credit Unions Limited	Council of Mortgage Lenders
Association of British Insurers	International Underwriting Association
Association of Financial Mutuals	Investment Management Association
Association of Private Client Investment Managers and Stockbrokers	Lloyd's
Association of Professional Financial Advisers	Lloyd's Market Association
Aviva UK Life	London Energy Brokers Association
British Bankers' Association	Royal & Sun Alliance Insurance
Building Societies Association	Society of Pension Consultants
	Wholesale Market Brokers Association

**CP12/34**

Association of British Credit Unions Limited  
 Association of British Insurers  
 Association for Financial Markets in Europe  
 Aviva plc  
 British Bankers' Association  
 Building Societies Association  
 Herbert Smith Freehills LLP

Lloyd's  
 Lloyd's Market Association International  
 Underwriting Association  
 Markerstudy Group  
 Royal & Sun Alliance Insurance plc  
 TAWA plc  
 The Association of Private Client Investment  
 Managers and Stockbrokers

**CP12/37**

Allen & Overy  
 Association of British Credit Unions  
 Association of British Insurers  
 Association of Professional Financial Advisers  
 BATS Trading Ltd  
 Building Societies Association  
 Business Wire  
 Dexion Capital plc  
 Equitystory/DGAP  
 Financial Services Consumer Panel  
 Financial Services Practitioner Panel  
 Friends Life  
 Hargreaves Lansdown

ICE Futures Europe  
 Investor Relations Society  
 Investment and Life Assurance Group  
 London Metal Exchange  
 LV  
 NYSE Euronext  
 Oriel Securities  
 PR Newswire  
 Royal & Sun Alliance  
 Shore Capital and Corporate Ltd  
 Thomson Reuters  
 Which?

**CP13/06**

Association of British Insurers  
 Association for Financial Markets in Europe  
 Credit Services Association  
 International Underwriting Association

Lloyds  
 Lloyds Markets Association  
 Building Societies Association  
 RSA

**CP13/3**

Association for Financial Markets in Europe	Finance and Leasing Association
Association of British Credit Unions Limited	Friends Life Group
Association of British Insurers	InterGlobal
Aviva Life Services UK Limited	Legal & General Group
Building Societies Association	Lloyd's
Computershare Investor Services plc	Thomson Reuters
Council of Mortgage Lenders	

## Appendix 1

---

# FCA statement of policy on the use of the power to direct qualifying parent undertakings

### **Background**

1. This statement sets out the Financial Conduct Authority's (FCA) policy on the use of its power to direct a qualifying parent undertakings under section 192C of the Financial Services and Markets Act 2000 as amended by the Financial Services Act 2012 ('the Act'). This statement is required by section 192H of the Act.<sup>22</sup>

### **Conditions for the exercise of the power of direction**

2. The statutory provisions relating to the power of direction are set out in sections 192A to 192I of the Act. In order for the FCA to be able to exercise the power of direction:
  - a) The parent company must be a 'qualifying parent undertaking' of a 'qualifying authorised person' or 'recognised investment exchange'; and
  - b) Either the 'general condition' or the 'consolidated supervision condition' must be satisfied.

---

<sup>22</sup> As part of the consultation by the PRA, the Bank of England has also published separately a statement setting out its policy on the use of its power to direct a qualifying parent undertakings of recognised clearing houses under section 192C of the Act (as applied to the Bank of England and recognised clearing houses by paragraph 17 of Schedule 17A of the Act).

## Identification of qualifying parent undertakings

3. A ‘qualifying parent undertaking’ is defined under the Act as a parent undertaking<sup>23</sup> of a qualifying FCA regulated entity that is:
  - a body corporate incorporated in any part of the United Kingdom or has a place of business in the United Kingdom;
  - not itself an authorised person, a recognised investment exchange or a recognised clearing house; and
  - a financial institution of a kind prescribed by the Treasury by order.
4. This definition is expected to cover any UK incorporated unauthorised financial parent undertaking in an ownership chain, even if that undertaking is not itself at the head of the ownership chain. In general, the FCA would consider action to be most effective when taken in relation to the ultimate parent undertaking at the head of the ownership chain, as that is usually where the majority of the power to direct and control the group resides.
5. However, where the ultimate parent undertaking is not a qualifying parent undertaking under the Act (for example if the group is headed by a non-UK or non-financial entity), then the FCA may consider that use of the Power of Direction over another qualifying parent undertaking in the ownership chain may still be helpful in addressing group risks on a more regional or local level.
6. The FCA will only have powers over the UK parent undertaking and therefore may also consider taking action in relation to an intermediate qualifying parent undertaking where the FCA regulated entity is headed by a third country parent. There may be other circumstances to take action in relation to an intermediary qualifying parent undertaking, for example, if there are restrictions on the powers of the ultimate parent undertaking in its constitution, if the ultimate parent undertaking fails to act, or if action is to be taken in relation to the immediate parent of the firm (particularly in cases where there are distinct sub-groups within wider groups).

## Uses of the Power of Direction

7. The FCA can use the Power of Direction if either the general condition or the consolidated supervision condition is met.

## General condition

8. The general condition is that the FCA considers that it is desirable to give direction in order to advance one or more of its operational objectives.

---

<sup>23</sup> Parent undertaking is defined in section 420 FSMA and section 1162 of the Companies Act 2006.

9. For example, the FCA considers that compliance with regulatory requirements is a key part of advancing its operational objectives which include securing an appropriate degree of protection for consumers, protecting and enhancing the integrity of the UK financial system and/or promoting effective competition in the interests of consumers in the markets. Where any of the actions or omissions of the parent undertaking lead, or could lead, directly or indirectly, to the authorised firm or UK Recognised Investment Exchange (RIE) being unable to ensure compliance with its own solo, consolidated or other group-wide regulatory requirements, the FCA may consider it desirable to make use of its powers of direction against qualifying parent holding companies under the general condition.

### **Consolidated supervision condition**

10. The consolidated supervision condition is that:
- a) the FCA is the competent authority for the purpose of consolidated supervision that is required, in relation to some or all of the members of the group of a qualifying authorised person, in pursuance of any of the relevant EU directives; and
  - b) the FCA considers that the giving of the direction is desirable for the purposes of the effective consolidated supervision of the group.
11. The FCA considers that the purpose of consolidated supervision is to enable supervisors to take necessary action to protect authorised firms from the adverse effects of being part of a group. These adverse effects may include: financial contagion (losses in a group entity impacting on a firm through financial linkages); reputational contagion (an event in one entity impacting adversely on another entity in the group through reputation damage); double/multiple gearing (i.e. use of the same capital resources more than once in the same group); leveraging (i.e. upgrading the quality of capital within a group by, for instance, using lower quality funds borrowed by the parent undertaking to create core equity tier 1 capital within the authorised firm); and the impact of intra-group relationships on authorised firms (exposures, contingent liabilities etc).
12. For example, the application of rules on a consolidated basis aims to address many of the risks above. Therefore, the FCA considers that where any act or omission of the parent undertaking leads, or could lead, directly or indirectly, to the authorised firm being unable to ensure compliance with rules applied at the consolidated level required by the relevant European legislation, it may be desirable to exercise its powers of direction on qualifying parent undertakings. In determining whether there is compliance, the FCA will also take into account the purpose of the rule and its intended effect. There may also be other circumstances where the FCA considers it appropriate to use its powers of direction against qualifying parent holding companies under the consolidated supervision condition. When using the power of direction, the FCA will have due regard to the consolidated supervision for those firms that does not derive from EU legislation.

13. Annex 1 to this statement of policy contains a non-exhaustive list of possible scenarios in which the FCA may consider exercising the Power of Direction.

### **Use of powers in relation to FCA regulated entities**

14. In deciding whether to give a direction, section 192C(5) of the Act provides that the FCA must have regard:
- a) to the desirability where practicable of exercising its powers in relation to authorised persons or UK RIEs rather than its powers under this section; and
  - b) to the principle that a burden or restriction which is imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to result from its imposition.
15. Under normal circumstances, the FCA would expect to use its powers over FCA regulated entities to try to achieve its objectives in the first instance. However there may be circumstances where the FCA would consider use of the power of direction in respect of the qualifying parent undertaking to be more appropriate or necessary.
16. In stressed circumstances, the potential conflicts between a parent undertaking and an FCA regulated entity can become heightened. In this case, the likelihood that actions taken in relation to the FCA regulated entity alone would be insufficient is increased and use of the Power of Direction may again be appropriate.

### **Content of Directions**

17. A direction, specified in section 192D(1) of the Act, may require the parent undertaking:
- a) to take specified action; or
  - b) to refrain from taking specified action.
18. The FCA would issue a direction designed to bring the FCA regulated entity and the group back into compliance with its regulatory requirements or to prevent the parent undertaking from taking action which may lead to disorderly failure of FCA regulated entities or the FCA regulated entity's group.
19. A requirement may be imposed by reference to the parent undertaking's relationship with:
- a) its group; or
  - b) other members of its group.

20. The requirement would be imposed either in relation to whichever relationship(s) are causing the concern, including relationships between sister companies, or on the basis of the group generally if the concern is in respect of group-wide issues where the best control over those issues is held by the qualifying parent undertaking.
21. A requirement may refer to the past conduct of the parent undertaking (for example, by requiring the parent undertaking to review or take remedial action in respect of past conduct).
22. We may require a parent undertaking to pay redress to consumers for claims arising from professional negligence or firms providing unsuitable advice. Where there have been several causes for concerns over a period of time, with the effects of each specific issue being insufficient on its own to trigger the use of the Power of Direction, the cumulative effect of these may be included in the consideration on whether to use the Power of Direction.
23. Annex 2 to this statement of policy contains a non-exhaustive list of type of directions which the FCA may consider making.

## Annex 1

### Non-exhaustive list of possible scenarios in which the FCA may consider exercising the power of direction

1. Examples of scenarios in which the FCA may consider the exercise of its Power of Direction include, but are not limited to:
  - the holding company sets financial objectives for the group, including the regulated entity, which conflict with consumer interests; for example the holding company expects the firm to generate a specific amount of income which leads to the firm to conduct high-pressure selling;
  - the holding company directs actions to the authorised firm and the authorised firm does not pay due regard to the interests of the consumers and treat them fairly, including communicating with them in a way that is clear, fair and not misleading;
  - the holding company fails to oversee the authorised firm's arrangements to provide adequate protection for client assets, where applicable;
  - where one or more directors of the parent company appear not to be fit and proper, or suitable;
  - where the holding company directors exert dominant influence on the regulated entity's board to obstruct its independence;
  - inadequate oversight of the development of a new product by the group board of directors;
  - insufficient quality or quantity of own funds or liquid assets or other assets that are made available to the authorised firms to meet their solo requirements;
  - intra-group transactions and allocation of risks and financial resources (including large exposures, booking practices, other channels of contagion and arrangements for the mitigation of risk such as by reinsurance) which do not meet the standards expected by the FCA;
  - where the orderly wind-down or (where relevant) group recovery and resolution plans do not meet the standards expected by the FCA;
  - where a proposed acquisition by the holding company which may affect compliance with consolidated or group requirements or the solo requirements of any authorised firm in the group;
  - where actions of the parent undertaking in a stressed situation may increase the chance of disorderly failure of the FCA regulated entity;

- scenarios where the parent undertaking moves, or may move, impaired, sub-standard or high risk assets into an FCA regulated entity and allows that firm to fail in a disorderly way whilst the rest of the group carries on as a going concern;
- where only the actions of the parent company in relation to one of its unregulated subsidiaries may maintain the stability of the regulated firms, particularly in stressed circumstances, (e.g. where a regulated firm is reliant on services provided by an unauthorised sister company);
- where risks generated in an unauthorised part of the group could affect the stability of the authorised firms;
- where the close links of the authorised firm prevents the FCA from effective supervision of the authorised firm;
- acts or omissions of the qualifying parent undertaking that are affecting, or may affect, a UK RIE's ability to continue to meet Recognition Requirements or other obligations to which it is subject under [FSMA] or directly applicable EU regulation;
- insufficient quality or quantity of own funds or liquid assets or other assets being available to meet consolidated group requirements;
- insufficient transferability of a group's own funds or liquid assets to support the group's regulated activities;
- complex or opaque group structures which hinder the authorised firm's and/or the FCA's ability to assess and manage the risks generated by the authorised firm's membership of its group;
- where funding by the holding company to the regulated entity is repaid to the holding company, compromising the own funds of the regulated entity;
- group-wide risk management or governance arrangements that do not meet the FCA's and/or internationally agreed standards;
- where the holding company controls the central control functions of the group and they are not able to adequately identify and assess the risks of the regulated entity; and
- group-wide systems and controls to manage group risks which do not meet the standards expected by the FCA.

## Annex 2

### Non-exhaustive list of possible directions which the FCA may consider making

1. Directions which may be made by the FCA may include, but are not limited to:
  - a requirement to ensure the group entities undertake activities that are fair to consumers and maintain market integrity;
  - a requirement for the holding company to employ additional people or implement additional systems and controls if the regulated firm has not provided suitable advice;
  - a requirement for the holding company to intervene and prevent the regulated firm from selling inappropriate products;
  - an undertaking from the board of the holding company that they would not pay any senior management bonuses until such time as the level of redress from crystallised conduct risks are confirmed in the regulated entity;
  - an appointment by the holding company of an independent board of directors;
  - a restriction on dividend payments, or other payments in respect of capital instruments, in order to retain capital in the group;
  - a requirement to move funds or assets around the group to more appropriately address the risks;
  - a requirement for the group to be restructured to remove any material impediments to effective supervision;
  - a requirement directing the parent undertaking to take steps (in accordance, where relevant, with the Listing Rules, Company Law and/ or the undertaking's Articles of Association) to stop or restrict an acquisition or divestiture (taking account of any potential conflict with Takeover rules);
  - a requirement to take steps (in accordance, where relevant, with the Listing Rules, Company Law and/ or the undertaking's Articles of Association) to remove a director, who is not fit and proper or suitable (including skills and knowledge), from his post;
  - a requirement to ensure the continuity of service is provided between relevant group entities and that outsourcing arrangements between group undertakings can operate effectively;
  - a requirement to include relevant regulated and unregulated entities (including shadow banking entities, where appropriate) in consolidated calculations; and
  - a requirement to raise new capital.

## Appendix 2

---

# Where SUP 11, 15 and 16 Notifications>Returns should be submitted

## The new FCA Handbook: Feedback on Regulatory Reform proposals relating to the FCA Handbook

	Address for Dual regulated firms	Address for FCA only regulated firms	Where is the submitting address located?
<b>SUP 11</b>	<p>Controllers and proposed controllers s178 notice – pre-notification (seeking approval)</p> <p>For new or increase in control of a UK regulated firm</p>	<p>Via email to <a href="mailto:PRA-changeincontrol@bankofengland.co.uk">PRA-changeincontrol@bankofengland.co.uk</a>, or via post or hand delivery to</p> <p>Assessment and Monitoring Team Bank of England – Prudential Regulation Authority 20 Moorgate London EC2R 6DA</p>	On the pre-notification change in control forms
Decrease in control notification by controllers	As above	As above	On the pre-notification change in control forms (SUP 11.3.15A for process)
Close links notification – event-driven Close links notification – monthly	Via email to <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a>	Via email to <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a>	SUP 11 directs firms to the 'Close Links' page on the PRA and FCA websites which contain this address.
<b>SUP 15</b>			
<b>(NB for dual regulated firms: the term 'appropriate regulator' in SUP 15 means the PRA in the PRA Handbook and the FCA in the FCA Handbook. New SUP 15.2.5G reminds dual regulated firms that where the term is used in a provision which appears both in the PRA and FCA Handbooks, 'appropriate regulator' therefore means in effect both the FCA and PRA.)</b>			
General notifications (Firms should have regard to SUP 15.3.5G)	<p>Usual supervisory contact at the FCA and PRA via post, hand delivery, electronic mail or fax. Where the usual supervisory contact at the PRA is the PRA Firm Enquiries Team the electronic email address is <a href="mailto:PRAfirm.enquiries@bankofengland.co.uk">PRAfirm.enquiries@bankofengland.co.uk</a></p>	<p>Usual supervisory contact at the FCA (unless stated in the notification rule, or on the relevant form (if specified) via <a href="mailto:fcc@fca.org.uk">fcc@fca.org.uk</a></p>	Flagged in SUP 15

SUP 15.5 Core information requirements (Change in address, name, telephone number)	Via ONA Credit Unions: Usual supervisory contact at the PRA via post, hand delivery, email, fax, ONA, or <a href="mailto:PRAffirm.enquiries@bankofengland.co.uk">PRAffirm.enquiries@bankofengland.co.uk</a>	Via ONA	SUP 15 Annex 3R
Notified persons	Via ONA Credit Unions: Usual supervisory contact at the PRA via post, hand delivery, electronic mail or fax. Where the usual supervisory contact is the PRA Firm Enquiries Team the email address is <a href="mailto:PRAffirm.enquiries@bankofengland.co.uk">PRAffirm.enquiries@bankofengland.co.uk</a>	Via ONA	SUP 15.4 Annex 2
Management of occupational pension scheme assets	Usual supervisory contact at the FCA (unless stated in the notification rule, or on the relevant form (if specified) via <a href="mailto:fcc@fca.org.uk">fcc@fca.org.uk</a>	Usual supervisory contact at the FCA (unless stated in the notification rule, or on the relevant form (if specified) via <a href="mailto:fcc@fca.org.uk">fcc@fca.org.uk</a>	Flagged in SUP 15
Individual Pension accounts	As above	As above	Flagged in SUP 15
Insurer's commission clawback	As above	As above	Flagged in SUP 15
Money service business report	As above	As above	Flagged in SUP 15
Delegation by UK UCITs management companies	As above	As above	Flagged in SUP 15
CTF providers	As above	As above	Flagged in SUP 15
Suspicious transactions reporting	As above	As above	Flagged in SUP 15
Notification by members of financial conglomerates	As above	As above	Flagged in SUP 15

## The new FCA Handbook: Feedback on Regulatory Reform proposals relating to the FCA Handbook

SUP 16	Dual regulated firms	FCA only regulated firms	
SUP 16.4 (Controllers – annual report)	Via email ( <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a> ) or via post or hand delivery to the FCA marked for the attention of 'Central Reporting' or via fax (020 7066 3905)	Via email ( <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a> ) or via post or hand delivery to the FCA marked for the attention of 'Central Reporting' or via fax (020 7066 3905)	SUP 16.3.6R – 10G
SUP 16.5 (Close links – annual report)	Via email to <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a>	Via email to <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a>	SUP 11.9.3AG
SUP 16.6 (Compliance reports)	Via email ( <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a> ) or via post or hand delivery to the FCA marked for the attention of 'Central Reporting' or via fax (020 7066 3905)	Via email ( <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a> ) or via post or hand delivery to the FCA marked for the attention of 'Central Reporting' or via fax (020 7066 3905)	SUP 16.3.6R – 10G
SUP 16.8 (Persistence Reports)	IMD.Pers@fca.org.uk or via post or hand delivery to the FCA marked for the attention of 'Central Reporting' or via fax (020 7066 3905)	IMD.Pers@fca.org.uk or via post or hand delivery to the FCA marked for the attention of 'Central Reporting' or via fax (020 7066 3905)	SUP 16.8
SUP 16.9 (Appointed reps reports-annual)	Via email ( <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a> ) or via post or hand delivery to the FCA marked for the attention of 'Central Reporting' or via fax (020 7066 3905)	Via email ( <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a> ) or via post or hand delivery to the FCA marked for the attention of 'Central Reporting' or via fax (020 7066 3905)	SUP 16.3.6R – 10G
SUP 16.10 (Standing data)	Via ONA  Credit Unions: <a href="mailto:Static.Data@fca.org.uk">Static.Data@fca.org.uk</a> or via post or hand delivery to the FCA marked for the attention of the 'Static Data team'.	Via ONA	SUP 16.3.6R – 10G
SUP 16.11 (Product sales data)	GABRIEL	GABRIEL	SUP 16.3.6R – 10G
SUP 16.12 (Regulatory reporting – Annual Accounts)	Via email ( <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a> ) or via post or hand delivery to the FCA marked for the attention of 'Central Reporting' or via fax (020 7066 3905)	Via email ( <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a> ) or via post or hand delivery to the FCA marked for the attention of 'Central Reporting' or via fax (020 7066 3905)	SUP 16.3.6R – 10G
SUP 16.12 (Regulatory reporting – FSA00)	GABRIEL	GABRIEL	SUP 16.3.6R – 10G

SUP 16.12 (Regulatory reporting – RMAR)	GABRIEL	GABRIEL	SUP 16.3.6R – 10G
SUP16.12 (Regulatory reporting – MLAR)	GABRIEL	GABRIEL	SUP 16.3.6R – 10G
SUP16.12 (Regulatory reporting – APF questionnaire)	n/a	Via email ( <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a> ) or via post or hand delivery to the FCA marked for the attention of 'Central Reporting' or via fax (020 7066 3905)	SUP 16.3.6R – 10G
SUP 16.13 (Payment services reports)	GABRIEL	GABRIEL	SUP 16.3.6R – 10G
SUP16.14 (Client Money & Asset Return)	GABRIEL	GABRIEL	SUP 16.3.6R – 10G
SUP16.15 (E-Money regulations)	E-MoneyReturns@fca.org.uk or via post or hand delivery to the FCA marked for the attention of 'Central Reporting' or via fax (020 7066 3905)	E-MoneyReturns@fca.org.uk or via post or hand delivery to the FCA marked for the attention of 'Central Reporting' or via fax (020 7066 3905)	FCA website on E-money SUP 16.15
SUP 16.16 (Prudential valuation reports)	Via email ( <a href="mailto:prudentvaluationreturns@bankofengland.co.uk">prudentvaluationreturns@bankofengland.co.uk</a> ) or via post or hand delivery to  Regulatory Data Group Statistics and Regulatory Data Division (H05 A-B) Bank of England Threadneedle Street London EC2R 8AH  or via fax to the Regulatory Data Group of the Bank of England (020 7601 3334) Submitted with year-end returns	Via email ( <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a> ) or via post or hand delivery to the FCA marked for the attention of 'Central Reporting' or via fax (020 7066 3905)	SUP 16.16.4

## The new FCA Handbook: Feedback on Regulatory Reform proposals relating to the FCA Handbook

SUP 16.17.3 (Remuneration Benchmarking Reporting)	Via email ( <a href="mailto:EBA.RemunerationData@BankofEngland.co.uk">EBA.RemunerationData@BankofEngland.co.uk</a> )	n/a	PRA Website
SUP 16.17.4 (High Earners Reporting)	Via email ( <a href="mailto:EBA.RemunerationData@BankofEngland.co.uk">EBA.RemunerationData@BankofEngland.co.uk</a> )	Via email ( <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a> )	PRA and FCA website
<b>Other reports</b>			
Credit Unions – annual accounts (submitted with annual return), annual return (CY) and quarterly return (CQ)	Via email ( <a href="mailto:creditiunionreporting@bankofengland.co.uk">creditiunionreporting@bankofengland.co.uk</a> ) or via post or hand delivery to Regulatory Data Group Statistics and Regulatory Data Division (H05 A-B) Bank of England Threadneedle Street London EC2R 8AH or via fax to the Regulatory Data Group of the Bank of England (020 7601 3334)	n/a	SUP 16.12.3R (1)(3) CREDS 8.2
Credit unions – complaints return	Via email ( <a href="mailto:Regulatory.reports@fca.org.uk">Regulatory.reports@fca.org.uk</a> ) or via post or hand delivery to the FCA marked for the attention of ‘Central Reporting’ or via fax (020 7066 3905)	n/a	CREDS 9.2
Insurance returns	Via email ( <a href="mailto:insurancedata@bankofengland.co.uk">insurancedata@bankofengland.co.uk</a> ) or via post or hand delivery to Regulatory Data Group Statistics and Regulatory Data Division (H05 A-B) Bank of England Threadneedle Street London EC2R 8AH or via fax to the Regulatory Data Group of the Bank of England (020 7601 3334) For Controllers & Close Links – see SUP 16.4 & SUP 16.5 above for submission address	n/a	IPRU(INS) 9.6(2)

Friendly Society Returns	<p>Via email (<a href="mailto:insurancedata@bankofengland.co.uk">insurancedata@bankofengland.co.uk</a>) or via post or hand delivery to  Regulatory Data Group  Statistics and Regulatory Data Division (H05 A-B)  Bank of England  Threadneedle Street  London  EC2R 8AH</p> <p>or via fax to the Regulatory Data Group of the Bank of England (020 7601 3334)</p> <p>For Controllers &amp; Close Links – see SUP 16.4 &amp; SUP 16.5 above for submission address</p>	n/a	IPRU (FSOC) 3.1 (7)
--------------------------	---	-----	---------------------

**PUB REF: 004644**

The Financial Services Authority  
25 The North Colonnade Canary Wharf London E14 5HS  
Telephone: +44 (0)20 7066 1000 Fax: +44 (0)20 7066 1099  
Website: [www.fsa.gov.uk](http://www.fsa.gov.uk)

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